

IN THE COURT OF COMMON PLEAS OF LANCASTER COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

DONNA SODERS, on behalf of : No. CI-00-04255
herself and all others :
similarly situated, :
 :
Plaintiff :
 :
v. :
 :
GENERAL MOTORS CORPORATION, : CLASS ACTION
 :
Defendant : JURY TRIAL DEMANDED

COMPLAINT

Plaintiff, Donna Soders, on behalf of herself and a class of all others similarly situated, brings this action for damages under the Pennsylvania Board of Vehicles Act, 63 P.S. §§ 818.1 et seq., demands a trial by jury, and in support hereof avers as follows:

The Parties

1. Plaintiff, Donna Soders, is an adult individual, residing at 709 East Chestnut Street, Lancaster, Pennsylvania 17602.

2. Defendant, General Motors Corporation ("GM"), is a Delaware corporation that is qualified to do and does do business throughout the Commonwealth of Pennsylvania, regularly transacts business in Lancaster County, and maintains its registered office in the Commonwealth of Pennsylvania, c/o CT Corporation System, 1635 Market Street, Philadelphia, Pennsylvania 19103.

Operative Facts

3. GM operates through unincorporated divisions that are in the business of assembling and selling new and unused motor vehicles.

4. Beginning in the 1960's and continuing until the late 1980's and early 1990's, some GM dealers, but not all, formed associations to engage in the local advertising of GM products.

5. The dealers who belonged to these associations funded them through voluntary assessments that the dealers paid when they bought new vehicles from GM.

6. The dealers initially paid these voluntary assessments directly to their associations, but it subsequently developed that GM, at the dealers' request, undertook to collect these assessments from the dealers when it sold them new vehicles, and then remitted to the dealers' associations all such voluntary assessments that it collected.

7. The dealers' voluntary assessments were in no fixed or set amount. Dealers could pay whatever assessment they wanted, or pay none at all. Dealers did not have to pay any assessment in order to buy a vehicle from GM.

8. In or about the fall of 1988, GM decided to change dealer participation in advertising programs from voluntary to mandatory, throughout the country.

9. To effect this change and to implement mandatory dealer participation in advertising programs, GM began to initiate in the fall of 1988 programs called "Marketing Initiatives" for

each of its six divisions. The Marketing Initiatives applied to all GM franchised dealers (hereinafter the "dealers"), including those in Pennsylvania.

10. The Marketing Initiatives for the Chevrolet and GMC Truck Division became effective in September 1988 with the introduction of those Divisions' 1989 model year vehicles.

11. The Marketing Initiatives for the Cadillac and Oldsmobile Divisions became effective in July 1989 with the introduction of those Divisions' 1990 model year vehicles.

12. The Marketing Initiatives for the Pontiac and Buick Divisions became effective in July and August 1990 with the introduction of those Divisions' 1991 model year vehicles.

13. The Marketing Initiative for GM's Saturn Division became effective when the Saturn Division was created.

14. Under the Marketing Initiatives, GM added a mandatory assessment of one percent (1%) of the Manufacturer's Suggested Retail Price ("MSRP") to the invoice of each vehicle that GM sold to a dealer. The 1% assessments applied to all GM vehicles except those sold:

- a) for resale under the GM Employee Purchase Plan;
- b) to GM qualified fleet purchasers; and
- c) to government purchasers.

15. GM's dealers had no choice about paying the 1% assessments under the Marketing Initiatives. The dealers had to pay the 1% assessments for each new vehicle that the dealers bought from GM in order to obtain those vehicles.

16. The funds created by the 1% assessments were designated and required to be used for advertising campaigns, just as the voluntary assessments had been before the Marketing Initiatives.

17. After paying the mandatory 1% assessments to GM, GM's dealers passed these assessments onto the purchasers of GM's vehicles, by adding the 1% assessments to the retail prices of the vehicles covered by the assessments.

18. GM continued the Marketing Initiatives and the 1% assessments until April 1, 1999, when GM terminated the Initiatives because of litigation brought by GM dealers against GM.

19. On December 2, 1997, while the Pontiac Marketing Initiative was in effect, Plaintiff purchased a new 1998 Pontiac Grand Am model vehicle from Jones Pontiac GMC Truck Co. ("Jones Pontiac"), P.O. Box 4426, 1335 Manheim Pike, Lancaster, Pennsylvania 17604.

20. Under the Pontiac Marketing Initiative, GM added one percent (1%) of the GM MSRP to the invoice that GM charged Jones Pontiac for Plaintiff's vehicle, and Jones Pontiac then added that one percent (1%) charge to the retail price of Plaintiff's car.

COUNT I

Pennsylvania Board of Vehicles Act

21. On December 22, 1983, the Pennsylvania General Assembly enacted the Board of Vehicles Act, 63 P.S. §818.1, et seq., which

became effective January 1, 1984, and was amended on April 19, 1996.

22. The Board of Vehicles Act, 63 P.S. §818.12, provides in relevant part:

It shall be a violation for any manufacturer (or) distributor...licensed under this act to require...any new vehicle dealer in this Commonwealth to:

* * *

(3) Participate monetarily in an advertising campaign...at the expense of the new vehicle dealer.

23. GM is a "manufacturer" and "distributor" under the Board of Vehicles Act, 63 P.S. §818.2.

24. Jones Pontiac is a "new vehicle dealer" under the Board of Vehicles Act, 63 P.S. §818.2.

25. The Marketing Initiative of GM's Pontiac Division required Jones Pontiac to participate monetarily in an advertising campaign at Jones Pontiac's expense, in violation of the Board of Vehicles Act, through the 1% charge that GM required its dealers to pay for use in advertising campaigns.

26. The Board of Vehicles Act further provides in relevant part:

...any person who is or may be injured by a violation of a provision of this act or any party to a franchise who is so injured in his business or property by a violation of a provision of this act relating to that franchise...may bring an action for damages...in any court of competent jurisdiction.

63 P.S. §818.29 (emphasis added).

27. Plaintiff is a "person" under the Board of Vehicles Act, 63 P.S. §818.2, and Plaintiff has been "injured" by the charge of one percent (1%) of the MSRP that GM added to the invoice for Plaintiff's car in violation of the Board of Vehicle Act, because Plaintiff ultimately had to bear that charge.

Class Action Allegations

28. Plaintiff incorporates the preceding allegations contained in paragraphs 1 through 27 as though set forth here in full.

29. Plaintiff brings this case on behalf of:

All persons who purchased at retail from a franchised GM dealer in Pennsylvania a new vehicle that was manufactured or distributed by the Chevrolet, GMC Truck, Cadillac, Oldsmobile, Buick, Pontiac and Saturn Divisions of General Motors Corporation and that was covered under a Marketing Initiative of any of those Divisions. The class includes natural persons and business entities of any kind, but does not include GM employees who purchased vehicles under the GM Employee Purchase Plans, GM qualified fleet purchasers and governmental agencies.

30. The above defined class is so numerous that joinder of all members is impracticable. While the exact number of class members is unknown, it is believed and therefore averred to be in the thousands.

31. All questions of law and fact are common to all members of the class. These questions involve:

a) whether GM required its Pennsylvania dealers to participate monetarily in advertising campaigns;

b) whether GM added one percent (1%) of the MSRP to the invoices of vehicles sold to GM's Pennsylvania dealers during the Marketing Initiatives;

c) whether the 1% charge that GM added to the invoices for its vehicles were used in advertising campaigns;

d) whether the one percent (1%) charge that GM added to the invoices of its vehicles violated the Board of Vehicles Act; and

e) whether Plaintiff and the class were "injured" as that term is used in the Board of Vehicles Act.

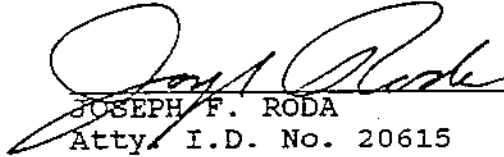
32. Plaintiff's claim is typical of the claims of all members of the class. Indeed, Plaintiff's claim is identical. The only difference between Plaintiff's claim and the claims of the members of the class is the amount of damages to which Plaintiff and each class member would be respectively entitled.

33. The defenses of GM to Plaintiff's claim are identical to the defenses of GM to each class member's claim.

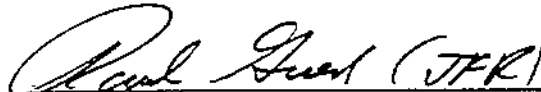
34. Plaintiff and her attorneys will fairly and adequately assert and protect the interests of the class under the criteria of Pennsylvania Rule of Civil Procedure 1709, which criteria are incorporated herein by reference.

35. This class action provides a fair and efficient method for adjudication of this controversy under the criteria set forth of Pennsylvania Rule of Civil Procedure 1708, which criteria are incorporated herein by reference.

WHEREFORE, Plaintiff respectfully requests that the class requested above be certified, and that judgment be entered in favor of Plaintiff and the class and against Defendant GM for damages consistent with the Board of Vehicles Act.


JOSEPH F. RODA
Atty. I.D. No. 20615

RODA & NAST, P.C.
801 Estelle Drive
Lancaster, PA 17601
(717) 892-3000


PAUL I. GUEST, JR.
Atty. I.D. No. 30488

P.O. Box 353
Newtown Square, PA 19073
(610) 353-7859

Attorneys for Plaintiff

DATE: *April 25, 2000*