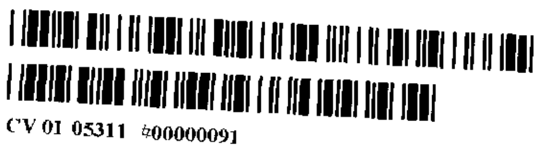

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

KENNETH L JARAMILLO, *et al.*,
Plaintiffs,
v
FORD MOTOR COMPANY,
Defendant

CASE NO C01-5311JKA

ORDER

This case has been reassigned to the undersigned magistrate judge for the conduct of all proceedings and the entry of judgment in accordance with 28 U S C § 636(c) on the consent of the parties The matter is before the court on plaintiffs' motion for partial summary judgment on the issues of enhanced injury and plaintiff's affirmative defense of contributory fault (Doc 57) and defendant's motion for partial summary judgment on the issues of pre-death pain and suffering, pre-impact fear, and loss of enjoyment of life (Doc. 63) Without recited the factual background, these two motions are addressed below.

Summary judgment shall be rendered if the pleadings, exhibits, and affidavits show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Fed R Civ P. 56(c) In deciding whether to grant summary judgment, the court must view the record in the light most favorable to the nonmoving party and must indulge all inferences favorable to that party Fed R Civ P 56(c) and (e) When a motion for summary judgment is made and supported as provided in Fed R Civ P 56, an adverse party may not rest upon the mere allegations or denials of his pleading, but

1 his response, by affidavits or as otherwise provided in Rule 56, must set forth specific facts showing that
2 there is a genuine issue for trial Fed R Civ P 56(e)
3 The Court, after reviewing the motions, pleadings filed in support and in opposition thereto, and
4 the remaining record, finds and orders as follows·
5 (1) Plaintiffs' motion for partial summary judgment (Doc 57) is **DENIED.**
6 Plaintiffs move the court for an order striking all affirmative defenses related to the cause of the
7 automobile crash incident In Baumgardner v American Motors Corp , 83 Wn 2d 751 (1974), the
8 Washington State Supreme Court adopted the enhanced injury doctrine rule of Larsen v General Motors
9 Corporation, 391 F 2d 495 (8th Cir 1968) wherein the 8th Circuit held the plaintiff could recover from the
10 manufacturer for that portion of damages or injuries caused by defective design over and above the
11 damage or injury that probably would have occurred as a result of the impact absent the defective design,
12 even though the design defect was not the cause of the accident Larsen, 391 F 2d at 503 In analyzing
13 Larsen and a contrary line of cases led by Evans v General Motors Corp , 359 F 2d 822 (7th Cir 1966),
14 the *Baumgardner* court found the holding in Larsen to be most persuasive and quoted that court as
15 follows.

16–24
> Automobiles are made for use on the roads and highways in transporting persons and cargo to and from various points This intended use cannot be carried out without encountering in varying degrees the statistically proved hazard of injury-producing impacts of various types. The manufacturer should not be heard to say that it does not intend its product to be involved in any accident when it can easily foresee and when it knows that the probability over the life of its product is high, that it will be involved in some type of injury-producing accident . . . . . Where the manufacturer's negligence in design causes an unreasonable risk to be imposed upon the user of its products, the manufacturer should be liable for the design These injuries are readily foreseeable as an incident to the normal and expected use of an automobile While automobiles are not made for the purpose of colliding with each other, a frequent and inevitable contingency of normal automobile use will result in collisions and injury-producing impacts No rational basis exists for limiting recovery to situations where the defect in design or manufacture was the causative factor of the accident, as the accident and the resulting injury, usually caused by the so-called "second collision" of the passenger with the interior part of the automobile all are foreseeable

25 Baumgardner v American Motors Corp , 83 Wn 2d at 754-755 (1974), *citing*, Larsen, 391 F 2d at 501-
26 502 This court has previously relied on the above case law to exclude affirmative defenses of
27 contributory fault when the plaintiff's claims were limited to enhanced injury damage claims and
28 defendant automobile manufacturer was unable to show any contributory negligence causally related to

1 plaintiff's enhanced injury. Keeley v Ford Motor Co , Cause No C02-5054JKA

2 This case is factually distinguishable from the above cited cases and material issues of fact

3 preclude summary judgment First, plaintiffs claims brought on behalf of the surviving three male family

4 members injuries are not based on any alleged enhanced injuries Defendants should not be precluded

5 from asserting or introducing contributory negligence or fault with respect to those claims. Second,

6 Defendant's expert, Dr Piziali, opines that there is "no evidence to indicate that roof deformation

7 contributed to the injuries of the occupants " Defendant's expert disagrees with plaintiff's expert's

8 opinion regarding the sequence of events and the cause of the injuries sustained by Angela Jaramillo

9 Finally, with respect to the injuries to McKenna Jaramillo, evidence supports both parties allegations

10 Plaintiffs argue McKenna's seatbelt was used properly and that state statutory law prohibits defendants

11 from arguing her seatbelt was not used at the time of the accident The record raises a question of fact

12 regarding whether or not McKenna's seatbelt was in use at the time of the accident. Plaintiffs allege the

13 seatbelt was defective and caused enhanced injuries to McKenna. Defendant should not be precluded

14 from introducing evidence of use or non-use of the seatbelt as it is relevant to defendant's argument that

15 the seatbelt was not a proximate cause of McKenna's death

16 (2) Defendant's motion for partial summary judgment to dismiss plaintiffs' damage claims based

17 on pre-death pain and suffering, pre-impact fear, and loss of enjoyment of life is **DENIED, in part, and**

18 **GRANTED, in part.**

19 The record reveals genuine questions of fact remain to be considered and determined at trial with

20 respect to claims for pre-death pain and suffering, pre-impact fear, and loss of enjoyment of life

21 experienced by Angela Jaramillo Witness Lesia Knowlton testified in her deposition that Ms Jaramillo

22 screamed, "Help me, God Help me, God Oh, Jesus Somebody help me," soon after she arrived at the

23 scene of the accident The observations of this witness and others at the scene of the accident should be

24 considered by the trier of fact at trial, along with evidence supporting the notion that Ms. Jaramillo was

25 unconscious and did not experience any pain and suffering prior to her death. Accordingly, defendant's

26 motion to dismiss the damage claims of Angela Jaramillo based on pre-death pain and suffering, pre-

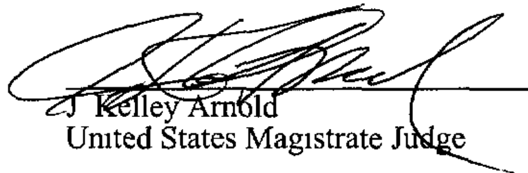
27 impact fear, and loss of enjoyment of life is denied.

28 In contrast, the evidence supporting plaintiffs' damage claims for pre-death pain and suffering,

pre-impact fear, and loss of enjoyment of life for McKenna Jaramillo is insufficient to allow the issue to be heard by the trier of fact The only evidence possibly supporting such damage claims for McKenna comes from her father, Ken Jaramillo, who in deposition testimony stated, "I started screaming her name I don't' know I could have swore I heard her say, 'I am over here ' So I guess that is the reason I knew which way to go But that was the only thing I heard I don't know if I was imagining it or not. I could swear in my heart I hear her say, 'I am over here, dad,' and that was it " This statement is insufficient by itself to support such damage claims Accordingly, defendant's motion to dismiss the damage claims of McKenna Jaramillo based on pre-death pain and suffering, pre-impact fear, and loss of enjoyment of life is granted

The Clerk is directed to send a copy of this Order to counsel of record.

Dated this 21st day of January, 2003



J Kelley Arnold
United States Magistrate Judge