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Volvo Loses Bid To Toss Sunroof Class Action

By **Bibeka Shrestha**

Law360, New York (April 11, 2011, 7:28 PM ET) -- Volvo Car Corp. on Monday failed to squash a putative class action in New Jersey federal court accusing the Swedish automaker of selling vehicles with defective sunroofs that allow water to seep inside.

Volvo was unable to persuade Judge Dennis Cavanaugh of the U.S. District Court for the District of New Jersey to throw out the suit by arguing that the plaintiffs could not meet requirements for class certification.

The judge ruled that it was too early for him to determine whether that is the case.

"To disallow certification before it has even been requested seems to the court like putting the cart before the horse," Judge Cavanaugh said. "Here, where the case is less than six months old and there has been no discovery, nor even a motion for class certification, the issue is simply not ripe for this court to consider."

Volvo had argued it would be impossible for the plaintiffs to prove that each and every class member both suffered water damage, and that the damage was directly caused by a defective sunroof.

The judge said he was unpersuaded that class members must necessarily have suffered water damage to take part in the putative class action.

The suit was launched by a group of consumers who accused Volvo of knowingly selling vehicles with defective sunroof drains from 2000 to the present, including the S40, S60, S70, S80, V50, V70, XC70 and XC90. The plaintiffs claim the defect has impacted hundreds of thousands of Volvo customers.

According to the complaint — filed in August 2010 — the sunroof drain systems easily clog with debris, allowing water to leak into the vehicles' interior, causing extensive damage.

The proposed class action accuses Volvo of having longstanding knowledge of the alleged design defect and issuing several technical service bulletins to address the problems. According to the complaint, the defect manifests itself shortly after the limited warranty expires.

The plaintiffs include Massachusetts resident Joanne Neale, who claims she heard a sloshing sound while driving her 2005 Volvo V50. Neale also said the car's interior carpet had been wet when she bought it used in October 2008.

According to the suit, Volvo technicians who handled the plaintiffs' repairs told them it was a

common issue.

“We are pleased with the decision and are now eager to move the case forward,” lawyers for the plaintiffs said in a statement Monday.

An attorney representing Volvo declined to comment Monday.

The suit accuses Volvo of breach of express warranty, breach of implied warranty, breach of good faith and fair dealing, unjust enrichment and negligent misrepresentation, along with violation of the New Jersey Consumer Fraud Act.

The plaintiffs demand a preliminary and permanent injunction requiring Volvo to notify consumers of the issue, to inspect and repair all impacted vehicles and to take measures to prevent similar design defects in the future.

The proposed class action also seeks compensatory and punitive damages, attorneys' fees and costs.

The plaintiffs are represented by Chimicles & Tikellis LLP and Mazie Slater Katz & Freeman LLC.

Volvo is represented by Hardin Kundla McKeon & Poletto.

The case is Joanne Neale et al. v. Volvo Cars of North America LLC et al., case number 2:10-cv-04407, in the U.S. District Court for the District of New Jersey.

--Editing by Jonathan Jacobson.

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