

IN THE SUPREME COURT OF APPEALS OF
WEST VIRGINIA

PETITIONERS' REPLY TO RESPONDENTS' BRIEF
No. 35702

WILLIAM J. HUSTON AND CONNIE A. HUSTON,

Respondents/Plaintiffs

vs.

MERCEDES-BENZ USA, a Foreign Corporation, and SMITH MOTOR CARS, a West Virginia
Corporation

Petitioners/Defendants

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PETITIONERS' REPLY

Notwithstanding Respondents' attempt to misguide this Court by re-characterizing Petitioners' arguments, misconstruing the underlying facts and creating issues where none exist, it is clear that there are only two questions to be decided by this Honorable Court. The first is whether the Circuit Court erred in allowing Respondents to seek to enforce the terms of a federal class action settlement over which a federal district court retains exclusive jurisdiction. The second question is whether the Circuit Court was correct in ruling that the Global Class Action Settlement Agreement limits the Respondent to the relief contained therein. Petitioners submit that the answers to these questions are not only clear under the prevailing law of this state, but also necessarily intertwined, as was posited in Petitioners' Brief and will be discussed more fully below.

I. CLARIFICATION ON THE TIMELINE OF EVENTS

Petitioners will not waste the Court's time by restating the arguments that were exhaustively briefed in its previously submitted 'Petitioners' Brief.' Petitioners will, however, set straight the pertinent dates and corresponding facts that control the outcome in this matter. On *August 26, 1998*, Respondents purchased a new 1999 ML320 Mercedes sport-utility vehicle from Smith Motor Cars in Charleston, West Virginia. On or about *July 15, 2002*, the Respondents, as a member of the Settlement Class in the matter of O'Keefe v. Mercedes-Benz,¹ agreed to be bound by a class action settlement that both afforded them extended warranty coverage for the shorter of 150,000 miles or ten years from the date of original purchase for engine damage caused by the use of API SH or SJ conventional motor oil, and simultaneously eliminated Respondents' right to bring future claims for negligence,

¹ Civil Action No. 01-CV-2902, United States District Court for the Eastern District of Pennsylvania

strict liability, breach of express or implied warranty, and violation of state consumer protection or deceptive trade practices statutes. On *October 15, 2008*, more than ten years after the original purchase date of their vehicle, and in violation of the terms of the Settlement Agreement to which they were a party, the Respondents wrongfully (1) sought relief for alleged breach of warranty and state statutory claims by filing their Complaint in the instant matter, and (2) did so in the Circuit Court of Kanawha County, West Virginia, even though the District Court clearly retained exclusive jurisdiction over the matter.

Finally, and of utmost importance, is the fact that Respondents *first* presented their vehicle to the Petitioners alleging engine damage in *late 2007/early 2008*, nearly ten years after they purchased the vehicle and after the vehicle has accumulated more than 100,000 miles of use. Although Petitioners did not find any evidence of engine damage as a result of the use of API SH or SJ conventional motor oil, this last date is of utmost significance because it relates the entire matter back to the O'Keefe Global Class Action Settlement Agreement to which the Respondents were bound. While this concept seems lost on the Respondents, if not for the benefits provided under the Settlement Agreement, the Respondents' original warranty would have expired, at the latest, in August, 2003, and no legal basis would ever have existed for pursuing a warranty claim.

II. JURISDICTION

According to the briefs in this matter, it appears that jurisdiction is the most hotly debated issue before this Court. Fortunately, jurisdiction also happens to be one of the more clearly defined issues. Pursuant to the prevailing case law laid out by the United

States Supreme Court in Kokkonen² and the United States Court of Appeals for the Fourth Circuit's application of Kokkonen in Marino,³ ancillary jurisdiction is not only proper, but required where a federal court expressly retains jurisdiction over a class action settlement and future interpretation or enforcement thereof by making the parties' obligation to comply with the terms of the settlement agreement part of the District Court's Order and dismissal. Respondent scoffs at the term "ancillary jurisdiction," as if it makes the legal theory less applicable, all the while ignoring the clearly stated explanation laid out by the Fourth Circuit Court of Appeals in Marino. The Court explained that allowing a state court to rule on a dispute arising out of a prior settlement agreement, especially one that remains within the exclusive jurisdiction of a federal court, would open the door to the relitigation of dozens, if not hundreds, of similar suits being filed across the country. Not only would this completely invalidate the entire purpose of a class action settlement, it would offend the fundamental laws of jurisdiction, the controlling precedent set by the U.S. Supreme Court in Kokkonen and ultimately all notions of justice.

In their Response Brief, the Respondents repeatedly ask "where is the Global Class Action Settlement term that allegedly requires [them] to travel to Pennsylvania to make warranty claims?"⁴ To this Petitioners respond, with the backing of the law, that where the benefits of an agreement are conferred upon a party, so must the detriments of that agreement be assumed. In choosing to remain a part of the Settlement Class, the Respondents agreed to refrain from pursuing the additional causes of actions sought hereunder. Furthermore, in the limited instance in which a disagreement over the

² See Kokkonen v. Guardian Life Ins. Co. of Am., 511 U.S. 375, 381-82 (1994); see also Petitioners' Brief, pages 10-11.

³ Marino v. Pioneer Edsel Sales, Inc. et al, 349 F.3d 746, 752 (4th Cir. 2003); see also Petitioner's Brief at pages 11-12.

⁴ See Respondents' Brief, page 8, end of first full paragraph

enforcement of the Settlement Agreement occurred, and interpretation or enforcement of the terms of the settlement Agreement were sought, Respondents were entitled to do so only upon presentation by motion to the United States District Court for the Eastern District of Pennsylvania.

There should be no controversy or debate as to whether the jurisdictional designation in the Settlement Agreement hereunder is mandatory- it clearly is. This Court has noted that “[t]o be enforced as mandatory, a forum-selection clause must do more than simply mention or list a jurisdiction; in addition, it must specify venue in mandatory language, or contain other language demonstrating the parties’ intent to make jurisdiction exclusive.”⁵ The Global Class Action Agreement by which Respondents are bound clearly states that the District Court is to retain continuing jurisdiction over the action and the parties thereto. There is no language indicating that any party merely has *the option* of litigating in the Eastern District of Pennsylvania. Respondents are intelligent, sophisticated adults who, after receiving notice of the proposed settlement, had every opportunity to fully investigate its terms and opt out of the settlement. The law does not excuse them from a duty to become fully informed of all the details of an agreement to which they bound themselves. Furthermore, a complete reading of the Settlement Agreement, specifically paragraph 17.4, makes clear that the parties contemplated the existence of additional suits arising outside the class settlement and outside the federal jurisdiction, and that the existence of any such outside suits would have been grounds for Petitioners to set aside the entire class action settlement. The final paragraph of the Settlement Agreement, paragraph 29, which was later adopted and restated in the Court’s Order of Dismissal, makes very clear that continuing jurisdiction over *any matter* arising out of the settlement was to be held

⁵ Caperton, __ W.Va. at __, 690 S.E.2d at 338.

exclusively by the United States District Court for the Eastern District of Pennsylvania.

Next, the Respondents' Response Brief contains the claim that not only did the District Court fail to retain exclusive jurisdiction over this matter, but instead, "the federal court acknowledged that owners could start a new case in another court on breach of warranty."⁶ The Respondents, however, fail to cite the [non-existent] portion of the Settlement Agreement or Court Opinion and Order dismissing the matter that supports this claim. Instead, what the Respondents do cite to, elsewhere in their Brief, both contradicts their position and supports the truth in this matter:

The settlement requires MBUSA to "err on the side of the Settlement Class Member" regarding a "legitimate dispute as to whether to provide" reimbursement. Global Class Action Settlement Agreement, at ¶ 11.1.6. If owners or lessees are dissatisfied with the outcome of a "look back" application, they are free to pursue compensation through the courts. They may bring an independent suit or a contempt proceeding before this court. The settlement does not release MBUSA from violations of the settlement agreement.⁷

To begin with, the above quoted language found in Respondents' Brief is actually dicta lifted from the 97-page Opinion and Order of the District Court approving and dismissing the O'Keefe class action suit. This dicta was articulated in response to the objections of a party to the O'Keefe action whom the District Court was "suspect of" because: (1) she was herself an attorney– yet was represented by attorneys from Michigan, Kentucky and Pennsylvania; (2) one of her attorneys was a professional class action objector; and (3) she had *never* put conventional motor oil in her leased 2000 Mercedes-Benz, and therefore could not conceivably have ever suffered any damage. The District Court quickly dismissed her objections. Nonetheless, the above-cited language from the Opinion and Order once again reinforces the Petitioners' position that any and all

⁶ See Respondents' Brief, page 10, end of first full paragraph, citing Opinion and Order of the District Court, attached as Exhibit A to Defendants/Petitioners' Amended Memorandum of Law in Support of Defendants' Motion for Partial Summary Judgment.

⁷ See Respondents' Brief, page 7, indented paragraph at page center (emphasis added)

proceedings brought pursuant to the Settlement Agreement, including the instant matter, must be brought before the District Court sitting in the Eastern District of Pennsylvania.

III. SUMMARY AND CONCLUSION

The Respondents in the present matter are seeking both tort and statutory remedies, including, incredibly, *a full-value Lemon Law buyback of the subject vehicle*, which at the time of their Complaint was a decade old and had, as of July 22, 2009, been driven for 124,036 miles. The remedies sought are expressly barred by the O'Keefe settlement as the release to which Respondents are self-admittedly bound precludes breach of warranty and state consumer law actions. Furthermore, Plaintiffs'/Respondents' action was filed more than ten years after the date of the initial purchase of the vehicle and well after the expiration of the Manufacturer's express warranty term. As such, all of the Plaintiffs'/Respondents' claims are barred by the applicable statute of limitations and the O'Keefe settlement agreement provides no basis for filing and instituting such claims, least of all in state court.

Further still, without the agreed-upon terms contained in the Settlement Agreement, the Respondents would have no basis for the suit in the instant matter. It is, therefore, axiomatic that if the Respondents bring suit pursuant to that Settlement Agreement, they must also be bound by the jurisdictional requirements contained therein. Their claims of personal jurisdiction in state court must necessarily fail as state court jurisdiction may be preempted in any matter where jurisdiction is exclusively retained by a federal court. For the Respondent to now claim that Petitioners failed to provide any authority that the federal court retained exclusive jurisdiction over the claims against Petitioners arising out of the Settlement Agreement is both absurd and disingenuous. In their original brief, Petitioners

provided this Honorable Court with a plethora of controlling law on the subject. To the contrary, the Respondents' Response Brief failed to contain one single case or statute that backs any of its unsupported substantive assertions.

In sum, and as previously stated, Paragraph 29 of the Global Class Action Settlement Agreement, which is again iterated in the District Court's Opinion and Order closing the case, is clearly entitled '*Continuing Jurisdiction*' and contains the pertinent facts necessary to resolve this matter. It is clear from a plain reading of the text that Respondents brought improper claims, and what's more, brought them in the wrong court. Respondents knew or by exercise of minimal diligence should have known that they were binding themselves to the Global Class Action Settlement Agreement's jurisdictional requirements. They now claim they were merely pursuing a dispute over enforcement of the settlement agreement. Once again, the final sentence of the text above states: "Any disputes or controversies arising with respect to the interpretation, enforcement or implementation of the Settlement shall be presented by motion to the [District] Court." There is no ambiguity as to the intended meaning of the agreed upon terms, nor is there any question as to the validity and enforceability of the contract as a whole.

RESPECTFULLY SUBMITTED,

PETITIONERS/DEFENDANTS BELOW
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by counsel,



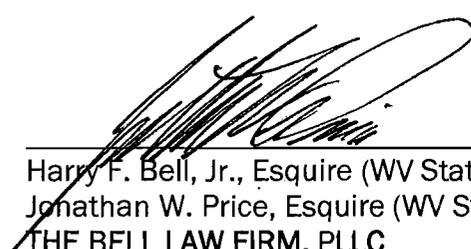
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CERTIFICATE OF SERVICE

I, Jonathan W. Price, hereby certify that on this the 3rd day of January, 2011, I caused service of the foregoing **PETITIONERS' REPLY BRIEF** to be made upon counsel of record by depositing true and accurate copies of the same in the United States mail, postage prepaid, in an envelope addressed as follows:

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