Plaintiffs' Class Allegations Flattened in Tire Case

June 14, 2011 by Sean Wajert

A federal court in New York last week denied plaintiffs' motion for class certification in a case alleging that the run-flat tires on defendant BMW's MINI Cooper S were defective. See Oscar v. BMW of North America LLC, No. 1:09-cv-00011-RJH (S.D.N.Y. 6/7/11).

Oscar purchased a new 2006 MINI Cooper S from BMW-MINI of Manhattan, an authorized MINI dealership, but prior to purchasing the MINI did not do any sort of research. Nor did he take the car for a test drive. The car came with run-flat tires (RFTs), an innovation that allows drivers to drive to the nearest service station even after the tire was flat. As of December 2, 2009, a period of about three years, Oscar had had five flat tires. Plaintiff alleges that his troubles stemmed from the fact that his car was equipped with RFTs rather than with standard radial tires. He considered the number of flat tires he experienced to be evidence of a widespread defect.

Plaintiff proposed a nationwide class (or a New York class) of all consumers who purchased or leased new 2005, 2006, 2007, 2008, and 2009 MINI vehicles equipped with Run-Flat Extended Mobility Technology tires manufactured by Goodyear and sold or leased in the United States whose Tires have gone flat and been replaced.

On the first prerequisite of Rule 23(a), the court offered an interesting discussion arising from the fact that most of plaintiff's evidence of numerosity did not correlate directly to his class definition: data that may have included other vehicles, or non-RFT tires, or makers other than Goodyear. But the opinion noted that courts have relied upon "back-of-the-envelope calculations in finding numerosity satisfied." Conservative assumptions leading to a likelihood of numerosity have at times sufficed. This case fell "right on the border between appropriate inference and inappropriate speculation." Accordingly, numerosity was satisfied for the proposed national class but not the New York class.

Turning to the Rule 23(b)(3) requirements, the court confronted the choice of law issues inherent in a national class. Although plaintiff conceded that the law of the fifty states plus the District of Columbia would apply to the members of the nationwide class, he argued that the differences between the states' laws on implied warranty claims were negligible because the implied warranty is a Uniform Commercial Code claim. But numerous courts have recognized that there are significant variances among the interpretation of the elements of an implied warranty of merchantability claim among the states. See Walsh v. Ford Motor Co., 807 F.2d 1000, 1016 (D.C. Cir. 1986); In re Ford Motor Co. Ignition Switch Litig., 194 F.R.D. 484, 489 (D.N.J. 2000). In particular, several states still require privity; so, plaintiff advanced a theory of privity-by-agency. But this theory has not been accepted in all states. Readers know that choice of law issues impact, among other things, the manageability of the class and the superiority of the use of the class device.

The court also found that plaintiff failed to demonstrate that common questions of fact predominate. Plaintiff was unable to articulate and allegedly common defect, merely hypothesizing that the failure rate could stem from the RFTs' "stiffness" and stating that further discovery would be necessary to ascertain the precise nature of the defect. Plaintiff did not provide the court with any evidence that Goodyear RFTs are likely to fail because of a particular common defect. The failure to specify an alleged common defect provided a further basis for concluding that plaintiff had not demonstrated predominance. See Am. Honda Motor Co. v. Allen, 630 F.3d 813, 819 (7th Cir. 2010) (holding

predominance was not satisfied where forty-one plaintiffs owners alleged that their motorcycles wobbled, but failed to provide competent evidence that a common defect underlay their claims).

Even if Oscar had put forth evidence of a common defect, breach of warranty suits like this one often involve complicated issues of individual causation that predominate over common questions regarding the existence of a defect. See, e.g., In re Bridgestone/Firestone, Inc., 288 F.3d 1012, 1018-19 (7th Cir. 2002) (noting that class treatment of tire defect litigation was unmanageable in part because individual factors could affect the alleged tire failure); Sanneman v. Chrysler Corp., 191 F.R.D. 441, 451-52 (E.D. Pa. 2000) (declining to certify a class of vehicle owners whose paint had delaminated allegedly because of faulty painting process in part because the paint could delaminate for reasons other than the alleged defect); In re Ignition Switch Litig., 194 F.R.D. at 490-91 (declining to certify a class of vehicle owners whose passenger compartments caught on fire allegedly because of a faulty ignition switch because issues of individual causation would predominate); Feinstein v. Firestone Tire and Rubber Co., 535 F. Supp. 2d 595, 603 (S.D.N.Y. 1982) (declining to certify a class of tire purchasers because of "myriad [individual] questions," including "other possible causes of the problem encountered"); see also Wolin v. Jaguar Land Rover N. Am., LLC, 617 F.3d 1168, 1172-74 (9th Cir. 2010).

Here, individualized issues of causation would swamp the common inquiry into an as yet to be identified tire design defect. Even if the plaintiffs were to show that the Goodyear RFTs suffered from a common defect, they would still need to demonstrate that this defect caused each class member's RFT to puncture. But tires can puncture for any number of reasons, and not all of these reasons will relate to the alleged defect. RFTs can go flat for reasons that would also cause a standard radial tire to go flat -- for example, if the driver ran over a nail, tire shredding device, or large pothole, or if a vandal slashed the tire. In order to demonstrate liability, plaintiff would have to demonstrate in each individual class member's case that the tire punctured for reasons related to the defect, rather than for a reason that would cause any tire to fail.

Similarly, under the state consumer fraud law claim, where the link between the defendant's alleged deception (about the tires) and the injury suffered by plaintiffs is too attenuated and requires too much individualized analysis, courts will not certify a class. See, e.g., Pelman v. McDonald's Corp., 272 F.R.D. 82 (S.D.N.Y. 2010) (declining to certify a class allegedly misled by McDonald's claims that its food was healthy). Again, determining whether each tire failed as a result of the allegedly concealed defect or as a result of unrelated issues, e.g., potholes or reckless driving habits, would devolve into numerous mini-trials.

Certification denied.