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Florida Court Strikes Another Blow Against Automobile Defect Class Actions

Florida's Third District Court of Appeal[18] recently reversed the class certification in an automobile products liability class action styled *Kia Motors America Corp. v. Butler*.[19] This article summarizes the court's reasoning in reversing the certification and offers a suggestion of its possible effects on Florida litigation.

Factual and Legal Background

The class plaintiff, Yvonne Butler, alleged that her 2000 model year Kia Sephia had a defective front brake system that caused the brakes to prematurely wear.[20] Ms. Butler's Complaint alleged that all Florida purchasers of 1999-2001 model year Kia Sephias were similarly damaged by the defective front brakes. She claimed the defective brakes caused the "'vehicle to be unable to stop, suffer an impaired stopping performance, exhibit increased stopping distances, brake shudder, brake vibration, unpredictable and violent brake pedal pressures, brake lock up, and loss of control when activated,'" all of which decreased the car's value. Despite alleging the existence of a class, it seems Ms. Butler was aware that not all of her class members actually suffered the brake problems of which she complained. The court seized upon that point, stating, "Ms. Butler, through her counsel, envisions an individual award to each member of the class, whether or not the alleged deficiency manifested itself in a particular case," and later, "Ms. Butler forgets... that fewer than half of the class members have reported brake difficulty."

Florida class actions are governed by the requirements of Rule 1.220, Fla.R.Civ.P. Rule 1.220(a) requires as a prerequisite to a class action that the trial court first find that:

> (1) the members of the class are so numerous that separate joinder of each member is impracticable, (2) the claim or defense of the representative party raises questions of law or fact common to the questions of law or fact raised by the claim or defense of each member of the class, (3) the claim or defense of the representative party is typical of the claim or defense of each member of the class, and (4) the representative party can fairly and adequately protect and represent the interests of each member of the class.

These prerequisites to class action are usually called numerosity, commonality, typicality, and adequacy of representation.

After meeting the prerequisites, Rule 1.220 also requires a class plaintiff to meet one of the three subsections of Rule 1.220(b). The court declared that (b)(3) was the relevant subsection for Ms. Butler's action. Rule 1.220(b)(3) requires that:

> the questions of law or fact common to the claim or defense of the representative party and the claim or defense of each member of the class predominate over any question of law or fact affecting only individual members of the class, and class representation is superior to other available methods for the fair and efficient adjudication of the controversy.

Analysis

The court focused its analysis on the predominance and superiority inquiries required by Rule 1.220(b)(3).[21] In addressing whether the common questions of law and fact predominated over individual questions, the court tried to envision how a class action trial would proceed.[22] The court stated that the key issue was whether Ms. Butler could prove the cases for each of the other members of her class by proving her own individual case. It determined that she could not. Instead, relying on its observation that not all class members suffered the brake defect of which Ms. Butler complained, the court envisioned that a class action trial would first require significant individual inquiry and an "inestimable" number of mini-trials to determine the proper class members. The court found its evaluation true for both questions of law and questions of fact.[23]

The court next turned to the superiority inquiry —whether all other methods of resolving the dispute are inferior to class action. The court determined that, in fact, several other methods were superior to class action in Ms. Butler's case. In particular, the court cited Florida's Motor Vehicle Warranty Enforcement Act, Chapter 681, Fla. Stat., (a/k/a Florida's "Lemon Law") and the federal Magnuson-Moss Warranty Improvement Act, 15 U.S.C. §§ 2301-12, as assuring that vehicle owners sold an inferior product are not "outgunned" by large car companies. The court pointed out that attorney fees are recoverable by prevailing consumers under both statutes.

The court also suggested that Ms. Baker could have filed a petition under 49 U.S.C. §§ 30101-30170 with the National Highway Traffic Safety Administration to seek a national recall of the allegedly defective Kias. The court determined that a recall would reach and protect currently "uninjured" class members that would have to be painstakingly excluded from the eventual trial of Ms. Butler's class action. Because a recall would protect more consumers, the court found a recall petition to the NHTSA to also be superior to a class action.

CONCLUSION

The court determined that Ms. Butler's attempted class action did not present common questions of either law or fact among class members and was actually inferior to other methods of seeking resolution and redress. On those bases, it reversed the trial court's certification of a class. The decision is not particularly monumental—as the court noted, other courts are already "'hesitant to certify classes in... cases involving allegedly defective motor vehicles and parts.'"[24] The court even referenced its earlier decision in *Volkswagen of America, Inc. v. Sugarman*,[25] with essentially the same holding. However, it bolsters the defense of automobile products liability class actions in Florida and further raises the bar for plaintiff attorneys who may seek to bring such actions.

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Endnotes

1 Speaker Rubio is a Republican from the 111th Congressional District in western Miami-Dade County. He has disagreed with Governor Crist, also a Republican, on several issues including Florida property tax reform and offshore drilling. *E.g.,* William March, "Suit Widens Crist, Rubio Rift," The Tampa Tribune, Dec. 2, 2007, *available at* http://www2.tbo.com/content/2007/dec/02/me-suit-widens-crist-rubio-rift/news-breaking/ (last accessed on Sept. 16, 2008).

2 A writ of quo warranto is an extraordinary writ that may be issued to a state officer or agency that has improperly exercised a power or right derived from the state.

3 Case No. SC07-2154. A copy of the decision is available at http://www.floridasupremecourt.org/pub_info/summaries/briefs/07/07-2154/Filed_07-03-2008_Opinion.pdf (last accessed on Sept. 16, 2008).

4 On April 11, 2008, Justice Raoul Cantero announced his

resignation from the Florida Supreme Court effective September 6, 2008. The court's official media release is available at http://www.floridasupremecourt.org/pub_info/documents/pressreleases/2008/04-11-2008_Cantero_Press_Release.pdf (last accessed on Sept. 16, 2008).

5 Justice Kenneth Bell has also announced his resignation from the Florida Supreme Court effective October 1, 2008. The court's official media release is available at http://www.floridasupremecourt.org/pub_info/documents/pressreleases/2008/05-23-2008_Bell_Press_Release.pdf (last accessed on Sept. 16, 2008).

6 *But see* Act of Aug. 15, 1953, Pub. L. No. 280 § 6, 67 Stat. 588, 590 (1953). As stated by the court, "Congress has... conferred on the states the authority to assume jurisdiction over crimes committed on tribal land... and Florida has assumed such jurisdiction. *See* ch. 61-252, §§ 1-2, at 452-53, Laws of Fla. (codified at § 285.16, Fla. Stat. (2007))." Therefore, to the extent gaming is a crime in Florida, it is prohibited on tribal lands within the state.

7 Under IGRA, Class III gaming includes slot machines and "banked" card games in which participants play against the house (e.g., blackjack).

8 States are immune from lawsuits to which they do not consent by the doctrine of sovereign immunity enshrined in the Eleventh Amendment to the Constitution of the United States of America. Florida's immunity in this exact situation was affirmed by the United States Supreme Court in *Seminole Tribe of Florida v. Florida*, 517 U.S. 44 (1996).

9 Tallahassee is Florida's capitol city and the seat of its state government.

10 It should be noted that under the gaming procedures the Department had threatened to unilaterally issue on or after November 15, 2007, the Seminoles would not have been obligated to pay portions of their gaming revenue to Florida as they would under Governor Crist's compact.

11 Despite its public policy, Florida currently allows some Class III gaming within the state. Article X, Section 15 of the Florida Constitution allows the state to operate a lottery. Article X, Section 23 of the Florida Constitution allows Vegas-style slot machines in Miami-Dade and Broward counties.

12 Citing the controversial case of *Bush v. Schiavo*, 885 So. 2d 321, 329 (Fla. 2004) (quoting State v. Cotton, 769 So. 2d 345, 353 (Fla. 2000)).

13 129 So. 876, 881 (Fla. 1930).

14 Citing State ex rel. Green v. Pearson, 14 So. 2d 565, 567 (Fla. 1943) ("The legislative branch looks to the Constitution not for sources of power but for limitations upon power. But if such limitations are not found to exist, its discretion reasonably exercised may not be disturbed by the judicial branch of the government."), and State ex rel. Cunningham v. Davis, 166 So. 289, 297 (Fla. 1936) ("The test of legislative power is constitutional restriction; what the people have not said in their organic law their representatives shall not do, they may do.").

15 Citing B.H. v. State, 645 So. 2d 987, 993 (Fla. 1994) ("[T]he legislature's exclusive power encompasses questions of fundamental policy and the articulation of reasonably definite standards to be used in implementing those policies."), and Askew v. Cross Key Waterways, 372 So. 2d 913, 925 (Fla. 1978) (stating that under the nondelegation doctrine, "fundamental and primary policy decisions shall be made by members of the legislature").

16 The court emphasized the point by later stating: "By authorizing the [Seminole] Tribe to conduct 'banked card games' that are illegal throughout Florida—and thus illegal for the Tribe [see note X, *infra*,]—the Compact violates Florida law. *See Chiles v. Children A, B, C, D, E, & F*, 589 So. 2d 260, 264 (Fla. 1991) ('This court has repeatedly held that, under the doctrine of separation of powers, the legislature may not delegate the power to enact laws or to declare what the law shall be to any other branch.')."

17 Florida's budget shortfall as of mid-FY 2009 sits at $1.7 billion. *See, e.g.*, Elizabeth McNichol & Iris J. Lav, *State Budget Troubles Worsen*, A Report by the Center on Budget and Policy Priorities, Sept. 8, 2008, *available at* http://www.cbpp.org/9-8-08sfp.htm (last accessed on Sept. 16, 2008).

18 Article V, Section 4 of the Florida Constitution created Florida's District Courts of Appeal to hear appeals of trial courts' final judgments or orders, and some non-final orders, that cannot be heard in Florida's Supreme Court or circuit courts. Rule 9.130(a), Fla.R.App.P., provides for Florida's District Courts of Appeal to hear non-final orders that determine that a class should be certified.

19 Case No. 3D05-1145 (Fla. 3d DCA June 11, 2008).

20 Ms. Butler was represented in part by Michael D. Donovan and his firm Donovan Searles, LLC of Philadelphia, Pennsylvania. Mr. Donovan and his firm have filed nearly identical actions against Kia in other states. *E.g.*, Samuel-Bassett v. Kia Motors America Inc., 143 F. Supp. 2d 503 (E.D.Pa.2001) (removed from Pennsylvania state court); Little v. Kia Motors America, Inc., Case No. UNN-L-800-01 (N.J.L.D. Aug. 20, 2003).

21 The court did not explain why it did not address the class certification's apparent failure to meet the prerequisites of subsections 3 and 4 of Rule 1.220(a), commonality and typicality.

22 In doing so, the court was following the dictate of *Humana, Inc. v. Castillo*, 728 So. 2d 261, 266 (Fla. 2d 1999), *rev. dismissed*, 741 So. 2d 1134 (Fla. 1999).

23 As the court noted, "Rule 1.220(b)(3) reads in alternative on this prong." In other words, either questions of fact or questions of law must predominate.

24 Quoting Sanneman v. Chrysler Corp., 191 F.R.D. 441, 449 (E.D. Pa. 2000).

25 909 So. 2d 923 (Fla. 3d DCA 2005).