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7th Circ. Revives Suit Over Volvo's Hybrid SUV

By Hannah Meisel

Law360, Springfield (August 22, 2017, 10:23 PM EDT) -- A Seventh Circuit panel on Tuesday rejected a district court's finding that the lead plaintiff in a proposed class action against Volvo over its electric hybrid SUV gave up legal standing when she rejected a remediation attempt by the company before filing the lawsuit.

The circuit judges reversed a judgment last year that **tossed the claims** of Illinois couple Xavier and Khadija Laurens, who **alleged their hybrid Volvo held far less of an electric charge** than was advertised.

Among its **arguments at the appellate court in April**, Volvo contended that Khadija Laurens, whose name was on the title of the vehicle, lacked standing to sue because the company had offered her a full refund in a boilerplate letter, which she declined.

Seventh Circuit Chief Judge Diane Wood, who authored the opinion, did not buy Volvo's argument that its letter prevented Khadija Laurens from suing.

"Consider what this case would look like if the parties' roles were reversed," Judge Wood wrote. "Khadija could not argue that she had the right unilaterally to compel an unwilling Volvo to trade a full refund in exchange for her claim. Our legal system places a premium on property rights, and protecting them is among the judiciary's most important functions."

The Laurenses placed an order for the \$83,475 Volvo XC90 T8 seven-passenger electric sport utility vehicle in February 2015 and received the car nearly a year later in January 2016. According to the couple's original complaint in district court, the vehicle appealed to them because of the advertised 25 miles the SUV could go on just a battery charge without using gasoline — perfect for daily commuting in Chicago.

But upon receiving the vehicle, the Laurenses quickly learned that the car could go only about 8 to 10 miles on just a charge, a mileage range Judge Wood characterized as "puny" in her Tuesday opinion. In their complaint, the couple alleges that had they known Volvo's mileage claims weren't true, they would never have paid the nearly \$84,000 price tag for the car, especially when Volvo had another model, the Volvo XC90, which runs on gas but is \$20,000 less.

To explain how Volvo's settlement letter does not void the Laurens' complaint, Judge Wood and the panel cited the 2016 U.S. Supreme Court decision in *Campbell-Ewald Co. v. Gomez*, which held that an unaccepted settlement offer does not moot a plaintiff's case.

"If forcing a contract on an unwilling party is unacceptable under the judicially supervised procedures of Rule 68 and Rule 67, we see no reason why an impersonal note offering a refund should have such a powerful effect," Judge Wood wrote. "Nor does it matter that

Volvo's offer preceded Khadija's lawsuit. Campbell-Ewald's core lesson is that unaccepted contract offers are nullities; settlement proposals are contract offers; and therefore unaccepted settlement proposals are nullities. Nothing about that logic turns on whether a suit has been filed."

The Laurenses filed their suit against Volvo in April 2016, but U.S. District Judge Harry Leinenweber dismissed the case in October, siding with Volvo that Xavier Laurens lacked standing because it was his wife's name on the car papers. **Even after Khadija was added as a plaintiff**, Volvo argued that the letter sent to her offering a refund for the car should still moot the case. But Judge Wood chided Volvo for its argument that the simple offer of a refund should have prevented the case from being filed in the first place.

"Any first-year law student knows that contract formation requires offer, acceptance, and consideration," Judge Wood wrote. "Whether we characterize the deal Volvo was proposing as a swap of a car for money (as we suggested earlier) or a swap of a claim for money (dropping the claim in exchange for \$83,475), until there is an acceptance there is no contract. (We take no position on which is the better description.) Khadija considered the trade and found it wanting. Whether she did so because of the cost of the charging station, or because she wanted additional damages for Volvo's betrayal, or she wanted to be reimbursed for the nuisance of a short-range electric car, or she wanted a bonus for serving as a class representative, is beside the point. Volvo has no right preemptively to force her to accept a contract offer. Indeed, an offeror is almost never permitted to force acceptance on an unwilling offeree."

In a short concurrence, Judge Michael Kanne wrote, "I join in the majority's opinion reversing and remanding the district court's decision for further consideration. I write separately to further emphasize that on remand the district court is free to draw, or not to draw, the conclusion that Khadija has not met her burden to show standing for injunctive relief."

The Laurenses' attorney, Todd McLawhorn of Siprut PC, told Law360 on Tuesday that the circuit judges ruled correctly and saw through Volvo's defenses.

"We are pleased that the Seventh Circuit recognized Volvo's offer, and other similar pick off attempts, for what they are — procedural mechanisms to avoid addressing the merits of plaintiffs' case," McLawhorn said in an email. "Volvo promised one thing and delivered another; it would be perverse that having been called out on its misrepresentations, Volvo would then get to decide the appropriate remedy by deciding the terms of its offer. The Seventh Circuit decision recognizes that plaintiffs cannot be forced to accept such offers, and are free to seek the relief of their choosing for corporate wrongdoing. The judge and jury will decide the remedy for Volvo's misrepresentations, not Volvo."

In addition to Judges Wood and Kanne, Circuit Judge Ilana Rovner sat on the panel.

Representatives for Volvo could not be reached for comment Tuesday.

The Laurenses are represented by Joseph Siprut, Todd McLawhorn and Ke Liu of Siprut PC.

Volvo is represented by Robert Roth, Jennifer Ilkka and Henry Pietrkowski of Reed Smith LLP.

The appellate case is Xavier Laurens et al. v. Volvo Cars of North America LLC et al., case number 16-3829, in the U.S. Court of Appeals for the Seventh Circuit.

--Additional reporting by Diana Novak Jones and Linda Chiem. Editing by Jill Coffey.

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