



## **II. Factual Background**

2. Plaintiff Bill L. Inman owns a 1997 Dodge Caravan manufactured by Defendant DaimlerChrysler Corporation, which he purchased new from an authorized DaimlerChrysler dealership in Nueces County, Texas.<sup>1</sup> Plaintiff, David Castro, owns a 1995 Dodge Ram 1500 manufactured by Defendant DaimlerChrysler Corporation, which he purchased new from an authorized Chrysler dealership in Nueces County, Texas.<sup>2</sup> Plaintiff, John Wilkins, owns a 1999 Dodge Intrepid, which he purchased used from an authorized Chrysler dealership in Nueces County, Texas. All three of these vehicles were originally designed and assembled by Chrysler with Gen3 seat belt buckles, and are still equipped with the factory installed buckles.<sup>3</sup>

3. The Gen3 buckle is dangerously subject to accidental release, far more dangerous than other buckle designs.<sup>4</sup>

4. The federal government, through the National Highway Transportation Safety Administration (“NHTSA”), has promulgated certain mandatory safety regulations concerning automobiles, including seat belt buckles. Under mandate of federal law, automobile manufacturers, like Chrysler, are prohibited from selling vehicles that do not comply with the safety standards promulgated by NHTSA. 49 U.S.C.A. § 301112. The Chrysler vehicles equipped with the Gen-3 Buckle do not comply with the standards because the Gen-3 Buckle is

---

<sup>1</sup>Plfs’ 6<sup>th</sup> Amended Class Action Pet. ¶ 2.

<sup>2</sup>Plfs’ 6<sup>th</sup> Amended Class Action Pet. ¶ 3.

<sup>3</sup>Plfs’ 6<sup>th</sup> Amended Class Action Pet. ¶¶ 2-4.

<sup>4</sup>Plfs’ 6<sup>th</sup> Amended Class Action Pet. ¶ 9.

not in compliance. *See* 49 C.F.R. § 571.209 S4.1(e) (“Buckle release mechanism shall be designed to minimize the possibility of accidental release”).<sup>5</sup>

5. The Gen-3 Buckles are defective as designed in that the design does not minimize the possibility of accidental release. The unreasonably dangerous, unfit, defective, and unsafe nature of the Gen-3 Buckles is evidenced by the fact that the design does not meet widely accepted standards for minimizing the possibility of accidental release. By way of example, and without limitation: (1) the design does not meet the risk-utility balancing test, in light of the technological feasibility of a safer alternative design costing no more than 24 cents more than the Gen-3 design; (2) the design does not meet industry standard; (3) the design does not meet General Motor Corp.’s design goal for minimizing the possibility of accidental release; (4) the design does not meet Ford Motor Corp.’s design goal for minimizing the possibility of accidental release; (5) the design does not meet Chrysler’s design goal for minimizing the possibility of accidental release in effect prior to 1993; (6) the design does not meet Chrysler’s design goal for minimizing the possibility of accidental release in effect from 1993 to the present; (7) the design does not meet the goal for minimizing the possibility of accidental release which was widely-accepted in Europe according to the sworn admissions of Chrysler engineers testifying under oath while within the scope of their employment with Chrysler; (8) the Gen-3 Buckle does not meet Chrysler’s own specification for the Gen-3 Buckle; (9) Gen-3 safety belt buckles have repeatedly come unlatched during crash tests run by Chrysler, the Canadian government, and the U.S. government; (10) numerous reports have been made to Chrysler and NHTSA of Gen-3 Buckles unlatching in wrecks and during normal driving; and (11) the design does not meet the U.S. government’s safety standards for safety belt buckles, which requires seat belt buckles “be

---

<sup>5</sup>Plfs’ 6<sup>th</sup> Amended Class Action Pet. ¶ 11.

designed to minimize the possibility of accidental release.’<sup>6</sup> Similarly, these same facts show the deceptive nature of Chrysler’s conduct in selling the Gen-3 Buckles in breach of warranties, and in breach of standards of the care owed to consumers under the DTPA.<sup>7</sup>

### **III. Nature of Relief Sought**

6. As a remedy, Plaintiffs, individually and on behalf of the class, seek the cost of replacing the existing Gen3 buckles with new, properly designed seat belt buckles that minimize the possibility of accidental release for each Class Member’s affected Chrysler vehicle, as well as damages for loss of use during the time it takes to replace the buckles, additional damages under the DTPA, attorneys’ fees and costs.<sup>8</sup>

### **IV. The Requirements of Rule 42 Are Satisfied**

7. As discussed more fully below, the requirements of Rule 42(a) of the Texas Rules of Civil Procedure are easily satisfied. The Class is so numerous that joinder is impracticable. TEX. R. CIV. P. 42(a)(1). There are questions of law or fact common to the Class. TEX. R. CIV. P. 42(a)(2). Plaintiff’s claims are typical of the claims of all other Class members. TEX. R. CIV. P. 42(a)(3). Plaintiff and his attorneys will fairly and adequately protect the interests of the Class. TEX. R. CIV. P. 42(a)(4).

8. The requirements of Rule 42(b) of the Texas Rules of Civil Procedure are also satisfied because (a) the prosecution of separate actions by individual members of the Class would create a risk of inconsistent adjudications or adjudications with respect to some members of the Class would as a practical matter be dispositive of the interests of other members of the

---

<sup>6</sup>Plfs’ 6<sup>th</sup> Amended Class Action Pet. ¶ 14.

<sup>7</sup>Plfs’ 6<sup>th</sup> Amended Class Action Pet. ¶ 14.

<sup>8</sup>Plfs’ 6<sup>th</sup> Amended Class Action Pet. ¶¶ 16, 24, 28, 36, 41, 46 and prayer.

Class not parties to the adjudications and/or (b) common questions of law or fact predominate over individual questions and a class action is superior to other available methods for the fair and efficient adjudication of the controversy. TEX. R. CIV. P. 42(b).

**A. Rule 42(a)**

9. **Numerosity.** Rule 42(a)(1) requires that a class must be so numerous that joinder of all members is impracticable. TEX. R. CIV. P. 42(a)(1). The numerosity requirement is not based on numbers alone; rather, the test is whether joinder of all class members is practicable in view of the size of the class, and includes such factors as judicial economy, nature of the action, geographical location of class members, and the likelihood that class members would be unable to prosecute individual lawsuits. *Rainbow Group, Ltd. v. Johnson*, 990 S.W.2d 351, 357 (Tex. Civ. App. – Austin 1999, pet. dismissed w.o.j.). Notably, numerosity may be established by showing the number of potential class members. *Id.* To establish numerosity, the proponent of class certification need not prove how many class members were affected by the challenged practice. *Id.* There are likely more than 10,000,000 affected vehicles geographically dispersed throughout the United States. It would be impossible to join all of the individuals that purchased or leased these vehicles in a single action. Accordingly, numerosity is easily established.

10. **Commonality.** Rule 42(a)(2) requires that there must be questions of law or fact common to the class. TEX. R. CIV. P. 42(a)(2). Commonality does not require that all or even a substantial portion of the legal and factual questions be common to the class. *Nissan Motor Co. v. Fry*, 27 S.W.3d 573, 588 (Tex. App. – Corpus Christi 2000 pet. denied); *Rainbow Group*, 990 S.W.2d at 358. It only requires that *some* legal or factual questions be common to the class. *Id.* Questions common to the class are those which, when answered as to one class member, are answered as to all class members. *Nissan Motor Co.*, 27 S.W.3d at 588. The common issues may be ones of law *or* fact; there need not be common issues of law *and* fact. *Id.* The

commonality requirement is generally considered satisfied where many members of the class are subject to the same misrepresentation or omission by reason of common documents, or where the defendant is alleged to have engaged in a common course of conduct. *Id.* In the present case, questions of law or fact common to the class include, but are not limited to the following:

- (a) Whether, in the use of Gen-3 Buckles in Chrysler vehicles, Chrysler violated one or more duties owed to the Class.
- (b) What is the cost of replacing the Gen-3 Buckle with a seat belt buckle that minimizes the possibility of accidental release?
- (c) Whether the use of the Gen-3 Buckle breached any express or implied warranty.
- (d) Whether Chrysler violated DTPA.
- (e) Whether Chrysler's conduct was knowing.
- (f) Whether Chrysler's conduct was intentional.
- (g) The date upon which the Class knew or should have learned of the defect in the design of the Gen-3 Buckle.
- (h) The amount of additional damages that should be awarded with respect to each vehicle.
- (i) Whether Chrysler's conduct was a proximate or producing cause of Plaintiffs' damages as a matter of law.

11. **Typicality.** Rule 42(a)(3) requires that the representative parties' claims or defenses must be typical of the claims or defenses of other class members. TEX. R. CIV. P. 42(a)(3). The typicality requirement is met if the class representative possesses the same interests and suffers the same injury as absent class members. *Nissan Motor Co.*, 27 S.W.3d at 582. To be typical, the representative's claims must arise from the same event or course of

conduct giving rise to the claims of other class members and must also be based on the same legal theories. *Id.* at 583. Although a class representative must not have interests antagonistic to those of the rest of the class, only a conflict that goes to the very subject matter of the litigation will defeat a party's claim of representative status. *Id.* at 582-83. Here, Plaintiffs' claims are not merely typical of the claims of other class members, they are identical.

12. **Adequate representation.** Rule 42(a)(4) requires that the representative parties fairly and adequately protect the interest of the class. TEX. R. CIV. P. 42(a)(4). In determining the adequacy requirement, the trial court is to inquire into the willingness and ability of the representative to take an active role in the litigation and to protect the interests of the absentees and into the zeal and competence of class counsel. *Rainbow Group*, 990 S.W2d at 359.

13. In determining the adequacy of the representative party, the primary issue is whether conflict or antagonism exists between the interests of the representative and those of the remainder of the class. *Id.* In the present case, there are no conflicts between Plaintiffs and the Class. Moreover, Plaintiffs know and understand that they are acting as representatives for the absentee Class members, hold themselves out as such representatives, and will pursue this claim and the claims of the absentee class members vigorously until a final conclusion is reached. Further, Plaintiffs will remain actively involved in the case and will fully participate in the process and make themselves available for deposition, hearing, or any other matters that may arise. Accordingly, there is no doubt that Plaintiffs will adequately represent the Class.

14. Nor is there any doubt that Plaintiffs' counsel will adequately represent the interests of the Class. Counsel of record for Plaintiffs are well qualified to represent the Class and have demonstrated their zeal and competence in this case and in prior class action litigation. The Edwards Law Firm has a 40 year history in Corpus Christi and throughout Texas; it has successfully concluded by way of settlement, trial, and appeal, numerous lawsuits against

automobile manufacturers in general, and Chrysler in particular; and it has significantly participated in previous successful class actions. The law firm of Much Shelist Freed Denenberg Ament & Rubenstein has decades of extensive experience in class action litigation, and is clearly competent to act as class counsel in this case.

#### **B. Rule 42(b)**

15. In addition to satisfying Rule 42(a), a party seeking class certification must also satisfy *one* of the four elements of Rule 42(b). Here, two of the elements of Rule 42(b) are satisfied. First, common questions of law or fact predominate over individual questions and a class action is superior to other available methods for the fair and efficient adjudication of the controversy. TEX. R. CIV. P. 42(b)(4). Second, the prosecution of separate actions by individual members of the Class would create a risk of inconsistent adjudications or adjudications with respect to some members of the Class would as a practical matter be dispositive of the interests of other members of the Class not parties to the adjudications. TEX. R. CIV. P. 42(b)(1).

16. **Predominance.** Courts determine if common issues predominate by identifying the substantive issues of the case that will control the outcome of the litigation, assessing which issues will predominate, and determining whether the predominating issues are common to the class. *Southwestern Refining Co. v. Bernal*, 22 S.W.3d 425 (Tex. 2000). The test for predominance is not whether common issues outnumber uncommon issues, but rather, whether common or individual issues will be the focus of litigation. *Id.*; *Nissan Motor Co.*, 27 S.W.3d at 590; *Rainbow Group*, 990 S.W.2d at 360. Ideally, a judgment in favor of the class representative should decisively settle the entire controversy, and all that should remain is for the absent class members to file proof of their claims. *Id.* However, the “ideal” situation is not a hard and fast requirement for all class certifications. *Entergy Gulf States v. Butler*, 25 S.W.3d 359, 362 n.2 (Tex. App.—Texarkana 2000, no writ). Class certification should not be denied merely because

of the presence of an arguable defense peculiar to certain members. *Nissan Motor Co.*, 27 S.W.3d at 591.

17. The predominance requirement is clearly met here, where Plaintiffs and every other Class member received dangerous seat belt buckles from Chrysler. Chrysler uniformly represented that vehicles manufactured with Gen3 buckles met all applicable safety standards, and they do not. In fact, the Gen3 buckles are dangerously prone to unlatch due to inadvertent contact. Thus, Plaintiffs and all other Class members are entitled to seek the common remedy of the cost of replacing the Gen3 buckles, along with damages for loss of use of the vehicles during the time it takes to replace the buckles, plus additional damages, attorneys' fees and costs. Unquestionably, these common issues not only outnumber any individual issues that may arise, but will clearly be the focus of the litigation.

18. **Superiority.** Class certification is appropriate where repeated litigation of the common issues and individual actions would be grossly inefficient, exorbitantly costly, and a waste of judicial resources. *Nissan Motor Co. v. Fry*, 27 S.W.3d 573, 582-83 (Tex. App. – Corpus Christi 2000, pet. denied). A class action is superior to other methods of adjudication where any difficulties that might arise in the management of the class are outweighed by benefits of class wide resolution of common issues. *Id.* This action is ideally suited for class action treatment for the reasons discussed above.

19. The two alternatives to certification, joinder of all parties or multiple, individual lawsuits are woefully inadequate alternatives. To begin with, there are likely more than 10,000,000 affected vehicles in the United States. It would be impracticable to join all of the purchasers who are geographically dispersed throughout the United States in one lawsuit. Alternatively, separate lawsuits by 10,000,000 individuals would also be impracticable, unnecessarily resulting in duplicate efforts. In marked contrast, a class action would facilitate a

uniform and fair resolution of the dispute, which emanates from Chrysler's uniform course of conduct. In the present case, in light of the number of claimants, the impracticality of joining all members and the gross inefficiency and exorbitant cost and waste of judicial resources associated with individual actions, class certification and class action status is superior to any other manner of resolution.

20. **Trial Plan.** Because this case involves similarly situated class members, common damages, a common course of conduct on the part of Chrysler, and a single model of defective belt buckle, no trial plan is necessary to determine that common issues will predominate over individual issues. See *State Farm Mutual Automobile Ins. Co. v. Lopez*, 45 S.W.3d 182 (Tex. App. – Corpus Christi 2001, pet. filed). Nonetheless, the trial plan is reflected in the attached proposed jury charge.

#### **V. Conclusion**

For the foregoing reasons, Plaintiffs request that the court enter a finding that this action may be maintained as a class action, certify the proposed class, designate Plaintiffs as class representatives and Plaintiffs' attorneys as Class Counsel, and grant such further and general relief as the court deems appropriate.

Dated: March 6, 2002

Respectfully submitted,

William R. Edwards, III  
William R. Edward  
John B. Gsanger  
THE EDWARDS LAW FIRM, L.L.P.  
1400 Frost Bank Plaza  
802 North Carancahua  
Corpus Christi, TX 78470-0700  
(361) 698-7600 Phone  
(361) 698-7614 Fax

and

J. Mitchell Clark  
LAW OFFICES OF J. MITCHELL CLARK  
Frost Bank Plaza  
802 N. Carancahua, Suite 1650  
Corpus Christi, Texas 78470  
Telephone: (361) 887-8500  
Facsimile: (361) 882-4500

and

Steven A. Kanner  
Carol V. Gilden  
Douglas A. Millen  
MUCH SHELIST FREED DENENBERG  
AMENT & RUBENSTEIN, P.C.  
200 N. LaSalle Street, Suite 2100  
Chicago, Illinois 60601-1095  
(312) 346-3100 Phone  
(312) 621-1750 or 1484 facsimile

and

Vernon N. Reaser Jr.  
Law Office of Vernon N. Reaser, Jr.  
202 Pecan Drive  
Victoria, TX 77905-0686  
(361) 576-5858 Phone  
(361) 575-7741 Fax

By: \_\_\_\_\_  
William R. Edwards, III  
State Bar No. 06465010

ATTORNEYS FOR PLAINTIFFS

**CERTIFICATE OF SERVICE**

The undersigned certifies that a copy of the foregoing instrument was served upon the attorneys of record of all parties to the above cause, in accordance with Rule 21a, Tex. R. Civ. P., on this the 6<sup>th</sup> day of March, 2002.

\_\_\_\_\_  
William R. Edwards, III

**VIA FACSIMILE AND  
CERTIFIED MAIL/RRR, TO:**

Ms. Roberta J. Hegland  
BRACEWELL & PATTERSON, L.L.P.  
2000 One Shoreline Plaza, South Tower  
800 N. Shoreline Blvd.  
Corpus Christi, Texas 78401-3700

**VIA FACSIMILE AND  
CERTIFIED MAIL/RRR, TO:**

Mr. Charles A. Newman  
Ms. Kathy A. Wisniewski  
BRYAN CAVE, L.L.P.  
One Metropolitan Square  
St. Louis, Missouri 63102  
Via Facsimile: (314) 259-2020

**ATTORNEYS FOR DAIMLERCHRYSLER CORPORATION**