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## Consumers Send Thank-You Notes for Class Action Recovery

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2013-07-17 12:00:00 AM

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Beginning in February, Pennsylvania buyers of the Kia Sephia car began receiving checks from a class action that went to trial in 2005. The case claimed the Sephia (no longer sold by Kia) contained a defective front-braking system that required frequent and repeated repairs or replacements. The trial took about two weeks and featured an automotive engineering expert who explained that the front brake rotors were too small for the car, which meant the brakes would wear out too quickly, often within just 5,000 miles. The jury agreed and awarded \$600 to each of the 9,400 Pennsylvania purchasers of the car.

Kia and its attorneys proceeded to file multiple appeals. The appeals did not argue that the Sephia was free from defects, as the car's warranty had promised. Instead, they said the case should not have been handled as a class action even though each car had the same brake-system design. Kia contended that even if the car was defectively designed, not every purchaser complained about the defect, so not everyone "experienced" the defect. They also argued that some people may have paid more than \$600 to fix the brakes, while others may have driven longer with bad brakes and paid less. Both the Pennsylvania Superior Court and the Pennsylvania Supreme Court rejected Kia's arguments.

But the appeals took six years and only ended after the U.S. Supreme Court refused to itself consider Kia's claims. Luckily, the erstwhile Sephia purchasers were earning interest on their jury verdict during the process.

Checks for \$1,014 (\$600 plus interest) started going out to each of the Sephia buyers this year. Shortly afterward, notes thanking the class lawyers trickled in. One, from a grateful client in Imperial, Pa., read, "Finally, a thank-you note that says how I really feel — grateful, happy, excited, elated."

Another from a client in Philadelphia said, "Thank you so much. ... I am disabled and this money will help me pay my bills." A note on a cute kitten and puppy card said, "Thank you for representing me."

Yet another puppy card from a Bensalem, Pa., class member said: "I sincerely appreciate your joint efforts. ... Believe it or not, it has come at a perfect time. This will be my co-pay for a cataract surgery. At the age of 70, it helps a lot."

Dozens of other class members simply called the class lawyers with thank yous, blessings and, in some cases, disbelief.

To ensure all class members would be paid, the court authorized skip traces to locate those who had moved since they bought the Sephia. Even still, it seems likely that some purchasers may not be located. After exhausting the skip traces, the court has directed that the leftover funds be divided evenly between the Pennsylvania Interest on Lawyers Trust Account Board, which provides funding for charitable legal services, and Community Legal Services, which provides civil legal services and educational programs to Pennsylvania residents.

The widespread and uniform satisfaction with this particular consumer class action may soon be an anachronism. Several recent decisions by the U.S. Supreme Court are certain to make it far more difficult, if not impossible, for ordinary consumers to bring class claims against companies that fix prices, sell defectively-designed products, short-change workers in their paychecks, or impose undisclosed add-on fees after the fact.

The decisions are likely to force consumers and small businesses into expensive or biased arbitration proceedings or to forgo any claims at all. Meanwhile, product quality and customer service will undoubtedly deteriorate. As Congress observed in 1974 when it authorized class actions for consumer warranty claims, "It is difficult for a company to conform voluntarily to high standards and practices if it has competitors who continue to reap greater profits by pursuing less honorable tactics."

The thank-you notes in the Pennsylvania Kia Sephia class action show that consumer class actions can and do work for ordinary people. When handled and reviewed by conscientious lawyers and courts, they benefit consumers and competitors alike by having the market police the market instead of depending upon federal regulators or, worse, self-help.

**Michael D. Donovan** is the managing principal of Donovan Axler, one of the law firms that represented the class of consumers in the Kia class action.