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## Federal Judge Won't Dismiss Class Action Over Malfunctioning Audi Fuel Sensors

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A federal judge yesterday refused to dismiss a consumer class action brought by owners of Audi A6s who say the cars are defective and can suddenly lose control due to a fuel-system malfunction that allows them to run out of gas unexpectedly.

In his seven-page opinion in *McLaughlin v. Volkswagen of America*, Senior U.S. District Judge Thomas N. O'Neill Jr. found that the consumers have the right to pursue their claims in federal court since each car owner easily meets the minimum \$75,000 in controversy.

The ruling is a victory for attorney David T. Shulick, a sole practitioner, Howard C. Gottlieb and Jeffrey L. Kodroff of Spector Roseman & Kodroff, and David J. Gorberg of Gorberg & Zuber.

In the suit, the car owners allege that Audi A6s manufactured since 1998 contain defective fuel-level sensors that cause the digital dashboard fuel gauge to display the current fuel level falsely. As a result, the suit says, the cars can suddenly run out of fuel, forcing drivers to lose control without any warning.

Audi admits that the car has its problems. In May, the company voluntarily recalled 48,500 vehicles.

But the suit says the remedial measures taken by the manufacturer have sometimes been ineffective. The class of owners are pursuing claims under the Pennsylvania Unfair Trade Practices and Consumer Protection Law as well as



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breach of contract and negligent misrepresentation.

Audi's lawyer, Matthew J. Hamilton of Pepper Hamilton, moved to dismiss the suit for lack of subject matter jurisdiction, arguing that in a federal diversity case, each individual plaintiff must establish the \$75,000 jurisdictional amount.

The plaintiffs' team argued that the UTPCPL allows for trebled damages and that each plaintiff therefore meets the minimum since the Audi A6 has a base price of about \$50,000.

But Hamilton argued that the fuel-system defect was at most worth one-fifth of the price, or \$10,000, so that the trebled damages would be just \$30,000.

Judge O'Neill sided with the plaintiffs, saying there is a growing body of

case law in the Eastern District that says UTPCPL damages must be calculated on the basis of the purchase price of the car.

Hamilton cited *Dorian v. Bridgestone/Firestone*, in which U.S. District Judge Jay C. Waldman remanded a suit to state court after finding that the damages for replacing defective tires should be limited to the costs of the tires.

But O'Neill found that Waldman's decision was easily distinguished from all of the others since the defect in that case related to a discrete, modular or incidental part of the vehicle.

By contrast, O'Neill said, the Audi A6 owners are complaining about a defect in "an integrated system that is necessary to the safe operation of the vehicle."

In such a case, O'Neill said, "it is reasonable to assume that the baseline for damages is the purchase price of the car."

While Audi characterized the defect as "nothing more than a malfunctioning fuel gauge," O'Neill said he sees the defect as "more complicated than that."

The fuel-level detection system, he said, involves components inside the fuel tank as well as a fuel gauge and computer.

Making the matter even more complex, O'Neill said, is the allegation that the manufacturer has been unable to fix the problem in some cars even after multiple attempts.

(Copies of the seven-page opinion in *McLaughlin v. Volkswagen of America*, PICS NO. 00-2364, are available from The Legal Intelligencer. Please refer to the Pennsylvania Instant Case Service order form on Page 9.)