

Nissan Escapes Suit Over Rust-Prone Floorboards

By **Dani Meyer**

Law360, New York (February 2, 2016, 1:19 PM ET) -- An Illinois federal judge on Monday tossed a proposed class action against Nissan over rusting floor panels in certain Altima vehicles, saying the court doesn't have jurisdiction over the out-of-state drivers and the remaining allegations fail to state a claim.

A group of 18 named plaintiffs had accused Nissan North America Inc. of concealing that floorboards installed in certain vehicles were prone to significant deterioration, but U.S. District Judge John Robert Blakey ruled that the court lacks jurisdiction for the out-of-state plaintiffs.

"The [first amended complaint] does not assert a single claim in which there is nationwide personal jurisdiction, nor is it clear from the allegations that the claims of the out-of-state plaintiffs, as presently pled, arise out of a common nucleus of operative fact," Judge Blakey said.

Even interpreted liberally, Judge Blakey said the suit isn't sufficient to support personal jurisdiction for the out-of-state plaintiffs, though he did find that personal jurisdiction exists for the claims of plaintiff Maria DeMaria, who represents a proposed class of Illinois drivers.

DeMaria launched the suit in April, claiming that floorboards in Nissan's Altima vehicles model years 2002 to 2006 cannot withstand normal exposure to the elements, do not drain properly and rust until the roadway under the vehicles is visible.

Nissan must have known of the defective floorboards after a prerelease test of the Altima in 2001, and the company certainly knew of the problem by 2005 due to customer complaints but failed to disclose the defect, amounting to fraud and negligence, DeMaria alleged.

But in addition to issues of jurisdiction, Judge Blakey found Monday that the surviving allegations fail to state a claim.

Judge Blakey said the fraud claims don't state the particularity of the circumstances surrounding the alleged fraud or provide sufficient detail.

"Plaintiffs have not alleged what material facts Nissan should have disclosed, to whom it should have disclosed them or when it should have disclosed them," Judge Blakey said. "Indeed, it is not even clear that plaintiffs are alleging omissions in the sales transactions involving the named plaintiffs, many of whom, like DeMaria, purchased their cars in transactions that did not even involve Nissan or its agents."

Judge Blakey also dismissed claims under the Magnusson-Moss Warranty Act, finding the complaint doesn't allege DeMaria purchased her car from Nissan or otherwise allege the existence of an implied warranty.

Her negligence claim was likewise dismissed for failing to allege the automaker was legally obligated to advise DeMaria of issues regarding her floorboards, while the unjust enrichment claim was tossed because it wasn't clear how Nissan was enriched by the relevant transaction.

Judge Blakey dismissed the first amended complaint in its entirety for lack of jurisdiction and failure to state a claim, though he gave the plaintiffs leave to amend the complaint and address the identified deficiencies.

Representatives for the parties didn't immediately respond Tuesday to requests for comment.

The plaintiffs are represented by Edward A. Wallace, Amy E. Keller and Adam Prom of Wexler Wallace LLP, Matthew Dameron of Williams Dirks Dameron LLC, Eric H. Gibbs and David Stein of Gibbs Law Group LLP, Norman E. Siegel of Stueve Siegel Hanson LLP, Tim E. Dollar and Jeffrey J. Burns of Dollar Burns & Becker LC, Gregory F. Coleman, Mark E. Silvey and Lisa Ann White of Greg Coleman Law PC, and John A. Yanchunis of Morgan & Morgan Complex Litigation Group.

Nissan is represented by Todd C. Jacobs, Justin R. Donoho, William R. Sampson, James P. Muehlberger, Amir Nassihi and M. Kevin Underhill of Shook Hardy & Bacon LLP.

The suit is DeMaria v. Nissan North America Inc. et al., case number 1:15-cv-03321, in the U.S. District Court for the Northern District of Illinois.

--Additional reporting by Jody Godoy. Editing by Philip Shea.

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