

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION**

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| SHIRLEY ZWIERCAN, <i>et al.</i> , | : | JUNE TERM, 1999 |
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| Plaintiffs | : | No. 3235 |
| | : | |
| v. | : | COMMERCE CASE MANAGEMENT |
| | : | PROGRAM |
| GENERAL MOTORS CORP., <i>et al.</i> , | : | |
| | : | |
| Defendants | : | Control No. 112612 |

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ORDER and MEMORANDUM

AND NOW, this 18th day of MARCH, 2003, upon consideration of Defendant General Motors Corporation's Renewed Motion for Summary Judgment, Plaintiff Shirley Zwiercan's response thereto, oral argument from the parties, and in accordance with the Memorandum Opinion being filed contemporaneously with this Order, it is hereby ORDERED and DECREED that the Motion is DENIED.

BY THE COURT:

GENE D. COHEN, J.

Although Plaintiff's vehicle has not been involved in a rear-end collision, she brings these claims, as a class representative, on behalf of herself and similarly situated owners of Class Vehicles, for violations of the Pennsylvania Unfair Trade Practices and Consumer Protection Law ("UTPCPL"), and breach of implied warranty of merchantability. On May 22, 2002, this Court granted Defendant's Motion for Summary Judgment as to the breach of warranty claim and denied summary judgment as to the UTPCPL claim.¹ On September 11, 2002 this Court granted summary judgment as to Defendant's claim that Plaintiff is preempted from using Defendant's statements made to the National Highway Transportation Safety Administration, and denied summary judgment on the Plaintiff's remaining UTPCPL claim.²

Pursuant to Rule 1035.2, Defendant urges this Court to reconsider its September 11, 2002 ruling. Pa. R. Civ. Pro. 1035.2. Defendant argues that the Superior Court issued an intervening and controlling opinion, Debbs v. Daimler Chrysler Corp., 810 A.2d 137 (Pa. Super. Oct. 24, 2002), which Defendant claims addressed many of the same issues ruled on by this Court. Upon review of the pleadings and after hearing oral argument, Defendant's Renewed Motion for Summary Judgment is Denied.

DISCUSSION

This Court Original Ruling Stands -- Plaintiff's UTPCPL Claim Survives Summary Judgment.

Defendant argues that the Superior Court's holding in Debbs v. DailmerChrysler, 810 A.2d 137

¹ Shirley Zwiercan, et al. v. General Motors Corp., et al, 2002 WL 1472335 (C.P. Phila. May 22, 2002)(Herron, J.). Ruling on Defendant's first motion for Summary Judgment, Judge Herron held that Plaintiff's cost to repair the alleged defective seats is sufficient to sustain a claim of damages in a UTPCPL action. Zwiercan v. General Motors, 2002 WL 1472335 (C.P. Phila. May 22, 2001)(Herron, J.).

² Shirley Zwiercan, et al. v. General Motors Corp., et al, 58 Pa. D.&C.4th 251 (C.P. Phila. Sept. 11, 2002)(Cohen, J.).

(Pa. Super. 2002) is controlling authority that is contrary to this Court's September 11, 2002 ruling. Defendant argues that Debbs, precludes this Court from holding that Plaintiff is entitled to a presumption of reliance, and that Defendant has a duty to disclose known dangerous and material latent defects to consumers.

Defendant ignores a key distinction between the facts under Debbs, and those presented in the instant case. In Debbs, it was alleged that Chrysler withheld information that serious burns could result from a deployment of the air bag in its vehicles. Although, the claim against Chrysler was based on an alleged "material" omission, it was undisputed that the risk of serious burns was relatively low. Debbs, 810 A.2d at 158. Moreover, the Superior Court was wholly unpersuaded by the plaintiff's claim as to the "materiality" of the allegedly withheld information, stating that, "[u]nder these facts, consumers could have a wide range of reactions to the undisclosed information . . . [s]ome consumers may not have bought a Chrysler at all; others may have bought the car but replaced the air bag; and others may have bought the car but not replaced the air bag." Id. Further clarifying its holding, the Superior Court stated that "[r]easonable consumers could come to different conclusions about the materiality of the withheld information." Id. (emphasis added).

In the instant case, there can be no doubt as to the materiality of the alleged defect. As more fully outlined in this Court's September 11, 2002 opinion, Plaintiff has alleged facts that, if true, support finding that the alleged defect in the front seats of Defendant's Class Vehicles are likely to cause paralysis or even death. Shirley Zwiercan, et al. v. General Motors Corp., et al, 58 Pa. D.&C.4th 251 (C.P. Phila. Sept. 11, 2002). It is further alleged that Defendant deliberately withheld its knowledge of this material and potentially life threatening defect. Given the severity of the consequences at issue in Zwiercan, materiality

can not be questioned. Therefore, this Court finds Plaintiff is entitled to a class wide presumption of reliance where it can be proven that the defect may cause serious bodily harm or death.

Without causing harm to this Court's original opinion, it should be noted that this Court was persuaded by the severity of the harm and the alleged egregious nature of the Defendant's withholding of such material information from consumers. Defendant's argument that, following Zwiercan, manufacturers will be compelled to disclose "all information to potential purchasers" because manufacturers always have "superior knowledge" of the facts, is belied by this Court's original opinion. This Court's holding in Zwiercan is limited to finding a duty to disclose known serious and life threatening latent defects. In so holding, this Court's opinion is consistent with the law in most states; a party has a duty to disclose known material and dangerous defects, *i.e.* those defects which are likely to cause significant bodily harm. As Defendant is well aware, the public policy debate over a manufacturer's duty to disclose known life threatening defects was settled decades ago. The Zwiercan opinion simply and quite appropriately applies that duty in the context of Pennsylvania's consumer protection statute. Defendant cannot argue in good faith that it is under no duty to disclose such a significant and material safety defect to the public.

Defendant and Plaintiff should be reminded that Plaintiff must overcome a heavy burden in order to prevail. Plaintiff's ultimate success at trial depends on her ability to prove the seriousness of the latent defect and Defendant's knowledge of that defect. Materiality of the defect is the keystone of Plaintiff's case. Plaintiff must first establish Defendant's knowledge of the serious and dangerous defect before being entitled to a presumption of reliance.

CONCLUSION

For the reasons stated, this Court finds that Plaintiff has alleged sufficient facts, which if accepted by a finder of fact, are sufficient to establish a valid UTPCPL claim against Defendant. Accordingly, relying on its original opinion and all matters of record, this Court denies Defendant's Renewed Motion for Summary Judgment. This Court will issue a contemporaneous Order consistent with this Opinion.

BY THE COURT:

GENE D. COHEN, J.

DATED: March 18, 2003