

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION : UNION COUNTY
DOCKET NO. UNN-L-800-01
A.D. Docket No.

REGINA LITTLE, :
Plaintiff, :
v. : Transcript of
 : Opinion
KIA MOTORS AMERICA, INC., :
Defendant. :

PLACE: Union County Courthouse
2 Broad Street
Elizabeth, New Jersey, 07207

DATE: Wednesday, August 20, 2003

BEFORE:

HONORABLE EDWARD W. BEGLIN, JR., A.J.S.C.

APPEARANCES:

DONNA SIEGEL MOFFA, ESQ. (Trujillo, Rodriguez &
Richards)
-and-
MICHAEL D. DONOVAN, ESQ. (Donovan Searles, LLC)
Attorneys for Plaintiff

JOSEPH KERNAN, ESQ.
-and-
NEAL WALTERS, ESQ. (Piper Rudnik)
Attorneys for Defendant

FREDERICK D. WOLFF, III, C.S.R.
Official Court Reporter
Union County Courthouse
2 Broad Street
Elizabeth, N.J., 07207

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1 (Oral argument takes place - not included in
2 this transcript.)

3 THE COURT: Thank you both. I appreciate the
4 extensive briefing and your argument. I think it has
5 been very thorough, complete and helpful to the court.

6 I will start out by incorporating my October,
7 2002, decision into the record here simply so I do not
8 have to repeat the general description of the case. I
9 think once is enough for that.

10 Today the court has before it the plaintiff's
11 motion, under Rule 4:32, seeking certification of the
12 projected class in this particular case. The Rule is
13 straight forward. It requires application of any
14 number of relevant factors and I believe the best
15 approach on a motion of this nature is simply to follow
16 the format of the cited rule. I start, therefore, with
17 Rule 4:32-1(a); 1(a) has four sub-parts to it:
18 Numerosity, commonality, typicality and adequacy. Let
19 me take them in that order.

20 First, is the class presented here
21 sufficiently large so that joinder of individual
22 parties would not be a satisfactory alternative? The
23 evidence on the motion tells the court that there are
24 some 8,455 potential class members, persons who during
25 the governing six year period in New Jersey have, by

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1 purchase or lease, potentially presented the problem
2 that is urged here as to the brakes of this particular
3 model Kia, the Sephia model car. That is a
4 sufficiently large number to establish the requisite
5 class classification under (a)(1).

6 Are there common questions either of law or
7 fact to establish the second factor? There are. The
8 common questions of law prevail for each member of this
9 class.

10 First, violation of the Consumer Fraud Act.
11 Alas, if the braking system as alleged is defective,
12 does that constitute a breach of an implied warranty of
13 merchantability and/or a breach of express warranty and
14 further is there presented a violation of the
15 Magnuson-Moss Warranty Act? All these common issues
16 prevail throughout the class membership. In addition,
17 fact issues to some degree are common as well.

18 The defendants have gone to considerable
19 length to point out the individuality of fact issues
20 that would vary from one particular member to another,
21 and indeed to some extent we must recognize that is so,
22 but that I believe overlooks the more basic fact
23 question, that is, was the braking system through the
24 pads and the rotors defective in this particular model
25 automobile, and despite the efforts of Kia over the

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1 relevant period to address such a defect through
2 modification of these parts, nevertheless, producing a
3 defective product that through lease or purchase came
4 into the hands of the class members. That is common.
5 That is the defect urged by the plaintiffs and that
6 commonality, combined with the legal issues that are
7 the same for each and every member, more than
8 sufficiently meet the requirement of (a)(2).

9 There are other aspects to that issue which I
10 will address subsequently.

11 The third requirement, the typicality
12 requirement, is are the claims being presented by the
13 represented parties typical of the class? Do they
14 carry the same essential characteristics so that
15 they'll prevail throughout? They do. There is no real
16 question here that the typicality questions do prevail
17 and they're clearly presented.

18 The fourth is the ability of the represented
19 parties to fairly and adequately protect the interests
20 of all the members of the class. This likewise is well
21 established. Included within that is the qualification
22 of plaintiff's counsel to represent the class, which
23 also is well established.

24 The exclusion of any lemon law claim in the
25 amended complaint removes any concern under this factor

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1 that there would be a conflict and then you would not
2 have the commonality through representation that the
3 rule requires.

4 I'm satisfied, therefore, that all
5 prerequisites that generally prevail for class action
6 under Rule 4:30-1(a) are clearly presented here and,
7 indeed, as I read the defendant's response to the
8 motion, I do not find that any of those general
9 prerequisites were seriously brought into question.

10 Rather, the more significant aspect of the
11 motion addresses 1(b). Here, the basis for class
12 certification rests upon 1(b)(3). The court then must
13 find there are questions of law or fact common to the
14 members of the class such that they predominate over
15 any questions affecting only individual members, and
16 secondly that class action is superior to other
17 available methods for fair and efficient adjudication
18 of the controversy.

19 Predominance and superiority. Case law
20 teaches that when you look at these factors you must
21 look at the full picture and be satisfied that in so
22 doing there is a common nucleus of operative facts that
23 doesn't shift, that remains dominant and common and
24 prevalent throughout the examination of the concerns
25 presented by an individual class member. The operative

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1 facts here start with and in large measure must remain
2 focused upon the allegation that throughout the period
3 in question the braking system of this particular model
4 of that automobile carried a defect. More particularly
5 and specifically, that defect is said to exist as to
6 the brake pads and the rotors and the size of same so
7 that the heat that any braking system generates,
8 because braking is a product of friction, the heat that
9 system produces is not dissipated in a manner that
10 allows the vehicle to continue to be operated safely.

11 Now, by the very nature of that defect two
12 things occur. There is a basis to urge that each and
13 every vehicle sold or leased in New Jersey, if found to
14 carry such a defect, has diminished in value. The
15 diminution in value flows automatically from the fact
16 that it carries such a defect. And the second is how
17 then has that been manifested?

18 Manifestation does take you into a more
19 particularized inquiry because by the very nature of
20 this problem, other factors will always come into play:
21 The usage made of the vehicle, the conditions under
22 which it was operated, the particular habits and
23 propensities of the operator, et cetera, et cetera.
24 But if you focus on all of those concerns, you can't
25 lose sight of the fact that they don't rise or fall on

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1 their own, but rather they relate to and flow from the
2 basic allegation of defect and it is that defect, if
3 proven, which in my judgment supports and justifies
4 class treatment because it prevails throughout.

5 To try to separate that defect from
6 particular or individual problems loses sight of the
7 focus of the case and in effect turns it on its head
8 and into something else.

9 The argument that since the Supreme Court of
10 New Jersey decided the Cadillac case so much has

11 transpired generally in the field of consumer
12 protection seeks to shift the focus away from that
13 basic defect which is urged to prevail here.

14 The lemon law procedures that are now
15 available through the Department of Consumer Affairs
16 are not there to replace the legal remedies available
17 to a plaintiff class when that class is able to
18 demonstrate commonality of a defect, such as is urged
19 here. The fire in the ignition switch is not the same
20 as the defect of a brake pad and a rotor in each
21 automobile coming off the assembly line at Kia.

22 I'm satisfied that under (b)(3) there is a
23 dominance of common issues flowing from the defect
24 urged that clearly predominates throughout the class
25 action of this nature. The warranty concerns as to

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1 notice start not with a phone call from an individual
2 customer but rather with the evidence of a general
3 notice in the materials on this motion possessed by Kia
4 that it was producing a product that carried a defect
5 known to it. Its own technical service bulletins
6 underline its awareness. The fact that it pointed out
7 to dealers these are interchangeable parts and be sure
8 that you put in the latest part if you are addressing
9 the braking system here and don't combine is further
10 evidence that Kia, for warranty breach purposes, was on
11 notice of the defect that its product was presented.

12 The actions of the customer, although, yes,
13 relevant in the calculation of damages in some
14 instances don't rise to the same level as do the
15 predominance across the entire spectrum of the class of
16 the evidence of generalized notice of the defect.

17 The coupon program is yet further support for
18 that conclusion. Without getting into its details nor
19 how it was structured by the company, it simply, for my
20 purposes at this point, evidences yet more awareness of
21 an underlying defect.

22 Throughout a (b)(3) analysis, the focus here
23 which makes this case, in my judgment, rather unique is
24 that only one model is under consideration, and it is
25 only the braking system in that model that is said to

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1 be defective, that the parts from year to year were
2 presented as being interchangeable, that there are only
3 8,455 potential class members, all of whom are in this
4 state, further demonstrate that the argument as to
5 individualization does not rise to override the
6 dominant features that I have mentioned.

7 Commonality clearly prevails. Commonality is
8 dominant throughout. And finally, a feature which the
9 courts of this state have always alluded to -- I
10 shouldn't say have alluded -- have specifically
11 addressed: What are the consequences of certification?

12 Well, you look at it two ways. First, you
13 look at the members affected, those urged to be the
14 qualified class. The evidence here is that for the
15 repair of a brake system of this nature, you're
16 speaking in terms of a few hundred dollars. Nothing
17 even coming close to \$1,000. How many of the 8,455
18 members would seek, individually, to claim recompense
19 of that small a sum? To ask the question, I think
20 answers it in terms of qualification.

21 The qualification criteria for lemon law
22 treatment? Some, yes, would qualify, some would not.
23 But that does not affect what we're dealing with today.

24 The final prong of that test is the
25 manageability of such a proceeding, not just the burden

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1 to a court system because the court system is here to
2 provide proper relief to a constituency whether or not
3 it suffers some burden in so doing, but rather do the
4 managerial features become so burdensome that they
5 override these other factors?

6 This is not a terribly large class. The
7 issues are discrete and well defined and I think,
8 therefore, for my purposes are manageable. I don't
9 find that there are factors in management and judicial
10 efficiency strong enough to overcome these other
11 superior factors.

12 My analysis, therefore, and quite comfortably
13 so, is that all the requirements of Rule 4:32-1(a) and
14 (b) have clearly been established. The motion is found
15 to be in order and it is now appropriate for class
16 certification to be granted, so the matter may proceed
17 on that basis.

18 I will enter the order that was submitted by
19 the plaintiffs attached to the motion.

20 Again thank you.

21 MR. DONOVAN: Very good, your Honor. Thank
22 you.

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CERTIFICATION

I, Frederick D. Wolff, III, C.S.R., License
No. XI00369, an Official Court Reporter in and for the
State of New Jersey, do hereby certify the foregoing to
be prepared in full compliance with the current
Transcript Format for Judicial Proceedings and is a
true and accurate non-compressed transcript, to the
best of my ability.

_____ Sept. 3, 2003

FREDERICK D. WOLFF, III, C.S.R. Date
Official Court Reporter
Union County Courthouse
Elizabeth, New Jersey