

D-101-CV-201001927 - Friday, July 2, 2010

BARNHILL V BMW OF NORTH AM**CASE DETAIL**

CASE #	CURRENT JUDGE	FILING DATE	COURT
D-101-CV-201001927	RAYMOND Z ORTIZ	06/03/2010	SANTA FE District

PARTIES TO THIS CASE

PARTY TYPE	PARTY DESCRIPTION	PARTY #	PARTY NAME
D	DEFENDANT	1	BMW OF NORTH AMERICA LLC
D	DEFENDANT	2	BAYERISCHE MOTOREN WERKE AG
D	DEFENDANT	3	BLACKWATER TONY
P	PLAINTIFF	1	BARNHILL LYNN
	ATTORNEY: PATRICK A. CASEY		
P	PLAINTIFF	2	THE ESTATE OF AIDA MUSA DECEASED
P	PLAINTIFF	3	MUSA AZIZ K
	ATTORNEY: PATRICK A. CASEY		
P	PLAINTIFF	4	MUSA TARIQ
	ATTORNEY: PATRICK A. CASEY		
P	PLAINTIFF	5	MUSA OMAR
	ATTORNEY: PATRICK A. CASEY		

CIVIL COMPLAINT DETAIL

COMPLAINT DATE	COMPLAINT SEQ #	COMPLAINT DESCRIPTION	DISP	DISP DATE
06/03/2010	1	OPN: COMPLAINT	Pending	

COA SEQ #	COA DESCRIPTION
1	WRONGFUL DEATH AUTO

PARTY NAME	PARTY TYPE	PARTY #
BMW OF NORTH AMERICA LLC	D	1
BAYERISCHE MOTOREN WERKE AG	D	2
BLACKWATER TONY	D	3
BARNHILL LYNN	P	1
THE ESTATE OF AIDA MUSA DECEASED	P	2
MUSA AZIZ K	P	3
MUSA TARIQ	P	4
MUSA OMAR	P	5

REGISTER OF ACTIONS ACTIVITY

EVENT DATE	EVENT DESCRIPTION	EVENT RESULT	PARTY TYPE	PARTY #	AMOUNT
07/01/2010	ACCEPTANCE OF SERVICE ACCEPTANCE OF SERVICE BY SECRETARY OF STATE ON BEHALF OF BYERISCHE MOTOREN WERKE AG				
06/11/2010	SUMMONS RETURN SUMMONS RETURN ISSUED TO: BMW OF NORTH AMERICA LLC WAS SERVED ON JUNE 7, 2010 TO LEANNE MARTONY, PROCESS SPECIALIST AT CT CORP				
06/08/2010	ATTORNEY'S AFFIDAVIT AFFIDAVIT OF NON-ADMITTED LAWYER (APRIL A. STRAHAN)				
06/08/2010	ATTORNEY'S AFFIDAVIT AFFIDAVIT OF NON-ADMITTED LAWYER (ROBERT E. AMMONS)				
06/04/2010	ORD: OF APPOINTMENT ORDER APPOINTING PERSONAL REPRESENTATIVE FOR WRONGFUL DEATH ESTATE				
06/04/2010	AFFIDAVIT PLAINTIFF'S STATUTORY AFFIDAVIT PURSUANT TO 38-1-6, NMSA				

"EXHIBIT A"

06/03/2010	MTN: MOTION MOTION FOR APPOINTMENT OF PERSONAL REPRESENTATIVE TO ACT AS NOMINAL PARTY UNDER WRONGFUL DEATH ACT			
06/03/2010	JURY DEMAND 6 PERSON JURY DEMAND - SIX (6) PERSON JURY RECEIPT #150650			
06/03/2010	SUMMONS ISSUED ISSUED TO TONY BLACKWATER			
06/03/2010	SUMMONS ISSUED ISSUED TO BYERISCHE MOTOREN WERKE AG			
06/03/2010	SUMMONS ISSUED ISSUED TO BMW OF NORTH AMERICA LLC			
06/03/2010	OPN: COMPLAINT COMPLAINT TO RECOVER DAMAGES FOR WRONGFUL DEATH			
06/03/2010	ASM: JURY 6 PERSON	P	1	150.00
06/03/2010	ASM: CIVIL FILING W/ ARBITRAT	P	1	132.00

JUDGE ASSIGNMENT HISTORY

ASSIGNMENT DATE	JUDGE NAME	SEQ #	ASSIGNMENT EVENT DESCRIPTION
06/03/2010	RAYMOND Z ORTIZ	1	INITIAL ASSIGNMENT

STATE OF NEW MEXICO
FIRST JUDICIAL DISTRICT COURT
COUNTY OF SANTA FE

ENDORSED
First Judicial District Court

LYNN BARNHILL, as Wrongful Death Act
Representative of the Estate of Aida Musa, Deceased, and
AZIZ K. MUSA, TARIQ MUSA and OMAR MUSA,

JUN - 8 2010

Santa Fe, Rio Arriba &
Los Alamos Counties
PO Box 2268
Santa Fe, NM 87504-2268

Plaintiffs,

vs.

No. D-0101-CV-2010 01927

BMW OF NORTH AMERICA, LLC, and
BAYERISCHE MOTOREN WERKE AG,
and TONY BLACKWATER.

Defendants.

COMPLAINT TO RECOVER DAMAGES FOR WRONGFUL DEATH

COME NOW, the Plaintiffs, by and through their undersigned counsel, and for their cause of action against the Defendants, BMW of North America, LLC, Bayerische Motoren Werke AG, and Tony Blackwater, state and allege as follows:

I. PARTIES

1. Plaintiff, Lynn Barnhill, is the appointed representative under the Wrongful Death Act, NMSA § 41-2-1, *et seq.*, as statutory Plaintiff in these proceedings for and on behalf of the statutory heirs of decedent Aida Musa, namely Aziz K. Musa, her surviving spouse, and Tariq Musa and Omar Musa surviving adult sons.

2. This action is brought by Plaintiff, Lynn Barnhill, pursuant to the Wrongful Death Act, NMSA § 41-2-1, *et seq.*, as statutory plaintiff for and on behalf of Aziz K. Musa, surviving

spouse, and Tariq Musa and Omar Musa and statutory heirs of the decedent Aida Musa.

3. Defendant, BMW of North America, LLC, is a Delaware limited liability company duly authorized to conduct regular and systematic business in the State of New Mexico, and whose agent for service of process is CT Corporation System, 123 East Marcy, Santa Fe, New Mexico 87501.

4. Defendant, Bayerische Motoren Werke AG, is a non-resident, German business organization that is doing regular and systematic business in the State of New Mexico, although not registered to do so. This Defendant can be served with process pursuant to the Hague Convention, 20 U.S.T. 361 (February 10, 1969). Pursuant thereto, service of process may be effected by serving a true and correct copy of process with a copy of the complaint attached thereto through the New Mexico Secretary of State for forwarding to Bayerische Motoren Werke AG, Petuelring 130, Munich D80788, Germany.

5. Defendant, Tony Blackwater, is an resident of New Mexico whose mailing address is Post Office Box 2583, Shiprock, New Mexico 87420 and may be served with process at that address.

II. JURISDICTION AND VENUE

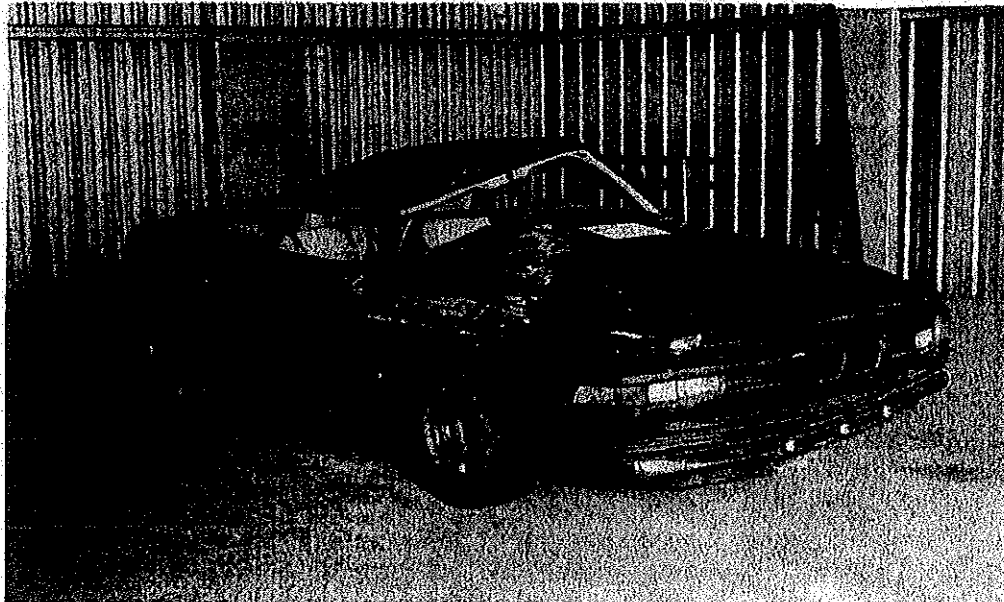
6. Venue is proper in Santa Fe County because the Wrongful Death Representative is a resident of Santa Fe County and the agent for service of process for the Defendant BMW of North America, LLC is CT Corporation System, located at 123 East Marcy, Santa Fe, New Mexico 87501,

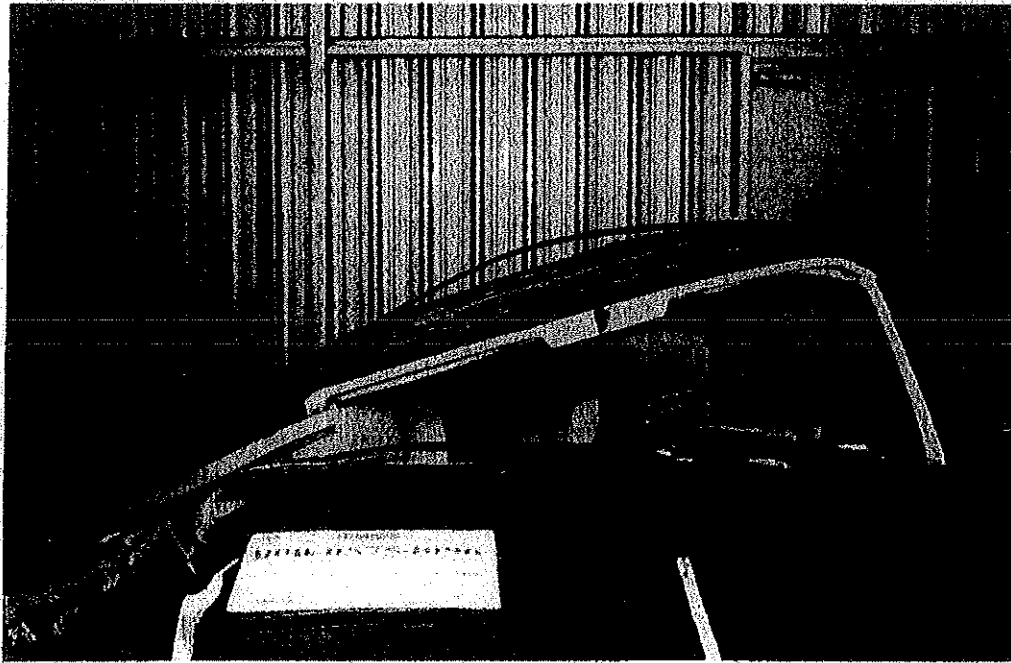
7. This court has jurisdiction over the subject matter hereof and the parties hereto.

III. FACTS COMMON TO ALL CAUSES OF ACTION

8. On or about May 4, 2009, Aida Musa (hereafter also Decedent) was a passenger in a 1995 BMW 840CI coupe (VIN WBAEF6321SCC89833) being operated by her husband, Aziz K. Musa, in an eastbound direction on U.S. Highway 64 in New Mexico when a Pontiac passenger car being operated by Defendant, Tony Blackwater, entered the highway from a private drive at a roadside business on U.S.64 approximately 20 feet North of the Big Rock Trading Post located at 3761 US-64, in San Juan County, New Mexico, and contacted the BMW. The BMW overturned.

9. During the incident, the BMW's roof crushed down and deformed laterally toward the center of the vehicle, all the way down until it was compressing the right-front passenger seat headrest. This crushing and excessive deformation of the roof severely compromised the survival space of Decedent as shown in the photos below:





10. Sometime prior to May 4, 2009, Defendants, BMW of North America, LLC, and Bayerische Motoren Werke AG (hereafter “the BMW Defendants”), designed and/or manufactured and/or assembled and/or marketed the BMW in question. The negligence of the BMW Defendants and the defective BMW were proximate and producing causes of the injuries to and death of Decedent and Plaintiffs’ resulting damages.

11. The conduct of all Defendants was a proximate and/or producing cause of the incident, Decedent’s injuries and death, and the resulting damages to Plaintiffs.

IV. FIRST CAUSE OF ACTION
NEGLIGENCE AS TO THE BMW DEFENDANTS

12. Plaintiffs’ injuries and damages were proximately caused by the negligence of the BMW Defendants in designing, manufacturing, testing, assembling, supplying, marketing, selling, instructing and providing warnings for the 1995 BMW 840CL.

13. Specifically, the BMW 840CI did not have a B-pillar, resulting in a weak and dangerous roof and making the vehicle uncrashworthy.

14. The BMW Defendants' negligence included, but is not limited to, the following acts and/or omissions with respect to the 1995 BMW 840CI:

- a. Improper and inadequate testing of the vehicle, including dynamic rollover testing;
- b. Failure to include a B-pillar in the vehicle; and
- c. Designing the vehicle with a weak roof structure.

15. The negligence of the BMW Defendants as outlined above proximately caused the injuries to and death of Decedent and Plaintiffs' resulting damages.

V. SECOND CAUSE OF ACTION
STRICT LIABILITY AS TO THE BMW DEFENDANTS

16. The BMW Defendants are the manufacturers of the 1995 BMW 840CI coupe bearing VIN WBAEF6321SCC89833.

17. The BMW 840CI involved in this incident was unreasonably dangerous as that term is understood in New Mexico law, and Plaintiffs therefore bring this action under Section 402(A) and 402(B) of the Restatement of Torts, Second.

18. The BMW 840CI was defectively designed, manufactured, assembled, marketed and sold by the BMW Defendants.

19. The BMW 840CI's structure was defectively designed without a B-pillar, was in a defective condition, and was unreasonably dangerous as designed. The defective nature of the BMW 840CI was a producing cause of the injuries to and death of Decedent and Plaintiffs' resulting damages.

20. The BMW Defendants knew that rollovers could be survivable and catastrophic injuries avoided if a B-pillar were included in the vehicle's design.

21. The BMW 840CI was defective in the following respects:

- a. it did not have a B-pillar;
- b. its roof structure is inadequate to withstand loading in rollover collisions;
- c. its weak roof exposes the occupant to injury as a result of compromised head and survival space.

22. The unreasonably dangerous nature of the defects as outlined above creates a high probability that the BMW 840CI's occupants, when involved in rollover crashes, can and will sustain fatal or catastrophic injuries. The BMW Defendants knew of this risk prior to production and marketing of the BMW 840CI in question, but they nonetheless manufactured and placed into the stream of commerce the BMW 840CI which fatally injured Decedent.

VI. THIRD CAUSE OF ACTION
WILLFUL, RECKLESSNESS OR WANTON CONDUCT OF THE BMW DEFENDANTS

23. The BMW Defendants recognized or should have recognized the extreme risk to persons such as Decedent presented by their acts and omissions in regard to their defective and inadequately tested BMW 840CI that did not have a B-pillar, and these acts were willful, wanton or reckless acts.

24. The conduct of the BMW Defendants in designing, marketing, manufacturing and/or selling the BMW 840CI in a defective and uncrashworthy condition was undertaken willfully, wantonly and with conscious disregard for the consequences, thus constituting grounds for punitive damages for their willful, wanton or reckless acts and conduct.

25. On May 4, 2009, as a direct and proximate result of the defective vehicle and the

negligent acts of the BMW Defendants as aforesaid, Aida Musa sustained injuries that resulted in her death and Plaintiffs' damages.

26. As a result of the negligence and willful, wanton or reckless acts and/or omissions of the BMW Defendants, Plaintiffs are entitled to recover exemplary and punitive damages. Such damages are warranted in this action as a punishment for the BMW Defendants' reckless and wanton acts and to deter the BMW Defendants and others from committing the same or similar actions which endanger the general safety of the motoring public.

VII. FOURTH CAUSE OF ACTION
NEGLIGENCE AS TO TONY BLACKWATER

27. Defendant, Tony Blackwater, incorporates paragraphs 1, 2, 5, 6, 7, 8, 9, and 11 as though fully set forth in detail at this point.

28. Defendant, Tony Blackwater, owed the plaintiffs a duty of reasonable care in the operation of the Pontiac automobile he was operating at the time of the collision herein.

29. Defendant, Tony Blackwater, was negligent in his operation of the Pontiac automobile he was operating at the time of the collision and thereby breached his duty of care in that he:

- b. failed to maintain control of his automobile;
- c. failed to maintain and keep a proper lookout for the traffic on U.S. 64;
- d. failed to keep his vehicle under control;
- e. failed to operate the vehicle he was driving in a safe and reasonable manner;
- f. failed to exercise ordinary and reasonable care in the operation of his motor vehicle.

30. Defendant, Tony Blackwater, breached his duty to the plaintiffs in one or more of the above enumerated negligent acts and this was a proximate cause of the collision.

31. As a direct and proximate result of the negligence of Defendant, Tony Blackwater, Plaintiffs sustained the injuries and damages alleged herein.

VIII. DAMAGES AGAINST ALL DEFENDANTS

32. As a direct and proximate result of the negligent actions and conduct of the Defendants, BMW of North America, LLC, Bayerische Motoren Werke AG, AND Tony Blackwater, Aida Musa sustained injuries which resulted in her physical and emotional pain, suffering and death. Accordingly, the wrongful death beneficiaries are entitled to an award of all damages cognizable under the New Mexico Wrongful Death Act, § 41-2-1, et seq., NMSA as amended, against , including, but not limited to, the items listed below:

- a. Conscious physical pain and suffering experienced by Aida Musa from the time of her injuries until the time of her death;
- b. Emotional pain and suffering experienced by Aida Musa, from the time of her injuries until the time of her death in an amount to be proven at trial;
- c. Loss of enjoyment of a full life expectancy and the joys and fullness of that life damages in an amount to be proven at trial;
- d. Loss of income and earning capacity and lost household services for the statistical lifetime of Aida Musa had she not suffered this wrongful death in an amount to be proven at trial;
- e. Pecuniary loss of Aida Musa in an amount to be proven at trial as permitted by the State of New Mexico;

- f. The value of life itself of Aida Musa apart from her earning capacity;
- g. The emotional distress caused by the loss of companionship, guidance, counseling, care, comfort, relational interests and love and affection, consortium and society for the decedent's husband Aziz K. Musa, and to her sons, Tariq Musa and Omar Musa;
- h. The decedent's heirs' loss of other expected benefits in amounts to be proven at trial;
- l. Funeral and burial expenses in an amount to be proven at trial;
- j. Aggravating circumstances attendant in the conduct of each of the Defendants

32. Aziz K. Musa was in the immediate moment of the accident and witnessed his wife's injuries and subsequent death following the collision and, therefore, under the doctrine of bystander recovery, is entitled to damages for the devastating physical and mental injuries suffered by the deceased as a proximate result of Defendants' defective product and/or negligent conduct. Plaintiff, Aziz K. Musa, was present at the scene of the accident and directly experienced, witnessed and perceived the injuries and suffering of his wife, Aida Musa, prior to her death. Actually witnessing such severe pain and trauma caused Plaintiff, Aziz K. Musa, severe mental anguish, trauma, shock and distress, both physical and emotional, past and future.

33. The Decedent's estate is entitled to pre-judgment interest at the rate allowed by statute on all amounts as may be awarded herein from the date of the service of the Complaint on Defendants as well as post-judgment interest on the judgment entered after trial as allowed by law.

IX. JURY DEMAND

34. Plaintiffs hereby request a jury trial of [12 or 6??].

WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, in an amount which will fairly and justly compensate for the losses and damages, and punitive damages,

as alleged, plus the costs incurred in this action, and for pre- and post-judgment interest as is allowed by law, and for such further relief as the Court deems proper.

Respectfully submitted,

PATRICK A. CASEY, P.A.

By: 

Patrick A. Casey, Esq.

P.O. Box 2436

Santa Fe, NM 87504

(505) 982-3639

(505) 989-9181 (Fax)

ATTORNEY FOR PLAINTIFFS

-and-

Rob Ammons

AMMONS LAW FIRM

3700 Montrose Blvd.

Houston, TX 77006

(713) 523-1606

**STATE OF NEW MEXICO
FIRST JUDICIAL DISTRICT COURT
COUNTY OF SANTA FE**

**LYNN BARNHILL, as Wrongful Death Act
Representative of the Estate of Aida Musa, Deceased, and
AZIZ K. MUSA, TARIQ MUSA and OMAR MUSA.**

Plaintiffs,

vs.

No. D-0101-CV-2010 01927

**BMW OF NORTH AMERICA, LLC,
BAYERISCHE MOTOREN WERKE AG,
and TONY BLACKWATER,**

Defendants.

**SUMMONS
THE STATE OF NEW MEXICO**

TO: BMW OF NORTH AMERICA, LLC
ADDRESS: C/O CT CORPORATION SYSTEM
123 EAST MARCY
SANTA FE, NEW MEXICO 87501

You are required to serve upon Patrick A. Casey, P.A. an answer or motion in response to the complaint which is attached to this summons within thirty (30) days after service of this summons upon you, exclusive of the day of service, and file your answer or motion with the court as provided in Rule 1-005 NMRA.

If you fail to file a timely answer or motion, default judgment may be entered against you for the relief demanded in the complaint.

Attorney for Plaintiff:

PATRICK A. CASEY, P.A.
Patrick A. Casey
Post Office Box 2436
Santa Fe, New Mexico 87504-2436
(505) 982-3639

place of abode of defendant _____, *(used when the defendant is not presently at place of abode)* and by mailing by first class mail to the defendant at _____
_____ *(insert defendant's last known mailing address)* a copy of the summons and complaint.

[] to _____, the person apparently in charge at the actual place of business or employment of the defendant and by mailing by first class mail to the defendant at _____ *(insert defendant's business address)* and by mailing the summons and complaint by first class mail to the defendant at _____ *(insert defendant's last known mailing address)*.

[] to _____, an agent authorized to receive service of process for Defendant _____.

[] to _____ [parent] [guardian] [custodian] [conservator] [guardian ad litem] of defendant _____ *(used when defendant is a minor or an incompetent person)*.

[] to _____ *(name of person)*, _____, *(title of person authorized to receive service. Use this alternative when the defendant is a corporation or an association subject to a suit under a common name, a land grant board of trustees, the State of New Mexico or any political subdivision)*.

Fees: _____

Signature of Person Making Service

Title (if any)

Subscribed and sworn to before me this _____ day of _____, 20_____.

Judge, Notary or Other Officer
Authorized to Administer Oaths

Official Title

STATE OF NEW MEXICO
FIRST JUDICIAL DISTRICT COURT
COUNTY OF SANTA FE

ENDORSED
First Judicial District Court

JUN - 3 2010

Santa Fe, Rio Arriba &
Los Alamos Counties
PO Box 2268
Santa Fe, NM 87502-2268

LYNN BARNHILL, as Wrongful Death Act
Representative of the Estate of Aida Musa, Deceased, and
AZIZ K. MUSA, TARIQ MUSA and OMAR MUSA,

Plaintiffs,

vs.

No. D-0101-CV-2010 01927

BMW OF NORTH AMERICA, LLC, and
BAYERISCHE MOTOREN WERKE AG,
and TONY BLACKWATER.

Defendants.

JURY DEMAND - SIX (6) PERSON JURY

COME NOW, the Plaintiffs, by and through their undersigned counsel, and make their demand for a petit jury consisting of six (6) qualified persons.

Respectfully submitted,

PATRICK A. CASEY, P.A.



Patrick A. Casey Esq.

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