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Volvo Can't Boot Electric Car Suit After 7th Circ. Revival

By **Diana Novak Jones**

Law360, Chicago (November 8, 2017, 8:35 PM EST) -- An Illinois federal judge preserved the bulk of claims brought by a proposed class of Volvo hybrid SUV owners on Wednesday, saying the complaint, recently revived by the Seventh Circuit, has enough information to allege the company misled them on how far the car could drive on a charge.

U.S. District Judge Harry Leinenweber largely denied Volvo Cars of North America LLC and Volvo Car USA LLC's motion to dismiss for failure to state a claim, saying the car owners met standards to pursue claims of fraud, breach of express warranty and unjust enrichment against the carmaker.

The car owners, led by named plaintiffs Xavier and Khadija Laurens, have done enough to warrant discovery on their claims Volvo's advertising and press releases far overstated the range its XC90 T8 seven-passenger electric sport utility vehicle could travel using only its electric battery, the judge said.

"Here, the 'promise' that a driver would be able to drive 25 miles on a single charge is subject to proof and could therefore constitute an express warranty," the judge wrote in evaluating the class' breach of warranty claims. "If, in fact, the T8 could only achieve 8 to 10 miles, as opposed to 25, this could be considered a violation of an express warranty, and the allegation clearly rises above the speculative level."

He did dismiss the proposed class' claims under the Illinois Consumer Fraud Act against Volvo Cars of North America without prejudice after finding the proposed class didn't do enough to tie it to the dispute.

The Laurens sued Volvo in April 2016, claiming their \$84,000 SUV did not live up to promises in press releases and ads that said the car's electric charge would be enough for 40 kilometers of travel. The electric battery range was why they bought the car, which was \$20,000 more than a similar model that ran only on gas, they said in the suit.

In reality, the car could only travel between eight and 10 miles on a battery charge, the Laurens said. They took it back to their dealer, who tested it and found a similar range.

Judge Leinenweber dismissed the suit in October 2016 after Volvo said it offered Khadija Laurens a full refund for the vehicle but was rebuffed. The offer, which was unconditional and did not require the couple to drop their case, stripped the Laurens of their standing to sue, he said.

The couple appealed, and in August the Seventh Circuit **revived their suit**. The U.S. Supreme Court has held that unaccepted contract and settlement offers are meaningless,

the court said.

After the suit was reinstated, Judge Leinenweber took up arguments in Volvo's motion to dismiss that he hadn't addressed when he found the couple's suit was moot.

Volvo argued that the company had not made any misrepresentations about its cars. It said the press release said the sentence mentioning how long the car could travel on an electric charge was modified by the phrase "NEDC driving cycle," referencing a calculation based on the New European Driving Cycle certification used in the European Union. The proposed class didn't challenge the NEDC's results, Volvo said.

Volvo listed its car's range in kilometers, not miles, it added. Plus, the press release carried a disclaimer at the end, noting that vehicle specifications could vary from country to country.

But the plaintiffs don't have discovery that would allow them to evaluate the NEDC results, Judge Leinenweber said Wednesday. The disclaimer Volvo points out seems to have to do with differences in climate and regulations in the different countries where the car is sold, not its electric mileage, he added.

Counsel for the plaintiffs, Todd McLawhorn of Siprut PC, told Law360 he was pleased with the ruling.

"We look forward to proving that those promises were deceptive, and that in fact Volvo vehicle purchasers and lessees have not obtained the mileage Volvo touted," McLawhorn said.

Representatives for Volvo did not respond to requests for comment Wednesday.

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

The proposed class is represented by Joseph Siprut and Todd McLawhorn of Siprut PC.

The case is *Laurens et al. v. Volvo Cars of North America LLC et al.*, case number 1:16-cv-04507, in the U.S. District Court for the Northern District of Illinois.

--Additional reporting by Hannah Meisel. Editing by Alanna Weissman.

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