

GM Appeals Successor Liability Over Nonswitch Claims

By **Cara Salvatore**

Law360, New York (July 26, 2017, 4:12 PM EDT) -- General Motors is appealing a court ruling that widened the scope of its post-bankruptcy responsibility for defects in pre-bankruptcy cars, it said Tuesday, signaling that it will fight allegations of shifting and steering defects as doggedly as it pursued last year's unsuccessful appeals to snuff out liability for a well-known ignition switch defect.

The company filed a notice of appeal Tuesday in the New York court of U.S. Bankruptcy Judge Martin Glenn in response to Judge Glenn's early June ruling that the 2009 bankruptcy asset sale does not shield so-called New GM from liability over its post-sale conduct regarding alleged defects in systems beyond an ignition switch miscue — conduct like failure to warn. The June decision cleared the way for what plaintiffs' attorneys say could be millions of claims.

As in all bankruptcy appeals, the question now moves to a federal district court, in this case the Southern District of New York.

Tuesday's notice is terse and purely procedural, but it indicates GM's resolve to press its argument that the sale order's promise that New GM would receive the assets of Old GM "free and clear of liens, claims, encumbrances and interests" is abjectly violated by product liability claims pending, future and, in one case, just decided.

There, Judge Glenn's June 7 order had the effect of greenlighting a trial in Connecticut federal court by owners of a 2004 Chevrolet Suburban who said that, though New GM did not manufacture the car, it failed in 2009 and afterward to warn the owners about a shifting defect that ended up killing an 8-year-old.

On July 19, a federal jury **awarded \$2.9 million**, saying the SUV's shifter design was not defective but that GM did fail to warn of a known or knowable danger. The failure led to 8-year-old Maggie O'Connor's death and injuries to her brother and mother, the jury said.

GM's series of appeals last year centered exclusively on ignition switches recalled in three waves in February and March 2014. The Second Circuit **ultimately disagreed** with a bankruptcy court and ruled that New GM did take on successor liability for these claims.

The Supreme Court **declined to hear** GM's **appeal of that ruling**. Now, GM embarks on an appeals path for claims beyond that limited group.

A lawyer for GM owners and victims said in June that a mountain of non-ignition-switch plaintiffs could pursue the carmaker following Judge Glenn's ruling.

"Millions of claims involving other ignition-switch defects, power-steering defects and defects in side-impact air bag systems can be heard," Hagens Berman Sobol Shapiro LLP's Steve Berman said in a statement at the time.

GM has insisted that the only further valid claims are those from select plaintiffs who took the initiative to appeal 2015 bankruptcy court orders by retired Judge Robert Gerber. Any non-ignition-switch plaintiff who failed to appeal has missed the boat, GM believes.

But Judge Glenn said his readings of the court's earlier decisions show that the door was not closed for plaintiffs with "truly independent claims" — ones that couldn't possibly have been asserted before the sale.

The plaintiffs are represented by Edward Weisfelner of Brown Rudnick LLP, William Weintraub of Goodwin Procter LLP, Steve Berman of Hagens Berman Sobol Shapiro LLP, Elizabeth Cabraser of Lieff Cabraser Heimann & Bernstein LLP, Robert Hilliard of Hilliard Muñoz Gonzales LLP, Sander Esserman of Stutzman Bromberg Esserman & Plifka PC, Joram Hirsch of Adelman Hirsch & Connors LLP, Gary Peller of Gary Peller Esq., Kris Ted Ledford of Ledford Law Firm, Victor Mastromarco of The Mastromarco Firm, Andre Jardini of Knapp Petersen & Clarke and Sean Southard of Klestadt Winters Jureller Southard & Stevens LLP.

GM is represented by Arthur Steinberg and Scott Davidson of King & Spalding LLP and Richard Godfrey and Andrew 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.

--Additional reporting by Emily Field, Daniel Siegal, Alex Wolf and Ryan Boysen. Editing by Sara Ziegler.