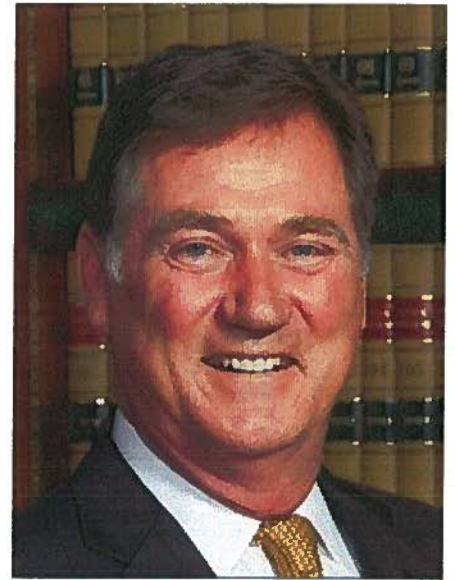




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Permissive Joinder Trend In GM Cases Benefits Plaintiffs

Law360, New York (September 12, 2014, 10:29 AM ET) -- With cases being filed all over the country related to General Motors Co.'s faulty ignition switches, there are many arguments for how these cases can be handled. GM will use a \$1 million starting point to calculate its payouts to the families of those who died or those who suffered serious injuries as a result of the ignition switch defect, attorney Kenneth Feinberg said when announcing the uncapped settlement fund.



Bob Langdon

Settlement Fund Shortcomings

But in our experience litigating product liability cases, juries regularly award many times that amount to victims of similar accidents. Likewise, victims of less serious injuries are eligible for \$20,000 for one night in the hospital and \$500,000 for more than a month stay, with a sliding scale in between. Compensation for those who only received outpatient treatment is capped at \$20,000.

None of these amounts that have been set up for GM victims is in measure with what a quality product defect law firm would deem an acceptable outcome for their clients. GM was allowed its media day upon announcing what amounts would be awarded for various claims, but these amounts could only be acceptable for firms who merely rely on higher case volume and don't regularly try cases — it is not for firms that have a truer sense of the measure of adequate compensation necessary. With the GM recall tally now up to 25.7 million vehicles in the U.S., Canada and Mexico, the amount of "great cases turned into good ones" will not be an insignificant amount.

When GM recalled thousands of small cars in February for faulty ignition switches, the media firestorm that built around these cases was substantial. Defective ignition switches were in cars for over a decade and have been linked to numerous road accidents, including 13 deaths.

But, in addition to not adequately accounting for the true extent of damages in these cases, the list of eligible vehicles as part of this settlement protocol is shorter than you would expect. Not all cars with faulty ignition switches, or key rotation problems, qualify for the settlement fund. Only the roughly 2.5 million cars involved in the initial ignition switch recalls will be eligible for the compensation protocol.

A total of 17 models were recalled in that time frame and are included in the compensation plan. These models include Chevrolet Cobalts, several Pontiac models and two Saturn models. However, that still leaves more than 10 million recalled GM cars since March with the same

problem — faulty ignition switches leading to “unintended key rotation and the possibility that air bags might not deploy in a crash because of a loss of power” — whose owners are not eligible to file a claim under the settlement fund.

Their main argument: GM doesn’t believe the problems in the millions of cars recalled since that initial period in February and March rise to the levels of those in the cars recalled in that first stage. GM also said that extensive testing has been done on all of the cars recalled for ignition switch problems, and that “nothing suggested that it was warranted” to include the rest of the recalled cars in the settlement fund.

If the driver of a GM vehicle believes the company should compensate them for an incident that took place in one of these cars, they’ll have to go about it in the old-fashioned way of bringing their case to court. That option is available to any GM customer, but those who decide to participate in the compensation plan and accept the company’s offer are required to waive their right to sue.

Ford/Firestone: A Precedential Auto Defect Case

Most courts are unable to afford each plaintiff an individual trial that is expedient, due to the volume that could occur. The number of recalls — 25.7 million, an all-time high in North America — means that, like mass tort litigation, this body of work will move quicker toward resolution when these cases are consolidated.

When a group of attorneys were selected that engineered the resolution of lawsuits involving Ford Motor Co. and Firestone Tire Rubber Co., the resulting litigation was an example of an auto defect that had national implications. Newspapers and broadcast outlets carried stories of how Ford Explorers were detreading and leading to rollovers. This defect led to numerous deaths and injuries — in my own practice, we settled many of these cases. But, to try them individually, drivers and their families would have to wait an undue amount of time to have their matters resolved.

Likewise, the Feinberg settlement plan portends to offer clients a quick and efficient way to resolve their dispute over an auto defect, in this case against GM. But, just because “there is always free cheese in a mousetrap,” does not necessarily mean it is a good deal for the client if a matter is resolved at a fraction of what it would be settled for when argued on the merits. And, when the cases are combined, as they can be in Missouri with permissive joinder, the client does not lose on the efficiency front, and yet still obtains a more just award for their damages.

Benefits of Filing in States with Permissive Joinder

In states like Missouri that allow for the expedient resolution of claims, these cases with similar defects and issues at play are consolidated to produce a more efficient process for all involved. Relevant state law for those GM cases filed in Missouri is Rule 52.05(a), which is “liberally construed to allow for a more expedient resolution of the case.” *State ex rel. Kinsey v. Wilkins*, 394 S.W.3d 446, 449 (Mo. App. E.D. 2013).

To that end, it should be applied in a way that will “promote judicial economy, expedite final disposition of litigation and prevent inconsistent results due to multiple separate lawsuits.” *Bryan v. Peppers*, 175 S.W.3d at 720. Permissive joinder is also proper where severance of claims imposes upon plaintiffs the “additional difficulty and expense of trying the same basic case two times.” *Id.* Finally, permissive joinder is proper where severance of claims creates the risk that verdicts on liability and damages will be inconsistent. *Id.*

It is conceivable that these isolated GM cases filed in Missouri will be much closer to the actual damages caused by the accidents instigated by defective GM vehicles, as compared to those that try their luck filing claims under the Feinberg plan. States with permissive joinder,

and Missouri in particular, will also benefit from the expedient manner in which these consolidated claims can be reviewed.

While the above review of Missouri Rule 52.05(a) is relevant for the GM cases filed in Missouri, under federal law, joinder of claims is governed by Rules 13 and 18(a) of the Federal Rules of Civil Procedure. These rules allow claimants to consolidate all claims that they have against an individual who is already a party to the case. Claimants may bring new claims even if these new claims are not related to the claims already stated (e.g., a plaintiff suing someone for breach of contract may also sue the same person for assault). The claims may be unrelated, but they may be joined if the plaintiff desires.

—By Bob Langdon, Langdon & Emison

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