

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

KRISTEN McLAUGHLIN

v.

VOLKSWAGEN OF AMERICA, INC.
d/b/a AUDI OF AMERICA

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CIVIL ACTION
No. 00-3295

MEMORANDUM

This case is a putative class action lawsuit which alleges that Audi A6 automobiles contain a defective fuel level detection system that causes the car to run out of gas unexpectedly. Presently before me is defendant's motion to dismiss the complaint pursuant to Fed. R. Civ. P. 12(b)(1) for lack of subject matter jurisdiction. For the reasons stated below, the motion will be DENIED.

BACKGROUND

The Audi A6 is a luxury automobile that costs upwards of \$50,000. The complaint alleges that A6s manufactured since 1998 contain "defective fuel level sensors which cause the digital dashboard fuel level display to falsely and incorrectly display the current fuel level of the vehicle, having the direct effect of causing drivers of the Audi A6 to suddenly, without any warning, lose control of their vehicle when the same suddenly runs out of fuel." See Complaint (Introductory Paragraph).

Defendant admits that there is a problem with the A6. In May 2000, defendant notified

the National Highway Traffic Safety Administration that it was voluntarily recalling the vehicles in question. See NHTSA Campaign ID No. 00V137000, available at <http://www.nhtsa.dot.gov>. According to the NHTSA, the recall potentially could affect 48,500 vehicles.¹ Id. However, plaintiff also alleges that the remedial measures taken pursuant to the voluntary recall have been, at least in some cases, ineffective. See Plaintiff's Reply Brief at 2.²

Plaintiff filed this suit on behalf of herself and "all other people who since their introduction into the marketplace (on or about July 1, 1998) have purchased or leased a 1998 or 1999 Audi A6, excluding any person related to or affiliated with Audi." Complaint ¶ 6. The complaint claims violations of the Pennsylvania Unfair Trade Practices and Consumer Protection Law ("UTPCPL") (Count I), fraud and fraudulent misrepresentation (Count II), negligent misrepresentation (Count III), and breach of contract (Count IV). Plaintiff asserts federal

¹ The NHTSA describes the problem as follows: "Sulfur in fuel interacts with certain additives found in widely available gasoline causing sulfur to become deposited on the contact points of three fuel sending units mounted inside the fuel tank. Low electrical resistance at contact points of any unit signals to the fuel gauge and computer that the fuel tank needs to be refilled. High resistance signals that the tank is full. Sulfur deposits could cause the fuel gauge to read full while the fuel tank may not in fact be full or could be empty. Running out of fuel without warning while the gauge indicates that there is sufficient fuel in the tank could result in a crash." Id.

² Plaintiff has supplied an affidavit from David T. Shulick, Esq., who is also counsel for the putative class. Mr. Shulick states that he purchased an A6 in February 2000. Schulick Aff. ¶ 1. In August 2000, the car ran out of gas while the fuel gauge was reading approximately 1/3 of a tank. Id. ¶ 3. The problem was supposedly fixed by a local Audi dealership shortly thereafter. Id. In October 2000, however, the car again ran out of gas while the fuel gauge was reading 1/4 of a tank. Id. ¶ 4. Later that same month, the car again ran out of gas while the fuel gauge was reading 1/2 of a tank. Id. ¶ 5. Mr. Shulick returned to the dealership to have the problem corrected in October or early November 2000, but the service representatives allegedly would not assure him that the problem would not occur again. Id. ¶ 7. Mr. Shulick also states that he never received any notification of the voluntary recall. Id. ¶ 10. Although the complaint does not specifically mention the recall or its alleged ineffectiveness, the allegations are broad enough to encompass the type of claims contained in Mr. Shulick's affidavit.

jurisdiction under 28 U.S.C. § 1332 (diversity). Defendant moves to dismiss the complaint for lack of subject matter jurisdiction under Fed. R. Civ. P. 12(b)(1).

DISCUSSION

“Putative class actions, prior to certification, are treated as class actions for jurisdictional purposes.” Dorian v. Bridgestone/Firestone, Inc., No. 00-4470, 2000 WL 1570627, at *2 n.2 (E.D. Pa. Oct. 19, 2000), citing Garcia v. General Motors Corp., 910 F. Supp. 160, 163-64 (D.N.J. 1995). However, “in a federal class action only the citizenship of the named class representatives must be diverse from that of the defendants.” In re School Asbestos Litig., 921 F.2d 1310, 1317 (3d Cir. 1990) citing Snyder v. Harris, 394 U.S. 332, 340 (1969). Therefore, since the named plaintiff is diverse from defendant, subject matter jurisdiction exists in this case if the amount in controversy as to each member of the putative class exceeds \$75,000 exclusive of interest and costs. See 28 U.S.C. § 1332(a).

Plaintiff bears the burden of establishing the jurisdictional amount. See McNutt v. General Motors Acceptance Corp., 298 U.S. 178, 189 (1936); Nelson v. Keefer, 451 F.2d 289, 296 (3d Cir. 1971). However, that burden is “very easy to meet.” Adams v. General Motors Corp., No. 89-7653, 1990 WL 18850, at *1 (E.D. Pa. Feb. 26, 1990). The amount claimed by the plaintiff “controls if the claim is made in good faith.” St. Paul Mercury Indem. Co. v. Red Cab Co., 303 U.S. 283, 288 (1938). Therefore, “[i]t must appear to a legal certainty that the claim is really for less than the jurisdictional amount to justify dismissal.” Id. at 289. “The threshold to withstand a motion to dismiss under Fed. R. Civ. P. 12(b)(1) is thus lower than that required to withstand a Rule 12(b)(6) motion.” Lunderstadt v. Colafella, 885 F.2d 66, 70 (3d Cir. 1989).

The parties agree that: 1) treble damages are available under the UTPCPL; and 2) any attorney's fees and punitive damages must be distributed on a pro rata basis to all class members. See Dorian, 2000 WL 1570627, at *1-*2. Starting from these shared assumptions, defendant uses the following hypothetical to argue that plaintiff cannot meet the jurisdictional amount. Defendant assumes for the purposes of the hypothetical that the fuel level detection system defect would result in a \$10,000 reduction in the value of the cars at issue, a reduction of approximately one-fifth of the purchase price. In that case, treble damages under the UTPCPL would lead to an award of \$30,000, and plaintiff would have to win more than \$45,000 in punitive damages and attorney's fees (after such fees were pro rated) in order to meet the jurisdictional amount. Defendant further argues that \$10,000 is an overstatement of the reduction in value that could possibly result from defect in question, particularly given that a voluntary recall is already in place.

Plaintiff responds that the purchase value of the A6, approximately \$50,000, is the appropriate number to be used as a baseline for damages. If plaintiff is correct, then the treble damages available under the UTPCPL could lead to an award of approximately \$150,000 per plaintiff before punitive damages and attorney's fees. There is a significant body of case law from this District that supports plaintiff's contention. See Werwinski v. Ford Motor Co., No. 00-943, 2000 WL 375260, at *3 (E.D. Pa. Apr. 11, 2000) ("Courts in Pennsylvania have found that the amount in controversy in a suit under the UTPCPL is the purchase price of the car."); Palan v. Ford Motor Co., No. 95-1445, 1995 WL 476240, at *2 (E.D. Pa. Aug. 8, 1995) (calculating the amount in controversy by using the purchase price of the vehicle in question as a baseline); Morganstein v. General Motors Corp., No. 94-3795, 1994 WL 558822, at *4 (E.D. Pa. Oct. 12,

1994) (same); Voorhees v. General Motors Corp., No. 90-295, 1990 WL 29650, at *1-*2 (E.D. Pa. Mar. 16, 1990) (same); Adams, 1990 WL 18850, at *1-*2 (same).

Defendant further argues that Judge Waldman's recent decision in Dorian should trump the Werwinski line of cases upon which plaintiff relies. Dorian was a putative class action that sought damages related to the costs of replacing an apparent defect in Bridgestone/Firestone tires. Like the plaintiff in this case, the defendants in Dorian (who had removed the case to federal court) argued that the baseline for calculating the amount in controversy in a UTPCPL case is the purchase price of the vehicle. Judge Waldman disagreed and distinguished the Werwinski line of cases:

Werwinski and the cases cited therein involved claims that the vehicles themselves were inherently defective. In the instant case, plaintiffs seek damages related to the cost of replacing defective tires. This is quite different from cases where defective engines or transmissions render the entire vehicle defective and unusable. A vehicle with defective windshield wipers is rendered too dangerous to operate on days with rain or snow. Yet, surely damages would be based on the cost of wipers and not the cost of the vehicle. Id. at *2.

On this basis, Judge Waldman concluded that the jurisdictional amount could not be met and remanded the case to state court. I agree with his approach. Where an alleged defect relates to a discreet, modular, or incidental part of the vehicle (such as the tires, windshield wipers or stereo), it is unreasonable to use the purchase price as a baseline for measuring the amount in controversy. In such cases, the better measure of damages is the replacement cost of the part in question. However, where an alleged defect relates to an integrated system that is necessary to the safe operation of the vehicle (such as the engine or transmission), it is reasonable to assume that the baseline for damages is the purchase price of the car.

I conclude that the present case is more like the latter than the former. Though defendant has

characterized the defect at issue in this case as “nothing more and nothing less than a malfunctioning fuel gauge” (Defendant’s Reply Brief at 1), it is more complicated than that. The NHTSA’s description of the basis for the recall (supra note 1) shows that the A6’s fuel level detection system is a complex system that involves components inside the fuel tank as well as a fuel gauge and computer elsewhere. Moreover, plaintiff alleges that at least in some cases defendant has been unable to fix the problem even after the vehicles in question have been serviced multiple times.³ I cannot say on this record that it is a legal certainty that putative class members would not, if successful, be entitled to an award of damages equal to treble the purchase price of the vehicles in question plus punitive damages and attorney’s fees. Therefore, the amount in controversy exceeds \$75,000 and subject matter jurisdiction is established.

An appropriate Order follows.

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³ I note that this analysis relies on three items from outside of the pleadings: 1) the NHTSA’s website’s description of the recall (of which I take judicial notice); 2) Mr. Shulick’s affidavit; and 3) the representation in plaintiff’s Reply Brief that claims like Mr. Shulick’s will be part of the case. It is proper to consider such materials on a Rule 12(b)(1) motion. See Armstrong World Indus., Inc. v. Adams, 961 F.2d 405, 410 n.10 (3d Cir. 1992) (“In determining whether subject matter jurisdiction exists, the district court is not limited to the face of the pleadings . . . the district court may inquire, by affidavits or otherwise, into the facts as they exist.”); 5A Charles A. Wright and Arthur R. Miller, Federal Practice and Procedure § 1350 (1990) (“When the movant’s purpose is to challenge the substance of the jurisdictional allegations, he may use affidavits and other matter to support the motion. Conversely, the pleader may establish the actual existence of subject matter jurisdiction through extra-pleading material, and, if persuasive, this will avoid a dismissal even if the complaint is defective.”).

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ORDER

AND NOW, this day of December, 2000, after consideration of defendant's motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(1), and plaintiff's response thereto, and for the reasons contained in the accompanying Memorandum, it is hereby ORDERED that the motion is DENIED.

THOMAS N. O'NEILL, JR., J.