

IN THE CIRCUIT COURT OF NICHOLAS COUNTY, WEST VIRGINIA

TARA LEIGH DODRILL, by her next friend, JULIE CALLAGHAN, by her natural father, guardian, and next friend and GARY B. DODRILL, and BRENDA COX,

Plaintiffs,

v.

Civil Action No.: 03-C-69

BUCKHANNON HOLDINGS, INC. d/b/a J.D.  
BYRIDER USED CAR SALES and  
DIAMLERCHRYSLER CORPORATION,

Defendants.

**FIRST AMENDED COMPLAINT**

The Plaintiffs complain and say as follows:

1. This Court has venue and jurisdiction over this action.
2. This Court has subject matter jurisdiction over the claims set forth in this complaint.
3. Defendant DaimlerChrysler Corporation, whether acting by and through its agents, servants, employees, co-conspirators, joint venturers, and/or subsidiaries, is a Delaware corporation. At all times relevant herein, DaimlerChrysler Corporation was and is in the business of designing, conceiving, formulating, manufacturing, marketing, advertising, distributing, and selling automobiles, including, but not limited to the Eagle Vision in the United States, including the State of West Virginia, for the use by citizens and residents of this state, including Nicholas County, West Virginia.
4. Defendant, Buckhannon Holdings, Inc. D.B.A. J.D. Byrider, (hereinafter known as J.D. Byrider), 25 N. Locust Ave., Buckhannon, WV 26201, whether acting by and through its agents,

servants, employees, co-conspirators, joint venturers and/or subsidiaries, is a West Virginia Corporation with its principal place of business in Buckhannon, WV. At all times relevant herein, J.D. Byrider was and is in the business of selling automobiles, including, but not limited to the Eagle Vision to West Virginia residents and for the use of Nicholas County residents.

5. Plaintiffs are residents of Nicholas County, West Virginia. Plaintiff Gary Dodrill is the natural father of Tara Dodrill.

6. That on or about September 13, 2002, Mabel Dodrill, natural grandmother of Tara Dodrill, purchased a 1993 Eagle Vision from Defendant J.D. Byrider. Mabel Dodrill purchased said vehicle for the sole purpose of providing an automobile for the sole use of Plaintiff, Tara Dodrill, then a minor.

7. At all times complained of herein, Defendants entered into a joint venture, one with the other, and with unnamed persons, firms and corporations for the goals and purpose as herein alleged and complained of.

8. The 1993 Eagle Vision sold by J.D. Byrider to Mabel Dodrill for the benefit of Plaintiff Tara Dodrill was unreasonably dangerous when used as intended.

9. The Defendants knew that the 1993 Eagle Vision was dangerous and defective and that their acts and/or omissions could likely cause injury and damage to persons who operated said vehicle, including your Plaintiff, Tara Dodrill.

10. The Daimler Chrysler Corporation Defendant negligently, carelessly, knowingly, recklessly, wrongfully and intentionally designed, formulated, tested, manufactured, labeled, distributed, advertised, marketed, prescribed and placed the 1993 Eagle Vision in the stream of commerce for sale in the United States, including the State of West Virginia, and sold the 1993 Eagle Vision to West Virginia residents, including Mable Dodrill, through Defendant J.D. Byrider, for the

use and benefit of your Plaintiff, Tara Dodrill.

11. Defendant J.D. Byrider negligently, carelessly, knowingly, recklessly, wrongfully and intentionally sold the 1993 Eagle Vision to Mabel Dodrill for the use and benefit of Plaintiff. Tara Dodrill.

12. The Defendants knew of the dangers of the 1993 Eagle Vision and its steering and restraint system and owed a duty to provide information to the public, of the dangers of the product.

13. The Defendants negligently, knowingly, recklessly, and intentionally failed and refused to advise the public of the aforesaid dangers of the Eagle Vision and its steering and restraint system.

14. Defendant Daimler Chrysler Corporation set about to and did encourage and enlist automobile dealers and others to assist Daimler Chrysler Corporation Defendant to sell the 1993 Eagle Vision and to mislead the Plaintiffs and to mislead the public, and in so doing, including Defendant J.D. Byrider who acted as Defendant Daimler Chrysler Corporation's agents, ostensible agents, servants, employees, conspirators, and/or joint venturers. Defendant DaimlerChrysler Corporation negligently, knowingly, recklessly, and intentionally failed and refused (o use due care in conceiving, designing, researching, testing, warning, packaging, advertising, marketing, promoting, selling the 1993 Eagle Vision. Defendants Daimler Chrysler Corporation negligently knowingly, recklessly, and intentionally failed and refused to specially instruct and inform by warning instruction and publication of the dangers of the 1993 Eagle Vision and its steering and restraint system.

15. Defendant Daimler Chrysler Corporation negligently, knowingly, recklessly, and intentionally withheld information from the public who had a right to know of information which would have prevented the Plaintiff from being exposed to the dangers of the 1993 Eagle Vision.

16. Plaintiffs did not have sufficient information to determine the safety of the 1993 Eagle

Vision, and, therefore, relied upon the superior knowledge of the Defendants in deciding to use the 1993 Eagle Vision, and, as a result of the reliance of the Defendant's often misleading misrepresentations and intentional omissions in hiding of relevant, significant and material facts and information, Plaintiffs were misled to believe the 1993 Eagle Vision was safe for its intended use.

17. On or about October 31, 2002, Plaintiff Tara Dodrill did operate the 1993 Eagle Vision (which was purchased by Mabel Dodrill from Defendant J.D. Byrider) on Hookersville Rd. in Nicholas County, WV. On or about April 31, 2002, while operating the 1993 Eagle Vision, said Eagle Vision left the roadway and struck a tree and a utility pole. Plaintiff Tara Dodrill was ejected from the vehicle. The steering system on the vehicle failed. The driver's side seatbelt failed to operate properly. The driver's side seatbelt broke and failed to restrain Plaintiff Tara Dodrill. Plaintiff Tara Dodrill was ejected from the vehicle as a result of the failure of the 1993 Eagle Vision seatbelt and as a result of the steering failure.

18. As a direct and proximate result of the failure of the steering system and (he seatbelt the Plaintiff Tara Dodrill suffered serious, severe and permanent injuries to her person, including but not limited to the following: brain injury; multiple bruises and contusions; pain and suffering, past and future; medical expenses, past and future; impairment of caring capacity; scarring and disfigurement; permanent injuries; will have her vocational options limited; and the infant Plaintiff was otherwise injured.

19. As a result of the aforesaid acts and conduct by the Defendants and each of the acting for and on their own behalf and as agents, ostensible agents, employees, conspirators, and joint venturers of others, including the other Defendants named herein, the 1993 Eagle Vision was placed into the stream of commerce, distributed and sold to Mabel Dodrill for the benefit and use of Plaintiff Tara Dodrill and Plaintiffs were damaged as hereinafter alleged.

### **Count 1**

Plaintiffs incorporate all allegations above as fully restated herein and realleged and Plaintiffs further complain and say as follows:

20. The Daimler Chrysler Corporation Defendant is a manufacturer and/or supplier and/or distributor of the 1993 Eagle Vision.

21. The aforesaid acts and conduct of the Defendants, and each of them acting in the manner as alleged above were negligent, and as approximate result, your Plaintiff Tara Dodrill has suffered and will in the future suffer some or all of the following direct and/or consequential foreseeable damages:

a. Permanent brain damage; past, present and future medical and hospital bills for treatment of her injuries;

b. Physical injury, both temporary and permanent;

c. Severe and significant emotional distress, and mental pain and suffering;

d. Humiliation, embarrassment, and fear;

e. Loss of enjoyment of life;

f. Loss of income, past and present;

g. Disability;

h. Disfigurement;

i. Extensive reasonably necessary expenses for the monitoring of the injuries;

j. Annoyance and inconvenience; and/or

k. Other damages, which under the law and circumstances. Plaintiffs are entitled to including attorney's fees and costs associated with the prosecution of this case.

22. The aforesaid acts and conduct of the Defendants, and each of them acting in the manner as alleged were negligent, and as a proximate result, your Plaintiff Gary Dodrill as the father of Plaintiff Tara Dodrill has suffered and will in the future suffer and in said capacity has in the past and will in the future incur medical expenses as a result of the injuries sustained by his daughter, Tara Dodrill.

23. The Plaintiff Gary Dodrill, the parent of Tara Dodrill has lost the parental society and companionship of Tara Dodrill.

24. In addition to the damages above, the acts and conduct of Defendants as alleged above entitle Plaintiffs to punitive damages, both individually.

### **Count 2**

Plaintiffs incorporate all allegations above the same as is fully restated and realleged and Plaintiffs further complain and say as follows:

25. The Defendant Daimler Chrysler Corporation is a manufacturer and/or supplier and/or distributor of the 1993 Eagle Vision. Defendant J.D. Byrider is an agent of the Defendant Daimler Chrysler Corporation.

26. The acts and conduct of Defendant as alleged above were intentional, malicious, oppressive, wanton, willful reckless, knowing, and wrongful and/or criminal indifference to the civil obligation affecting the right of others, and, in particular those of Tara Dodrill and, as a proximate result your Plaintiff Tara Dodrill used the 1993 Eagle Vision as advised by the Defendant and as a result was injured severely and suffered permanent brain damage and otherwise injured.

27. The Defendants and each of them, acting as alleged above intentionally inflicted emotional distress on the Plaintiffs by their conduct.

28. The acts and conduct of Defendant were outrageous in that they offended the general

accepted standards of decency and morality of the community.

28. As a proximate result of the Defendant's acts and omissions, your Plaintiffs have suffered and are suffering severe emotional distress or otherwise damage as alleged above.

### **Count 3**

Plaintiffs incorporate all allegations above the same as if fully restated and realleged and Plaintiffs further complain and say as follows:

30. The Daimler Chrysler Corporation Defendant is a manufacturer and distributor of a product which was unreasonably dangerous and defective and which was placed in the stream of commerce by Defendant Daimler Chrysler Corporation and J.D. Byridcr.

31. The aforesaid 1993 Eagle Vision was defective in that it was not properly conceived, designed, formulated, tested, researched, studied, packaged, distributed and sold and it was not accompanied by proper warnings and instructions and Defendants are strictly liable to Plaintiffs for their damages. The 1993 Eagle Vision had known steering defect problems, and, as early as 1999 the NHTSA had reported over 55,000 steering related warranty claims under 36,000 miles on this steering system and over 1,450 reported incidents of sheared, cracked steering assemblies and/or complete loss of steering control.

32. The product was defective in that when it was placed in the stream of commerce and the Defendants knew or should have known that;

(a) The foreseeable risks exceeded the benefits associated with the design or formulation, and/or;

(b) It was more dangerous than the ordinary consumer, including Plaintiffs, would expect and more dangerous than other products marketed for the same purposes and/or;

(c) The product did not have sufficient warnings or instructions in light of the

dangers associated with the use of the product and/or;

(d) The automobile and its steering and its restraint system was inadequately tested, and not fit for its intended use;

33. For all the reasons alleged above the Defendants are strictly liable to the Plaintiffs for their damages.

34. As a proximate result of the product defects. Plaintiffs were damaged as alleged herein.

#### **Count 4**

Plaintiffs incorporate all allegations above the same as if fully restated and realleged and Plaintiffs further complain and say as follows:

35. The Daimler Chrysler Corporation Defendants is a manufacturer and distributor of a product which was unreasonably dangerous and defective and which was placed in the stream of commerce by Defendant Daimler Chrysler Corporation and Defendant J.D. Byrider: and. the Defendants knew or should have known of the dangers;

36. The aforesaid 1993 Eagle Vision was defective in that it was not properly conceived, designed, formulated, tested, researched, studied, packaged, distributed and sold and it was not accompanied by proper warnings and instructions and Defendants are liable to Plaintiffs for their damages; and. the Defendants knew or should have known of the defects;

37. As a proximate result of the product defects. Plaintiffs were damaged as alleged herein.

#### **Count 5**

Plaintiffs incorporate all allegations above the same as if fully restated and realleged and Plaintiffs further complain and say as follows:

38. Defendants expressly warranted that the 1993 Eagle Vision was safe for the

uses

intended and that the 1993 Eagle Vision had been properly studied and tested, when the Defendants knew it was defectively unsafe;

39. The 1993 Eagle Vision purchased by Mabel Dodrill from Defendant J.D. Byrider for the and benefit of Plaintiff Tara Dodrill did not conform the express representations because the 1993 Eagle Vision was not safe for use in the manner advertised, marketed, and approved by the Defendants and Defendants breached the express warranties, when the Defendants knew the product was defectively unsafe;

40. As a proximate result of the breach of said warranties, Plaintiffs have suffered and will continue to suffer injury, harm, and economic loss as alleged above.

### **Count 6**

Plaintiffs incorporate all allegations above the same as if fully restated and alleged and Plaintiffs further complain and say as follows:

41. At the time Defendants marketed, sold, and distributed the 1993 Eagle Vision for use by Plaintiff Tara Dodrill, Defendants knew of the use for which said automobile and its steering and restraint system was intended and impliedly warranted the product to be of merchantable quality and safe and fit for such use.

42. Contrary to such implied warranty, the 1993 Eagle Vision and its steering and restraint system was not of merchantable quality or safe or fit for its intended use because the 1993 Eagle Vision and its steering and restraint system was and is unreasonably dangerous, defective and unfit for the ordinary purpose for which it was used as described above and Defendants breached the implied warranties, and breached the implied warranties knowingly, willingly and intentionally;

43. As a direct and proximate result of the breach of implied warranties, Plaintiffs suffered

and will continue to suffer injury, harm, and economic loss as alleged above.

### **Count 7**

Plaintiffs incorporate all allegations above the same as if fully restated and realleged and Plaintiffs further complain and say as follows:

44. Defendants, by acts and omissions, misrepresented the safety of the foregoing 1993 Eagle Vision, which acts and omissions were fraudulent, all as alleged above.

45. Plaintiffs relied on the Defendants' acts and omissions, used the 1993 Eagle Vision, and were damaged as alleged above.

### **Count 8**

Plaintiffs incorporated all allegations above the same as if fully restated and realleged and further complain and say as follows:

46. The Defendant DaimlerChrysler has engaged in a pattern of conduct since at least 1999 consisting of an egregious pattern and practice of deceit, fraud, and cover up. On information and belief, Plaintiffs' believe the following:

- a. That the steering system used in the 1993 Eagle Vision has been seriously, dangerously, fatally defective since its installation, and that Defendant DaimlerChrysler Corporation has had full knowledge of same dating back at least ten years or more; and, has made no effort to correct the fatal defect due to the "cost benefit ratio" referred to in paragraph 46d above counts;
- b. That the NHTSA reported, in 1999, that the this steering system used in the 1993 Eagle Vision had over 55,000 steering related warranty claims with under 35,000 miles and reported over 1,450 reports of sheared or cracked

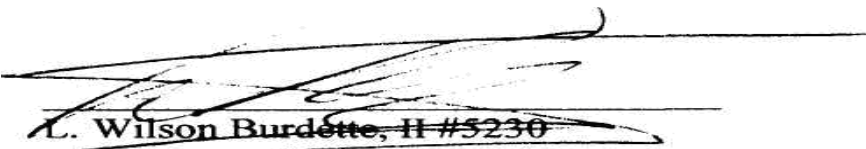
steering assemblies and/or complete loss of steering control. Rather than address this serious dangerous issue, DaimlerChrysler Corporation has ignored the issue and engaged in a pattern of denial and cover up;

- c. In case style Jimenez v. Chrysler (Civil Action No: 2:96-1269-11) the Court found that to enhance its profits at the expenses of consumer safety, Daimler Chrysler decided not to spend .250 to .500 per vehicle DaimlerChrysler engineers determined would make a Minivan latch safe. Rather, Daimler Chrysler chose to conceal the dangerous latch issue and continue to make and proclaim the safety of the Minivan;
- f. Former NHTSA administrator Joan Claybrook, told to CBS news reporting a DaimlerChrysler ball joint defect, Chrysler's view is a cost benefit ratio, it is cheaper to let these circumstances happen. A few people get killed, and they don't have to pay for all the replacement parts.

Count I Punitive Plaintiffs are entitled to punitive damages from and against the Defendant, DaimlerChrysler Corporation in amounts to be determined based on the net worth of the Company. The Defendant DaimlerChrysler Corporation has exhibited a reckless dangerous indifference to the safety of consumers and your Plaintiffs herein.

WHEREFORE, Plaintiffs demand judgment against the Defendants, jointly and severally, as follows: compensatory and consequential damages, punitive damages, attorneys' fees and costs incurred by Plaintiffs in connection with this action; and such other and further relief as this Court deems just and proper all in an amount sufficient to compensate them for their damages and losses.

TARA DODRILL AND  
GARY DODRILL  
Plaintiffs by Counsel



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