

Class Action Litigation Report®

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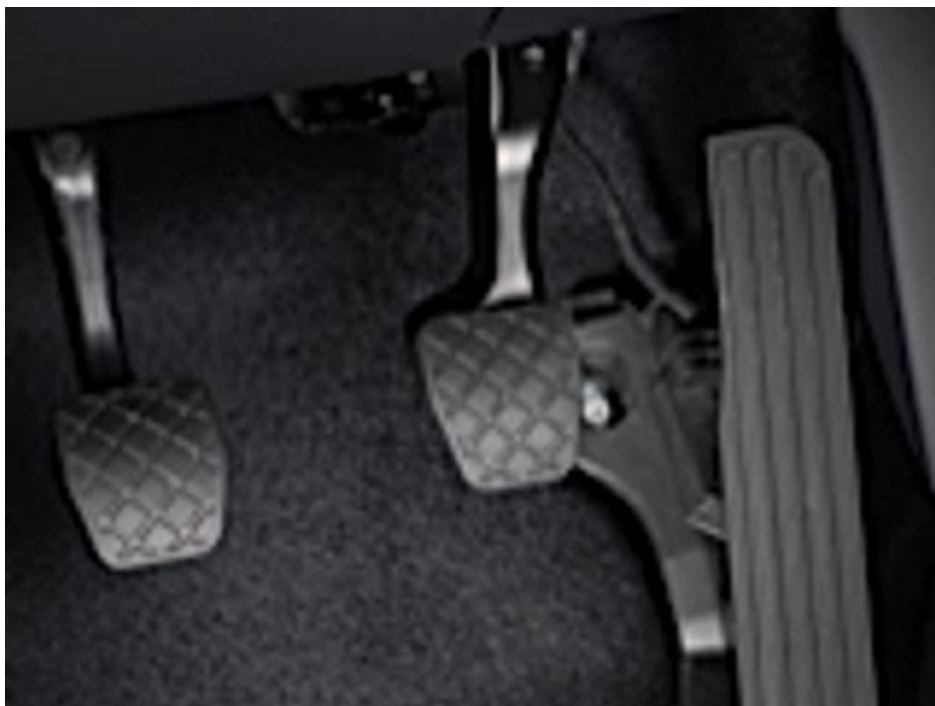
Motor Vehicles

Ford Owners Win Another Shot at Class Status In Suit Alleging Sudden Acceleration

BNA Snapshot

Edwards v. Ford Motor Co., 9th Cir., No. 13-55331, unpublished2/27/15

Holding: A district court erred when it said individualized issues predominate over common ones in a defect-based consumer fraud class action against Ford for throttle issues.



By Martina Barash

March 2 — Class certification shouldn't have been denied to some Ford Freestyle owners who allege they were sold cars with a known defect in the electronic throttle control systems that can cause them to unexpectedly accelerate or stall, the Ninth Circuit ruled Feb. 27 in an unpublished opinion (*Edwards v. Ford Motor Co.*, 9th Cir., No. 13-55331, unpublished2/27/15).

Individualized issues, including the variety of factors affecting engine surges, shouldn't have defeated class status under Fed. R. Civ. P. 23, the appeals court said.

The district court's holdings that questions common to the class existed but didn't predominate over individual questions were irreconcilable in this case, the U.S.

Court of Appeals for the Ninth Circuit said, reversing the lower court.

In this opinion, "the Ninth Circuit recognizes that defective-product cases are well suited for class actions," David K. Stein, an attorney for the plaintiffs, told Bloomberg BNA March 2.

Stein said he thinks the court made that clearer here than in previous opinions, though he noted the "unpublished" designation indicates the opinion doesn't break significant new ground.

"But clarification is always helpful," he said.

The U.S. Chamber of Commerce, which submitted an amicus brief, declined to comment March 2.

An attorney for Ford couldn't be reached for comment.

Common, Individual in Defect Cases

The Ninth Circuit said the U.S. District Court for the Southern District of California got the commonality question right but erred on predominance under Rule 23(b)(3) (13 CLASS 632, 6/22/12).

“The district court correctly concluded that whether a defect existed and whether Ford had a duty to disclose the defect were both questions common to the class under Rule 23(a)(2),” the appeals court said in a memorandum opinion.

But the district court concluded “that individualized proof was required on the question of the existence of a defect” and on a reliance issue under the California Consumers Legal Remedies Act, the court said.

Proof that a defect exists isn't necessary to satisfy the predominance requirement, the appeals court said.

“Individual factors, such as driving conditions, may affect surging, but they do not affect whether the Freestyle was sold with an ETC system defect,” the court said. Indeed, “Ford acknowledged that a single class defect exists” when it started a “repair and reimbursement program,” the court said.

Klein said news developments connecting electronic throttle control problems with sudden unintended acceleration didn't necessarily account for the different results at the district court level and the Ninth Circuit.

“The news about Toyota unintended acceleration had broken before the district court opinion,” he said, referring to the high-profile recall of 10 million Toyotas because sudden acceleration problems (42 PSLR 278, 3/24/14)

Failure to Disclose

As for the reliance question under the CLRA, the Ninth Circuit said it revolves around whether “the defendant has failed to disclose information that would have been material to a reasonable person who purchased the defendant's product,” the court said.

Materiality “is governed by an objective ‘reasonable person’ standard under California law, an inquiry that is the same for every class member,” giving rise to a rebuttable inference of reliance, the court said.

Judges Susan P. Graber and Kim M. Wardlaw, along with Judge James C. Mahan of the U.S. District Court for the District of Nevada, served on the panel.

Girard Gibbs LLP and Ram, Olson, Cereghino & Kopczynski LLP represented the plaintiffs.

Dykema Gossett PLLC, Shook, Hardy & Bacon LLP and Snell & Wilmer LLP represented Ford.

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For More Information

The opinion is available at http://www.bloomberglaw.com/public/document/GENE_EDWARDS_on_behalf_of_herself_and_all_others_similarly_situat.