S T A T E O F M I C H I G A N

C O U R T O F A P P E A L S

KEVIN ELLIOTT, as Personal Representative of the ESTATE OF MARGARET K. ELLIOTT, deceased, and KEVIN ELLIOTT, Individually,	UNPUBLISHED March 28, 1997
Plaintiff-Appellants,	
v	No. 190954 Oakland Circuit Court
GENERAL MOTORS CORPORATION,	LC No. 94-475688
Defendant-Appellee.	

Before: Michael J. Kelly, P.J., and Saad and H.A. Beach*, JJ.

PER CURIAM.

Plaintiffs appeal as of right from an order granting summary disposition in favor of defendant pursuant to MCR 2.116(C)(10). We affirm.

Plaintiffs argue that sufficient evidence was presented below to raise a genuine issue of material fact as to the enhancement of their injuries. We disagree.

The "crashworthiness" or "second collision" doctrine imposes a duty on the manufacturer of an automobile to so design and build the vehicle that it will protect its occupants against unreasonable injury in the event of a collision, whatever the cause of that collision, beyond the duty of the manufacturer to design and build a vehicle which will not cause an accident from its own defect or malfunction. *Rutherford v Chrysler Motors Corp,* 60 Mich App 392, 395; 231 NW2d 413 (1975). The manufacturer has a duty to eliminate any unreasonable risk of foreseeable injury to its occupants as a result of a collision for which the manufacturer may not be responsible. *Id.,* 400. A plaintiff relying on the "crashworthiness" doctrine must prove that the defect, although not the cause of the accident, resulted in the enhancement of the plaintiff's injuries, and must demonstrate such enhanced injuries. *Sumner v General Motors Corp,* 212 Mich App 694, 699; 538 NW2d 1 (1995). The plaintiff must first prove the extent of injuries attributable to what the plaintiff alleges to be the defect in the car. Specifically, the plaintiff has the burden to prove the amount of injuries which are in excess of those

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* Circuit judge, sitting on the Court of Appeals by assignment.

which can reasonably be expected and those which are not attributable to the claimed defect. Any injuries not attributable to the claimed defect are not enhanced injuries. The plaintiff also has the burden to separately establish the extent of the injury that he would have sustained had there not been the claimed defect in the car. *Id.,* 698. The plaintiff claiming enhancement must prove the enhanced injuries beyond speculation and conjecture. *Id.,* 700.

After reviewing the record and giving the benefit of reasonable doubt to the plaintiffs, *Peters v Dep't of Corrections,* 215 Mich App 485, 486; 546 NW2d 668 (1996); *Osman v Summer Green Lawn Care, Inc,* 209 Mich App 703, 706; 532 NW2d 186 (1995), we conclude that plaintiffs failed to prove that the alleged seat belt routing defect resulted in any enhancement of their injuries. *Sumner, supra.* The expert testimony presented below indicated that a majority of plaintiffs' injuries were linked to a seat belt routing defect. However, as plaintiffs' counsel acknowledged at oral argument, their expert was mistaken in his belief that the seat belts were misrouted as was clearly established by a belated physical inspection.

Because plaintiffs have failed to prove that the seat belt routing system was defective and that the alleged defect, although not the cause of the accident, resulted in the enhancement of the plaintiffs' injuries, we hold that summary disposition was properly granted to defendant on this claim. Moreover, any claim that the seat itself was defectively designed was waived at oral argument.

Affirmed.

/s/ Michael J. Kelly
/s/ Henry William Saad
/s/ Harry A. Beach