

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

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| SHAMELL SAMUEL-BASSETT ON BEHALF OF | : | IN THE SUPERIOR COURT OF |
| HERSELF AND ALL OTHERS SIMILARLY | : | PENNSYLVANIA |
| SITUATED | : | |
| | : | |
| | : | |
| v. | : | |
| | : | |
| KIA MOTORS AMERICA, INC., | : | |
| Appellant | : | No. 3048 EDA 2005 |

Appeal from the Judgment entered
October 25, 2005 in the Court of Common Pleas of
Philadelphia County, Civil, No. 2199 January Term, 2001

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| SHAMELL SAMUEL-BASSETT ON BEHALF OF | : | IN THE SUPERIOR COURT OF |
| HERSELF AND ALL OTHERS SIMILARLY | : | PENNSYLVANIA |
| SITUATED, | : | |
| Appellant | : | |
| | : | |
| v. | : | |
| | : | |
| KIA MOTORS AMERICA, INC. | : | No. 3068 EDA 2005 |

Appeal from the Judgment entered
October 25, 2005 in the Court of Common Pleas of
Philadelphia County, Civil, No. 2199 January Term, 2001

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| SHAMELL SAMUEL-BASSETT ON BEHALF OF | : | IN THE SUPERIOR COURT OF |
| HERSELF AND ALL OTHERS SIMILARLY | : | PENNSYLVANIA |
| SITUATED | : | |
| | : | |
| | : | |
| v. | : | |
| | : | |
| KIA MOTORS AMERICA, INC., | : | |
| Appellant | : | No. 537 EDA 2006 |

Appeal from the Order entered
January 23, 2006 in the Court of Common Pleas of
Philadelphia County, Civil, No. 2199 January Term, 2001

BEFORE: KLEIN, BENDER and GANTMAN, JJ.

MEMORANDUM:

FILED OCTOBER 24, 2007

Kia Motors America, Inc. appeals from a class action verdict awarding \$600.00 to each of 9,402 class members, for a total of \$5,641,200.00, based on a finding that Kia Sephias on the market between model years 1995 and 2001 had brakes that needed replacement approximately every 5,000 miles, when the standard in America is much higher than that and the express warranty was for 36 months or 36,000 miles. Plaintiff, in a cross-appeal, appeals from the order denying class certification under the Unfair Trade Practices and Consumer Protection Law ("UTPCPL"), 73 P.S. §§ 201-1 *et seq.* The trial judge also awarded plaintiff counsel fees in the amount of \$4,125,000.00 and expenses of \$267,513.00, which Kia appeals. All three appeals have been consolidated herein.

With regard to the appeal of the class action verdict and related cross-appeal, we affirm on the thorough and cogent Pa.R.A.P. 1925(a) opinion of the distinguished trial judge, the Honorable Mark I. Bernstein. With regard to the appeal of the counsel fee award, we remand for the filing of a supplemental Rule 1925(a) opinion and further briefing by the parties.

Kia's Appeal of Class Action Verdict

Kia classifies its questions involved into four separate categories. We will address each briefly.

First, Kia claims that that it was improper to certify a class because it was not certain that each member relied on the warranty or that Kia refused to make repairs. The evidence demonstrated that: (1) there was a common

defective design of the brake systems in all 1995-2001 Kia Sephias; (2) the repair cost for each vehicle was only \$600; (3) expert testimony would be needed in each individual case; and (4) there were 9,402 consumers who bought the Sephias with bad brakes. We agree with the following observation by Judge Bernstein:

It strains credibility that a party could sincerely suggest that more than 9,402 product defect design warranty cases claiming damages in the amount of only \$600.00 each could be individually tried. If not tried as class litigation, individual claims would place an absurd burden on [both the] Courts, and on each of the 9,402 plaintiffs.

. . .

. . . Clearly requiring each of the 9,402 class members to individually litigate damages in the amount of \$600.00 amounts to sealing shut our Courtroom doors in violation of the Pennsylvania Constitution.

(Trial Court Opinion, 12/28/06, at 34-35 (footnote omitted).)

Second, Kia claims that the trial court erred in assessing Kia \$600.00 for each class member, since there might be no individual entitlement by various class members. Based on the evidence, it is clear that the brakes on all 1995-2001 Kia Sephias were defective. Regardless of whether an individual class member had his or her brakes repaired under warranty by Kia, all class members were entitled to have good brakes on their cars that did not require repeated trips to the dealership for replacement in order to avoid brake failure. Plaintiff's engineering expert testified that the out-of-pocket expenses for additional repair costs beyond the costs associated with a non-defective brake

system was \$1,005.00 per consumer. Plaintiff's total cost for brake repairs during the warranty period was \$596.16. We conclude that the jury's assessment of class damages at \$600.00 was reasonable and supported by the evidence. Thus, the trial court did not err in multiplying the 9,402 class members (which was stipulated) by \$600.00 to reach a total verdict of \$5,641,200.00.

Moreover, the jury found a breach of the *express* warranty in that the brakes did not last 36,000 miles. The jury did not reach the issue of *implied* warranty. While Kia claims that the brake *linings* were exempt from the warranty, the linings themselves were fine; it was the *design* that was flawed, which caused the linings to fail.

Third, Kia claims that it is entitled to a new trial because the trial court erred in admitting evidence of complaints made to the National Highway Transportation and Safety Administration (NHTSA) and excluding evidence that the NHTSA did not institute an investigation. This claim was not addressed in Judge Bernstein's opinion, nor was it raised in Kia's Pa.R.A.P. 1925(b) statement. Therefore, it is waived. ***See Commonwealth v. Castillo***, 888 A.2d 775 (Pa. 2005); ***Commonwealth v. Lord***, 719 A.2d 306 (Pa. 1998).

Fourth, Kia claims that that trial court erred in "multiple respects" in its jury charge and in submitting the special interrogatories and verdict slip to the jury. With respect to the alleged errors in the jury charge, either Kia *won* on the issue or failed to object to the charge. After a lengthy conference, Kia

basically approved the charge, and any variations were within the trial judge's discretion and do not warrant a new trial. There is no requirement that the trial judge use the language suggested by either party.

Plaintiff's Cross-Appeal

Plaintiff asserts that proof of individual reliance was not required for class certification under the UTPCPL. However, this same argument was considered and rejected in *Debbs v. Chrysler Corp.*, 810 A.2d 137 (Pa. Super. 2002). In *Debbs*, this Court held that because reliance must be proven on an individualized basis, the critical inquiry under the UTPCPL was not amenable to class treatment. *Id.* at 156. Therefore, plaintiff's claim lacks merit.

Accordingly, as to the appeal and cross-appeal of the class action verdict, we affirm on the basis of Judge Bernstein's Rule 1925(a) opinion. We incorporate that opinion herein and instruct counsel to attach a copy in the event of further proceedings in this matter.

Kia's Appeal of Counsel Fee Award

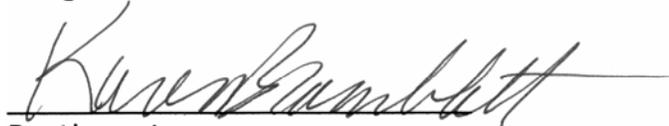
Kia also appeals from the January 23, 2006 order awarding plaintiff counsel fees in the amount of \$4,125,000.00 and costs and expenses of \$267,513.00. Kia asserts, *inter alia*, that the fees awarded were not based on actual time expended, nor were they proven to be necessary and reasonable. Plaintiff, on the other hand, asserts that the trial court properly exercised its discretion in awarding counsel fees and expenses. The issues Kia raises with respect to this matter are complex and fact-specific. Although the trial court

held a lengthy hearing on the counsel fee petition, it did not prepare a Rule 1925(a) opinion explaining the basis for its multi-million-dollar fee award. We agree with Kia that our review of such an award is hampered without the benefit of a trial court opinion.¹

Accordingly, we remand this case to the trial court for the filing of a supplemental Rule 1925(a) opinion on the counsel fee matter within 60 days of this decision. The parties then shall have 30 days after the filing of that opinion to file supplemental briefs with this Court, if they so desire.

Judgment of October 25, 2005 affirmed. All outstanding motions are denied. Counsel fee matter remanded for further proceedings consistent with this memorandum. Panel jurisdiction retained.

Judgment Entered.


Prothonotary

Date: _____

¹ On February 23, 2007, this Court denied Kia's request to suspend the briefing schedule pending the filing of a Rule 1925(a) opinion on counsel fees. In that order, we also stated that we would accept a supplemental Rule 1925(a) opinion on counsel fees should Judge Bernstein deem one necessary. To date, Judge Bernstein has not filed a supplemental opinion. However, after reviewing the parties' briefs and hearing argument on the counsel fee matter, we decline to consider this particular appeal without the benefit of a trial court opinion.