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IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

WILLIAM J. HUSTON AND
CONNIE A. HUSTON,

Plaintiffs,

v.

Civil Action No. 08-C-2033
Judge Tod J. Kaufman

CATIE S. GATSON, CLERK
KANAWHA COUNTY
CIRCUIT COURT

2010 MAY 25 PM 3:38

FILED

MERCEDES-BENZ USA, LLC, a
Foreign corporation, and
SMITH MOTORS CARS, a West
Virginia corporation,

Defendants.

**ORDER GRANTING DEFENDANTS' MOTION FOR PARTIAL SUMMARY
JUDGMENT AND CERTIFYING QUESTIONS TO THE WEST VIRGINIA SUPREME
COURT**

The Court, after having reviewed the Defendants' Motion for Partial Summary Judgment after examining the records makes the following Finds of Facts and conclusions of Law:

1. Plaintiffs' in bringing this action against Defendants have maintained since the initial filing, that they are the beneficiaries of that certain class action settlement styled O'Keefe v. Mercedes-Benz USA, LLC, Civil Action No. 01-CV-2902, United States District Court for the Eastern District of Pennsylvania;

2. Based upon their participation in the class action and their agreement to obtain the benefits under the O'Keefe settlement, the relief to which the Plaintiffs may be entitled is limited to that as set forth in that same settlement and more particularly set forth as follows:

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- 11.1 Warranty Coverage. MBUSA will cover engine damage caused by the use of APISH or SJ conventional motor oil in its model year 1998, 1999, 2000 and 2001 (first sold or leased on or before March 31, 2001) Mercedes-Benz vehicles equipped with the FSS system sold or leased in the United States, Puerto Rico and any U.S. territory, as follows:
- 11.1.1 Warranty coverage shall be under the terms of the original warranty and/or any existing extending warranty purchased by the Settlement Class member from MBUSA;
- 11.1.2 Such warranty coverage shall apply up to 150,000 miles or ten years from the date of original purchase or lease of the Vehicle, whichever occurs first;
- 11.1.3 Such warranty coverage shall survive the sale or other transfer of the Vehicle to a new owner or lessee;
- 11.1.4 MBUSA will encourage its dealers to provide loaner vehicles or whatever customer care benefits are ordinarily extended to customers of those dealerships whose vehicles are being repaired under warranty;
- 11.1.5 If requested by any Settlement Class member, MBUSA will review any previous engine repair performed by a Mercedes-Benz dealer involving certain specific types of engine problems or damage that could have been caused by the use of API or SJ conventional motor oil (in particular, oil sludging or piston ring repairs) paid for by the Settlement Class member (and not otherwise covered by a warranty or goodwill adjustment by MBUSA or its dealer) and, if determined by MBUSA to have been caused by the use of API SH or SJ conventional motor oil prior to December 2001, MBUSA shall cover the repair by reimbursing the Settlement Class member for such repair;
- 11.1.6 If there is a legitimate dispute as to whether engine damage was caused by the use of API SH or SJ conventional motor oil, MBUSA will err on the side of the Settlement Class member in determining whether to provide such coverage; Provided however, that MBUSA shall not be obligated or required to provide such warranty coverage:
- 11.1.7 Provided, however, where there is evidence of Vehicle abuse or neglect in failing to properly maintain the Vehicle according to MBSUA recommendations, including the recommended service schedule; and 2) to Vehicles with product alterations that would void the warranty in accordance with its terms
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- 12 Maintenance Service Certificate. MBUSA will distribute to each Settlement Class member who owns or leases a 1998 or 1999 vehicle a letter with attached Maintenance Service Certificate, in substantially the form attached hereto as Exhibit A, in the amount of...

3. Plaintiffs' seek to bring a state court suit, alleging that their use of conventional motor oils has caused engine damage and that this state court suit falls outside of the

preclusions set forth in the terms of the O'Keefe settlement;

4. As Plaintiffs brought this action more than 10 (ten) years after the date of the initial purchase of the vehicle and well after the expiration of the Manufacturer's express warranty term, any and all such other relief as may be afforded under the West Virginia "Lemon Law" and/or federal Magnuson-Moss Act or any other common law claims are barred by the applicable statute of limitations. The O'Keefe settlement agreement provides no basis for filing and instituting such claims.

Conclusions of Law

1. The West Virginia Rules of Civil Procedure state that summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law." W. Va. R. Civ. P. 56(c). "The circuit court's function at the summary judgment stage is not 'to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.'" *Painter v. Peavy*, 451 S.E.2d 755, 758 (1994) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986)).

2. "The essence of the inquiry the court must make is 'whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.'" *Williams v. Precision Coil, Inc.*, 459 S.E.2d 329, 338 (1995) (quoting *Anderson*, 477 U.S. at 249).

3. The Court finds that there is no genuine issue of material fact. Therefore, the Court GRANTS the Defendants' Motion for Partial Summary Judgment.

Certified Questions

Pursuant to W.Va. Code §58-5-2, counsel for both the Plaintiffs William J. Huston and Connie A. Huston and the Defendants Mercedes-Benz USA, LLC, and Smith Motor Cars have moved this Court to present certified questions to the West Virginia Supreme Court. The Defendants have presented to this Court certain questions of law, which are issues of first impression in West Virginia, and which substantially control the outcome of the case. Therefore, this Court finds that these issues are appropriate for certification to the West Virginia Supreme Court.

1. Does the Circuit Court of Kanawha County, West Virginia, have jurisdiction over a lawsuit wherein the Plaintiffs purport to be seeking to enforce the terms of a federal class action settlement, where the federal District Court that had jurisdiction of that class action expressly retained jurisdiction over the parties thereto? **Yes.**
2. Are member of a federal court class who released all asserted or potential claims in exchange for the relief granted to the class under the federal court settlement barred from nonetheless pursuing claims, including a statutory "lemon law" claim under West Virginia law under the guise of enforcing the settlement and which could result in affirmative relief well beyond what is available under the settlement terms? **Yes.**

The first question is raised in Defendants' motion to dismiss and the second question is raised in the Defendants' motion for partial summary judgment and present questions of law that the parties agree need to be answered by the West Virginia Supreme

Court because the outcome will impact not only Plaintiff and Defendant, but may impact other members of the O'Keefe class.

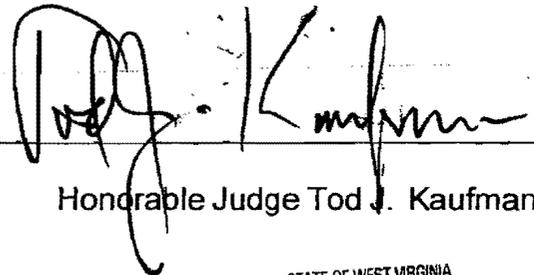
It is ORDERED that counsel for the Defendant is to file a Petition within sixty days of the date of entry of this order, in accordance with the WV Rules of Appellate Procedure, Rule 13.¹

The Clerk is ordered to mail a certified copy of this ORDER to all counsel of record.

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ENTERED this 25th day of May, 2010.



Honorable Judge Tod J. Kaufman

STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, SS
I, CATHY S. GATSON, CLERK OF CIRCUIT COURT OF SAID COUNTY
AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING
IS A TRUE COPY FROM THE RECORDS OF SAID COURT.
GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS 27th
DAY OF August 2010
Cathy S. Gatson, CLERK
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

5/27/10 Rule 13 directs the party presenting the certified question(s) to file the Petition.

certified/1st class mail
fax
hand delivery
interdepartmental
other (please indicate)
certificates accomplished:
AKA

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