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8 UNITED STATES DISTRICT COURT FOR THE
9 EASTERN DISTRICT OF WASHINGTON

10
11 CRYSTAL BEAR, by and through her Guardian
Ad Litem, Gary N. Bloom,

12 Plaintiff,

13 vs.

14 FORD MOTOR COMPANY, a Delaware
15 corporation; and MARLA BEAR, a single
person,

16 Defendants.

CV-05-253-EFS

**COMPLAINT FOR
DAMAGES AND
DEMAND FOR JURY
TRIAL**

17 Plaintiff, by and through her undersigned attorneys, alleges as follows:

18 **I.**

19 **PARTIES**

20 1.1 Plaintiff Crystal Bear resides with her parents, Steve and Joy Bear, in
21 Stevens County, Washington. Crystal brings this cause of action through her limited
22 Guardian ad Litem, Gary N. Bloom. Mr. Bloom is the duly appointed limited
23 Guardian ad Litem, pursuant to SPR 98.16W, having been appointed by Order of the
24 Stevens County Superior Court, Cause No. 01-4-00081-6 on December 13, 2001.

25 **ORIGINAL**

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1 1.2 Defendant Ford Motor Company (hereinafter "Ford") is a corporation
2 organized and existing under the laws of the state of Delaware and is authorized to
3 conduct business in the State of Washington, among other places.

4 1.3 Defendant Marla Bear is a single person who is a resident of the State of
5 Utah.

6 1.4 Defendant Ford is engaged in numerous business activities in the State
7 of Washington including, but not limited to, extensive television, radio and newspaper
8 advertising and wholesale and retail sales of Ford vehicles in the ordinary course of
9 commerce.

10 II.

11 JURISDICTION AND VENUE

12 2.1 This Court has jurisdiction over the subject matter of this lawsuit pursuant
13 to 28 U.S.C. § 1332 as there is complete diversity between the plaintiff and
14 defendants. This Court has pendent jurisdiction over the state law claims. The
15 amount in controversy exceeds \$75,000.00. Venue is proper in the Eastern District
16 of Washington pursuant to 28 U.S.C. § 1391.

17 III.

18 FACTS

19 3.1 On or about October 17, 1999, plaintiff Crystal Bear was a passenger in
20 the right rear seat of her family's 1984 Ford Bronco II.

21 3.2 Plaintiff Crystal Bear's 16-year old sister, defendant Marla Bear, was
22 driving the subject Ford Bronco II. Approximately 1.5 miles from their home in
23 Rice, Washington, on the way to church in the town of Chewelah, Washington,
24 defendant Marla Bear's attention was diverted to the children passengers in the rear
25 seats who were trying to fasten their seat belts. When Marla Bear turned her head,

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1 the vehicle swerved on the road and then went out of control, left the paved road
2 surface and overturned, landing in a farm field.

3 3.3 At the time that defendant Marla Bear attempted to correct the pathway
4 of the subject Ford Bronco II, the vehicle failed to perform in a reasonably safe
5 manner and failed to perform in a reasonably crashworthy fashion under reasonably
6 foreseeable driving conditions.

7 3.4 During the course of the rollover, plaintiff Crystal Bear was ejected from
8 the subject Ford Bronco II and sustained serious and permanent injuries, including
9 quadriplegia and a traumatic brain injury. Her brother, who was in the left rear
10 passenger seat, was also ejected but suffered only minor injuries. The belted driver
11 and front seat passenger were not ejected.

12 **IV.**

13 **FIRST CAUSE OF ACTION**

14 **AGAINST DEFENDANT FORD MOTOR COMPANY**

15 **Violation of Washington State Products Liability Law**

16 4.1 Defendant Ford is liable to plaintiffs pursuant to the Washington State
17 Products Liability Law, RCW 7.72, et seq., for manufacturing a product unreasonably
18 dangerous as designed and by failing to issue adequate warnings or instructions. At
19 the time of its manufacture, and up to the date of the accident in this case, the Bronco
20 II was unsafe to an extent beyond that which would be contemplated by the ordinary
21 consumer or user.

22 4.2 Defendant Ford is liable pursuant to the Washington State Products
23 Liability Law, RCW 7.72, et seq., for manufacturing the Bronco II involved in this
24 accident when it knew at the time of its design and later as it learned about rates of
25 accident rollover and injury that it was foreseeable that the Bronco II would be used

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1 to carry families including small children in the back seat and that the vehicle would
2 be driven at highway speeds. Further, at the time of its manufacture and up to the
3 date of accident in this case, Ford knew that the short wheel base, narrow track width,
4 and high center of gravity would combine to cause the Bronco II to rollover more
5 easily than other more stable passenger vehicles. Specifically, the Bronco II involved
6 in this accident was dangerously defective for the following reasons:

7 4.2.1 Defective rear seat lap belts due to a defective design and/or
8 manufacturing process allowed the belt mechanisms to break, split and/or fall
9 down below the rear seat and become invisible and inaccessible to vehicle
10 occupants during reasonably foreseeable driving conditions.

11 4.2.2. Lack of adequate warnings and instructions regarding the
12 disappearing and inaccessible rear seat belts and failure by Ford to exercise
13 reasonable care in informing product users about the dangers.

14 4.2.3. Lack of crashworthiness caused injuries in this accident which
15 exceeded the harm that would have occurred if the Bronco II had been
16 reasonably safe, including the following crashworthiness defects:

- 17 (1) Lack of an adequate occupant restraint system.
- 18 (2) Lack of a visible and accessible rear seat belt.
- 19 (3) Lack of adequate roof support and/or strength.
- 20 (4) Side and rear window glass which shattered and failed to
21 provide protection from ejection during accident.
- 22 (5) Failure to incorporate crashworthiness design features which
23 would prevent enhanced injuries for vehicle occupants in an
24 accident.

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VI.

THIRD CAUSE OF ACTION

AGAINST DEFENDANT FORD MOTOR COMPANY

Violation of Consumer Protection Act

6.1 Plaintiff hereby realleges and incorporates each and every allegation as set forth in paragraphs 1.1 through 5.3 herein.

6.2 Defendant Ford marketed the 1984 Ford Bronco II in the State of Washington.

6.3 Said defendant's marketing and advertising of the Ford Bronco II in the State of Washington constitutes unfair or deceptive acts or practices under the Washington Consumer Protection Act, RCW 19.86, et seq.

6.4 Despite the fact that defendant was aware that the Ford Bronco II had defects in its rear seat belt restraint system and had a propensity to unexpectedly rollover under foreseeable driving conditions and that said rollovers can, and do, cause serious bodily injury or death, defendant continued to market its product as safe while failing to manufacture and sell a reasonably safe design and by failing to adequately warn the public of the inherent dangers of the Ford Bronco II.

6.5 The defendant's unfair and deceptive acts and practices were a direct and proximate cause of damage to plaintiff Crystal Bear.

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VII.

FOURTH CAUSE OF ACTION

AGAINST DEFENDANT FORD MOTOR COMPANY

Misrepresentation and Tort of Outrage

7.1 Plaintiff hereby realleges and incorporates each and every allegation as set forth in paragraphs 1.1 through 6.5 herein.

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1 7.2 Defendant Ford misrepresented material facts, as alleged hereinafter,
2 concerning the character, quality and safety of the Bronco II and of the 1984 Ford
3 Bronco II referred to in this case in particular, of such a nature as to render defendant
4 Ford liable for the injuries and damages to plaintiff Crystal Bear.

5 7.3 Defendant Ford engaged in a course of advertising, marketing and
6 promoting of the Bronco II to consumers and the public which included express and
7 implied misrepresentations of material facts concerning the character and quality of
8 the Bronco II. These representations were made by defendant's advertising,
9 marketing, promotional and training activities, the totality of which falsely represented
10 that:

11 7.3.1. The Bronco II was suitable as a passenger vehicle on the
12 highways and streets of America when, in fact, it was among the most
13 dangerous vehicles on the market with respect to rollover stability and
14 crashworthiness;

15 7.3.2. The Bronco II was suitable for safe use on highways as
16 depicted in the advertising, marketing and promotional material distributed to
17 the public;

18 7.3.3. The Bronco II was suitable for use by individuals who were
19 not experienced engineers or drivers with adequate knowledge and
20 understanding of suspension systems, steering and handling of utility vehicles;

21 7.3.4. Defendant Ford concealed from consumers and the public
22 vital information concerning the rollover propensity and the safety of the
23 Bronco II. Specifically, defendant Ford knew information that indicated that
24 the Bronco II contained defects, including defective rear seat lap belts, lack of
25 adequate warnings and instructions regarding the disappearing and inaccessible
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1 rear seat belts and lack of crashworthiness as more fully set forth in Section IV
2 herein. Rather than undertaking action to prevent deaths and injuries,
3 defendant Ford unreasonably concealed from consumers and the public relevant
4 knowledge about dangers involving foreseeable uses of the Bronco II and
5 promoted and sold the Bronco II for use in a manner which defendant knew to
6 be dangerous. Defendant's concealment of these known dangers represented
7 the safety of the Bronco II, which was a proximate cause of the injuries and
8 damages suffered by plaintiff in this case, such that plaintiff's sister, defendant
9 Marla Bear, would not have been operating the vehicle absent defendant's
10 concealment.

11 7.4 All of the above described conduct, under the circumstances of this case,
12 was known or reasonably should have been known by defendant Ford prior to the
13 design and sale of the subject Ford Bronco II in this case. Defendant Ford's
14 misrepresentations were a direct and proximate cause of the injuries and damages to
15 plaintiff Crystal Bear. Defendant Marla Bear would not have been driving nor would
16 plaintiff Crystal Bear have been occupying the vehicle absent defendant's
17 misrepresentations and concealment.

18 7.5 By reason of and as a direct and proximate result of defendant Ford's
19 extreme and outrageous conduct described and alleged above, as recognized in the
20 State of Washington as the tort of outrage, plaintiff Crystal Bear sustained severe and
21 permanent injuries.

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VIII.

FIFTH CAUSE OF ACTION
AGAINST DEFENDANT MARLA BEAR

Negligence

8.1 Plaintiff hereby realleges and incorporates each and every allegation as set forth in paragraphs 1.1 through 7.5 herein.

8.2 Defendant Marla Bear had a duty to exercise ordinary care toward plaintiff Crystal Bear.

8.3 In breach of said duty, defendant Marla Bear was negligent in one or more of the following respects:

8.3.1. Failure to keep the Ford Bronco II under proper control;

8.3.2. Operating said vehicle in a negligent manner in violation of RCW 46.61.525; and/or

8.3.3. Was otherwise negligent.

8.4 By reason of and as a direct result of defendant Marla Bear's negligence, plaintiff Crystal Bear sustained severe and permanent injuries.

IX.

DEMAND FOR JURY TRIAL

9.1 A jury trial is requested.

X.

DAMAGES

10.1 As a direct and proximate result of the breaches, misrepresentations, negligence and tortious conduct of defendants, and each of them, plaintiff Crystal Bear has sustained general and special damages including past and future medical expenses, future economic loss, lost earning capacity, out-of-pocket expenses, pain and

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1 suffering, emotional distress, tort of outrage, disability, disfigurement and loss of
2 enjoyment of life, all in amounts to be proven at trial.

3 **PRAYER**

4 WHEREFORE, plaintiff prays for judgment against defendants, jointly and
5 severally, for general and special damages as follows:

- 6 1. For general and other damages, including damages for pain
7 and suffering, negligent infliction of emotional distress, tort
8 of outrage, disability, disfigurement and loss of enjoyment
9 of life, all in amounts to be proven at the time of trial;
- 10 2. For special damages including, but not limited to, past and
11 future medical expenses, future economic loss, lost earning
12 capacity, out-of-pocket expenses and such other special
13 damages, all in amounts to be proven at the time of trial;
- 14 3. For prejudgment interest;
- 15 4. For plaintiff's costs and disbursements incurred herein;
- 16 5. For reasonable attorneys' fees; and
- 17 6. For such other and further relief as the Court may deem just and
18 equitable.

19 DATED this 19th day of August, 2005.

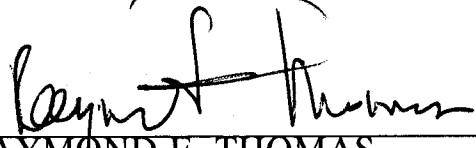
20 EYMANN, ALLISON, FENNESSY, HUNTER
21 & JONES, P.S.

22
23 By 

24 RICHARD C. EYMANN, WSBA #7470
25 Co-counsel for Plaintiff

26 **EYMANN ALLISON FENNESSY HUNTER JONES**

SWANSON, THOMAS & COON

By 
RAYMOND F. THOMAS
Co-counsel for Plaintiff

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