

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION : UNION COUNTY  
DOCKET NO. UNN-L-800-01  
A.D. Docket No.

REGINA LITTLE, :  
Plaintiff, :  
v. : Transcript of  
 : Opinion  
KIA MOTORS AMERICA, INC., :  
Defendant. :

PLACE: Union County Courthouse  
2 Broad Street  
Elizabeth, New Jersey, 07207

DATE: Wednesday, August 20, 2003

BEFORE:

HONORABLE EDWARD W. BEGLIN, JR., A.J.S.C.

APPEARANCES:

DONNA SIEGEL MOFFA, ESQ. (Trujillo, Rodriguez &  
Richards)  
-and-  
MICHAEL D. DONOVAN, ESQ. (Donovan Searles, LLC)  
Attorneys for Plaintiff

JOSEPH KERNAN, ESQ.  
-and-  
NEAL WALTERS, ESQ. (Piper Rudnik)  
Attorneys for Defendant

FREDERICK D. WOLFF, III, C.S.R.  
Official Court Reporter  
Union County Courthouse  
2 Broad Street  
Elizabeth, N.J., 07207

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1 (Oral argument takes place - not included in  
2 this transcript.)

3 THE COURT: Thank you both. I appreciate the  
4 extensive briefing and your argument. I think it has  
5 been very thorough, complete and helpful to the court.

6 I will start out by incorporating my October,  
7 2002, decision into the record here simply so I do not  
8 have to repeat the general description of the case. I  
9 think once is enough for that.

10 Today the court has before it the plaintiff's  
11 motion, under Rule 4:32, seeking certification of the  
12 projected class in this particular case. The Rule is  
13 straight forward. It requires application of any  
14 number of relevant factors and I believe the best  
15 approach on a motion of this nature is simply to follow  
16 the format of the cited rule. I start, therefore, with  
17 Rule 4:32-1(a); 1(a) has four sub-parts to it:  
18 Numerosity, commonality, typicality and adequacy. Let  
19 me take them in that order.

20 First, is the class presented here  
21 sufficiently large so that joinder of individual  
22 parties would not be a satisfactory alternative? The  
23 evidence on the motion tells the court that there are  
24 some 8,455 potential class members, persons who during  
25 the governing six year period in New Jersey have, by

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1 purchase or lease, potentially presented the problem  
2 that is urged here as to the brakes of this particular  
3 model Kia, the Sephia model car. That is a  
4 sufficiently large number to establish the requisite  
5 class classification under (a)(1).

6 Are there common questions either of law or  
7 fact to establish the second factor? There are. The  
8 common questions of law prevail for each member of this  
9 class.

10 First, violation of the Consumer Fraud Act.  
11 Alas, if the braking system as alleged is defective,  
12 does that constitute a breach of an implied warranty of  
13 merchantability and/or a breach of express warranty and  
14 further is there presented a violation of the  
15 Magnuson-Moss Warranty Act? All these common issues  
16 prevail throughout the class membership. In addition,  
17 fact issues to some degree are common as well.

18 The defendants have gone to considerable  
19 length to point out the individuality of fact issues  
20 that would vary from one particular member to another,  
21 and indeed to some extent we must recognize that is so,  
22 but that I believe overlooks the more basic fact  
23 question, that is, was the braking system through the  
24 pads and the rotors defective in this particular model  
25 automobile, and despite the efforts of Kia over the

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1 relevant period to address such a defect through  
2 modification of these parts, nevertheless, producing a  
3 defective product that through lease or purchase came  
4 into the hands of the class members. That is common.  
5 That is the defect urged by the plaintiffs and that  
6 commonality, combined with the legal issues that are  
7 the same for each and every member, more than  
8 sufficiently meet the requirement of (a)(2).

9 There are other aspects to that issue which I  
10 will address subsequently.

11 The third requirement, the typicality  
12 requirement, is are the claims being presented by the  
13 represented parties typical of the class? Do they  
14 carry the same essential characteristics so that  
15 they'll prevail throughout? They do. There is no real  
16 question here that the typicality questions do prevail  
17 and they're clearly presented.

18 The fourth is the ability of the represented  
19 parties to fairly and adequately protect the interests  
20 of all the members of the class. This likewise is well  
21 established. Included within that is the qualification  
22 of plaintiff's counsel to represent the class, which  
23 also is well established.

24 The exclusion of any lemon law claim in the  
25 amended complaint removes any concern under this factor

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1 that there would be a conflict and then you would not  
2 have the commonality through representation that the  
3 rule requires.

4 I'm satisfied, therefore, that all  
5 prerequisites that generally prevail for class action  
6 under Rule 4:30-1(a) are clearly presented here and,  
7 indeed, as I read the defendant's response to the  
8 motion, I do not find that any of those general  
9 prerequisites were seriously brought into question.

10 Rather, the more significant aspect of the  
11 motion addresses 1(b). Here, the basis for class  
12 certification rests upon 1(b)(3). The court then must  
13 find there are questions of law or fact common to the  
14 members of the class such that they predominate over  
15 any questions affecting only individual members, and  
16 secondly that class action is superior to other  
17 available methods for fair and efficient adjudication  
18 of the controversy.

19 Predominance and superiority. Case law  
20 teaches that when you look at these factors you must  
21 look at the full picture and be satisfied that in so  
22 doing there is a common nucleus of operative facts that  
23 doesn't shift, that remains dominant and common and  
24 prevalent throughout the examination of the concerns  
25 presented by an individual class member. The operative

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1 facts here start with and in large measure must remain  
2 focused upon the allegation that throughout the period  
3 in question the braking system of this particular model  
4 of that automobile carried a defect. More particularly  
5 and specifically, that defect is said to exist as to  
6 the brake pads and the rotors and the size of same so  
7 that the heat that any braking system generates,  
8 because braking is a product of friction, the heat that  
9 system produces is not dissipated in a manner that  
10 allows the vehicle to continue to be operated safely.

11 Now, by the very nature of that defect two  
12 things occur. There is a basis to urge that each and  
13 every vehicle sold or leased in New Jersey, if found to  
14 carry such a defect, has diminished in value. The  
15 diminution in value flows automatically from the fact  
16 that it carries such a defect. And the second is how  
17 then has that been manifested?

18 Manifestation does take you into a more  
19 particularized inquiry because by the very nature of  
20 this problem, other factors will always come into play:  
21 The usage made of the vehicle, the conditions under  
22 which it was operated, the particular habits and  
23 propensities of the operator, et cetera, et cetera.  
24 But if you focus on all of those concerns, you can't  
25 lose sight of the fact that they don't rise or fall on

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1 their own, but rather they relate to and flow from the  
2 basic allegation of defect and it is that defect, if  
3 proven, which in my judgment supports and justifies  
4 class treatment because it prevails throughout.

5 To try to separate that defect from  
6 particular or individual problems loses sight of the  
7 focus of the case and in effect turns it on its head  
8 and into something else.

9 The argument that since the Supreme Court of  
10 New Jersey decided the Cadillac case so much has

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11 transpired generally in the field of consumer  
12 protection seeks to shift the focus away from that  
13 basic defect which is urged to prevail here.

14 The lemon law procedures that are now  
15 available through the Department of Consumer Affairs  
16 are not there to replace the legal remedies available  
17 to a plaintiff class when that class is able to  
18 demonstrate commonality of a defect, such as is urged  
19 here. The fire in the ignition switch is not the same  
20 as the defect of a brake pad and a rotor in each  
21 automobile coming off the assembly line at Kia.

22 I'm satisfied that under (b)(3) there is a  
23 dominance of common issues flowing from the defect  
24 urged that clearly predominates throughout the class  
25 action of this nature. The warranty concerns as to

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1 notice start not with a phone call from an individual  
2 customer but rather with the evidence of a general  
3 notice in the materials on this motion possessed by Kia  
4 that it was producing a product that carried a defect  
5 known to it. Its own technical service bulletins  
6 underline its awareness. The fact that it pointed out  
7 to dealers these are interchangeable parts and be sure  
8 that you put in the latest part if you are addressing  
9 the braking system here and don't combine is further  
10 evidence that Kia, for warranty breach purposes, was on  
11 notice of the defect that its product was presented.

12 The actions of the customer, although, yes,  
13 relevant in the calculation of damages in some  
14 instances don't rise to the same level as do the  
15 predominance across the entire spectrum of the class of  
16 the evidence of generalized notice of the defect.

17 The coupon program is yet further support for  
18 that conclusion. Without getting into its details nor  
19 how it was structured by the company, it simply, for my  
20 purposes at this point, evidences yet more awareness of  
21 an underlying defect.

22 Throughout a (b)(3) analysis, the focus here  
23 which makes this case, in my judgment, rather unique is  
24 that only one model is under consideration, and it is  
25 only the braking system in that model that is said to

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1 be defective, that the parts from year to year were  
2 presented as being interchangeable, that there are only  
3 8,455 potential class members, all of whom are in this  
4 state, further demonstrate that the argument as to  
5 individualization does not rise to override the  
6 dominant features that I have mentioned.

7 Commonality clearly prevails. Commonality is  
8 dominant throughout. And finally, a feature which the  
9 courts of this state have always alluded to -- I  
10 shouldn't say have alluded -- have specifically  
11 addressed: What are the consequences of certification?

12 Well, you look at it two ways. First, you  
13 look at the members affected, those urged to be the  
14 qualified class. The evidence here is that for the  
15 repair of a brake system of this nature, you're  
16 speaking in terms of a few hundred dollars. Nothing  
17 even coming close to \$1,000. How many of the 8,455  
18 members would seek, individually, to claim recompense  
19 of that small a sum? To ask the question, I think  
20 answers it in terms of qualification.

21 The qualification criteria for lemon law  
22 treatment? Some, yes, would qualify, some would not.  
23 But that does not affect what we're dealing with today.

24 The final prong of that test is the  
25 manageability of such a proceeding, not just the burden

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1 to a court system because the court system is here to  
2 provide proper relief to a constituency whether or not  
3 it suffers some burden in so doing, but rather do the  
4 managerial features become so burdensome that they  
5 override these other factors?

6 This is not a terribly large class. The  
7 issues are discrete and well defined and I think,  
8 therefore, for my purposes are manageable. I don't  
9 find that there are factors in management and judicial  
10 efficiency strong enough to overcome these other  
11 superior factors.

12 My analysis, therefore, and quite comfortably  
13 so, is that all the requirements of Rule 4:32-1(a) and  
14 (b) have clearly been established. The motion is found  
15 to be in order and it is now appropriate for class  
16 certification to be granted, so the matter may proceed  
17 on that basis.

18 I will enter the order that was submitted by  
19 the plaintiffs attached to the motion.

20 Again thank you.

21 MR. DONOVAN: Very good, your Honor. Thank  
22 you.

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CERTIFICATION

I, Frederick D. Wolff, III, C.S.R., License  
No. XI00369, an Official Court Reporter in and for the  
State of New Jersey, do hereby certify the foregoing to  
be prepared in full compliance with the current  
Transcript Format for Judicial Proceedings and is a  
true and accurate non-compressed transcript, to the  
best of my ability.

\_\_\_\_\_ Sept. 3, 2003

FREDERICK D. WOLFF, III, C.S.R. Date  
Official Court Reporter  
Union County Courthouse  
Elizabeth, New Jersey