

New GM Out Of Reach For Car Defect Punitive Damages

By **Rick Archer**

Law360, New York (July 12, 2017, 5:58 PM EDT) -- A New York bankruptcy judge found Wednesday that General Motors Co. is shielded from punitive damages from product liability claims based on its prebankruptcy actions.

The agreement that turned prebankruptcy GM into the corporation referred to as New GM expressly transferred liability for compensatory damages, but neither the agreement nor bankruptcy law support the transfer of punitive damage liability, U.S. Bankruptcy Judge Martin Glenn said in his opinion.

"Old GM was deeply insolvent, and it would have never been liable for punitive damages until all higher priority claims were paid in full," he said. "Likewise, New GM cannot be held liable for damages that the Bankruptcy Code dictates would never have been paid by Old GM."

The decision is the latest in a series of rulings sorting out what kinds of damages can be claimed from GM in product liability suits brought before and after the automaker's bankruptcy filing, including a multidistrict class action for an alleged ignition switch defect. In 2016 the **Second Circuit affirmed** a 2015 bankruptcy court finding that since the ignition switch defect did not fully come to light until after the bankruptcy sale, New GM could still face liability, even if the cars in question were put out by Old GM.

Last month Judge Glenn found that plaintiffs with non-ignition-switch-related product liability claims may bring claims against New GM based solely on its wrongful conduct after the close of the bankruptcy sale, thus permitting claims related to GM recalls other than its February and March 2014 ignition switch recalls to be heard in trial court proceedings.

Wednesday's decision rejected plaintiff-side arguments that New GM was liable for punitive damage claims made against Old GM. The sale order that created New GM transferred only liability for compensatory damages, and under the U.S. Bankruptcy Code all general unsecured claims must be paid in full before punitive damages claims can be paid, according to the decision.

"And in the case of Old GM, not all higher priority claims will be paid in full," Judge Glenn said.

He also found that purchasers of used GM cars are bound by the sale order and that the "ignition switch plaintiffs" referred to in the Second Circuit opinion included only parties with claims based on ignition switch defects.

Representatives of GM declined to comment. Counsel for the multidistrict litigation plaintiffs did not immediately respond to requests for comment Wednesday.

The plaintiffs are represented by Adelman Hirsch & Connors LLP, Anthony Law Firm PA, Carcione Cattermole Dolinski Stucky Markowitz & Carcione, Ledford Law Firm, Brown Rudnick LLP, Stutzman Bromberg Esserman & Plifka, Hagens Berman Sobol Shapiro LLP, Lief Cabraser Heimann & Bernstein LLP, Goodwin Procter LLP, Gary Peller, The Mastromarco Firm, Knapp Petersen & Clarke, Klestadt Winters Jureller Southard & Stevens LLP, and Hilliard Muñoz Gonzales LLP.

GM is represented by Arthur Steinberg and Scott Davidson of King & Spalding LLP and Richard C. Godfrey and Andrew B. Bloomer of Kirkland & Ellis LLP.

The bankruptcy is In re: Motors Liquidation Co., case number 1:09-bk-50026, in the U.S. Bankruptcy Court for the Southern District of New York.

--Editing by Edrienne Su.