

STATE OF NORTH CAROLINA

FILED

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

WAKE COUNTY

File No. 15 CVS 6395

JONATHON KINGSLEY, Individually and as)
Administrator of the Estate of Weston Kingsley, C.)
and KELSEY KINGSLEY, Individually,)
BY _____)
Plaintiffs,)

v.)

FCA US LLC and WILLIAM TYLER HOOVER,)
Defendants.)

**MOTION TO DISMISS,
MOTION TO STRIKE, AND
ANSWER
(Jury Demand)**

COMES NOW FCA US LLC (formerly known as Chrysler Group LLC and hereinafter "Chrysler Group"), Defendant in the above-styled action, and hereby responds to Plaintiffs' Complaint, showing the Court as follows:

MOTION TO DISMISS

Pursuant to N.C. Gen. Stat. § 1A-1, Rule 12(b)(6), Chrysler Group moves this Court to dismiss all the Plaintiffs' claims against it, stating the following in support:

1. The applicable products-liability statute of repose covering this 2003 Dodge Caravan provided that "no action for the recovery of damages for personal injury, death, or damage to property based upon or arising out of any alleged defect or any failure in relation to a product shall be brought more than six years after the date of initial purchase for use or consumption" of the product at issue. N.C. Gen. Stat. § 1-50(a)(6) (2007) (emphasis added).

2. Plaintiffs allege that this 2003 Dodge Caravan was initially purchased for use or consumption on May 29, 2003. (See Compl. ¶ 9)

3. The repose period for the 2003 Dodge Caravan expired on May 29, 2009, thus extinguishing any products-liability claims that could later arise.

4. As of the Plaintiffs' filing of this action on May 13, 2015, all products liability claims relating to the subject vehicle had been time-barred for nearly 6 years. (*See* Compl.)

5. The accident which is the focus of the civil action occurred on February 2, 2014 (*See* Compl. ¶ 10), almost five years after all claims relating to this vehicle were time-barred.

6. Accordingly, because the statute of repose long ago extinguished all claims by the Plaintiffs against Chrysler Group, the Court should dismiss them with prejudice.

MOTION TO STRIKE

In the alternative, Chrysler Group moves pursuant to Rule 12(f) of the North Carolina Rules of Civil Procedure to strike the Plaintiffs' Complaint, in whole or in part, based upon the extraneous, redundant, immaterial, impertinent, irrelevant, scandalous and inadmissible matters contained therein.

1. As grounds for this motion, Chrysler Group would show that Plaintiffs' Complaint is comprised of 51 separate paragraphs of allegations and is largely written in a narrative style. Many of the paragraphs between numbers 1 and 23 contain purported quotations from executives of Daimler Chrysler Corporation and from its affiliate's or predecessor's website, not Defendant Chrysler Group and contain references to vehicles manufactured by a different company to whom Chrysler Group is not a successor in interest.

2. Moreover, the allegations are a mere subterfuge for a lengthy, detailed set of Rule 36 Requests for Admissions posed in the form of a Complaint and are improper as such. Responding to these extraneous and improper allegations is unduly burdensome.

3. Additionally, allowing the Complaint to include irrelevant and inadmissible allegations would highly prejudice Chrysler Group's ability to defend this case at trial.

4. Accordingly, Chrysler Group requests that all extraneous, redundant, immaterial, impertinent, irrelevant, scandalous and inadmissible allegations be stricken from Plaintiffs' Complaint, specifically including without limitation Paragraphs 1, 2, 8, sub-header I, 13, sub-header II, 18 and 23 of the Plaintiffs' Complaint, and Plaintiffs' Complaint be dismissed, or at a minimum, amended to conform to Rule 8 of the North Carolina Rules of Civil Procedure.

ANSWER AND AFFIRMATIVE DEFENSES

Subject to and without waiving the forgoing motions, Chrysler Group hereby sets forth its Answer and Affirmative Defenses hereafter and responds to the individually numbered Paragraphs of Plaintiffs' Complaint as follows:

As to "INTRODUCTION"

1. Defendant Chrysler Group moves to strike Paragraph 1 pursuant to Rule 12(f) of the North Carolina Rules of Civil Procedure as containing extraneous, redundant, immaterial, impertinent, irrelevant, scandalous and inadmissible statements. (See Motion to Strike, above) Defendant Chrysler Group denies the allegations contained in Paragraph 1 of Plaintiffs' Complaint.

2. Defendant Chrysler Group moves to strike Paragraph 2 pursuant to Rule 12(f) of the North Carolina Rules of Civil Procedure as containing extraneous, redundant, immaterial, impertinent, irrelevant, scandalous and inadmissible statements. (See Motion to Strike, above) Defendant Chrysler Group denies the allegations contained in Paragraph 2 of Plaintiffs' Complaint.

**As to “PARTIES, JURISDICTION, VENUE,
AND SERVICE OF PROCESS”**

3. Defendant Chrysler Group is without sufficient information or knowledge to form a belief about the truth of the allegations contained in Paragraph 3 of Plaintiffs’ Complaint, and therefore, those allegations are denied.

4. Defendant Chrysler Group admits that DaimlerChrysler Corporation was engaged in the business of designing (in part), testing (in part), manufacturing (in part), marketing, and distributing for sale motor vehicles throughout the United States before 2009, including the model vehicle identified in Plaintiffs’ Complaint. It admits that in 2009, Chrysler LLC (whose predecessor included DaimlerChrysler Corporation) filed for bankruptcy protection in the United States Bankruptcy Court of the Southern District of New York which court approved the sale of substantial assets to Chrysler Group LLC and Fiat S.p.A. via a Master Transaction Agreement. It admits that Chrysler Group LLC changed its name to FCA US LLC in 2014. Chrysler Group admits that that it is a Delaware corporation which is engaged in the business of designing (in part), testing (in part), manufacturing (in part), marketing, and distributing for sale motor vehicles throughout the United States, including in North Carolina. It denies any remaining allegations contained in Paragraph 4 of Plaintiffs’ Complaint and specifically denies that it assumed negligence-based claims relating to vehicles manufactured before the bankruptcy or specifically any of the claims being asserted in this lawsuit.

5. Defendant Chrysler Group admits it may be served through its registered agent in North Carolina - CT Corporation System, 150 Fayetteville, Street, Box 1011, Raleigh, Wake County, North Carolina, 27601. It denies that it engaged in the business of designing, manufacturing, marketing, promoting, advertising, distributing, or selling the subject vehicle. Defendant Chrysler Group denies that it has a “predecessor” which engaged in the business of

designing, manufacturing, marketing, promoting, advertising, distributing, or selling the subject vehicle. Chrysler Group is without sufficient information or knowledge to form a belief about the truth of remaining allegations, including the legal assertions made therein, contained in Paragraph 5 of Plaintiffs' Complaint, and therefore, those allegations are denied.

6. The allegations contained in Paragraph 6 of Plaintiffs' Complaint assert legal conclusions to which no response is necessary. To the extent a response is required, the allegations are denied.

7. The allegations contained in Paragraph 7 of Plaintiffs' Complaint assert legal conclusions to which no response is necessary. To the extent a response is required, the allegations are denied.

As to "FACTUAL ALLEGATIONS"

8. Defendant Chrysler Group moves to strike Paragraph 8 including the bolded sentence sub-header "I" thereafter pursuant to Rule 12(f) of the North Carolina Rules of Civil Procedure as containing extraneous, redundant, immaterial, impertinent, irrelevant, scandalous and inadmissible statements. (See Motion to Strike above) Defendant Chrysler Group denies the allegations contained in Paragraph 8 of Plaintiffs' Complaint.

9. Defendant Chrysler Group admits that the subject 2003 Dodge Caravan was first purchased on or before May 29, 2003. Chrysler Group denies the remaining allegations in contained Paragraph 9 of Plaintiffs' Complaint.

10. Defendant Chrysler Group is without sufficient information or knowledge to form a belief about the truth of the allegations contained in Paragraph 10 of Plaintiffs' Complaint, and therefore, those allegations are denied.

11. Defendant Chrysler Group is without sufficient information or knowledge to form a belief about the truth of the allegations contained in Paragraph 11 of Plaintiffs' Complaint, and therefore, those allegations are denied.

12. Defendant Chrysler Group denies the allegations contained in Paragraph 12 that the driver's seat was "defective" and that the driver's seat "failed." Chrysler Group is without sufficient information or knowledge to form a belief about the truth of the remaining allegations contained in Paragraph 12 of Plaintiffs' Complaint, and therefore, those allegations are denied.

13. Defendant Chrysler Group moves to strike Paragraph 13 pursuant to Rule 12(f) of the North Carolina Rules of Civil Procedure as containing extraneous, redundant, immaterial, impertinent, irrelevant, scandalous and inadmissible statements. (See Motion to Strike, above) Defendant Chrysler Group denies the allegations contained in Paragraph 13 of Plaintiffs' Complaint.

14. Defendant Chrysler Group denies it is liable to Plaintiffs in any manner whatsoever. Defendant Chrysler Group denies the remaining allegations contained in Paragraph 14 of Plaintiffs' Complaint.

15. Defendant Chrysler Group moves to strike the bolded sentence sub-header "II" which follows Paragraph 15 of the Plaintiffs' Complaint pursuant to Rule 12(f) of the North Carolina Rules of Civil Procedure as containing extraneous, redundant, immaterial, impertinent, irrelevant, scandalous and inadmissible statements. (See Motion to Strike above) Defendant Chrysler Group denies the allegations contained in Paragraph 15 of Plaintiffs' Complaint.

16. Defendant Chrysler Group denies the allegations contained in Paragraph 16 of Plaintiffs' Complaint.

17. Defendant Chrysler Group denies the allegations contained in Paragraph 17 of Plaintiffs' Complaint.

18. Defendant Chrysler Group moves to strike the second and third sentences of Paragraph 18 as containing extraneous, redundant, immaterial, impertinent, irrelevant, scandalous and inadmissible statements. (See Motion to Strike, above) Chrysler Group denies all allegations contained in Paragraph 18.

19. Defendant Chrysler Group denies the allegations contained in Paragraph 19 of Plaintiffs' Complaint.

20. Defendant Chrysler Group denies the allegations contained in Paragraph 20 of Plaintiffs' Complaint.

21. Defendant Chrysler Group denies the allegations contained in Paragraph 21 of Plaintiffs' Complaint.

22. Defendant Chrysler Group is without sufficient information or knowledge to form a belief about the truth of the allegations regarding the Kingsleys' subjective beliefs related to the safety of Chrysler Group minivans, and therefore, those allegations are denied. The defendant Chrysler Group further denies the remaining allegations contained in Paragraph 22 of Plaintiffs' Complaint.

23. Defendant Chrysler Group moves to strike Paragraph 23 pursuant to Rule 12(f) of the North Carolina Rules of Civil Procedure as containing extraneous, redundant, immaterial, impertinent, irrelevant, scandalous and inadmissible statements. (See Motion to Strike, above) Defendant Chrysler Group denies the allegations contained in Paragraph 23 of Plaintiffs' Complaint.

As to “Count I: Inadequate Design”

24. Defendant Chrysler Group hereby restates and incorporates by reference its responses, defenses and motions to Paragraphs 1 through 23 above, as if set forth fully below.

25. Chrysler Group denies that it manufactured the Dodge Caravan at issue. It is admitted that Defendant Chrysler Group has such duties as are imposed by law in the design, testing, manufacturing, marketing, and sale of its products. Except as herein admitted, and to the extent the allegations contained in Paragraph 25 are not consistent with such duties imposed by law, they are denied. Defendant Chrysler Group is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 25 regarding the condition of the Caravan, and therefore, those allegations are denied.

26. Defendant Chrysler Group denies the allegations contained in Paragraph 26 of Plaintiffs’ Complaint.

27. Defendant Chrysler Group denies the allegations contained in Paragraph 27 of Plaintiffs’ Complaint.

28. Defendant Chrysler Group denies the allegations contained in Paragraph 28 of Plaintiffs’ Complaint.

29. Defendant Chrysler Group denies the allegations contained in Paragraph 29 of Plaintiffs’ Complaint.

30. Defendant Chrysler Group denies the allegations contained in Paragraph 30 of Plaintiffs’ Complaint.

31. Defendant Chrysler Group denies the allegations contained in Paragraph 31 of Plaintiffs’ Complaint.

32. Defendant Chrysler Group denies the allegations contained in Paragraph 32 of Plaintiffs’ Complaint.

As to “Count II: Inadequate Warning”

33. Defendant Chrysler Group hereby restates and incorporates by reference its responses, defenses and motions to Paragraphs 1 through 32 above, as if set forth fully below.

34. Defendant Chrysler Group denies the allegations contained in Paragraph 34 of Plaintiffs’ Complaint.

35. Defendant Chrysler Group denies the allegations contained in Paragraph 35 of Plaintiffs’ Complaint.

36. Defendant Chrysler Group denies the allegations contained in Paragraph 36 of Plaintiffs’ Complaint.

37. Defendant Chrysler Group denies the allegations contained in Paragraph 37 of Plaintiffs’ Complaint.

38. Defendant Chrysler Group denies the allegations contained in Paragraph 38 of Plaintiffs’ Complaint.

39. Defendant Chrysler Group denies the allegations contained in Paragraph 39 of Plaintiffs’ Complaint.

As to “Count III: Negligent Infliction of Emotional Distress”

40. Defendant Chrysler Group hereby restates and incorporates by reference its responses, defenses and motions to Paragraphs 1 through 39 above, as if set forth fully below.

41. Defendant Chrysler Group denies the allegations contained in Paragraph 41 of Plaintiffs’ Complaint.

42. Defendant Chrysler Group denies the allegations contained in Paragraph 42 of Plaintiffs’ Complaint.

43. Defendant Chrysler Group denies the allegations contained in Paragraph 43 of Plaintiffs’ Complaint.

44. Defendant Chrysler Group denies the allegations contained in Paragraph 44 of Plaintiffs' Complaint.

As to "Count IV: Hoover's Negligence"

45. Defendant Chrysler Group hereby restates and incorporates by reference its responses, defenses and motions to Paragraphs 1 through 44 above, as if set forth fully below.

46-48. The allegations of Paragraphs 46 through 48 are directed to a defendant other than Chrysler Group, and therefore, no response is necessary from Chrysler Group. To the extent a response is deemed necessary, the allegations of Paragraphs 46 through 48 are admitted upon information and belief.

49. Defendant Chrysler Group denies it is liable to Plaintiffs in any manner whatsoever. Except for the allegations in Paragraph 49 that Hoover was negligent in driving and is liable for causing the crash, Chrysler Group denies the remaining allegations contained in Paragraph 49 of Plaintiffs' Complaint.

As to "DAMAGES"

50. Defendant Chrysler Group denies it is liable to Plaintiffs in any manner whatsoever for the damages claimed in Paragraph 50 of Plaintiffs' Complaint, including subparagraphs (a)–(d).

51. Defendant Chrysler Group denies it is liable to Plaintiffs in any manner whatsoever for the damages claimed in Paragraph 51 of Plaintiffs' Complaint and denies the allegations therein.

Defendant Chrysler Group further denies all allegations set forth in the last unnumbered paragraph of Plaintiffs' Complaint beginning with "WHEREFORE" including subparagraphs (a) through (d). Chrysler Group contests all requests in Plaintiffs' Prayer for Relief.

QUALIFIED GENERAL DENIAL

Except as expressly admitted herein, Chrysler Group denies all allegations of the Plaintiffs' Complaint.

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which relief can be granted under the laws of North Carolina. (Rule 12(b)(6) of the North Carolina Rules of Civil Procedure).

SECOND AFFIRMATIVE DEFENSE

Defendant Chrysler Group affirmatively alleges, upon information and belief, that Plaintiffs' claims are barred by the applicable statutes of repose including N.C. Gen. Stat. § 1-50(a)(6). The subject vehicle, which is the model year 2003 Dodge Caravan, was first purchased for use on or about May 29, 2003. However, this lawsuit was not commenced until May 13, 2015, nearly twelve (12) years later, and is accordingly barred by the statute of repose as a matter of law. (See Motion to Dismiss, above)

THIRD AFFIRMATIVE DEFENSE

Defendant Chrysler Group affirmatively alleges that Plaintiffs' claims fail because Chrysler Group did not manufacture, design, market, or sell the subject vehicle, nor did Chrysler Group assume liabilities for the negligent causes of action against the bankrupt manufacturer of the subject vehicle or those claims which were time-barred. Chrysler Group is a wholly new company that purchased some of the assets of the successor of the manufacturer of the subject vehicle during a bankruptcy proceeding in 2009. In connection with the court approved asset sale (Master Transaction Agreement), Chrysler Group did not assume any negligence-based claims relating to vehicles manufactured before the bankruptcy and did not assume any claims which were barred by the Statute of Limitations.

FOURTH AFFIRMATIVE DEFENSE

Defendant Chrysler Group affirmatively alleges that Plaintiffs' Complaint should be struck, in whole or part, pursuant to Rule 12(f) of the North Carolina Rules of Civil Procedure based upon the extraneous, redundant, immaterial, impertinent, irrelevant, scandalous and inadmissible matters contained herein. (See Motion to Strike, above)

FIFTH AFFIRMATIVE DEFENSE AND MOTION

Defendant Chrysler Group affirmatively alleges lack of personal jurisdiction in bar to Plaintiffs' claims herein pursuant to Rule 12(b)(2) of the North Carolina Rules of Civil Procedure.

SIXTH AFFIRMATIVE DEFENSE

Chrysler Group affirmatively alleges, upon information and belief, that all injuries or damages alleged by the Plaintiffs were caused by the sole negligence of parties other than Chrysler Group, including specifically Defendant Hoover, and were not caused, enhanced, or contributed to by any conduct of Chrysler Group.

SEVENTH AFFIRMATIVE DEFENSE

Chrysler Group affirmatively alleges that the Plaintiffs' claims are barred because Chrysler Group at all times exercised the degree of care that is required by law.

EIGHTH AFFIRMATIVE DEFENSE

Chrysler Group specifically incorporates herein by reference all statutory defenses, including but not limited to defenses arising under Chapter 99B of the North Carolina General Statutes.

NINTH AFFIRMATIVE DEFENSE

Chrysler Group affirmatively alleges that all or some of the Plaintiffs' claims are barred because the subject vehicle, including the components and/or systems therein, was not defective,

was not unreasonably dangerous, and was both merchantable and fit for its purposes when it left the possession of the manufacturer.

TENTH AFFIRMATIVE DEFENSE

Chrysler Group affirmatively alleges that all components or systems claimed defective by the Plaintiffs on the subject vehicle, including but not limited to the seats and seatbacks therein, conform to the then existing state-of-the art for the manufacture and design of said components and/or systems for similar products and complied in all respects with all applicable laws, regulations, and standards to which such components or systems are in any respect subject, including but not limited to Federal Motor Vehicle Safety Standards.

ELEVENTH AFFIRMATIVE DEFENSE

Chrysler Group affirmatively alleges that any defect which may have existed in the components and/or systems claimed defective by the Plaintiffs or in any other component or system of the subject vehicle, which defects are specifically denied, did not exist when the subject vehicle left the control of DaimlerChrysler.

TWELFTH AFFIRMATIVE DEFENSE

Chrysler Group affirmatively alleges that the instructions and warnings provided with the subject vehicle were adequate in their content and informed ordinary uses, including the Plaintiffs, of the proper way to operate the subject vehicle, including, without limitation, proper utilization of available safety restraints, and the specific risks of harm that may be involved in its use. Notwithstanding these instructions and warnings, the subject vehicle, upon information and belief, was used in a manner for which it was not intended, tested, or designed to be used and contrary to express and adequate instructions and warnings, and this misuse or failure to heed warnings and follow instructions proximately caused the injuries alleged in the Complaint. N.C. Gen. Stat. §§ 99B-3 and 99B-4(1).

THIRTEENTH AFFIRMATIVE DEFENSE

Chrysler Group affirmatively alleges, upon information and belief, that the Plaintiffs' claims are barred because any alleged injuries and damages were proximately caused by the unauthorized alteration or modification of the subject vehicle by a party other than Chrysler Group. N.C. Gen. Stat. § 99B-3.

FURTHER AFFIRMATIVE DEFENSES

Chrysler Group reserves the right to assert such other and further affirmative defenses as a course of investigation and discovery shall dictate, including, without limitation, spoliation of the subject vehicle or component parts, contributory negligence and failure to heed warnings from the manufacturer of the child car seat.

JURY DEMAND

A trial by jury is demanded on all issues so triable herein.

WHEREFORE, having fully responded to the Complaint and having moved to dismiss and moved to strike, Chrysler Group seeks the following relief from the Court:

- a. That the Plaintiff's Complaint be dismissed pursuant to Rules 12(b)(2) and 12(b)(6) of the North Carolina Rules of Civil Procedure;
- b. That the Plaintiffs' Complaint, in whole or in part, be stricken under Rule 12(f) of the North Carolina Rules of Civil Procedure;
- c. That judgment be entered in favor of Chrysler Group; and
- d. That the Complaint be dismissed with prejudice;
- e. Plaintiffs recover nothing from Chrysler Group from this action;
- f. Chrysler Group recover from Plaintiffs the costs that it incurs in defending this action, including awarding Chrysler Group costs and attorneys' fees;
- g. For trial by jury on all issues triable herein; and

h. Chrysler Group have such other relief as the Court deems just and proper.

This 17th day of June 2015.

SMITH, ANDERSON, BLOUNT, DORSETT,
MITCHELL & JERNIGAN, L.L.P.

By: 

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(*Pro hac* requests to be submitted)

CERTIFICATE OF SERVICE


This is to certify that the undersigned has this date served the foregoing **MOTION TO DISMISS, MOTION TO STRIKE, AND ANSWER OF DEFENDANT FCA US LLC** in the above-entitled action upon all other parties to this cause by depositing a copy thereof, postage paid in the United States mail, addressed as follows:

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This the 17th day of June, 2015.



Kirk G. Warner