

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

**IN RE NEW MOTOR VEHICLES
CANADIAN EXPORT ANTITRUST
LITIGATION**

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MDL DOCKET No. 1532
*(This Document Applies to Paul
Melangagio, et al. v. General Motors
Corporation, et al., No. 2:06-cv-40)*

**ORDER ON MOTION TO DISMISS NEBRASKA
CONSUMER PROTECTION CLAIM**

In my Procedural Order of June 16, 2006 (2:03-md-1532, Docket Item 376), I noted that a new Nebraska lawsuit, Melangagio v. General Motors Corp., recently arrived here through the Multidistrict Panel. By agreement it has been consolidated with the multidistrict litigation already pending here. It asserts the identical claim (under the Nebraska consumer protection statute) earlier advanced in this court in the Fourth Amended Complaint. Despite extensive motion practice in this court, the defendants did not previously move to dismiss the Nebraska claim in this multidistrict litigation. See In re New Motor Vehicles Canadian Export Antitrust Litig., 350 F. Supp.2d 160, 168 (D. Me. 2004). In the recently transferred case, however, they had moved in Nebraska state court on August 22, 2005, to dismiss the complaint for failure to state a claim. They had not briefed that motion at the time they removed the case to federal court nor when the MDL panel transferred it here. I therefore permitted the defendants to brief their Fed. R. Civ. P. 12(b)(6) motion here, and they have done so. (2:06-cv-

40, Docket Item 6). I now conclude that it is appropriate to delay consideration of the issue. There was abundant opportunity to raise the Nebraska statutory issue earlier when I canvassed scores of state statutes on the defendants' motion to dismiss state claims. There will be abundant opportunity to raise the issue later at the time of summary judgment practice. To address it now in the midst of class certification issues, ongoing discovery and a host of other issues that have been addressed sequentially would only complicate further attempts to manage this litigation efficiently.

Accordingly, the motion to dismiss is **DENIED WITHOUT PREJUDICE** to its renewal at the time of motions for summary judgment. This ruling does not express any judgment concerning the merits of the defendants' motion on the Nebraska state law claim.

So ORDERED.

DATED THIS 6TH DAY OF JULY, 2006

/s/D. BROCK HORNBY
D. BROCK HORNBY
UNITED STATES DISTRICT JUDGE

U.S. DISTRICT COURT
DISTRICT OF MAINE (PORTLAND)
CIVIL DOCKET FOR CASE #: 2:06-CV-40 (DBH)

**Paul Melangagio,
William Wurgler,
Pamela Wurgler,
Paul Elsome,
Dan Ozaydin and
Deann Ozaydin,**
*Individually And On Behalf Of All Others
Similarly Situated*

Plaintiffs

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03-md-1532
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v.

**General Motors Corporation,
General Motors of Canada, Ltd.,
SAAB Cars USA, Inc.,
Saturn Corporation,
Ford Motor Company,
Ford Motor Company of Canada,
Ltd.,
Volvo Cars of North America LLC,
Volvo Cars of Canada, Ltd.,
Volkswagen AG,
Toyota Motor Corporation,
Toyota Motor Sales USA, Inc.,
Toyota Canada, Inc.,
Honda Motor Company, Ltd.,
American Honda Motor Company,
Ltd.,
DaimlerChrysler
Aktiengesellschaft,
DaimlerChrysler Corporation,
DaimlerChrysler Motors Co., LLC,
DaimlerChrysler Canada, Inc.,
Mercedes-Benz USA, LLC,
Mercedes-Benz Canada, Inc.,
Nissan Motor Company, Ltd.,
Nissan North America, Inc.
Nissan Canada, Inc.**

Defendants

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DISTRICT OF MAINE (PORTLAND)
CIVIL DOCKET FOR CASE #: 2:03-MD-1532-DBH**

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