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2009 Massachusetts Avenue, NW
Washington, DC 20036
202.588.0302 wlf.org

Ninth Circuit's *Daniel v. Ford Motor Company* Decision Dents Defendants' Ability to Defend California Consumer Class Actions

by Allison R. McLaughlin and Cedric D. Logan

Due to its relatively plaintiff-friendly laws, California is a popular forum for plaintiffs' attorneys to file class actions based on allegedly defective products. The U.S. Court of Appeals for the Ninth Circuit recently made it even more desirable. On December 2, 2015, the court issued *Daniel v. Ford Motor Company*, 806 F.3d 1217 (9th Cir. 2015), a decision that complicates the ability of manufacturers, particularly those in the automobile industry, to obtain pre-trial dismissal of consumer class actions brought under California law.

In 2011, four Ford Focus owners brought a putative class action alleging that Ford breached express and implied warranties and committed fraud in selling 2005 to 2011 model-year Focuses. The plaintiffs alleged that the vehicles contain a rear-suspension defect that leads to premature tire wear, rendering the vehicles unsafe. The plaintiffs also alleged that Ford knew of the defect but did not disclose it and that they would not have bought their cars had Ford done so. Ford moved for summary judgment. The district court granted the motion, finding that (1) the implied-warranty claim failed because the plaintiffs did not show that their vehicles malfunctioned within the implied warranty's one-year duration; (2) the express-warranty claim failed because the warranty did not cover design defects; and (3) the consumer-fraud claims failed because the plaintiffs did not show that they relied on the omission. The Ninth Circuit reversed each holding.

Impact 1: The Song-Beverly Act's One-Year Implied-Warranty Duration Does Not Apply to a Claim for Latent Defects. *Daniel* put to rest—in plaintiffs' favor—a six-year-old dispute over how to interpret a provision in California's warranty statute—the Song-Beverly Consumer Warranty Act—that sets the duration of the implied warranty. Section 1791.1 of the California Civil Code provides that the "duration of the implied warranty of merchantability ... shall be coextensive in duration with an express warranty which accompanies the consumer goods, provided the duration of the express warranty is [not] *less than 60 days nor more than one year* following the sale of new consumer goods to a retail buyer. Where no duration for an express warranty is stated ... the duration of the implied warranty shall be the maximum period prescribed above." Section 1791.1 has been a powerful defense for manufacturers, as a number of state and federal courts have held that a plaintiff cannot state an implied-warranty claim if the product functioned properly in the first year after sale.

However, in *Mexia v. Rinker Boat Co.*, 95 Cal. Rptr. 3d 285, 295 (Ct. App. 2009), the California Court of Appeal held that the alleged presence of a *latent* defect can give rise to a breach of implied warranty, even if the product functions properly for the entire warranty duration. According to *Mexia*, a product may be unmerchantable at sale if it has a hidden defect that will cause it to break *at some later point in time*. The court reasoned "[t]here is nothing that suggests a requirement that the purchaser discover and report to the seller a latent defect within that time period." *Ibid*. The California Supreme Court denied the *Mexia* defendants' petition for review.

Allison R. McLaughlin is Of Counsel and **Cedric D. Logan** is an Associate with Wheeler Trigg O'Donnell LLP in Denver, CO.

In the wake of *Mexia*, federal district courts have grappled with whether to apply *Mexia* to alleged latent product defects, coming to mixed results.* Those courts refusing to apply *Mexia* have criticized it as an outlier that "renders meaningless any durational limits on implied warranties. Every defect that arises could conceivably be tied to an imperfection existing during the implied warranty period." *Marchante v. Sony Corp. of Am., Inc.*, 801 F. Supp. 2d 1013, 1022 (S.D. Cal. 2011).

Daniel settled this controversy. The Ninth Circuit explained that "[a]bsent convincing evidence that the California Supreme Court would decide the issue in *Mexia* differently, its rule that § 1791.1 'does not create a deadline for discovering latent defects or for giving notice to the seller,' must be followed." 806 F.3d at 1223 (internal citation omitted). According to the panel, there was "not convincing evidence" that the California Supreme Court would decide *Mexia* differently; rather, *Mexia* is "in line with 'the policy repeatedly expressed by California courts of the need to construe the Song-Beverly Act so as to implement the legislative intent to *expand* consumer protection and remedies.'" *Id*. at 1222-23. The impact of this holding will be substantial. Plaintiffs now need only allege that the defect was latent and present at the time of sale—and then later support this allegation with some expert testimony—to avoid dismissal. In other words, durational limits on implied warranties no longer provide meaningful protection under California law.

Impact 2: Reliance Can Be Established Even if the Plaintiff Never Would Have Seen the Disclosure Had it Been Made. The *Daniel* plaintiffs also brought claims for violation of California's two consumer protection statutes—the Consumer Legal Remedies Act and the Unfair Competition Law—based on Ford's alleged failure to disclose the defect. Both claims require proof of "actual reliance," meaning that the plaintiff would have acted differently had the omitted information been disclosed. The district court granted summary judgment because the *Daniel* plaintiffs did not view any advertisement, brochure, or other marketing material before buying their vehicles; therefore, even if Ford had disclosed the alleged defect, the plaintiffs would not have seen it.

In reversing, the Ninth Circuit held that plaintiffs need not have viewed any marketing materials prior to purchase. Rather, the plaintiffs need only show that "they would have been aware of the defect had Ford disclosed it to its dealerships," which they did with evidence that "they interacted with and received information from sales representatives at authorized Ford dealerships." *Id*. at 1226. The *Daniel* court rejected Ford's argument that the plaintiffs needed to show more than that it was hypothetically possible for Ford to disseminate information through its dealers. *Id*. at 1226-27. Because the plaintiffs showed that Ford communicated indirectly with them through its dealerships—and those dealerships, in turn, provided the plaintiffs with information about the Focuses—a reasonable fact finder could conclude that "Ford's authorized dealerships would have disclosed the alleged rear[-]suspension defect to consumers if Ford had required it." *Id*. at 1227.

This ruling is significant. Following *Daniel*, it does not matter if the plaintiff never interacted with the manufacturer (either directly or through its marketing materials) before purchase. Rather, reliance is satisfied so long as the plaintiff can show that he interacted with a third-party retailer who *could* have received defect information from the manufacturer and *could* have passed that information along to him.

Plaintiffs' attorneys will rely heavily on *Daniel* in the future. Not only does *Daniel* demonstrate the uphill battle that defendants face in moving to dismiss and moving for summary judgment, but it also highlights the need for defendants to aggressively defend putative class actions.

By eliminating potential defenses that could be asserted in dispositive motions, *Daniel* increases the importance of defeating class certification. Thus, while *Daniel* may be a useful plaintiffs' tool in defeating motions to dismiss or motions for summary judgment, the class-certification decision will continue to be the pivotal moment in class-action litigation.

* *Compare Roberts v. Electrolux Home Prods., Inc.*, No. CV 12-1644 CAS VBKX, 2013 WL 7753579, at *6 (C.D. Cal. Mar. 4, 2013) (applying *Mexia*), *and Parenteau v. Gen. Motors, LLC*, No. CV 14-04961-RGK MANX, 2015 WL 1020499, at *11 (C.D. Cal. Mar. 5, 2015) (same), *with Peterson v. Mazda Motor of Am., Inc.*, 44 F. Supp. 3d 965, 972 (C.D. Cal. 2014) (limiting *Mexia*), *and Rossi v. Whirlpool Corp.*, No. 12–CV–125–JAM–JFM, 2013 WL 1312105, at *5 (E.D. Cal. Mar. 28, 2013) (rejecting *Mexia*).

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