

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

SHERYL YSBRAND and MARY COONEY,)
Individually and on behalf of all others)
similarly situated,)
)
Plaintiffs/Appellees,)
)
vs.) No. 97469
)
DAIMLERCHRYSLER CORPORATION,) District Court No. CJ-2000-643
a Delaware corporation, individually and as)
Successor in Interest to Chrysler Corporation)
and CHRYSLER CORPORATION, a Delaware)
corporation, individually,)
)
Defendants/Appellants.)

**BRIEF OF ALLIANCE OF AUTOMOBILE MANUFACTURERS, INC.
AS AMICUS CURIAE IN SUPPORT OF
PETITION FOR REHEARING OF DEFENDANTS/APPELLANTS**

Appeal from The District Court of Sequoyah County, State of Oklahoma
Case No. CJ-2000-643
The Honorable John C. Garrett, District Judge
National Class Action Asserting Contract and Tort Theories
Based on Claims of Automotive Defects

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INTEREST OF THE AMICUS CURIAE

The Alliance of Automobile Manufacturers, Inc., (“Alliance”) is a nonprofit trade organization whose members – BMW Group; DaimlerChrysler Corporation; Ford Motor Company; General Motors Corporation; Mazda North American Operations; Mitsubishi Motors North America, Inc.; Nissan North America, Inc.; Porsche Cars North America, Inc.; Toyota Motor North America, Inc.; and Volkswagen of America, Inc – consist of many of the major manufacturers of motor vehicles distributed and sold in the United States.

Alliance members are manufacturers of products that are distributed, sold, and used throughout the United States and that are subject to pervasive Federal regulation, as well as regulation by States. Accordingly, the relationship and interaction of these formal regulatory systems with each other and with the Federal and State court litigation systems are of profound importance to the Alliance and its members. Because the products manufactured and distributed by Alliance members generally cannot be tailored to meet conflicting requirements of various jurisdictions, uniformity and consistency of regulation are crucial to the Alliance’s members. Moreover, as manufacturers who are dedicated to improving product safety, and who compete with each other in marketing the safety of their respective products, Alliance members have a strong interest in the development of rational, effective safety regulation.

Plaintiffs’ claims already have been considered and rejected by the National Highway Traffic Safety Administration, and the certification of a nationwide “no injury” class action to be adjudicated under the laws of Michigan would conflict with the sovereign policy and legal choices made by other States. Thus, the outcome of the class certification decision in this case may have a significant effect on the Alliance and its members.

INTRODUCTION

As more fully set forth in the Statement of the Case in the appellants' Brief in Chief, which the Alliance herein adopts by reference, the Honorable John C. Garrett, District Judge, of the District Court of Sequoyah County, certified a nationwide class of more than one million DaimlerChrysler minivan owners based on allegations that the air bags in their 1996 and 1997 minivans have the potential to cause injuries. This Court affirmed the trial court's class certification order as to plaintiffs' asserted warranty claims, and reversed as to the claim for fraud and deceit. *Ysbrand v. DaimlerChrysler Corp.*, 2003 OK 17, ¶¶1, 18, __ P.3d __.

ARGUMENT

I. **PLAINTIFFS' PROPOSED CLASS ACTION WOULD INAPPROPRIATELY MAKE THIS STATE'S COURTS NATIONAL AIR BAG REGULATORS**

Reduced to their essence, all of plaintiffs' claims, including their purported "warranty" claims, seek the imposition by an Oklahoma State court (and Oklahoma lay jury) of a nationwide recall of more than one million DaimlerChrysler minivans to replace air bag systems that allegedly are excessively aggressive. *See Ysbrand v. DaimlerChrysler Corp.*, 2003 OK 17, ¶3, __ P.3d __ ("Plaintiffs seek damages in an amount sufficient to allow owners to install the 'safer' air bags or, in the alternative, replacement of the 'defective' air bags by DaimlerChrysler.")¹

¹ That plaintiffs are, in fact, seeking a recall is clear, as this Court itself seems to have noted. *See Ysbrand*, 2003 OK 17, ¶ 3, __ P.3d __. Other courts have recognized that, however styled, proposed remedies like the ones sought here *are* requests for recalls. *See, e.g., Solarz v. DaimlerChrysler Corp.*, No. 2033, 2002 WL 452218, at *2 (Pa. Common Pl. Mar. 13, 2002).

Thus, even in their damages claim, plaintiffs effectively seek, though a nationwide class action, to have this State's courts enter into the business of promulgating nationwide regulations for complex air bag systems. *See San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236, 247 (1959) (“[R]egulation can be as effectively exerted through an award of damages as through some form of preventative relief.” The obligation to pay compensation can be, indeed is designed to be, a potent method of governing conduct and controlling policy.”). Such a course would be profoundly misguided.

A. Plaintiffs’ Proposed Class Remedy Has Been Rejected By The Expert Federal Agency With Responsibility For Nationwide Motor Vehicle Safety Regulation In A Proceeding That Provided An Alternative Method For Adjudicating The Putative Class Claims.

Plaintiffs’ claims should be directed to the National Highway Traffic Safety Administration (“NHTSA”) – the Federal agency that, pursuant to the National Traffic and Motor Vehicle Safety Act (“Motor Vehicle Safety Act”), is responsible for regulating the safety of motor vehicles on a national basis. *See* 49 U.S.C. § 30101, *et seq.*

NHTSA has been authorized by Congress to promulgate Federal motor vehicle safety standards, conduct defect and noncompliance investigations, undertake independent research and testing, and, if appropriate, order recalls or other remedies for defective or noncompliant vehicles or equipment. *See* 49 U.S.C. §§ 30111(a) 30118, 30120, 30121(b), (c), 30165, 30166, 30168.

Pursuant to its authority, NHTSA has extensively regulated air bag and other restraint systems over the years. *See* 49 C.F.R. § 571.208 (2003). Even a cursory glance at the pertinent regulations and notices reveals the complexity of the technical issues with which NHTSA deals in regulating air bag systems.

NHTSA also has considered claims that DaimlerChrysler minivans have overly aggressive air bag systems, and has rejected such claims. *See* Denial of Motor Vehicle Defect Petition, 62 Fed. Reg. 41477 (Aug. 1, 1997). In its decision in this case, however, this Court held that the fact that NHTSA denied a petition to investigate Chrysler minivans *supports* the conclusion that a class action in this case would be superior to other means of adjudication, because NHTSA’s denial of the petition showed that there were no other “*available* methods for the fair and efficient adjudication of the controversy.” *Ysbrand*, 2003 OK 17, ¶24, ___ P.3d at ___ (quoting Okla. Stat. tit. 12, § 2023(B)(3) (2001)) (emphasis supplied in *Ysbrand*). With all respect, this conclusion is mistaken, because NHTSA *did* provide an alternative (and superior) method for adjudicating the controversy.

NHTSA’s decision to deny the petition was based on a careful and exhaustive examination of a number of comments, crash reports, investigative reports of fatal crashes involving the subject vehicles, tests performed both by manufacturers and NHTSA, and other technical analyses, including “records of a sampling of crashes and an analysis that includes a computation of the change in velocity ... of the vehicle during the crash impact.” 62 Fed. Reg. at 41480. Based on its expert assessment of this highly technical evidence, and informed by comments from the public, NHTSA made detailed factual findings and concluded that “*there is no reasonable possibility* that an order concerning the notification and remedy of a safety-related defect [in the subject vehicles] would be issued at the conclusion of an investigation.” *Id.* at 41481 (emphasis added).²

² The determination, which was based on a thorough initial investigation, that a finding of defect and a recall were highly unlikely to result from further investigation provides the context for the agency’s reference to its “need to allocate and prioritize NHTSA’s limited resources to best accomplish the agency’s safety mission,” which the
(cont’d)

In these circumstances, then, the fact that the regulatory process did not result in a recall order like the one sought by plaintiffs here does *not* mean that an alternative method of adjudication was not *available*. To the contrary, the administrative process *did* make an alternative method of adjudication available, but that adjudicative process resulted in a finding that “there was no reasonable possibility that” a defect would be found and a recall ordered. It should go without saying that the failure to prevail in a forum does not mean that the forum failed to provide an *available* “method of adjudication.” After all, if each of plaintiffs’ putative class members had already brought individual actions in their home States and *lost* in their home courts, they would not be heard to argue here that a class action should be certified in Sequoyah County because their defeats in their home courts showed that those courts failed to provide an available “alternative method of adjudication.”

Thus, NHTSA made a considered, well-informed, expert decision that claims that are substantially similar to those of plaintiffs here have no reasonable prospect of success. Moreover, nothing would prevent plaintiffs from petitioning NHTSA to investigate their claims and order a recall of their DaimlerChrysler minivans. *See, e.g., American Suzuki Motor Corp. v. Superior Court*, 44 Cal. Rptr. 2d 526, 531 (Cal. Ct. App. 1995) (“The remedy which will best promote consumer safety, and which will address real parties’ concern that ‘tragic consequences’ will result if the defect is not remedied, is to petition the

(... cont’d)

Court quotes in footnote 2 of *Ysbrand*. It is clear that resource limitations were *not* the basis for the decision not to pursue the defect and investigation further. To the contrary, *because* there was “no reasonable possibility that an order concerning the notification and remedy of a safety-related defect ... would be issued at the conclusion of an investigation” (62 Fed. Reg. at 41481), the agency concluded that it should not devote additional resources to further investigate the allegations in the petition.

National Highway Traffic Safety Administration (NHTSA) for a defect investigation.”) (footnote omitted); *Frank v. DaimlerChrysler Corp.*, 741 N.Y.S.2d 9, 17 (N.Y. App. Div. 2002) (similar); *Ziegelmann v. DaimlerChrysler Corp.*, 649 N.W.2d 556, 565 (N.D. 2002) (similar). It therefore is clear that NHTSA’s administrative procedures *do* provide an alternative method for adjudicating the claims in this case, and, as we show below, administrative proceedings provide a more appropriate method for adjudicating plaintiffs’ claims than does a nationwide class action in a State court.

B. The Courts Of This State Should Not Allow Themselves To Be Used As National Air Bag Regulators.

The nationwide class action that plaintiffs seek to persuade this Court to approve would, in effect, make the courts of this State *de facto* national regulators of DaimlerChrysler minivan air bag safety. To allow an Oklahoma court to assume such a role with regard to any aspect of motor vehicle safety poses an acute risk of upsetting Congress’s legislatively mandated national scheme of regulation and calls into question the ultimate authority of NHTSA.

It also would be inadvisable for a court (and jury) of this State to assume the role of national safety regulator, because *no* court or jury is up to such a task. Plaintiffs’ defect claims relate to highly complex passenger restraint systems that are regulated on the basis of intricate engineering analyses and carefully considered risk/benefit decisions. The choices among different kinds of air bag systems and different degrees of air bag “aggressivity” involve a complex weighing of different risks to different groups. Designers and regulators must make highly informed technical decisions that take account of such issues as the crash pulses and interior design features of specified vehicles, as well as the likely driving habits of the vehicles’ owners, *and* policy-oriented trade-offs among risks and benefits of

alternative systems for various groups. These choices are not binary – that is, they do not involve a choice between only two alternative air bag systems. To the contrary, there are a range of alternative systems to choose from, and each will present a different profile of risks and benefits for different groups.

For instance, to take just one dimension of the myriad factors facing vehicle and air bag designers and regulators, although an air bag system that is less “aggressive” than some baseline system may provide enhanced protection for small women and children (the latter of whom should not be seated adjacent to an air bag at all), that same “less aggressive” system may, when compared to the baseline system, provide less protection to large unbelted males in some crashes. Similarly, an air bag system designed with the assumption that all front seat occupants will always use seat belts properly will be different than a system designed to protect unbelted occupants. Thus, the challenge for the regulators and the designers of vehicles is to balance the competing risks and benefits involved in any particular air bag system design.

Moreover, because, the choices among air bag systems are not binary, there are a range of different interest groups and stakeholders with often conflicting positions on the appropriateness of the choices. Thus, even among so-called “consumer advocates,” there may be disagreements about the appropriate kinds of air bag systems, with some favoring de-powering of air bags because of concerns about risks to small women and children posed by relatively aggressive air bags, and others taking a contrary position, because they are concerned that a de-powering of air bags could increase the risks for large individuals, especially those who also are unbelted.

The possibility for diverse and cross-cutting views on air bag aggressivity issues is not merely hypothetical. In fact, in a recent NHTSA rulemaking on requirements for advanced air bags, dozens of comments, letters, and responses were filed, and there were disagreements in the positions of various safety advocates, such as the Insurance Institute for Highway Safety and the National Transportation Safety Board, on the one hand, and Public Citizen, Inc., on the other, with some advocates taking a position diametrically opposed to plaintiffs here – arguing that de-powering would not improve occupant safety for large unbelted men and therefore NHTSA should not promulgate a regulation requiring de-powering. *See* Federal Motor Vehicle Safety Standards; Occupant Crash Protection, 65 Fed. Reg. 30680, 30700 (May 12, 2000) (noting that “[s]afety advocacy groups” supported return to a test that is incompatible with de-powering).³ So strongly do the opponents of de-powering feel about the issue that a number of these groups and individuals have brought a petition for judicial review in the United States Court of Appeals for the Ninth Circuit to challenge NHTSA’s decision to phase in a new generation of de-powered air bags. *See Public Citizen, Inc. v. Mineta*, No. 02-70303.

Unfortunately, courts are not well equipped to handle such multi-dimensional issues. Courts generally consider only the views of the limited number of parties before them, and they depend on the initiative of the parties to obtain and present the evidence upon which the

³ There is great public interest in the air bag rulemaking. In fact, this rulemaking is the second most frequently visited docket on NHTSA’s website. *See* “DMS Web Top Requested Dockets,” available at http://dms.dot.gov/reports/topdock_rpt.htm (last visited Mar. 14, 2003).

decision is to be made.⁴ Thus, courts and juries lack both the expertise and the access to the range of perspectives necessary to assess the public policy issues raised by plaintiffs' claims in this case – such as the effect of possible decisions on non-parties; how various options would fare under an engineering, cost-benefit, or risk-benefit analysis; and whether a given decision would create incentives that advance or impede overall safety and public policy objectives.⁵

Administrative rulemaking proceedings, by contrast, can accommodate polycentric issues and diverse multi-coalition disputes because, in those proceedings, the public is given notice of proposed rule changes, and participation by *all* interested parties (with the right to present evidence) is both welcomed by the agency and relatively inexpensive for the commenters. Moreover, as noted (*supra* note 5), agencies can use a variety of information-gathering mechanisms to obtain information necessary to understand a broad range of potential ramifications of various policy choices and to undertake the careful balancing of risks, costs, and benefits that is required for rational safety administration and enforcement.

Thus, there are substantial reasons to doubt that a nationwide class action is a minimally appropriate, much less a superior, method for adjudicating plaintiffs' claims about DaimlerChrysler minivan air bag systems or for determining the remedy, if any, that is

⁴ Even class actions are typically presented as binary disputes between two, and only two, opposed positions. Other interested parties are not heard at all in such actions, or, if allowed to participate as intervenors or *amici*, participate only on a limited basis.

⁵ In considering such issues, regulators not only can consider evidence and arguments presented by commenters who offer pertinent information on their own initiative, but also can propound information requests to regulated entities or conduct their own tests and surveys. Courts and juries very rarely, if ever, seek information beyond that offered by the parties, and they generally are not qualified to engage in the sophisticated engineering, cost-benefit, and risk-benefit analyses that are matters of course for regulatory agencies.

appropriate. Finally, there is an additional reason why it would be inappropriate to certify a nationwide class action to, in effect, promulgate a new national standard for minivan air bag systems: Unlike Federal regulators, class action plaintiffs' counsel and State juries are utterly unaccountable for the outcomes of their "regulatory" action. NHTSA not only is subject to Congressional oversight, but its proceedings are subject to close scrutiny by the press and by the many public interest groups, industry members, and other entities that participate in its proceedings. These all provide a measure of responsiveness and public accountability that class action litigation unfortunately does not, and cannot, provide.

Thus, the courts of this State should not accept plaintiffs' invitation to become national air bag regulators. Such a role is inappropriate for courts and juries, and should be left to the Federal agency with the expertise and responsibility for developing, implementing, and enforcing nationally applicable motor vehicle safety standards.

II. PLAINTIFFS' PROPOSED CLASS ACTION WOULD OVERRIDE LEGISLATIVE AND POLICY CHOICES MADE BY OKLAHOMA'S CO-EQUAL FELLOW STATE SOVEREIGNS

Besides conflicting with Federal regulatory decisions and authorizing a State court and lay jury to engage in regulatory decisionmaking that is better left to expert administrative agencies, plaintiffs' proposed class action and class action remedies invite the courts of this State to make quasi-legislative decisions that might intrude upon the sovereign laws and policy choices of Oklahoma's co-equal fellow sovereigns. The danger that, in adjudicating this case, Oklahoma courts will trample upon the policy choices of other States that have at least as strong an interest in these matters as does Oklahoma has already manifested itself in this Court's decision to allow the certification of a nationwide "no-injury" class whose claims are to be adjudicated under Michigan law.

A. The Selection Of Michigan Law To Govern All Of The Class Members' Claims Conflicts With The Laws And Policies Of Most Other States.

The novel decision to apply Michigan law to all of the class claims surely conflicts with the policies and laws of the home States of most – if not all – of the out-of-state putative class members. These States almost certainly would *not* apply Michigan law to claims brought by their residents arising out of sales occurring within their borders. “Neither Indiana nor any other state has applied a uniform place-of-the-defendant’s headquarters rule to products-liability cases.” *In re Bridgestone/Firestone, Inc.*, 288 F.3d 1012, 1016 (7th Cir. 2002), *cert. denied*, 123 S. Ct. 870 (2003).⁶ *See also Spence v. Glock*, 227 F.3d 308, 314 & n.9 (5th Cir. 2000) (if district court considering certification of class had performed a proper choice-of-law analysis of tort and contract claims, it likely would have found that distributor’s home State’s law would not be controlling on tort and contract issues); *Feinstein v. Firestone Tire & Rubber Co.*, 535 F. Supp. 595, 605-06 (S.D.N.Y. 1982) (rejecting application of defendant’s State law to class action warranty claims).

⁶ Because the warranty claims at issue here are based on the contention that a defect exists in the DaimlerChrysler minivans’ air bag systems, those claims are closely akin to (in fact, in substance, if not name, are *identical to*) products liability claims. *See, e.g., Rivera v. Wyeth-Ayerst Labs.*, 283 F.3d 315, 320 (5th Cir. 2002) (the “wrongs” alleged by plaintiffs – “failure to warn and sale of a defective product – are products liability claims”). Indeed, it appears that the only reason that the plaintiffs did *not* bring claims for products liability is that they suffered no physical injuries. (As discussed below, the fact that this is a “no injury” case raises yet another conflict with policies and laws of most of Oklahoma’s fellow State sovereigns.)

The district court below relied heavily upon the U.S. district court decision that was reversed by the Seventh Circuit in *Bridgestone/Firestone*. In addition, appellants discussed the Seventh Circuit decision at length in their briefs. Nevertheless, this Court appears to have overlooked the Seventh Circuit’s decision, mentioning it only in a footnote. On rehearing, the Seventh Circuit’s decision would merit close attention, because it persuasively rebuts most, if not all, of the arguments in favor of class certification in this matter.

Thus, the decision to allow an Oklahoma court and jury to apply Michigan law on a nationwide basis could result in an adjudication that would violate the laws and policies of other States. As the Seventh Circuit recently noted in criticizing a virtually identical decision to apply the law of the *seller's* State to class wide warranty claims, “[s]tate consumer protection laws vary considerably, and courts must respect these differences rather than apply one state’s law to sales in other states with different rules.” *Bridgestone/Firestone*, 288 F.3d at 1018. *See also* RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 6 cmt. f (1971) (“In determining a question of choice of law, the forum should give consideration not only to its own relevant policies ... but also to the relevant policies of all other interested states.”).

It is not surprising that few, if any, jurisdictions have adopted the view that warranty actions generally should be governed by the *seller's* State’s law. After all, “[e]ach plaintiff’s home state has an interest in protecting its consumers from in-state injuries caused by foreign corporations and in delineating the scope of recovery for its citizens under its own laws.” *In re Ford Motor Co. Ignition Switch Prods. Liab. Litig.*, 174 F.R.D. 332, 348 (D.N.J. 1997). As the Seventh Circuit pointed out in rejecting the conclusion that Indiana would apply Michigan fraud and warranty law in a nationwide class action, “[w]e do not for a second suppose that Indiana would apply Michigan law to an auto sale if Michigan permitted auto companies to conceal defects from customers; nor do we think it likely that Indiana would apply Korean law (no matter *what* Korean law on the subject may provide) to claims of deceit in the sale of Hyundai automobiles, in Indiana, to residents of Indiana, or French law to the sale of cars equipped with Michelin tires.” *Bridgestone/Firestone*, 288 F.3d at 1018. The same analysis almost certainly holds here for Oklahoma.

That this is a putative nationwide class action cannot justify disregarding the preferences and policies of other concerned States, and certainly provides no basis for concocting wholly new choice-of-law rules to facilitate administration of the case. To the contrary, the fact that a procedural “shortcut was necessary in order for this suit to proceed as a class action should have been a caution signal” that class certification was improper. *Broussard v. Meineke Disc. Muffler Shops, Inc.*, 155 F.3d 331, 343 (4th Cir. 1998). *See also Cimino v. Raymark Indus.*, 151 F.3d 297, 312 (5th Cir. 1998) (class action rule “does not alter the required elements which must be found to impose liability and fix damages ... *or the identity of the substantive law* ... which determines such elements”) (emphasis added). Thus, this Court’s validation of the novel choice-of-law theory propounded by plaintiffs in this case not only tramples upon the policies and laws of other States with a genuine interest in DaimlerChrysler minivan sales that occurred outside of Oklahoma (and Michigan), but also provides strong evidence that this case is not suitable for class action treatment.⁷

B. The Validation Of A “No-Injury” Class Also Conflicts With The Laws And Policies Of Other States.

The Court’s validation of a “no-injury” class suffers from many of the same flaws as does the choice of Michigan law to govern all of the class members’ claims. As the Seventh Circuit has pointed out, “most states would not entertain the sort of tort that plaintiffs press” in their no-injury “warranty” claim. *Bridgestone/Firestone*, 288 F.3d at 1017.

⁷ The Court’s choice-of-law discussion indicates that class-action considerations may have weighed significantly in the novel decision to designate Michigan law as the national law for this case. Specifically, the Court states that “Michigan is the only state where conduct relevant to all class members occurred.” *Ysbrand*, 2003 OK 17, § 15, _ P.3d _. As we have shown, however, that the choice of a particular State’s law would allow a class to be certified is not a basis for the choice of that law to govern a nationwide class action.

In fact, the cases rejecting the kind of “no-injury,” non-manifest defects, tendency-to-fail allegations raised by plaintiffs here are legion. *See, e.g., Briehl v. General Motors Corp.*, 172 F.3d 623 (8th Cir. 1999); *In re Air Bag Prods. Liab. Litig.*, 7 F. Supp. 2d 792, 803 (E.D. La. 1998); *Lee v. General Motors Corp.*, 950 F. Supp. 170 (S.D. Miss. 1996); *Martin v. Ford Motor Co.*, 914 F. Supp. 1449, 1455 (S.D. Tex. 1996); *Yost v. General Motors Corp.*, 651 F. Supp. 656, 658 (D.N.J. 1986); *American Suzuki Motor Corp. v. Superior Court*, 44 Cal. Rptr. 2d 526, 527 (Cal. Ct. App. 1995); *Frank v. DaimlerChrysler Corp.*, 741 N.Y.S.2d 9, 12-16 (N.Y. App. Div. 2002); *Ziegelmann v. DaimlerChrysler*, 649 N.W.2d 556, 559-565 (N.D. 2002).

Thus, by permitting residents of States that would not recognize a no-injury cause of action to be members of a nationwide class in Oklahoma, this Court would override the policy choices and laws of those States.

C. The Certification Of A Nationwide Class In This Case Conflicts With The Position Of States That Would Bar This Action Under The Doctrines Of Preemption Or Primary Jurisdiction.

Finally, the certification of a nationwide class in this case ignores the possibility that other States might find plaintiffs’ proposed recall remedy preempted or otherwise barred, or might choose, as a matter of sound policy, to refer plaintiffs’ complaints to NHTSA under the doctrine of primary jurisdiction. *Cf., e.g., Lilly v. Ford Motor Co.*, No. 00 C 7372, 2002 WL 84603, at *5 (N.D. Ill. Jan. 22, 2002); *Namovicz v. Cooper Tire & Rubber Co.*, 225 F. Supp. 2d 582, 584 (D. Md. 2001); *In re Bridgestone/Firestone, Inc.*, 153 F. Supp. 2d 935 (S.D. Ind. 2001); *Nelson v. Blue Shield of MA, Inc.*, 387 N.E.2d 589 (Mass. 1979); *Atlantic Satellite Communications Co. v. Duffy*, 705 N.Y.S.2d 170, 171 (N.Y. Sup. Ct. 2000); *Solarz v. DaimlerChrysler Corp.*, No. 2033, 2002 WL 452218, at *2.

By allowing a nationwide class action that includes class members from jurisdictions that would not allow individual suits seeking a court-ordered recall, this Court would disregard the laws of Oklahoma's co-equal State sovereigns, in violation of basic principles of comity and respect for the prerogatives of fellow States.

CONCLUSION

Plaintiffs' proposed class-wide remedy conflicts with determinations made by NHTSA and invites the courts of this State to assume the role of nationwide motor vehicle safety regulators – a role that is inappropriate for common law courts. In addition, the certification of a nationwide class seeking a court-ordered recall under Michigan law would be inconsistent with the laws and policies of many of Oklahoma's co-equal sovereigns.

For the foregoing reasons, as well as the reasons set forth in the brief of the appellants, the Alliance of Automobile Manufacturers, Inc., respectfully requests that this Court grant rehearing and enter an order reversing the district court's class certification order in its entirety.

Respectfully submitted.

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CERTIFICATE OF MAILING

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