

Hon. J. Kelley Arnold

CV 01 05311 #00000061

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CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

KEN L JARAMILLO, individually and
as Personal Representative of the Estates
of ANGELA L. JARAMILLO and
MCKENNA LEE JARAMILLO,
GERALD R. TARUTIS as guardian ad
litem for RILEY R. JARAMILLO, a
minor; and BRADFORD J. FULTON as
guardian ad litem for SAWYER D.
JARAMILLO, a minor,

Plaintiffs,

v

FORD MOTOR COMPANY, a Delaware
corporation, and DOREL JUVENILE
GROUP, INC, a foreign corporation,

Defendants.

NO. C01-5311JKA

DEFENDANT DOREL'S
MOTION FOR
SUMMARY JUDGMENT

NOTE ON MOTION
CALENDAR

Friday, January 3, 2002³

ORAL ARGUMENT
REQUESTED, IF MOTION IS
CONTESTED

INTRODUCTION

This is a product liability lawsuit arising out of an single vehicle accident that occurred in Idaho on August 5, 2000. Defendant Dorel Juvenile Group, Inc ("Dorel" hereinafter) is a product manufacturer of a child restraint that plaintiffs allege McKenna

DEFENDANT DOREL'S MOTION
FOR SUMMARY JUDGEMENT - 1

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ORIGINAL

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1 Jaramillo was using at the time of the accident. Dorel brings this motion for summary
2 judgment for dismissal because there is an absence of evidence to support a prima facie case
3 of product liability against Dorel. Dorel bases this Motion upon the Declaration of Sharon
4 Ambrosia-Walt with the attached discovery excerpts and the files and pleading herein.

5 FACTS

6 The Accident

7 On October 5, 2000 at approximately 9 50 p.m., the members of the Jaramillo family
8 were in their 1998 Ford Explorer traveling on Highway 20 in Idaho. Angela Jaramillo was
9 driving the vehicle, and seated in the front passenger seat, was her husband, Ken. In the back
10 were the three young Jaramillo children, Riley, age 3, McKenna, age 4, and Sawyer, age 2.
11 Plaintiffs allege that they were all using their seat belts and that the children were secured in
12 child restraints. As the Jaramillos traveled at speeds in excess of 60 mph, one or more deer
13 entered the roadway. Mrs. Jaramillo sharply swerved the vehicle from one side to another
14 in an effort to avoid the deer. Her evasive maneuvers caused the vehicle to trip and engage
15 in a series of rollovers before eventually coming to rest. Mrs. Jaramillo died at the scene from
16 her injuries. McKenna was ejected during the accident and found several feet from where
17 the vehicle came to rest. She died the next morning. Mr. Jaramillo and the two boys
18 survived the accident without life threatening injury.

19 The Allegations

20 Plaintiffs initially filed this suit on June 12, 2001 only against Ford Motor Company
21 alleging that plaintiffs' 1998 Ford Explorer was defectively designed and that such defects
22 caused plaintiffs' injuries and the deaths of Angela and McKenna Jaramillo (See Complaint
23 for Wrongful Death and Personal Injury - Crashworthiness - Product Liability). On January
24 10, 2002, however, Plaintiffs filed an Amended Complaint joining Dorel as an additional
25 defendant. Said Amended Complaint was subsequently amended to more properly identify
26 Dorel. Plaintiffs allege in their Second Amended Complaint that a Dorel child booster seat
27 known as the Cosco Grand Explorer was being used by McKenna at the time of the accident,
28 and that McKenna sustained her fatal injuries as a result of product defects. Plaintiffs further

1 allege that Dorel was "brought into this case because of its identification as a non-party at
2 fault by defendant Ford Motor Company." (See Second Amended Complaint for Wrongful
3 Death and Personal Injury-Crashworthiness-Product Liability, ¶4.3, attached hereto).

4 **The Status of the Case**

5 This case is set for trial commencing February 10, 2003. Discovery closed on
6 December 6, 2002. Prior to the discovery cut-off, the parties engaged in vigorous discovery
7 All of plaintiffs' and Defendant Ford's key experts have been deposed. No further evidence
8 material to plaintiffs case against Dorel is anticipated.

9 **The Product and the Allegations of Its Use**

10 The Cosco Grand Explorer is a booster seat designed for children who weigh at least
11 30 pounds. For children of weight between 30-40 pounds, the seat is used with a shield and
12 secured by the lap belt portion of the vehicle seat belt. Once a child is over 40 pounds, the
13 shield is removed and the seat base is used as a belt positioning booster. As a belt
14 positioning booster, it uses the vehicle lap and shoulder belts to restraint the child. The seat
15 comes with instructions advising of proper use, and there is a warning label on the seat base
16 cautioning consumers not to use the seat with only a lap belt when the seat is used as a belt
17 positioning booster. (See Declaration of S. Ambrosia-Walt and attached photograph of
18 exemplar seat, label, and instructions, Ex. 1, 2, and 3 respectively).

19 In this case, plaintiffs claim that they were using the Cosco Grand Explorer booster
20 seat for McKenna in the belt positioning mode. (See dep. of K. Jaramillo, pg. 83, lines 3-13,
21 Ex. 4 to Decl. of S. Ambrosia-Walt) However, they did not use it with a lap and shoulder
22 belt as instructed by Dorel. Instead, plaintiffs maintain that McKenna was secured in only
23 the available lap belt for the rear center seat. (See Plaintiffs' Answer to Interrogatory No.
24 23, Ex. 5 to Decl. of S. Ambrosia-Walt)

25 Mr. Jaramillo has testified that although he believes there was a label on the booster
26 seat, he is unaware of its contents. (See dep. of K. Jaramillo, pg. 182, lines 6-16, Ex. 4 to
27 Decl. of S. Ambrosia-Walt). He further testified that he himself did not review any other
28 instructions for the Dorel product. (See dep. of K. Jaramillo, pg. 82, lines 6-8, Ex. 4 to

1 Decl of S Ambrosia-Walt) There is no information in the record whether or not his wife
2 did

3 **The Testimony of the Adverse Experts**

4 Plaintiffs, in their Interrogatory Answers allege that Dorel's booster seats are
5 "defective in design because they allow displacement of the seat in rollover events and can
6 lead to ejection during rollovers" and that the "instructions and warnings relating to the seat
7 were defective and unclear" (See Plaintiffs' Answer to Dorel's Interrogatory No 12,
8 attached as Ex 5 to Decl of S. Ambrosia-Walt). Yet plaintiffs' experts do not support this
9 theory as causative in the subject accident Plaintiffs' theory of the case is presented through
10 their expert, Donald Friedman. Mr. Friedman has testified that the cause of McKenna's
11 ejection was the failure of the vehicle lap belt to restrain McKenna and her child restraint
12 According to Mr. Friedman, the forces of the accident caused the retractor housing of the lap
13 belt to deform and that "tricked" the sensor inside into allowing the lap belt to spool out
14 freely during the accident sequence thus allowing McKenna to be ejected (See dep of D
15 Friedman, pgs. 94 -100, Ex 6 to Decl of S Ambrosia-Walt). The product defect that caused
16 McKenna's death according to the plaintiffs, therefore, is not the design of the booster seat
17 but the design of the vehicle seat belt: ¹

18 Q. And what exists – what defect do you believe was evident in the
19 rear restraint system?

20 A: I believe that the means of protecting the retractor from
21 mechanical interference is inadequate and that the bracket that
22 holds it is more associated with a belt loading in the axial form
23 than it is in the lateral form, the consequences of which is that
the bending of the bracket under load and the distortion of the
cover on a subsequent roll released the retractor and allowed the
child to be ejected

24 (See dep of D Friedman, p 94, lines 11-20, Ex. 6 to Decl of S. Ambrosia-Walt) As
25 explained by Mr. Friedman, when the belt housing was deformed, "it deactivated the
26

27 ¹Plaintiff maintains that the cause of McKenna's death was her ejection from the
28 vehicle (See dep of J. Burton, pg. 90, lines 12-15, Ex 8 to Decl. of Sharon Ambrosia-
Walt)

DEFENDANT DOREL'S MOTION
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1 automatic locking feature, allowing the webbing to pay out with the child and allowed the
2 child basically to separate from the restraint ” (See dep of D. Friedman, p. 100, lines 18-21,
3 Ex 6 to Decl of Sharon Ambrosia-Walt). Although Mr Friedman has some criticisms of
4 the Dorel booster seat, he attributes no causal role to the booster in relation to McKenna’s
5 ejection

6
7 A: So the answer to your question as of this moment in time that I
8 believe the primary cause of the ejection was the release of the
9 belt that allowed the child to come out of this belt, the seat, and
10 the vehicle The-

11 Q You’re not faulting the – what you’ve listed here as the Cosco
12 booster seat?

13 A At this time, that’s correct

14 (See dep. of D. Friedman, p 175, lines 15-22, Ex 6 to Decl. of S. Ambrosia-Walt)

15 Plaintiffs other two experts on child restraints equally fail to provide the sufficient
16 testimony against Dorel Gary Whitman, while critical of the booster seat, is also unable to
17 assign a causal role to it.

18 Q. Likewise, in this case, you are not being called upon to offer an
19 opinion on what, in fact, was the cause for the ejection of
20 McKenna?

21 A: That’s correct.

22 Q. So you’re not sitting here telling us it was the Cosco Grand
23 Explorer’s fault if that’s what she was sitting on?

24 A Right, I am talking about some defects that I see with the
25 restraint that could be contributors.

26 Q: But you’re not here to say that they probably were in this case?

27 A: That’s correct

28 (See dep of G Whitman, p. 218, lines 8-22, Ex 7 to Decl. of S. Ambrosia-Walt). Although
plaintiffs biomechanic, Joseph Burton, M D , testified to a possible scenario of how the
booster seat could become displaced and the child could come out from under a fastened seat

1 belt, Dr Burton begins with an assumption that there is no evidence of a seat belt failure.²
2 Further, while Dr. Burton provides some testimony of a possible ejection scenario, he
3 provides no testimony regarding whether his possible scenario is the result of a design defect
4 in the booster seat.

5 Q: I gather as one of your tasks, you're not addressing whether the
6 child restraint design in this case was defective as designed or
7 defective as manufactured?

8 A Correct.

9 (See dep of J. Burton, p. 142, lines 3-7, Ex. 8 to Decl of S Ambrosia-Walt) Indeed, the
10 vehicle rolled many times during the accident scenario, and according to Dr Burton

11 "But the more the vehicle moves round and has contacts from one side to the
12 other, the greater the chance that someone will, basically, come out of a
restraint, no matter what type of restraint it is."

13 (See dep. of J. Burton, p. 91, lines 10-13, Ex. 8 to Decl. of S. Ambrosia-Walt).

14 Most significantly, all of plaintiffs experts concede that had McKenna used the
15 booster seat with both a lap and shoulder belt (as instructed by Dorel), she would not have
16 been ejected Dr. Burton agrees that had she been in a lap and shoulder belt she would not
17 have ejected (See dep of J. Burton, p 139-140, Ex. 8 to Decl. of S. Ambrosia-Walt) Gary
18 Whitman believes this as well. (See dep. of G. Whitman, p. 72-73, Ex. 7 to Decl. of S.
19 Ambrosia-Walt) So does Don Friedman.

20 Q Okay If there -- let me -- let me vary the question a little bit. If
21 McKenna--

22 A: Uh-huh

23 Q --were in a Cosco Grand Explorer but using a lap and shoulder
24 belt, and without any spooling occurring, in your opinion would
McKenna have more probably than not stayed in the vehicle and
in the seat?

25 A Yes

26 (See dep of D. Friedman, p. 169, lines 4-13, Ex. 6 to Decl. of S. Ambrosia-Walt).

27 _____
28 ²Dr. Burton was unaware of Mr. Friedman's findings at the time he testified (See
dep of J. Burton, pg. 85, lines 18-22, Ex 8 to Decl of Sharon Ambrosia-Walt)

1 Finally, the experts of Defendant Ford provide no testimony that the booster seat had
 2 a defect or that any defect caused or contributed to McKenna's ejection and resulting death.
 3 (See Declaration of S Ambrosia-Walt)

4 In light of the plaintiffs' theory that McKenna was ejected because the vehicle seat
 5 belt failed and because there is a complete absence of proof to prove a prima facie case
 6 against Dorel, Dorel requests that this Court enter Summary Judgment in its favor

7 8 AUTHORITIES

9 I. SUMMARY JUDGMENT SHOULD BE GRANTED WHERE THERE IS A 10 FAILURE OF PROOF CONCERNING ANY ELEMENT ESSENTIAL TO THE NON- 11 MOVING PARTY'S CASE.

12 Summary Judgment "shall be rendered forthwith if the pleading, deposition, answers
 13 to interrogatories, and admissions on file, together with the affidavits, if any, show that there
 14 is no genuine issue as to any material fact and that the moving party is entitled to judgment
 15 as a matter of law " Fed. R. Civ. P. 56(c). In the view of our Supreme Court, this rule
 16 "mandates the entry of Summary Judgment, after adequate time for discovery and upon
 17 motion, against a party who fails to make a showing sufficient to establish the existence of
 18 an element essential to that party's case, and on which that party will bear the burden of proof
 19 at trial " *Celotex Corporation v Catrett*, 477 U.S. 317, 322, 106 S Ct. 2548, 91 L.Ed 2d 265
 20 (1986). When there is a failure of proof concerning one element essential to the non-moving
 21 party's case, all other facts are rendered immaterial and no genuine issue of material fact will
 22 be deemed to exist *Id* , at 323

23 Although the party seeking summary judgment bears the burden of establishing the
 24 absence of a genuine issue of material fact, that burden may be met by "showing'- that is,
 25 pointing out to the district court - that there is an absence of evidence to support the
 26 nonmoving party's case " *Id* , at 325; *Lujan v National Wildlife Federation*, 497 U.S 871,
 27 885, 110 S. Ct. 3177, 111 L Ed 2d 695 (1990); *Nissan Fire & Marine Insurance Co , v*
 28 *Fritz*, 210 F.3d 1099, 1106 (9th Cir 2000) There is no requirement that the moving party

1 negate the opponent's claim. *Celotex Corporation v Catrett*, 477 U.S. at 323; *Lujan v*
 2 *National Wildlife Federation*, 497 U.S. at 885. Once the moving party has met its initial
 3 burden of demonstrating an absence of evidence, the burden shifts and the nonmoving party
 4 must go beyond the pleadings and identify facts which show a genuine issue for trial *Celotex*
 5 *Corporation v Catrett*, 477 U.S. at 323; *Tarin v City of Los Angeles*, 123 F.3d 1259, 1263
 6 (9th Cir 1997). If the nonmoving party fails to come forward with specific, significant
 7 probative evidence, that is evidence on which a reasonable jury could find for the plaintiff,
 8 the moving party is entitled to judgment in its favor as a matter of law. *Celotex Corporation*
 9 *v Catrett*, 477 U.S. at 323; *Anderson v Liberty Lobby, Inc.*, 477 U.S. 242, 252, 106 S. Ct.
 10 2505, 91 L. Ed. 2d 202 (1986)

11 In this case, plaintiffs maintain the McKenna's fatal injuries were caused by the
 12 failure of the vehicle seat belt to restrain her and her child restraint. Under this theory, the
 13 booster seat has no causal role in McKenna's death. Even if plaintiffs are incorrect in their
 14 theory, there is insufficient evidence that the booster seat contained a defect that proximately
 15 caused or contributed to McKenna's death.

16
 17 **II. ESSENTIAL TO A CAUSE OF ACTION UNDER THE WASHINGTON**
 18 **PRODUCT LIABILITY ACT IS A SHOWING THAT AN UNSAFE CONDITION**
 19 **PROXIMATELY CAUSED THE INJURY CLAIMED.**

20 To establish a prima facie case of design defect product liability, a plaintiff must show
 21 not only that the product was unsafe at the time it left the hands of the manufacturer, but also
 22 that such unsafe condition was the proximate cause of his or her injuries. See RCW
 23 7.72.030(1). See also, *Emersen GM Diesel, Inc v Alaskan Enterprises*, 732 F.2d 1468 (9th
 24 Cir 1984), *Baughn v Honda Motor Company*, 107 Wn. 2d 127, 727 P.2d 655 (1986);
 25 *Crittenden v Fibreboard Corporation*, 58 Wn. App. 649, 794 P.2d 554 (1990); *Bruns v.*
 26 *PACCAR, Inc.* 77 Wn. App. 201, 890 P.2d 469(1995), review denied, 126 Wn. 2d 1025, 896
 27 P.2d 64 (1995). To establish proximate cause, a plaintiff must prove both (1) cause in fact,
 28 the "but for" aspect connecting the act and the injury, and (2) legal cause, a determination
 of whether policy, logic and common sense support liability. *Anderson v Weslo, Inc.*, 79

1 Wn App. 829, 838, 906 P. 2d 336 (1995) Plaintiffs in this case can not prove causation
2 because their theory of the case effectively negates any causal role of the booster seat.

3 **A. Under the Plaintiffs' Theory, Dorel is Not A Cause in Fact.**

4 Plaintiffs' theory of the case is that the vehicle seat belt allegedly used to secure
5 McKenna contained a defect that caused it to spool out thereby permitting McKenna to eject
6 from the vehicle during the accident scenario. The Cosco Grand Explorer child seat is a belt
7 positioning booster seat. Belt positioning boosters do not contain a belt system themselves
8 but rather simply improve the position of child so that the child can better use the *vehicle's*
9 seat belts, specifically the lap and shoulder belt. See 49 CFR §571.213.³ Thus, if McKenna
10 was ejected because the seat belts of the vehicle failed as plaintiffs maintain, Dorel is not,
11 as a matter of law, a cause of her death.

12 Even if plaintiffs are incorrect in their assertions that the seat belt failed, Plaintiffs'
13 other experts on child restraints, Dr. Burton and Gary Whitman, are either unable to identify
14 a defect with the booster seat or are unable to assign a causal role on a more probable than
15 not basis to the booster seat or both. At best, Dr. Burton testifies:

16 Q It is your contention in this case that McKenna was using a
17 Cosco Grand Explorer in a belt-positioning mode and that the
18 Grand Explorer slipped out from underneath her?

19 A Might have moved relative to her buttocks

20 Q: Now, I noticed that you used the word "might."

21 A: Yes. There's no – probably, the majority of the time, it would
22 work fine.

23 (See dep. of J. Burton, pg. 134-5, lines 25 & 1-15, Ex. 8 to Decl. of S. Ambrosia-Walt)
24 Expert testimony must provide proof that a defect "more probably than not" caused the injury

25 _____
26 ³FMVSS 213 defines a belt positioning seat as "a child restraint system that positions
27 the child on a vehicle seat to improve the fit of a vehicle Type II belt system on the child and
28 that lacks any component, such as a belt system or a structural element, designed to restrain
forward movement of a child's torso in a forward impact". 49 CFR §571.213. A vehicle
Type II belt system is "a combination of pelvic and upper torso restraints." See 49 CFR
§571.209

1 about which the plaintiff complains. Less certain evidence, such as may, might, could or
2 possibly, does not provide enough guidance to the jury to remove the decision making
3 process from speculation and conjecture. *Bruns v PACCAR, Inc* 77 Wn App. at 215,
4 *O'Donoghue v Riggs*, 73 Wn. 2d 814, 824, 440 P.2d 823 (1968).

5 Finally, although Defendant Ford refutes that its seat belt was defective, it has not
6 identified an expert who will testify that the booster seat was unsafe or that any unsafe
7 condition caused or contributed to McKenna's ejection. (See Declaration of S. Ambrosia-
8 Walt) In short, the evidence is insufficient to sustain a continued case against Dorel.

9 **B. The Fact of McKenna's Ejection Alone is Not Sufficient to Sustain this**
10 **Action Against Dorel.**

11 If plaintiffs are unsuccessful in proving that Ford's seat belt was defective, it does not
12 follow that the fact of McKenna's ejection is proof of a defective child seat. Product
13 defectiveness is not established by mere proof of an accident occurring in connection with
14 the use of a product. Evidence merely of the occurrence of an accident itself while the
15 product was being used in a normal manner may only be sufficient where it appears that the
16 defect in the product is the *only* possible explanation for the accident providing that the
17 claimant has negated all other likely causes of the accident. *See Bich v General Electric*
18 *Company*, 27 Wn. App. 25, 30-31, 614 P.2d 1324 (1980), *Bombardi v Pochel's Appliance*,
19 10 Wn. App. 243, 246, 518 P. 2d 202 (1973), *See also*, 63 Am.Jur 2d, Products Liability
20 §235; *See also*, 65 A L R. 4th, Strict Products Liability: Product Malfunction or Occurrence
21 of Accident as Evidence of Defect, §2. Here, the evidence is that the booster seat was not
22 being used in a normal manner. Belt positioning boosters are designed pursuant to
23 government regulations to be used with a lap and shoulder belt. The booster seat in this case
24 was used with only a lap belt in contravention of the manufacturer's instructions. Further,
25 there are other possible causes for McKenna's ejection including whether her seat belt was
26 *unfastened* at the time of the accident:

27 Q. Okay. Among the various possibilities is it also possible that
28 McKenna released that seat belt before the accident?

A I can't rule that out. I cannot rule that out

1 (See dep of G Whitman, pg. 56, lines 9-14, Ex. 7 to Decl. of S. Ambrosia-Walt). Although
2 the opposing party is not required for purposes of defending against a Motion for Summary
3 Judgment to fend off all possible defenses whether or not urged by the moving party, the
4 opposing party must establish with reasonable certainty that a defect was the cause of the
5 accident, and in attempting to do so, if the evidence shows that the injury is equally
6 attributable to other causes, the opposing party must also exclude those other causes. See
7 *Potter v Van Water and Rogers*, 19 Wn App 746, 752, 578 P.2d 859 (1978). In short, an
8 issue of fact can not be created inferentially to defeat Dorel's Motion for Summary
9 Judgment

10
11 **II. THE PLAINTIFFS' MISUSE OF THE BOOSTER SEAT BARS THIS SUIT**
12 **AGAINST DOREL**

13 In order to find Dorel liable, plaintiffs must prove that McKenna's death (i.e. ejection)
14 was proximately caused by an unsafe product. See RCW 7.72.030. In a design case, a
15 product is not reasonably safe as designed, if, at the time of manufacture, the likelihood that
16 the product would cause the claimant's harm outweighed the burden on the manufacturer to
17 design a product that would have prevented those harms and the adverse effect that an
18 alternative design that was practical and feasible would have on the usefulness of the
19 product. RCW 7.72.030(1)(a). Plaintiffs can prove that a product was not reasonably safe
20 by the risk/benefit analysis of RCW 7.72.030(1)(a) or by showing that the product was unsafe
21 to an extent beyond that which would be contemplated by the ordinary consumer. See RCW
22 7.72.030(3), *Soprani v Polygon Apartment Partners*, 137 Wn.2d 319, 326-327, 971 P.2d 500
23 (1999), *Falk v. Keene Corporation*, 113 Wn. 2d 645, 654, 782 P. 2d 974 (1989).

24 According to the plaintiffs' experts, however, the Grand Explorer booster seat - if
25 used as designed with the lap and shoulder belt - would not, on a more probable than not
26 basis, have caused McKenna to eject from the vehicle. If McKenna would not have been
27 harmed had she been using the booster seat as it was designed, plaintiffs have no viable claim
28 against Dorel because, again, there is a lack of proximate cause.

1 Yet, the analysis does not end here. Plaintiffs may also prove that a product is unsafe
2 if adequate warnings or instructions were not provided with the product. See RCW
3 72.030(b). As with a claim of defective design, plaintiffs may establish liability through
4 either this "risk-utility" test or the "consumer expectations" test of RCW 72.030(3). *Ayers*
5 *v. Johnson & Johnson Baby Products Co.*, 117 Wn. 2d 747, 765, 818 P.2d 1337 (1991).
6 Here too, however, plaintiffs must first show that the lack of adequate warnings or
7 instructions proximately caused the injury. *Id.* at 752.

8 Dorel instructs consumers via written instructions and labeling to secure the booster
9 with a lap and shoulder belt and warns consumers with text and pictures not to use only a lap
10 belt. Although Dorel believes that no reasonable person would find its instructions unclear,
11 the question of adequacy is not reached because plaintiffs again can not prove that the
12 warnings or instructions proximately caused them harm. Mr. Jaramillo did not read the
13 instructions and does not know what they say. The record is devoid of whether Mrs.
14 Jaramillo read them. Our Supreme Court has held that testimony of this nature is fatal to an
15 adequacy of the warning claim. See *Hiner v Bridgestone/Firestone, Inc.*, 138 Wn. 2d 248,
16 978 P.2d 505 (1999).

17
18 In *Hiner*, plaintiff installed studded snow tires on the front wheels of her vehicle
19 without also installing the same type of tire on the rear wheels. When she was injured in an
20 accident allegedly caused by the failure to install the same type of tire on all four wheels, she
21 sued the tire manufacturer on a failure to adequately warn claim. Plaintiff testified, however,
22 that she did not read the vehicle owner's manual that warned that snow tires should be
23 installed on all four wheels. Nor did she look for warnings prior to the accident on the
24 studded snow tires she installed. The issue before the Court was whether plaintiff could
25 establish proximate cause notwithstanding her testimony that she did not read the warnings.
26 The Court of Appeals had found a causal link on the reasoning that even though the plaintiff
27 may not have read the warnings, someone else such as the installer of the tires "may have"
28 *Id.* at 256. Our Supreme Court disagreed finding that the Court of Appeals based its holding

1 upon speculation. Instead, the Supreme Court held that the plaintiff's failure to read her
2 vehicle owner's manual about snow tires and failure to examine the snow tires themselves
3 for warnings were fatal to her claim that she would not have placed the studded snow tires
4 on the front wheels of her automobile even if warnings had been imprinted on them *Id* at
5 258

6 Similarly, in this case there is no evidence to support the contention that Mr. or Mrs
7 Jaramillo would not have secured McKenna with only a lap belt had Dorel's warnings been
8 any different because there is no evidence that they read the instructions that Dorel did
9 provide Without proof of cause in fact, there can be no proximate cause *Hiner* at 256
10


11 In short, plaintiffs' failure to use the booster seat with a lap and shoulder belt coupled
12 with the testimony of their experts that had McKenna been secured with a lap and shoulder
13 belt she likely would not have ejected, strikes an additional and independently fatal blow to
14 their claim against Dorel

15 **Conclusion**

16 The pleadings, depositions, answers to interrogatories, and admissions on file show
17 that there is no genuine issue as to any material fact and that Dorel is entitled to judgment as
18 a matter of law pursuant to Fed R Civ P 56(c) Accordingly, Dorel respectfully requests
19 that this Court grant summary judgment in Dorel's favor. A proposed Order is attached.
20

21
22 RESPECTFULLY SUBMITTED this 12th day of December, 2002.

23
24 HOUGER & WALT, P.S

25 By: 
26 SHARON AMBROSIA-WALT, WSBA No. 15212
27 Attorneys for Defendant Dorel
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CERTIFICATE OF SERVICE

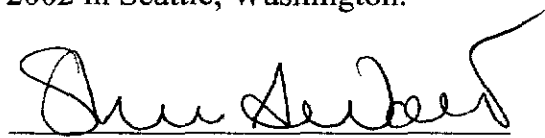
The undersigned does hereby certify that on the 12th day of Dec, 2002, I [X] faxed and deposited with the U S. Postal Service with correct postage affixed as to Andrew Ashworth and [X] placed with legal messengers for same day delivery a true and correct copy of Defendant Dorel's Motion for Summary Judgment, Declaration of Sharon Ambrosia-Walt with attachments, and Proposed Order to Paul Whelan and Raymond Weber, addressed as follows:

Paul W Whelan
STRITMATTER KESSLER
WHELAN WITHEY COLUCCIO
200 Second Avenue West
Seattle, WA 98119

Raymond S. Weber
MILLS MEYERS SWARTLING
1000 Second Avenue, 30th Floor
Seattle, WA 98104-1064

Andrew Ashworth
Snell & Wilmer, L.L.P
One Arizona Center
Phoenix, Arizona 85004

Dated this 12th day of Dec, 2002 in Seattle, Washington.


SHARON AMBROSIA-WALT

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Hon J. Kelley Arnold

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

KEN L. JARAMILLO, individually and as
Personal Representative of the Estates of
ANGELA L. JARAMILLO and MCKENNA
LEE JARAMILLO; GERALD R. TARUTIS
as guardian ad litem for RILEY R.
JARAMILLO, a minor; and BRADFORD J.
FULTON as guardian ad litem for SAWYER
D JARAMILLO, a minor,

Plaintiffs,

v.

FORD MOTOR COMPANY, a Delaware
corporation; and DOREL JUVENILE GROUP,
INC , a foreign corporation,

Defendants.

NO. C01-5311JKA

**SECOND AMENDED COMPLAINT
FOR WRONGFUL DEATH AND
PERSONAL INJURY –
CRASHWORTHINESS – PRODUCT
LIABILITY**

JURY TRIAL DEMANDED

SECOND AMENDED COMPLAINT FOR PERSONAL INJURY –
CRASHWORTHINESS – PRODUCT LIABILITY - 1

I. PARTIES

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1.1 Plaintiff Ken L. Jaramillo was the spouse of Angela L. Jaramillo and the father of McKenna Lee Jaramillo and was named personal representative of the Estates of Angela L. Jaramillo and McKenna Lee Jaramillo by Letters of Administration from the Superior Court of Mason County dated October 17, 2000. At all times pertinent hereto, he has been a resident of Grapeview, Mason County, Washington.

1.2 Gerald R. Tarutis was appointed guardian ad litem for Riley R. Jaramillo, a minor child of Ken and Angela Jaramillo, by order of the Superior Court of Washington for Pierce County dated November 15, 2000. Riley R. Jaramillo is and was at all times material to this suit a resident of Grapeview, Washington.

1.3 Bradford J. Fulton was appointed guardian ad litem for Sawyer D. Jaramillo, a minor child of Ken and Angela Jaramillo, by order of the Superior Court of Washington for Pierce County dated November 15, 2000. Sawyer D. Jaramillo is and was at all times material to this suit a resident of Grapeview, Washington.

1.4 Defendant Ford Motor Company is a Delaware corporation with its principal place of business in Michigan and doing business in the state of Washington. Defendants Ford Motor Co. is generally in the business of designing, testing, manufacturing, and distributing vehicles, including the subject vehicle, and is a product manufacturer as defined in RCW 7.72 010(2).

1.5 Defendant Dorel Juvenile Group, Inc. is the manufacturer of the Cosco Grand Explorer child car seat with its principal place of business in Columbia, Indiana, doing business in the state of Washington. Dorel Juvenile Group, Inc., is in the business of designing, testing, manufacturing, and distributing child seats for use in passenger vehicles.

II. JURISDICTION

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2.1 Plaintiffs bring this action pursuant to 28 U.S.C. § 1332(a) on the basis of diversity of citizenship and on the basis that the amount in controversy exceeds the jurisdictional amount of \$75,000 as therein provided

III. FACTS

3.1 On August 5, 2000, Plaintiffs Ken L. Jaramillo, Riley R. Jaramillo and Sawyer D. Jaramillo were passengers in a 1998 Ford Explorer car driven by Angela L. Jaramillo on Highway 20, near Hill City, Idaho. McKenna Lee Jaramillo, 4 years old, was also a passenger in the car, seated in the middle rear position. McKenna was seated in a car seat manufactured by Dorel Juvenile Group, Inc., known as a Cosco Grand Explorer. Each of the Jaramillos was seat belted. Near milepost 134, Angela L. Jaramillo steered to avoid some deer that had entered the roadway. The right tires of the Ford Explorer edged off the road for a brief period, then re-entered the road. Once back on the highway, the Ford Explorer tipped to its right and rolled several times

3.2 The subject vehicle was a 1998 Ford Explorer, VIN 1FMZU34X5WZB24804.

3.3 Defendant Ford Motor Company was aware from testing and field accident experience that the Ford Explorer had stability problems and a tendency to tip and roll. Ford Motor Company chose to market the vehicle despite this defect with the result that hundreds or thousands of vehicles have rolled, and hundreds of Ford customers have been killed or injured.

IV. LIABILITY

4.1 Defendant Ford Motor Company is liable because the subject vehicle was defective in the design of its roof, restraint systems, and overall stability, and because adequate warnings were not provided with the product or after manufacture, and as such was unsafe to an

extent beyond that contemplated by an ordinary user and consumer as set forth in RCW

7.72.030

4.2 Defendant Dorel Juvenile Group, Inc is liable because the subject car seat was defective in design and was unsafe to an extent beyond that contemplated by an ordinary user and consumer as set forth in RCW 7.72.030. Said defendant also failed to appropriately instruct and warn as to use of the subject product and as to other damages associated with the product

4.3 Dorel Juvenile Group, Inc. are brought into this case because of its identification as a non-party at fault by defendant Ford Motor Company. Hence, in accordance with Washington law, Ford bears the burden of proof as to the liability/causation in accordance with RCW 4.22.070.

V. CAUSATION AND DAMAGES

5.1 As a proximate result of the tortious acts and omissions of the defendants, the estate of Angela L Jaramillo and her beneficiaries have suffered losses as follows:

A. As a consequence of the death of Angela L. Jaramillo, Ken L. Jaramillo as her surviving spouse has been deprived of love, affection, support, services, society and spousal consortium, including all of the decedent's contributions to the marital relationship and their quality of life, all to his damage in an amount that will be established with particularity at the time of trial;

B. The tortious conduct of defendants was a proximate cause of the death of Angela L. Jaramillo, and the resulting loss of the capacity to enjoy life, and the Estate of Angela L. Jaramillo makes a claim for loss of enjoyment of life and shortened life expectancy of Angela L. Jaramillo as well as a loss of income for the premature death of Angela L. Jaramillo.

1 C. Angela L. Jaramillo suffered grievous bodily and mental pain and
2 suffering, anxiety and emotional distress before her death;

3 D. The two surviving children of Angela L. Jaramillo, Riley R. Jaramillo and
4 Sawyer D. Jaramillo, suffered substantial damages, as a result of the death of their mother
5 including loss of support, services, emotional support, love, care, guidance, training,
6 companionship, instruction and protection of their mother,

7 E. The estate of the deceased, Angela L. Jaramillo, incurred medical, funeral
8 and related expenses;

9 F. Any and all pecuniary losses sustained by surviving beneficiaries, in an
10 amount to be proven at the time of trial.

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12 5.2 As a proximate result of the tortious acts and omissions of the defendants, the
13 estate of McKenna Lee Jaramillo and her beneficiaries have suffered losses as follows.

14 A. Ken L. Jaramillo, the father of McKenna Lee Jaramillo, has suffered the
15 loss of love and companionship of his daughter and suffered the loss and destruction of the
16 parent-child relationship with his daughter;

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18 B. The tortious conduct of defendants was a proximate cause of the death of
19 McKenna Lee Jaramillo, and the resulting loss of the capacity to enjoy life, and the Estate of
20 McKenna Lee Jaramillo makes a claim for loss of enjoyment of life and shortened life
21 expectancy of McKenna Lee Jaramillo as well as a loss of income for the premature death of
22 McKenna Lee Jaramillo,

23 C. McKenna Lee Jaramillo suffered grievous bodily and mental pain and
24 suffering, anxiety and emotional distress before her death,

5 5 As a proximate result of the tortious acts and omissions of the defendants, the
1 plaintiff Sawyer D. Jaramillo suffered personal injuries and damages including, but not limited
2 to, multiple trauma, lacerations to the head and right arm, and multiple contusions and abrasions
3 He has incurred medical expenses and with reasonable probability is expected to incur further
4 medical expenses in the future; he has undergone pain and suffering, disability, disfigurement
5 and the loss of enjoyment of life, all in an amount to be proven at the time of trial.
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7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiffs pray for judgment of liability in favor of the plaintiffs and
9 against the defendants herein as follows.
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- 11 A For special damages in an amount to be proven at trial,
- 12 B. For general damages in an amount to be proven at trial,
- 13 C. For prejudgment interest on all special damages herein,
- 14 D. For taxable costs and disbursements, and
- 15 E. For such other and further relief as this court deems just and equitable.

16 DATED this _____ day of _____, 2002.
17

18 STRITMATTER KESSLER WHELAN WITHEY COLUCCIO

19 _____
20 PAUL L. STRITMATTER, WSBA #4532
21 PAUL W. WHELAN, WSBA #2308
22 PETER O'NEIL, WSBA #28198

23 Counsel for Plaintiffs
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