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October 9, 2015

Via ECF
Honorable Joseph A. Dickson, U.S.M.J.
United States District Court
Dr. MLK Courthouse
50 Walnut Street
Newark, New Jersey 07102

Re: Neale v. Volvo Cars of North America, LLC et als.
Civil Action No.: 2:10-cv-04407-JLL-MF

Dear Judge Dickson:

Along with my co-counsel, we represent the Plaintiffs in the above matter and write in response to Volvo's letter dated October 6, 2015 (Doc. No. 328) ("Reply"). This eight page single-spaced letter raises new arguments not made by Volvo in its initial submission and is precisely the reason Plaintiffs suggested additional briefing should not be permitted.

Volvo's Reply is replete with superlatives about Plaintiffs' position: Plaintiffs are being "disingenuous;" Plaintiffs are asking the Court "to turn a blind eye;" Plaintiffs' position is "fundamentally unfair;" Plaintiffs' are seeking to "secrete key evidence;" and Plaintiffs' position is "irrational."[1] However, Volvo's use of such colorful language is simply an attempt to distract this Court from Volvo's true motivations: delaying this matter as long as it can while desperately vying for new experts. Volvo knows that the longer it can delay this matter, the greater the

[1] Volvo also claims that "Plaintiffs' position flatly contradicts what they said in 2011, when they agreed there would be additional discovery following class certification." Reply at pg. 3, n. 2. That is incorrect. In fact, Plaintiffs do intend to conduct limited and specific discovery after class certification pursuant to an express agreement with Volvo. That agreement permits limited discovery and the service of a final expert report on the issue of damages after class certification because the parties agreed it would be a waste of resources to do so before it was known what class or classes would be certified. *See* email chain attached as Exhibit "A."

number of class vehicles retired to the junkyard; thereby decreasing the number of potential class members.

The "new" discovery Volvo claims is vital to its defense is only sought so that Volvo may justify its request to submit new expert reports in opposition to Plaintiffs' renewed motion for class certification.[2] Volvo's previous experts -- one who admitted to reviewing virtually nothing prior to issuing his opinions and another that literally copy-and-pasted most of her report from previously unrelated cases -- did not satisfy *Daubert* and were excluded by the Court. (*See* Doc. Nos. 268 and 272.) Volvo now recognizes the importance of this case and wants a "do-over." As a result, Volvo is now attempting to delay the case and prejudice the putative class, who are also its own customers, in order to accomplish its goals. Respectfully, Volvo's transparent efforts should not be tolerated by this Court.

Plaintiffs will not beleaguer the Court with a recitation of the arguments already presented in their prior submission. However, Plaintiffs must generally address the overall irrationality of Volvo's position. Volvo suggests that additional discovery must be permitted any time there is a delay in case proceedings. Applying this rationale, if this Court were to again grant class certification and Volvo inevitably appeals pursuant to Fed. R. Civ. P. 23(f), Volvo would thereby be entitled to new discovery on events that may have occurred during such appeal. As a result, litigation in all cases would proceed endlessly and indefinitely. Such an argument goes against all legal logic.

This case is now over five years old and it is time to for this case move forward. Accordingly, we respectfully request that Volvo's request to re-open fact and expert discovery be denied and the parties proceed to class certification briefing immediately.

Respectfully submitted,

MATTHEW R. MENDELSOHN

cc: All Counsel (via ECF)

[2] Despite Volvo's repeated arguments that the new discovery is relevant to class certification, Volvo has not once explained precisely how such information would be used in its arguments in opposition to class certification. This conspicuous absence further demonstrates that the requested discovery is merely being used as an excuse.

EXHIBIT A

Matthew Mendelsohn

From: Matthew D. Schelkopf <mds@chimicles.com>
Sent: Sunday, August 05, 2012 5:58 PM
To: Matthew Mendelsohn
Subject: Fwd: Volvo SR

Begin forwarded message:

From: "Herzog, Peter" <pwherzog@BryanCave.com>
Date: August 5, 2012 5:55:09 PM EDT
To: "'mds@chimicles.com'" <mds@chimicles.com>
Cc: "'JThomas@dykema.com'" <JThomas@dykema.com>
Subject: Re: Volvo SR

Matt,

I want to make sure we are clear on this. I think so, but write to be precise. As discussed, I do not object to delaying your expert report on the amount or quantification of Plaintiffs' alleged damages until after the Court decides whether any class may be certified in this case. However, if Plaintiffs intend to argue that the fact of damage can be shown with classwide proof and if they intend to support that argument with expert testimony, then our position is that such testimony must be offered prior to certification. As explained, we fully intend to argue that the fact of damage is individualized and cannot be shown with evidence common to all class members. Plaintiffs are not entitled to use our agreement to argue that such evidence will be presented at a later time. If this accurately represents our agreement, we don't need to discuss further. If you have a different understanding, then we need to clear it up right away.

Peter

Sent from my BlackBerry Wireless Handheld

From: Matthew D. Schelkopf [mailto:mds@chimicles.com]
Sent: Friday, August 03, 2012 11:42 AM
To: Herzog, Peter
Subject: RE: Volvo SR

Peter – I will discuss the issue with Stefan. Also, per our prior discussion, please confirm that for purposes of the class certification motion you are agreeable to us not submitting an expert damages report opining as to a total hard dollar amount of damages to the class at this time. As discussed, you were agreeable to us submitting a report pertaining to final dollar figures after class certification and before trial.

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