

PARTIES

2. Plaintiff, BILL L. INMAN, is over eighteen (18) years of age. He is a resident of Nueces County, Texas who owns a 1997 Dodge Caravan which he purchased new in Nueces County, Texas from an authorized Chrysler dealership. This vehicle was originally designed and assembled by Chrysler with Gen-3 seat belt buckles, and is still equipped with the factory installed buckles.

3. Plaintiff, DAVID CASTRO, is over eighteen (18) years of age. He is a resident of Nueces County, Texas who owns a 1995 Dodge Ram 1500 which he purchased new in Nueces County, Texas from an authorized Chrysler dealership. This vehicle was originally designed and assembled by Chrysler with Gen-3 seat belt buckles, and is still equipped with the factory installed buckles.

4. Plaintiff, JOHN WILKINS, is over eighteen (18) years of age. He is a resident of Nueces County, Texas who owns a 1999 Dodge Intrepid which he purchased used in Nueces County, Texas. This vehicle was originally designed and assembled by Chrysler with Gen-3 seat belt buckles, and is still equipped with the factory installed buckles.

5. Defendant, DAIMLERCHRYSLER CORPORATION, is a Delaware corporation, and has appeared and answered herein.

6. Defendant CHRYSLER CORPORATION is believed to be a predecessor corporation of DAIMLERCHRYSLER CORPORATION, Chrysler Corporation being a corporation whose name was changed to DaimlerChrysler Corporation. This Defendant has appeared and answered herein.

7. Defendant CHRYSLER, IN ITS ASSUMED OR COMMON NAME, refers to that entity which designed, manufactured and sold the vehicles in question, and is believed to be one and the same as DAIMLERCHRYSLER CORPORATION.

8. Because all named Defendants are believed to be one and the same entity, they will be referred to herein collectively as “DaimlerChrysler.” Likewise, the term “DaimlerChrysler vehicle,” as used herein, includes any vehicle manufactured and/or sold by Chrysler regardless of brand name or label, and including Chrysler, Dodge and Jeep vehicles.

INTRODUCTION

9. This action is brought on behalf of all United States resident persons who own or lease model year 1993 - 2002 vehicles that were manufactured and/or sold by DaimlerChrysler and equipped with Gen-3 seat belt buckles (“Gen-3 Buckle”).¹ The Gen-3 Buckle is dangerously subject to accidental release, far more dangerous than other buckle designs.

10. 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 DaimlerChrysler, are prohibited from selling vehicles that do not comply with the safety standards promulgated by NHTSA. 49 U.S.C.A. § 30112. The DaimlerChrysler

¹ As used in this petition, “Gen-3 buckles” is meant to include those seat belt buckles designated as Gen-3 buckles by DaimlerChrysler, and any other seat belt buckles used in DaimlerChrysler vehicles that use a similar type of cover and release button as the Gen-3 buckle, regardless of how DaimlerChrysler designates the buckle or who manufactures the buckle for DaimlerChrysler.

vehicles equipped with the Gen-3 Buckle do not comply with the standards because the Gen-3 Buckle is 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”).

11. Car owners place significant importance on the functioning of their vehicle's safety system. Seat belts are at the core of a vehicle's safety system, and the buckle is the heart of the seat belt. When a person buckles in and hears the reassuring click that his or her seat belt is fastened, he or she reasonably expects that the seat belt buckle will not accidentally release at any time, and especially in the event of a collision. DaimlerChrysler capitalizes on its vehicles' safety features in its sales and promotional efforts, representing that its vehicles' safety systems are adequate.

12. This case arises from the manufacture and distribution of DaimlerChrysler vehicles equipped with Gen-3 Buckles which, contrary to DaimlerChrysler's purported image of quality and safety, are subject to accidental release at any time, and especially in the event of a collision. This latent defect totally defeats the purpose of the seat belt assembly. DaimlerChrysler knew of this defect, or should have known of it, prior to the sale of affected cars to the public. DaimlerChrysler did not, however, disclose this defect to potential or actual purchasers and lessees of its vehicles.

13. 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,² 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 DaimlerChrysler's design goal for minimizing the possibility of accidental release in effect prior to 1993; (6) the design does not meet DaimlerChrysler'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 DaimlerChrysler engineers testifying under oath while within the scope of their employment with DaimlerChrysler; (8) the Gen-3 Buckle does not meet DaimlerChrysler's own specification for the Gen-3 Buckle; (9) Gen-3 safety belt buckles have repeatedly come unlatched during crash tests run by DaimlerChrysler, the Canadian government, and the U.S. government; (10) Numerous reports have been made to DaimlerChrysler 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 designed to minimize the possibility of accidental release."³ Similarly, these same facts show the deceptive nature of

² See *Hernandez v. Tokai Corp.*, 2 S.W.3d 251 (Tex. 1999).

³ 49 C.F.R. § 571.209 S4.1(e).

DaimlerChrysler'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.

14. DaimlerChrysler's conduct breached express and implied warranties and violated the Texas Deceptive Trade Practices - Consumer Protection Act, (herein referred to as the "DTPA").⁴

15. Plaintiffs seek monetary damages equal to the cost of new, properly designed seat belt buckles that minimize the possibility of accidental release for each Class Member's affected DaimlerChrysler vehicle, loss of use of the vehicle during the time of replacement, additional damages under DTPA, and attorneys' fees and costs. Plaintiffs do not seek damages for personal injury, property damage or death. No Class Member seeks damages in excess of \$74,500.00.

JURISDICTION AND VENUE

16. Venue and jurisdiction of this case are proper in Nueces County, Texas, as DaimlerChrysler is registered to do business in Texas and regularly conducts business in Texas, including Nueces County. Additionally, all or part of these causes of action arose in Nueces County, as at least one of the Class Representatives, Bill L. Inman resides in Nueces County, Texas and Bill L. Inman, David Castro, and John Wilkins purchased their vehicles in Nueces County, Texas, and Bill L. Inman resided in Nueces County, Texas at the time of his purchase.

⁴ TEX. BUS. & COM. CODE §§ 17.41 *et seq.*

17. Federal jurisdiction over this action does not exist as the amount in controversy as to the Plaintiffs and each Class Member does not exceed \$75,000, including interest, any pro-rata award of attorneys' fees, any additional damages each may be entitled to receive under DTPA, and costs. In fact, Plaintiffs' and each Class Member's individual claim will be worth, on average, less than \$5,000, inclusive of attorneys' fees and damages, and additional damages. Damages, additional damages under DTPA and attorneys' fees and costs may not be aggregated to meet the minimum federal jurisdictional amount in a diversity case. Moreover, DaimlerChrysler is well aware that this action cannot be removed to federal court.⁵ Any removal of this action would be without jurisdiction, frivolous, and in bad faith and should, therefore, be remedied with an award of costs, including attorney's fees, plus sanctions sufficient both to punish DaimlerChrysler's conduct and to deter DaimlerChrysler from future improvident removals.

18. Plaintiffs and Class Members assert no federal question. The Parties' claims do not exceed \$74,500.00 and, accordingly, do not confer diversity jurisdiction. The state law causes of action mandate that this action be heard in a Texas state forum.

19. The fact that Plaintiffs seek recovery under the DTPA, and that additional damages may be recovered with respect to each individual putative Class Member, does not create federal diversity jurisdiction because aggregation of additional damages and attorneys'

⁵ See Order of Remand, *Inman v. DaimlerChrysler Corp.*, No. C-00-340 (S.D. Tex. Dec. 8, 2000); *Garbie v. DaimlerChrysler*, 211 F.3d 407 (7th Cir. 2000); *Gibson v. DaimlerChrysler Corp.*, No. C-99-1047 MHP, 1999 WL 1049572 (N.D. Calif. May 28, 1999).

fees for that purpose is not proper.⁶ Moreover, DaimlerChrysler is well aware that attorneys' fees and additional damages cannot be aggregated to meet the federal amount in controversy.⁷

FACTUAL ALLEGATIONS

20. The Gen-3 Buckle is subject to accidental release and does not minimize the possibility of accidental release. This action arises because DaimlerChrysler installed the Gen-3 Buckle in its 1993 - 2002 model year DaimlerChrysler vehicles. All references to DaimlerChrysler vehicles below, refer to DaimlerChrysler vehicles in which the Gen-3 Buckle was installed. For their causes of action, Plaintiffs allege on information and belief, based upon the investigation conducted by and through their counsel, except for the allegations regarding Class Representatives, which are alleged on personal knowledge. The sources of Plaintiffs' information and belief include, but are not limited to, public filings, media reports, and investigations by Plaintiffs' counsel.

21. Between calendar years 1992 and 2002 (the "relevant period"), DaimlerChrysler manufactured and/or sold vehicles with the defective Gen-3 Buckle, which is dangerously prone to accidental release and is not designed to minimize the possibility of such release. While DaimlerChrysler manufactured and/or sold some vehicles during the relevant period equipped with a seat belt buckle other than the Gen-3 Buckle, most DaimlerChrysler vehicles

⁶ *Coghlan v. Wellcraft Marine Corp.*, 240 F.3d 449, 455 (5th Cir. 2001); *Goody v. Allstate Insurance Co.*, 2000 WL 626856 (N.D. Tex., May 12, 2000); *Stipelcovich v. Directv, Inc.*, 2000 WL 337597 (E.D. Tex., May 3, 2000); *Johnson v. Directv, Inc.*, 63 F. Supp. 2d 768 (S.D. Tex., 1999).

⁷ See cases cited *supra* note 5.

manufactured and/or sold by DaimlerChrysler during the relevant period did employ the Gen-3 Buckle.

22. This defective Gen-3 Buckle leaves the DaimlerChrysler vehicles' occupants without the benefit of a primary component of their vehicle's safety system - a seat belt assembly designed to minimize the possibility of accidental release.

23. The only remedy for this defect is the replacement of the defective Gen-3 Buckles with properly designed seat belt buckles that minimize the possibility of accidental release and payment for loss of use of the vehicle during the time of replacement.

24. The cost of replacing the Gen-3 Buckle in the DaimlerChrysler vehicles is believed to be not in excess of \$75 per buckle. The value of the loss of use of the vehicle during the time of replacement is believed to not exceed \$500.00 per vehicle.

CLASS ACTION ALLEGATIONS

25. Plaintiffs bring all claims as class claims, pursuant to Rule 42(a) and (b)(4) of the Texas Rules of Civil Procedure. These requirements are met with respect to the Class defined below.

26. Plaintiffs bring their claims individually, and on behalf of the following Class:

All United States resident persons (except residents of California or Nevada) who own or lease model year 1993 - 2002 vehicles manufactured and/or sold by DaimlerChrysler and equipped with Gen-3 seat belt buckles. Excluded from this Class is any person, firm, trust, corporation, or other entity related to or affiliated with Defendants; any person, firm, trust, corporation, or other entity who purchased, for resale, from Defendants, or any entity related to or affiliated with DaimlerChrysler, new model year 1993 through 2001 DaimlerChrysler vehicles; or any person who has an action for damages for personal injury or death or property

damage against Defendants. Additionally excluded from the Class are any persons or entities who have suffered damages, including attorneys' fees, additional damages, and costs of court in excess of \$74,500.00.

27. Plaintiffs seek the cost of replacement of Gen-3 Buckles and payment for loss of use of the vehicle during the time of replacement on behalf of all Class Members. Plaintiffs expressly disclaim any intent to request any recovery for personal injuries, property damage or death suffered, or which may be suffered, by any Class Member.

28. This action has been brought and may be properly maintained as a class action for the following reasons:

a. The Plaintiff Class as above described is so numerous, that joinder of the individual members of the proposed Class is impracticable. The Class, upon information and belief, includes tens of thousands of members. The precise number of Class Members can only be obtained through discovery. Tex. R. Civ. P. 42(a)(1). Plaintiffs do not anticipate any difficulties in the management of the action as a class action.

b. Questions of law or fact of common and general interest to the Class, exist as to all members of the Class and predominate over any questions affecting only individual members of the Class. Tex. R. Civ. P. 42(a)(2).

Among the questions of law and fact common to the Class are the following:

1. Whether, in the use of Gen-3 Buckles in DaimlerChrysler vehicles, DaimlerChrysler violated one or more duties owed to the Class.

2. What is the cost of replacing the Gen-3 Buckle with a seat belt buckle that minimizes the possibility of accidental release?
3. Whether the use of the Gen-3 Buckle breached any express or implied warranty.
4. Whether DaimlerChrysler violated DTPA.
5. Whether DaimlerChrysler's conduct was knowing.
6. Whether DaimlerChrysler's conduct was intentional.
7. The date upon which the Class knew or should have learned of the defect in the design of the Gen-3 Buckle.
8. The amount of additional damages that should be awarded with respect to each vehicle.
9. Whether DaimlerChrysler's conduct was a proximate or producing cause of Plaintiffs' damages as a matter of law.

c. The Class Representatives' Claims are typical of the claims of Class Members. Tex. R. Civ. P. 42(a)(3). Moreover, the defenses, if any, that will be asserted to the Class Representatives' claims are typical of the defenses, if any, that will be asserted to the Class Members' claims. All Plaintiffs sustained the same kind of damages out of the same course of conduct.

d. The Class Representatives will fairly and adequately protect the interests of the members of the Class. The Class Representatives have no interests adverse to the interests of the Class Members. The Class Representatives have

retained counsel who have significant experience in the prosecution of class actions and complex litigation, including litigation against vehicle manufacturers, and who will vigorously prosecute this action. Tex. R. Civ. P. 42(b)(4).

e. The Class Representatives and the Class were victimized by a common course of conduct by DaimlerChrysler that involved standardized print and broadcast advertising that DaimlerChrysler knew was untrue or allowed the dissemination of such statements with gross disregard for the truth or falsity thereof. As a result, the common issues that affect the Class Representatives and the Class Members predominate over those which affect any individual Class Member. Tex. R. Civ. P. 42(b)(4).

f. A class action is superior to other available methods for the fair and efficient adjudication of this controversy, since individual joinder of all members of the Class is impractical, if not impossible. Tex. R. Civ. P. 42(b)(4). Furthermore, as the compensatory damages suffered by each individual member of the Class are relatively small (on average, less than \$5,000), the expense and burden of individual litigation would make it difficult, if not impossible, for individual members of the Class to redress the wrongs done to them by a Fortune 500 corporation like DaimlerChrysler. The cost to the court system of such individualized litigation would be substantial. Individualized litigation would also present the potential for inconsistent or contradictory judgments and

would magnify the delay and expense to all parties and the court system in multiple trials of identical or similar complex factual issues of the case. Tex. R. Civ. P. 42(b)(1)(a). By contrast, the conduct of this action as a class action presents fewer management difficulties, conserves the resources of the parties and the court system, protects the rights of each Class Member and maximizes recovery to them.

COUNT I

BREACH OF EXPRESS WARRANTY

29. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 29 above.

30. The allegations of breach of express warranty in Count I are made on behalf of Bill Inman, David Castro, John Wilkins and those Plaintiffs who purchased or leased new DaimlerChrysler vehicles at dealerships authorized by DaimlerChrysler for the purpose of selling DaimlerChrysler vehicles directly to the public.

31. In advertising and promotional materials, DaimlerChrysler has represented that DaimlerChrysler vehicles are safe, quality vehicles that meet all applicable safety standards.

32. The stickers or plates on all DaimlerChrysler vehicles represent that the vehicle conforms to all applicable federal motor vehicle safety standards in effect.

33. The audible "click" created when a Gen-3 Buckle is fastened constitutes a representation that the buckle is indeed properly secured and will not release accidentally. This representation is false as the Gen-3 Buckle is prone to accidental release.

34. DaimlerChrysler knew, or should have known, that the foregoing representations were false, incomplete, and/or misleading at the time they were made to Plaintiffs.

35. DaimlerChrysler breached an express warranty in the sale of the DaimlerChrysler vehicles to the Plaintiffs.

36. As a direct and proximate result of the foregoing conduct, Plaintiffs have suffered injury in the amounts required to replace the Gen-3 Buckles in their DaimlerChrysler vehicles with buckles designed to minimize the possibility of accidental release and the loss of use of the vehicles during the time of replacement. Each Class Member will seek damages in excess of the jurisdictional minimum of this Court, but no Class Member will seek damages, including additional damages and attorneys' fees, in excess of \$74,500.00, because, as the Class is defined, it includes no one with more than \$74,500.00 in damages, including additional damages and attorneys' fees.

COUNT II

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

37. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 36 above.

38. The allegations of breach of implied warranty of merchantability in Count II are made on behalf of Bill Inman, David Castro, John Wilkins and those Plaintiffs who purchased or leased new DaimlerChrysler vehicles at dealerships authorized by DaimlerChrysler for the purpose of selling DaimlerChrysler vehicles directly to the public.

39. Through the sale of the DaimlerChrysler vehicles, DaimlerChrysler was a "seller" of the Gen-3 Buckles pursuant to § 2.314 of the Uniform Commercial Code. Pursuant to that § 2.314, a warranty that the Gen-3 Buckles were merchantable is implied in the sale of the buckles.

40. DaimlerChrysler breached the implied warranty of merchantability in the sale of the DaimlerChrysler vehicles, as these vehicles were rendered unfit for their ordinary purposes due to their inadequate and defective seat belt buckles, and the vehicle did not conform to the affirmations of fact (that the vehicle met all safety standards).

41. As a direct and proximate result of the breach of implied warranty of merchantability, Plaintiffs have suffered injury in the amounts required to replace the Gen-3 Buckles in their DaimlerChrysler vehicles with buckles designed to minimize the possibility of accidental release and the loss of use of the vehicles during the time of replacement. Each Class Member will seek damages in excess of the jurisdictional minimum of this Court, but no Class Member will seek damages, including additional damages and attorneys' fees, in excess of \$74,500.00, because, as the Class is defined, it includes no one with more than \$74,500.00 in damages, including additional damages and attorneys' fees.

COUNT III

BREACH OF IMPLIED WARRANTY OF FITNESS

FOR A PARTICULAR PURPOSE

42. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 41 above.

43. The allegations of breach of implied warranty for a particular purpose in Count III are made on behalf of Bill Inman, David Castro, John Wilkins and those Plaintiffs who purchased or leased new DaimlerChrysler vehicles at dealerships authorized by DaimlerChrysler for the purpose of selling DaimlerChrysler vehicles directly to the public.

44. Through the sale of the DaimlerChrysler vehicles, DaimlerChrysler was a "seller" pursuant to § 2.315 of the Uniform Commercial Code. At the time the vehicles were sold, DaimlerChrysler had reason to know that the seat belt buckles it sold with its vehicles were required to minimize the possibility of accidental release and that the buyers (Plaintiffs) were relying on DaimlerChrysler's skill or judgment to select or furnish suitable seat belt buckles. Pursuant to that § 2.315, a warranty that the seat belt buckles were fit for use (and minimize the possibility of accidental release) is implied in the sale of the vehicles.

45. DaimlerChrysler breached the implied warranty of fit for a particular use in that the Gen-3 buckles are unreasonably dangerous, unfit, defective, and unsafe, and they do not minimize the possibility of accidental release.

46. As a direct and proximate result of the breach of implied warranty of fitness for a particular purpose, Plaintiffs have suffered injury in the amounts required to replace the Gen-3 Buckles in their DaimlerChrysler vehicles with buckles designed to minimize the possibility of accidental release and the loss of use of the vehicles during the time of replacement. Each Class Member will seek damages in excess of the jurisdictional minimum of this Court, but no Class Member will seek damages, including additional damages and attorneys' fees, in

excess of \$74,500.00, because, as the Class is defined, it includes no one with more than \$74,500.00 in damages, including additional damages and attorneys' fees.

COUNT IV

NEGLIGENCE

47. Plaintiffs incorporate by reference the allegations contained in paragraph 1 through 46 above.

48. DaimlerChrysler owed to Plaintiffs a duty to act with reasonable care in designing, manufacturing, selling, marketing and advertising their DaimlerChrysler vehicles.

49. DaimlerChrysler, by their employees, agents and servants acting within the scope and course of their employment, breached their duty of reasonable care to Plaintiffs by reason of the following acts and omissions:

- a. failure to design and manufacture the DaimlerChrysler vehicles with a seat belt buckle designed to minimize the possibility of accidental release, which rendered the DaimlerChrysler vehicles defective.
- b. failure to warn owners of the DaimlerChrysler vehicles of the defective condition of the DaimlerChrysler vehicles when they knew or should have known of the defective condition;
- c. failure to notify owners of DaimlerChrysler vehicles of the defective condition of the DaimlerChrysler vehicles when DaimlerChrysler knew, or should have known, of their seat belt buckle defect.

50. Each Class Member will seek damages in excess of the jurisdictional minimum of this Court, but no Class Member will seek damages in excess of \$74,500.00, including additional damages and attorneys' fees, because, as the Class is defined, it includes no one with more than \$74,500.00 in damages, including additional damages and attorneys' fees.

COUNT V

NEGLIGENT MISREPRESENTATION

51. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 50 above.

52. DaimlerChrysler owed to Plaintiffs a duty of reasonable care and knew, or should have known, that, in making their purchase decisions, Plaintiffs would rely upon DaimlerChrysler's acts, practices, misrepresentations, omissions and violations and other wrongs complained of above.

53. In making the misrepresentations and omissions, and doing the things alleged above, DaimlerChrysler acted without any reasonable grounds for believing the misrepresentations they made to be true, and, upon the exercise of due care, DaimlerChrysler would have discovered and known of these errors and omissions. DaimlerChrysler intended by such misrepresentations and omissions to induce Plaintiffs' reliance and Plaintiffs' purchase of the DaimlerChrysler vehicles.

54. Plaintiffs and the Class actually, reasonably, foreseeably, and justifiably relied upon each of the acts, practices, misrepresentations, omissions and violations and other wrongs complained of above, when purchasing DaimlerChrysler vehicles.

55. Each Class Member will seek damages in excess of the jurisdictional minimum of this Court, but no Class Member will seek damages in excess of \$74,500.00, including additional damages and attorneys' fees, because, as the Class is defined, it includes no one with more than \$74,500.00 in damages, including additional damages and attorneys' fees.

COUNT VI

DTPA

56. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 55 above.

57. Plaintiffs are "consumers" as that term is defined in the Texas Deceptive Trade Practices - Consumer Protection Act §17.45(4), Texas Business and Commerce Code ("DTPA"), and, under the circumstances of this case, are entitled to the protection of the DTPA §§ 17.41 *et. seq.*, Texas Business and Commerce Code. DaimlerChrysler has engaged in one or more of the acts and/or practices defined as "false, misleading or deceptive" by §17.46, DTPA. Additionally, DaimlerChrysler engaged in an unconscionable action or course of action with respect to the Gen-3 Buckles. Said violations of DTPA were producing causes of actual economic damages to Plaintiffs equal to the cost of replacing their Gen-3 Buckles with buckles designed to minimize the risk of accidental release. Accordingly, Plaintiffs are entitled to recover their economic damage equal to the cost of replacing the Gen-3 Buckles in their DaimlerChrysler vehicles and the loss of use of the vehicles during the time of replacement from DaimlerChrysler under DTPA.

58. On information and belief, Plaintiffs allege that DaimlerChrysler's violations of DTPA were knowing and/or intentional, and Plaintiffs are therefore entitled to additional damages as provided by DTPA.

59. Pursuant to the DTPA, Plaintiffs seek attorneys' fees.

60. Each Class Member will seek damages in excess of the jurisdictional minimum of this Court, but no Class Member will seek damages in excess of \$74,500.00, including additional damages and attorneys' fees, because, as the Class is defined, it includes no one with more than \$74,500.00 in damages, including additional damages and attorneys' fees.

ESTOPPEL FROM PLEADINGS AND
TOLLING OF THE STATUTE OF LIMITATIONS

61. Plaintiffs incorporate by reference the allegations contained in paragraph 1 through 60 above.

62. DaimlerChrysler is collaterally estopped from litigating the issue of whether the Gen-3 Buckle is defective because a civil jury has previously determined that it is defective. Moran v. DaimlerChrysler Corporation, Cause No. 97-60542-1 in the County Court at Law No. 1, Nueces County, Texas. That civil finding is entitled to full faith and credit in this judicial forum. Alternatively, this finding establishes a rebuttable presumption against DaimlerChrysler that the Gen-3 Buckle is a defective product.

63. Plaintiffs could not have, by the exercise of reasonable diligence, discovered the existence of the defect of DaimlerChrysler's wrongdoing as alleged herein before at least June 1, 2000, because of the self-concealing nature of DaimlerChrysler's conduct and the fraudulent

and active concealment of the defect and wrongdoing by DaimlerChrysler, including their deliberate efforts to conceal defects in the design of the DaimlerChrysler vehicles and to give Class Members the false impression that the DaimlerChrysler vehicles were safe.

64. Until shortly before the filing of the Original Petition, neither Plaintiffs nor the members of the Class had knowledge that DaimlerChrysler was engaged in the wrongdoing alleged herein, or that the Gen-3 Buckle was defective. Prior to that time, even through this date, DaimlerChrysler has continued to insist that there are no defects in these DaimlerChrysler vehicles, and any problems were due to owner negligence. As soon as practicable upon learning of the defect, plaintiff gave notice to DaimlerChrysler that the Gen-3 Buckle breached UCC warranties and the DTPA.

65. Because of the foregoing, Class Representatives assert the tolling of any applicable statutes of limitations affecting the claims by them and members of the Class.

JUDGMENT INTEREST

66. Plaintiffs are entitled to and seek pre-judgment and post-judgment interest as provided by law.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Class Representatives, BILL L. INMAN, DAVID CASTRO and JOHN WILKINS, individually and behalf of all others similarly situated, request that Defendants DaimlerChrysler Corporation, Chrysler Corporation; and Chrysler in its common or assumed name, be cited to appear and answer, and that Plaintiffs and members

of the Class have judgment in their favor and against Defendants DaimlerChrysler Corporation, Chrysler Corporation; and Chrysler in its common or assumed name:

- a. declaring the action be maintained as a class action under Rule 42 of the Texas Rules of Civil Procedure;
- b. for compensatory damages (actual damages consisting of the cost of replacement of the Gen-3 Buckles in their DaimlerChrysler vehicles and loss of use of the vehicles during the time of replacement), pre-judgment and post-judgment interest thereon, attorneys' fees and the costs of this action;
- c. additional damages as provided for by DTPA, which, when added to the attorneys' fees and actual damages of each will not exceed \$74,500.00; and
- d. awarding Plaintiffs BILL L. INMAN, DAVID CASTRO, JOHN WILKINS and members of the Class such other and further relief this Court deems just and proper under the circumstances.

Dated: March 21, 2002

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned attorney, as one of the attorneys of record for Plaintiffs, hereby certify that a true and correct copy of the above and foregoing Plaintiffs' Seventh Amended Class Action Petition has been served upon counsel of record as indicated below by the method of service indicated below on this 21st day of March, 2002.

William R. Edwards, III

VIA HAND DELIVERY TO:

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