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Class Action Proceeds Against Fujifilm

◆ PRODUCTS LIABILITY LAW ◆

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Personal technology has become an integral part of our lives. Most Americans are completely dependent upon personal computers, cellular telephones, personal digital assistants, MP3 players and other consumer devices. Like many other manufactured products, these devices sometimes fail to perform as designed. And, sometimes, disappointed consumers sue. This periodic column will look at lawsuits and claims involving some of the most common consumer products, such as the recent Fujifilm digital camera class action.

How often do we find that products malfunction after the warranty period has apparently expired? One New Jersey consumer persevered against a manufacturer, notwithstanding that she filed her claim about three years after the warranty on her digital camera expired by its terms.

In January 2003, Jerilynn Payne purchased a FinePix 3800 digital camera manufactured by Fujifilm U.S.A., Inc. (Fujifilm) for \$399. She asserted that the owner's manual stated that the "number of available shots using fully charged (external) batteries would be 300-350 frames."¹ The camera came with an express one-year limited warranty, which disclaimed implied warranties of merchantability and fitness for purpose beyond the one-year period.

Ms. Payne claimed that more than a year after she purchased the camera it stopped working long before 300 frames were clicked off—even with a fully charged battery. She contacted Fujifilm's repair service and was told that, since the camera was out of warranty, she would have to pay a fee to have it looked at, with no guarantee of repair.²

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Last year, a class action was filed against Fujifilm alleging that its FinePix 3800 digital camera contained a design flaw causing the internal memory battery to discharge, even when the external battery was recharged. A federal district court has allowed the case to go forward, even though the claim was filed three years after the camera warranty expired.

Ms. Payne evidently did some additional research regarding her camera problem and in January 2007 filed a class action against Fujifilm in the U.S. District Court in New Jersey.³ She alleged that the camera contained a design flaw that caused the internal memory battery to discharge, even when the external battery was recharged. She sought to represent a class of approximately 42,000 purchasers of the allegedly defective FinePix 3800 camera,⁴ and her amended complaint contained causes of action for breach of warranty (both express and implied), for violations of the Magnuson-Moss Warranty Act⁵ and the New Jersey Consumer

Fraud Act,⁶ and for breach of contract and breach of the implied covenant of good faith and fair dealing.⁷

Fujifilm moved to dismiss plaintiff's warranty claims, asserting that plaintiff conceded in her complaint that her FinePix 3800 digital camera only failed to operate after the one-year written limited warranty had expired.⁸

In considering defendant's motion, the District Court acknowledged that the general rule pertaining to warranties "is that an express warranty does not cover repairs made after the applicable time...periods have elapsed,"⁹ and that the U.S. Court of Appeals for the Third Circuit has expressly found that "a defect which is not discovered until after the expiration of the express warranty period is not actionable."¹⁰ End of photo session, right?

Not so fast. Plaintiff countered that she (and those she sought to represent) stated an actionable breach of warranty claim because her pleading alleged "that the defect affects and manifests in the camera immediately" and that the "durational limits [of the express warranty] are unconscionable."¹¹

The plaintiff claimed that class members had "no meaningful choice" in determining the time limits of the FinePix 3800's express warranty; that the terms of the warranty "unreasonably favored" Fujifilm; that there was a "gross disparity in bargaining power" between Fujifilm and members of the putative plaintiff class; and that Fujifilm knew that the FinePix 3800 cameras were defective at the time of sale.¹²

Under New Jersey law, if a court reviewing a contract finds that the contract—or any portion of it—is unconscionable at the time it was made, "the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause," or it may limit the application of the clause to prevent an unconscionable result.¹³

According to the District Court, to determine whether a contractual provision is

unconscionable, courts generally look at two issues: first, “unfairness in the formation of the contract, or procedural unconscionability”; and second, “excessively disproportionate terms, or substantive unconscionability.”¹⁴

Applying this test and the language of the New Jersey statute, the District Court zoomed in on the allegations of plaintiff’s amended complaint and ruled that plaintiff had adequately pleaded the unconscionability of Fujifilm’s limited warranty. The court therefore denied Fujifilm’s motion to dismiss the plaintiff’s warranty claims.

Quoting from a decision of the Fourth Circuit, the District Court found that “[w]hen a manufacturer is aware that its product is inherently defective, but the buyer has ‘no notice of or ability to detect’ the problem, there is perforce a substantial disparity in the parties’ relative bargaining power. In such a case, the presumption is that the buyer’s acceptance of limitations on his contractual remedies—including of course any warranty disclaimers—was neither ‘knowing’ nor ‘voluntary,’ thereby rendering such limitations unconscionable and ineffective.”¹⁵ Plaintiff’s allegations of concealment and unequal bargaining power were sufficient to withstand defendant’s motion to dismiss the warranty claims of the amended complaint.

Of course, the ruling contains no finding that Fujifilm’s warranty was, in fact, unconscionable, and Fujifilm vigorously disputes plaintiff’s claims in that regard. The burden is now on the plaintiff to attempt to prove her claim at trial.

Magnuson-Moss Warranty Act

Fujifilm also sought dismissal of the plaintiff’s Magnuson-Moss Warranty Act (MMWA) cause of action. The basis for defendant’s motion was plaintiff’s failure to include at least 100 named plaintiffs in her putative class action, as required by the statute.¹⁶ The District Court acknowledged that plaintiff’s amended complaint failed to satisfy the statutory requirements of the act. Again, it looked like the plaintiff’s photo session was about to be ended, at least in federal court.

But the District Court applied a wide-angle lens to its analysis and looked beyond the MMWA to the Class Action Fairness Act (CAFA)¹⁷ to consider whether the plaintiff had stated an alternative basis for federal jurisdiction over her class action claims.

Guided by the recent decision of another judge of the New Jersey federal court and the principle of construction that requires courts

to presume that Congress enacts legislation with knowledge of existing law (in this case, the limited jurisdictional provisions of the MMWA with respect to class actions), the court in *Payne* reasoned that, in enacting CAFA, Congress intended to expand those limitations. Therefore, the *Payne* court disregarded the limitations found in MMWA and, instead, sought to determine whether the plaintiff’s amended complaint met the requirements of CAFA.¹⁸

The court found that plaintiff adequately alleged that the putative class members’ aggregate claims exceed \$5 million, that minimal diversity exists between the parties, and that the requirements of Federal Rule of Civil Procedure 23 were met. Therefore, the court concluded, although plaintiff did not meet the statutory requirements of the MMWA, the court could nevertheless exercise jurisdiction over the case under CAFA and denied defendant’s motion to dismiss the complaint on jurisdictional grounds.

The court also denied Fujifilm’s motion to dismiss the New Jersey Consumer Fraud Act and contract-based claims, finding that the allegations of the amended complaint were sufficient to permit the claims to proceed.

Defendant thought that its legal arguments would send plaintiff away crying, but the court reduced plaintiff’s red eyes by permitting her to proceed to the discovery stage of the case.

Lithium Battery Update

In a July 31, 2007, column, we noted that there had been reports of allegedly exploding lithium batteries in laptop computers and in cellular telephones, and that several computer manufacturers had recalled millions of computers due to concerns about the safety of the lithium batteries installed in them. Following these reported incidents, the U.S. Department of Transportation issued a rule prohibiting passengers from packing loose lithium batteries in checked airline baggage, effective Jan. 1, 2008.

Frequent “road warriors” should not despair. Under the new rule, passengers will continue to be permitted to transport lithium batteries in checked baggage if they are actually installed in electronic devices, and will also be able to carry loose lithium batteries in carry-on bags as long as they are properly protected from short-circuiting in their original packing materials, in individual plastic bags or in a protected travel case. A guide to the new rule can be found at <http://safetravel.gov>.

1. *Payne v. Fujifilm U.S.A. Inc.*, 2:07-cv-00385 (D.N.J.) (Amended Complaint, ¶23).

2. *Id.*, ¶9.

3. *Payne v. Fujifilm U.S.A. Inc.*, 2:07-cv-00385 (D.N.J.)

4. *Payne* (Amended Complaint, ¶15).

5. 15 U.S.C. §2301-2312

6. N.J.Stat. Ann. §56:8-1, et seq.

7. In its answer to plaintiff’s Amended Complaint, Fujifilm denies that its FinePix 3800 camera is defective in any respect. *Payne v. Fujifilm U.S.A. Inc.*, 2:07-cv-00385 (D.N.J.) (Answer to Amended Complaint, Jan. 14, 2008, Docket No. 29).

8. *Payne v. Fujifilm U.S.A. Inc.*, slip copy, 2007 WL 4591281 at *3 (D.N.J. Dec. 28, 2007).

9. *Id.*, citing *Abraham v. Volkswagon of Am. Inc.*, 795 F.2d 238, 250 (2d Cir. 1986).

10. *Id.*, citing *Duquesne Light Co. v. Westinghouse Elec. Corp.*, 66 F.3d 604, 616 (3d Cir. 1995).

11. *Payne*, slip copy at *3.

12. *Payne*, slip copy at *4.

13. N.J. Stat. Ann. §12 A:2-302.

14. *Id.*

15. *Payne*, slip copy at *5, quoting *Carlson v. Gen. Motors Corp.*, 883 F.2d 287, 296 (4th Cir. 1989).

16. Sections 2110(d)(1) and (3) of the Magnuson-Moss Act provide that a class action claim based upon the failure of a warrantor to comply with an obligation under a written or implied warranty may not be brought in federal court if “the number of named plaintiffs is less than one hundred.” 15 U.S.C. §§2310(d)(1) and (3).

17. 28 U.S.C. §1332(d)(2).

18. *Payne*, slip copy at *5, citing *McGhee v. Cont’l Tire N. Am. Inc.*, No. 06-6234, 2007 U.S. Dist. LEXIS 62869, at *8 (D.N.J. Aug. 27, 2007), quoting *Chavis v. Fidelity Warranty Services Inc.*, 415 F. Supp. 2d. 620, 626 (D.S.C. 2006).

19. “When Electronic Devices Turn Against Owners,” NYLJ, July 31, 2007.