

IN THE CIRCUIT COURT OF THE 17TH
JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA

CIRCUIT CIVIL DIVISION

CASE NO.

LILIANA AWAN, as Personal Representative
of the Estate of Omar Awan, and on behalf of
herself and the minor surviving children,
Rizvan Awan, Saf Awan, Zaria Awan, Zain
Awan, and Alina Awan,

Plaintiff,

vs.

TESLA MOTORS, INC. and TESLA
FLORIDA, INC.,

Defendants.

JURY TRIAL DEMANDED

COMPLAINT

1. Plaintiff Liliana Awan sues Defendants Tesla Motors, Inc. and Tesla Florida, Inc. and alleges:

2. Plaintiff Liliana Awan, M.D. is the surviving widow of Dr. Omar Awan and the mother of their five surviving minor children Rizvan Awan (age 17), Saf Awan (age 16), Zaria Awan (age 10), Zain Awan (age 8), and Alina Awan (age 6). Plaintiff and the children are all survivors under the Florida Wrongful Death Act, Fla. Stat. §§ 768.16, *et seq.*

3. Liliana Awan, a medical doctor and board certified as a family practitioner, has been appointed personal representative of her husband's estate and brings this wrongful death action on behalf of the estate, as the surviving spouse, and the couple's surviving minor children.

4. Plaintiff and decedent leased a Tesla "Model S" from the Tesla dealership in Dania

Beach, Florida (the “Awan Tesla”). That Model S reached, and was expected to reach, Plaintiff and her deceased husband in substantially the same condition as it was when distributed by Tesla.

5. Manufacturers must design their products to avoid and eliminate dangerous conditions.

6. Manufacturers must fully and fairly warn users about the risks and dangers of using the products that are not obvious.

7. This is an action for damages exceeding Fifteen Thousand Dollars (\$15,000.00), exclusive of costs and fees.

8. Any conditions precedent to the maintenance of this action have already occurred.

9. Venue is proper in Broward County Florida where the events giving rise to the lawsuit occurred.

FACTUAL ALLEGATIONS

10. Tesla manufacturers, distributes, and retails electric cars with all-electric powertrains powered by large lithium-ion batteries mounted under the cars’ seats.

11. Defendant Tesla Motors, Inc. is a publicly traded company that designs, manufacturers, tests, sells, supplies and distributes electric motor vehicles. In Florida, it operates its business through, or in connection with, Defendant Tesla Florida, Inc. (collectively referred to as Tesla unless otherwise noted).

12. Among the car models that Tesla sells and markets to the public is the “Model S,” which ranges in price from approximately \$75,000 to \$130,000.

13. Tesla prides itself on producing a car that is innovative, safe, crashworthy, ecofriendly, and fast. It advertises and markets its vehicles as a better and safer alternative to standard internal combustion engine motor vehicles.

14. Tesla markets the Model S as a sports car, “designed for speed and endurance.”

According to Tesla, it has “incredible aerodynamics, ludicrous performance, and uncompromised aesthetics.” Tesla advertises the Model S as having the ability to reach speeds of sixty m.p.h. in less than 2.5 seconds, making it one of the fastest accelerating cars in the world.

15. Tesla also claims the Model S “sets an industry standard” for “safety.”

16. A unique design component of the Model S, touted by Tesla, is the door handle. Tesla features these handles on its website and describes them as “automatic door handles [that] auto-present upon approach and withdraw when closed.”

17. The Model S handles are designed and programmed to automatically extend from the door as a driver or passenger approaches the car, permitting the individual to pull on the handle to open the door. When not in use, the handles withdraw flush into the door, creating a smooth, stylish line. The Model S handles cannot be accessed manually while retracted.

18. According to Tesla, the door handles are “designed for efficiency” and help Tesla represent that the Model S is “the most aerodynamic car in its class with the lowest drag coefficient on earth.”

19. On February 24, 2019, during an afternoon drive by decedent Dr. Omar Awan, the Awan Tesla veered out of control on a parkway in South Florida, yawed sideways, went over the curb and onto the median, and struck a palm tree.

20. A nearby police officer witnessed the accident and immediately went to help.

21. The police officer tried to open the doors of the Awan Tesla but the door handles were retracted and did not “auto-present” when he approached. Without door handles, he could not open the doors. The sleek design of the Model S doors eliminates anything that can be pulled or opened until the recessed handles become available.

22. The Awan Tesla’s battery quickly caught fire, and flames spread. Throughout this time, the Awan Tesla’s doors remained inaccessible and locked, preventing the police officer and

other bystanders who had arrived on the scene from opening the doors or finding another way to remove Dr. Awan from the car.

23. Inside the Awan Tesla, smoke penetrated the occupants' cabin and eventually engulfed the cabin, while the police officer and bystanders helplessly watched. Soon, the car was completely engulfed in flames.

24. The Awan Tesla continued to burn for hours, reigniting several times, even after the initial fire had been extinguished by emergency professionals and the car had been towed.

25. Tesla batteries are prone to unique types of fire risk. *See, e.g.,* <https://www.livescience.com/62179-tesla-fire-cleanup-danger.html>.

26. Tesla knows of this risk and danger. Tesla addressed Model S fire risks in an open statement in 2013.

27. On this tragic day, the Tesla customer was decedent Dr. Omar Awan, a 48-year-old husband, father, and board-certified anesthesiologist. After the Tesla hit the tree, he was alive. He had no internal injuries or broken bones. He died from the smoke he inhaled as he sat locked inside the Tesla, despite that a police officer and others were there and ready to help, until flames forced them away. The fire engulfed the car and burned Dr. Awan beyond recognition—all because the Model S has inaccessible door handles, no other way to open the doors, and an unreasonably dangerous fire risk.

28. The Model S's design was defective and unreasonably dangerous. The Model S's design precluded those on the scene of the crash from getting Dr. Awan out of the cabin because the door handles failed. The Model S had an unreasonably dangerous fire risk that was not addressed through proper design. And Tesla failed to give any appropriate, adequate, full or fair warnings about the risks relating to the door handles or the smoke and fire.

29. These Model S defects and others rendered it a death trap.

COUNT I

STRICT LIABILITY IN TORT—DESIGN, MANUFACTURING, WARNING

30. Plaintiff adopts and realleges the previous paragraphs and further alleges as follows.

31. Tesla was the designer, manufacturer, distributor, and supplier of the Awan Tesla, and placed the Awan Tesla in the stream of commerce.

32. The Awan Tesla was defective and unreasonably dangerous.

33. When the Awan Tesla was manufactured and placed into the stream of commerce by Tesla, it contained defects that were unreasonably dangerous to foreseeable users, including decedent Dr. Awan.

34. Specifically, the Awan Tesla was defective and unreasonably dangerous when it was designed, sold and placed in the stream of commerce in these ways:

- a) the Awan Tesla was not crashworthy;
- b) the Awan Tesla's door locks were defective, including because of their failure to release and allow access to the interior of the car from the outside if a crash occurs;
- c) the Awan Tesla's battery was inherently unstable and subject to explosion and spontaneous fire;
- d) the Awan Tesla had inadequate measures to prevent a post-collision fire, including not adequately protecting and shielding the battery and not treating it with an intumescent material to protect and provide protection from the propagation of thermal runaway from one cell to adjacent cells;
- e) the Awan Tesla had inadequate measures to contain or extinguish fire;
- f) the Awan Tesla was prone to intense fires preventing rescue of occupants and yet lacking adequate and reasonable design and safety features and considerations to address this risk;
- g) the Awan Tesla had no warning, and Tesla failed to warn users, about the scope and extent of the defective and unreasonably dangerous conditions of the Model S; and

h) the Awan Tesla was otherwise defective in ways that will be demonstrated by the evidence adduced during discovery.

35. Because of these defects, the Awan Tesla was rendered unreasonably dangerous

- a) because it failed to perform as safely as an ordinary consumer would expect when using it in an intended or reasonably foreseeable manner, including during an accident, which is a reasonably foreseeable circumstance.
- b) because the risks of harm posed by its design outweigh the benefits and those risks could have been reduced or avoided by Tesla's adoption of a safer alternative, or both.
- c) because foreseeable risks of harm could have been avoided or reduced by Tesla providing reasonable warnings or instructions.

36. By placing an unreasonably dangerous defective product into the stream of commerce, Tesla is liable even if it has exercised all possible care in the preparation and sale of the product.

37. The defects allowed fire to erupt and spread quickly, prevented the police officer and bystanders from getting Dr. Awan out of the Tesla after his crash, and deprived Dr. Awan of warnings about the dangers. Ultimately, smoke entered the occupant cabin and suffocated Dr. Awan, before fire overtook the vehicle.

38. As a direct and proximate result of the defective design of the Awan Tesla, Dr. Awan sustained greater injuries than would have been sustained if the Awan Tesla were not defective and was killed, and Plaintiff and the survivors suffered the damages listed below.

COUNT II

NEGLIGENCE—FAILURE TO WARN

39. Plaintiff adopts and realleges the previous paragraphs 1-29, and further alleges:

40. Tesla had a duty to exercise due care in the design, manufacture, assembly, distribution, and sale of the Awan Tesla, and in placing it into the stream of commerce, so that the it would be reasonably safe for its intended use and for other foreseeable uses.

41. Tesla had a duty to ensure that when it placed the Awan Tesla in the stream of commerce it was safe for use by its intended users and those persons who may foreseeably come into close proximity to it, including decedent, Dr. Awan.

42. Tesla failed to adequately warn that the Awan Tesla was defective in the manners and ways set forth herein:

- a) the Awan Tesla was not crashworthy;
- b) the Awan Tesla's door locks were defective, including because of their failure to release and allow access to the interior of the car from the outside if a crash occurs;
- c) the Awan Tesla's battery was inherently unstable and subject to explosion and spontaneous fire;
- d) the Awan Tesla had inadequate measures to prevent a post-collision fire, including not adequately protecting and shielding the battery and not treating it with an intumescent material to protect and provide protection from the propagation of thermal runaway from one cell to adjacent cells;
- e) the Awan Tesla had inadequate measures to contain or extinguish fire;
- f) the Awan Tesla was prone to intense fires preventing rescue of occupants and yet lacking an adequate and reasonable design and safety features and considerations that address this risk; and
- g) the Awan Tesla was otherwise defective in ways that will be demonstrated by the evidence adduced during discovery.

43. Defendants designed, manufactured, assembled, distributed, sold, leased and placed within the stream of commerce the Awan Tesla and intended it to be used by consumers such as Dr. Awan. When it placed the Awan Tesla into the stream of commerce, Tesla knew, or with the exercise of reasonable care should have known, that the Awan Tesla was defective and negligently designed and manufactured.

44. Defendants negligently failed to give adequate warnings to any purchaser or foreseeable user of the Awan Tesla, including Dr. Awan, about its unreasonably dangerous conditions, risks, and propensities, any of which could and did cause injury and death.

45. Defendants negligently designed, manufactured, assembled, marketed, sold, leased and allowed the use of the Awan Tesla without adequate instructions and warnings as to its risks and dangers, and knew or should have known the Awan Tesla, when used within the purposes for which it was designed, manufactured, and intended, or those that were foreseeable, was unreasonably dangerous and hazardous to users.

46. Defendants failed to give appropriate warnings about risks or dangerous characteristics, propensities, and defects that Tesla knew or should have known were involved in the reasonably foreseeable use of the product. Tesla failed to provide adequate warnings before and after it put the Awan Tesla into the stream of commerce.

47. Dr. Awan was unaware and had no reason to know about the defects and dangerousness of the Awan Tesla that made it unsafe for its intended and foreseeable use, nor were such defects apparent by reasonable inspection.

48. As a direct and proximate result of Tesla's failure to warn, Dr. Awan sustained greater injuries than would have been sustained if the Awan Tesla were not defective and was killed, and Plaintiff and the survivors suffered the damages listed below.

COUNT III

NEGLIGENCE—DESIGN

49. Plaintiff adopts and realleges the previous paragraphs 1-29, and further alleges:

50. Tesla had a duty to exercise reasonable care in the design of the Awan Tesla, and in placing such cars into the stream of commerce, so the Awan Tesla would be reasonably safe for its intended use and for other uses that were foreseeably probable.

51. Tesla had a duty to ensure that the Awan Tesla that it placed in the stream of commerce was safe for use by its intended users and those persons who may foreseeably come into close proximity to it, such as the decedent, Dr. Awan.

52. Defendants failed to exercise reasonable care under the circumstances in designing the product, including not properly considering or addressing these defects:

- a) the Awan Tesla was not crashworthy;
- b) the Awan Tesla's door locks were defective, including because of their failure to release and allow access to the interior of the car from the outside if a crash occurs;
- c) the Awan Tesla's battery was inherently unstable and subject to explosion and spontaneous fire;
- d) the Awan Tesla had inadequate measures to prevent a post-collision fire, including not adequately protecting and shielding the battery and not treating it with an intumescent material to protect and provide protection from the propagation of thermal runaway from one cell to adjacent cells;
- e) the Awan Tesla had inadequate measures to contain or extinguish fire;
- f) the Awan Tesla was prone to intense fires preventing rescue of occupants and yet lacking an adequate and reasonable design and safety features and considerations that address this risk; and
- g) the Awan Tesla was otherwise defective in ways that will be demonstrated by the evidence adduced during discovery.

53. Defendants designed, manufactured, assembled, distributed, sold, leased and placed within the stream of commerce the Awan Tesla and intended it to be used by the ultimate consumer, including Dr. Awan. Under the circumstances, Tesla failed to exercise reasonable care under the circumstances in designing the product.

54. Tesla's failures resulted in a car that presented unreasonably dangerous conditions, risks, and propensities, any of which could, and did, cause injury.

55. Dr. Awan was unaware and had no reason to know of the defects of the Awan Tesla that made it unsafe for its intended and foreseeable use, nor were such defects apparent by reasonable inspection.

56. As a direct and proximate result of Tesla's failure to warn, Dr. Awan sustained greater injuries than would have been sustained if the Awan Tesla were not defective and was

killed, and Plaintiff and the survivors suffered the damages listed below.

CLAIMS FOR DAMAGES FOR ALL COUNTS

DAMAGES CLAIMED BY PERSONAL REPRESENTATIVE FOR DAMAGES ON BEHALF OF THE ESTATE, SURVIVING SPOUSE AND MINOR CHILDREN

57. As a direct and proximate result of the defects in the Awan Tesla Model S and Tesla's negligence, which caused the death of Omar Awan, Plaintiff Dr. Liliana Awan, as Personal Representative of the Estate of Omar Awan, sets forth the below listed claims for the Estate and the survivors under Florida Wrongful Death Act.

CLAIM OF PERSONAL REPRESENTATIVE ON BEHALF OF THE ESTATE

58. The Estate has in the past suffered and will continue to suffer these damages:
- a. Loss of earnings of Omar Awan from the date of his death, less lost support and services, excluding contributions in kind, with interest;
 - b. Loss of net accumulations beyond death; and
 - c. funeral expenses that have been incurred due to the decedent's death which have become a charge against his estate or that were paid by or on behalf of the decedent excluding the amounts recoverable by the decedent's Personal Representative.

CLAIM OF SURVIVING SPOUSE LILIANA AWAN

59. Plaintiff Dr. Liliana Awan, as surviving spouse of Dr. Omar Awan, has in the past suffered and will continue to suffer these damages:

- a. The value of lost support and services from the date of the decedent's injury to his death, with interest, and future loss of support and services to the date of death, and for the expected remainder of his life;
- b. The loss of the decedent's companionship and protection and mental pain and suffering and any other recoverable noneconomic harm; and
- c. funeral expenses paid by Plaintiff and which were incurred as a result of decedent's death.

CLAIMS OF SURVIVING MINOR CHILDREN

60. The surviving minor children, Rizvan Awan, Saf Awan, Zaria Awan, Zain Awan and Alina Awan, each have in the past and will continue to suffer these damages:

- a. Permanent loss of parental companionship, instruction, guidance and mental pain and suffering and any other recoverable noneconomic harm; and
- b. The value of lost support and services from the date of Dr. Omar Awan's death, with interest, and future loss of support and services from the date of death, and reduced to present value, for the expected remainder of his life.

WHEREFORE, the Plaintiff demands judgment against Defendants for all damages recoverable under the laws of the State of Florida and the Florida Wrongful Death Act.

DEMAND FOR JURY TRIAL

The Plaintiff hereby demands a trial by jury on all issues triable by right.

DATED this 10th day of October, 2019.

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