

## FCA, Nissan, Others Escape Risky Keyless Fobs Suit

By **Kat Sieniuc**

*Law360, New York (September 30, 2016, 9:03 PM EDT)* -- A California federal judge on Friday tossed five related consumer fraud class actions against automakers including Ford and Toyota by owners accusing the car manufacturers of installing keyless fob systems without proper safeguards and warnings, finding that the drivers had no leg to stand on.

In five related consumer fraud class action lawsuits, drivers claim that Nissan, Ford, Toyota, FCA US and Hyundai didn't tell drivers their vehicles came without an auto-off feature for their keyless ignition switches, meaning it's possible the cars can stay running without keys in the ignition and potentially give drivers carbon monoxide poisoning.

But U.S. District Judge Andre Birotte Jr. concluded the car owners haven't shown how the keyless ignitions have caused the owners any actual injury, nor have they alleged a defect even exists in their vehicles.

"Merely experiencing a vehicle not automatically turning off, and being concerned about the lack of Auto-Off, are not concrete harms," Judge Birotte said, adding that the "concerns about future harm amount to only a speculative risk of injury: The complaints reveal that out of all the times the plaintiffs have parked their vehicles, they left them running only a handful of times (usually once or twice), and never suffered physical injury."

Judge Birotte also found that concerns about injuries to others — specifically, their allegations that others suffered carbon monoxide poisoning — is not a consequential harm that can be traced to the automakers' conduct or redressed by a favorable decision in the courts.

The drivers claim if they had known the cars didn't have an automatic off switch, they would never have bought the vehicles, or would not have paid as much for them.

An attorney representing the plaintiffs did not immediately return a request for comment late Friday.

The case dates back to August 2015, when all of the plaintiffs originally filed their claims in a single complaint against 18 automakers including Ford Motor Co., BMW of North America LLC, Toyota Motor Sales USA Inc., Nissan North America Inc., American Honda Motor Co. Inc., FCA US LLC, General Motors Co., Volkswagen Group of America Inc., Mercedes-Benz USA LLC, Hyundai Motor America Inc. and Kia Motors America Inc., as well as their research and design companies.

The drivers alleged engines can no longer operate once traditional keys are removed from vehicles, but keyless ignition fobs present a danger. While they can remotely turn on the engine, they have nothing to do with turning off the engine. Therefore, drivers can park their cars and exit with the keyless fobs and still leave engines running, no matter how far the fob goes from the car.

The plaintiffs also claimed that the car manuals give no warnings about the carbon monoxide poisoning risk and that the cars have no audible warnings alerting drivers that the engine is still running, an alleged flaw the drivers say has killed 13 people.

The automakers moved to dismiss in November 2015 in separate motions. Some argued they shouldn't be liable for drivers' forgetfulness and said the drivers haven't suffered any physical or economic injuries and therefore don't have standing to sue. Others pointed to specific vehicle features and warnings in car owners' manuals they say thwart the claims.

The plaintiffs are represented by Elaine T. Byszewski and Steve W. Berman of Hagens Berman Sobol Shapiro LLP and Martis Alex, Daniel R. Leathers and Brian R. Morrison of Labaton Sucharow LLP.

Ford is represented by Randall W. Edwards, Carlos M. Lazatin and Michael Reynolds of O'Melveny & Myers LLP.

Nissan is represented by M. Kevin Underhill, Amir Nassihi and William R. Sampson of Shook Hardy & Bacon LLP.

Toyota is represented by David L. Schrader and Esther K. Ro of Morgan Lewis & Bockius LLP.

Hyundai is represented by Ekwon E. Rhow, Thomas V. Reichert and Douglas A. Fretty of Bird Marella Boxer Wolpert Nessim Drooks Lincenberg & Rhow PC.

FCA is represented by John W. Rogers, Kathy A. Wisniewski, Stephen A. D'Aunoy and Rowena G. Santos of Thompson Coburn LLP.

The case is Draeger et al. v. Toyota Motor Sales USA Inc. et al., case number 2:15-cv-06491, in the U.S. District Court for the Central District of California.

--Editing by Bruce Goldman.