

BMW Can't Shake Class, State Claims In Water Damage Suit

By **Aebra Coe**

Law360, New York (January 07, 2015, 11:32 AM ET) -- A California federal judge said Tuesday that class allegations and state consumer protection claims against BMW of North America LLC can stand in a suit accusing the automaker of concealing design defects in its X5, X3 and 5 series vehicles that allegedly cause trunk leaks and electrical problems.

U.S. District Judge Maxine M. Chesney trimmed plaintiffs Monita Sharma and Eric Anderson's breach of implied warranty claim, but allowed the rest of the case to remain intact. In a second order, she denied BMW its motion to strike class allegations from the suit, saying plaintiffs have enough of a case to allow class standing to be decided by a certification motion.

"BMW fails to show that plaintiffs, as a matter of law, are precluded from establishing, on a motion to certify, that common issues pertaining to liability and damages predominate over individual issues," Judge Chesney said.

In June, the same judge **dismissed the suit's** California consumer protections claims without prejudice, saying the plaintiffs had not sufficiently alleged BMW was aware of the alleged defect when Sharma and Anderson purchased their cars.

This time around, the plaintiffs offered up company documents the automaker released before they had bought their cars as new evidence to back up their state consumer protection claims, and the court agreed that it was enough to let the claims stand.

But the court found that the implied warranty on the cars, which were purchased used, only lasted for three months and both of the plaintiffs first claimed to experience problems long after that window of time expired.

First filed in May 2013, **the suit alleges** the vehicles were designed so that certain vital electrical components are located in the lowest part of the cars' trunks, making them prone to water damage that can only be caused by normal usage of the cars. The plaintiffs also say that damages to those components can cause the car to lose power while in operation.

The suit additionally claims that the BMW vehicles at issue were designed so that the tubes used to drain water away from the cars' sunroofs are located directly next to the electrical equipment in the trunk and are prone to getting clogged with leaves and other debris. When the drainage tubes are clogged, they come loose or leak into the cars' trunks, causing the electrical parts to short and shut off other parts that are needed for driving, the complaint said.

Representatives for BMW and the proposed class did not immediately respond to requests for comment Wednesday.

The plaintiffs are represented by William A. Kershaw, Stuart C. Talley and Ian J. Barlow of Kershaw Cutter & Ratinoff LLP, by Edward A. Wallace and Amy E. Keller of Wexler Wallace LLP, by Joseph R. Santoli of The Law Offices of Joseph R. Santoli and by Joseph M. Dunn of Wigington Rumley Dunn LLP.

BMW is represented by Aengus Hartley Carr and Troy Masami Yoshino of Carroll Burdick & McDonough LLP.

The case is Monita Sharma et al. v. BMW of North America LLC, case number 3:13-cv-02274, in the U.S. District Court for the Northern District of California.

--Additional reporting by Lisa Ryan. Editing by Rebecca Flanagan.

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