

1988

United States Court of Appeals Determines That General Motors' Braking System Was Not Proven Defective

Peggy Healy

Follow this and additional works at: <http://lawcommons.luc.edu/lclr>

 Part of the [Consumer Protection Law Commons](#)

Recommended Citation

Peggy Healy *United States Court of Appeals Determines That General Motors' Braking System Was Not Proven Defective*, 1 Loy. Consumer L. Rev. 23 (1988).

Available at: <http://lawcommons.luc.edu/lclr/vol1/iss1/7>

This Recent Case is brought to you for free and open access by LAW eCommons. It has been accepted for inclusion in Loyola Consumer Law Review by an authorized administrator of LAW eCommons. For more information, please contact law-library@luc.edu.

any history of prior, racial discrimination. Further, the system acted as a ceiling for minority access to housing opportunities.

The court concluded that Starrett's allocation of public housing on the basis of racial quotas clearly had a discriminatory effect on minorities. Starrett conceded the discriminatory effect of its plan but had two major defenses. First, Starrett argued that it was clothed with governmental authority by its receipt of federal funding and thus was obligated to affirmatively promote integration. The court declined to decide whether Starrett was a state actor but concluded that even if Starrett were a state actor, the racial quotas Starrett used were invalid affirmative action plans under the Fair Housing Act.

Starrett next argued that a "white flight" phenomenon justified its use of racial quotas to maintain integration. In support of this argument, Starrett relied upon *Otero v. New York City Housing Authority*, 484 F.2d 1122 (2d Cir. 1973), where the court held that public housing authorities had a duty to integrate housing complexes and to prevent racial segregation even if their actions in so doing prevented some minorities from residing in particular housing. In *Otero*, the landlords rented half of a group of newly renovated apartments to non-former occupants, instead of renting to former occupants who were predominately minorities. The court distinguished *Otero* because there the renting procedures did not involve a plan for long-term maintenance of specified levels of integration. The court held the *Otero* plan to be a single event which did not operate as a strict racial quota. Starrett's plan, in contrast, operated to determine exact racial distribution on an indefinite basis.

Dissent: Use of Quotas Discriminatory Only if They Result in Segregation

The dissent concluded that Starrett was within the spirit of the Fair Housing Act by maintaining

an integrated housing complex through the use of quotas. First, the dissent disagreed with the majority's interpretation of the purpose of the Fair Housing Act. The Fair Housing Act was intended to prohibit segregation, not integration. As authority for this interpretation, the dissent noted that neither the Fair Housing Act nor its legislative history explicitly indicates whether Congress intended to prohibit racially maintained integration. Therefore, the dissent claimed that the Fair Housing Act was never intended to apply to actions such as Starrett's which maintained an integrated rather than segregated complex. Second, the dissent relied upon the holding in *Otero*, which the dissent characterized as generally not prohibiting racial rental quotas adopted to promote integration under the Fair Housing Act. The dissent in fact found the instant case easier to decide than *Otero* because Starrett promoted integration through quotas from the inception of the complex. In *Otero*, on the other hand, the New York Housing Authority attempted to achieve integration by extricating itself from commitments it had made with minority tenants. Finally, the dissent stated that public policy decisions of this nature should be determined by the legislature and not by the courts.

Stephanie Ferst

Editor's Note: On November 7, 1988, the United States Supreme Court denied the petition for writ of certiorari. Justice White would have granted the writ. 57 U.S.L.W. 3333 (U.S. Nov. 7, 1988) (No. 88-82). The United States Department of Justice, the NAACP, and the City of Chicago have challenged a "managed integration" quota system used by the directors of Atrium Village, a 309-apartment complex in Chicago. Their view is that the directors violated the Fair Housing Act by manipulating the list of rental applicants to maintain a 50-50 balance of black and white tenants.

UNITED STATES COURT OF APPEALS DETERMINES THAT GENERAL MOTORS' BRAKING SYSTEM WAS NOT PROVEN DEFECTIVE

In *U.S. v. General Motors Corp.*, 841 F.2d 400 (D.C. Cir. 1988), the United States Court of Appeals for the District of Columbia Circuit considered a claim that General Motors Corporation ("GM") manufactured automobiles with a defective braking system. The claim, brought under the National Traffic and Motor Vehicle Safety Act ("the Act"), alleged that GM knew, or should have known, that the braking system in

its 1980 model X-cars caused premature rear-wheel lock-up. The complaint further alleged that excessive corrosion over time aggravated that condition, and that GM violated the Act by failing to notify the Secretary of Treasury and failing to remedy the defect. The Court of Appeals held that there was not a class-wide defect and affirmed the trial court's judgment in favor of GM.

Background

Development of the X-car by GM began in 1975. In 1978, GM engineers first obtained information indicating a potential brake problem. In a test of GM's model X-cars, drivers registered complaints of "premature" rear-wheel lock-

(continued on page 24)

GM BRAKING SYSTEM NOT DEFECTIVE (from page 23)

ups, which caused skidding and spin-out. As a result, GM formed a special task force to examine the braking system. Within a few weeks, the task force suggested that a number of design changes be made in three component parts of the braking system, but recommended against delaying production. The recommended design changes were phased in gradually during 1979, and thus resulted in 1980 model X-cars with several different brake configurations.

In July, 1981, after receiving an unusually high number of consumer complaints about rear-wheel lock-up, the National Highway and Traffic Safety Agency ("NHTSA") opened a formal investigation of GM's model X-car. That same month, GM agreed to make one of the three design changes originally recommended by the task force, but did not acknowledge the existence of a defect. NHTSA continued its own investigation, and in January, 1983, found that both manual and automatic 1980 X-cars with their original brake linings had a safety defect. This finding was widely publicized. In fact, NHTSA released a film clip to television networks which showed an X-car spinning out of control. Faced with that publicity, GM agreed to voluntarily recall all 1980 model X-cars with manual transmissions and some 1980 model X-cars with automatic transmissions. Shortly thereafter, NHTSA requested that GM produce copies of all internal documents relating to premature rear-wheel lock-up. Some of the documents revealed that GM's bureaucracy harbored concerns about the lock-up problem. As a result, NHTSA contacted the Department of Justice ("the Government"), which filed suit against GM in 1983.

Some skidding, caused by lock-up, can occur with any car. Such a phenomenon is often a product of weather conditions or the level of braking force applied. The key issue in the instant case was whether the skidding experienced by drivers of GM's model X-cars resulted from premature lock-up. The court observed that this defect, "by its terms, included concepts of causation (skidding or lock-up caused by rear wheels) and consumer expectations (skidding or lock-up that was premature)." 841 F.2d at 406 (emphasis in original).

The Trial

In attempting to prove a class-wide defect in the bench trial, the Government relied mainly on two types of evidence. First, the Government relied on the testimony of twelve consumers and the depositions of others describing their personal experiences with skidding and loss of control. The trial judge noted that the Govern-

ment's evidence demonstrated that as many as 3000 GM customers probably experienced similar incidents and internal GM documents corroborated additional consumer complaint evidence offered by NHTSA. Second, the Government described GM's initial identification of the problem and the formation of the task force. The Government revealed that durability testing conducted by GM after production began indicated that the problem persisted.

In its defense, GM relied upon brake testing data and accident statistics. First, GM produced extensive test data comparing the braking performance of the X-car with that of other manufacturers' cars. The tests were conducted by both GM and NHTSA, and the results were uniformly favorable to GM. None of the tests isolated any physical engineering cause which would explain the rear-wheel lock-up, and none replicated the type of incident complained of by consumers. Second, GM demonstrated through the use of state and NHTSA statistics that the X-cars had lower rates of accident involvement than various models manufactured by competitors.

In order to demonstrate a defect under the Act, the trial court required the Government to show that actual brake failures had occurred and not merely that consumers had complained. The trial court did not consider the consumer complaints to be sufficiently reliable to justify an inference of a specific brake problem. Moreover, the trial court found that the test results disproved the existence of any common problem in the braking system of GM's model X-cars. Even assuming a defect existed, the trial court found that the Government still had failed to demonstrate that GM's model X-cars presented an unreasonable risk of accidents or injury.

The Appeal

On appeal, the Government attacked certain aspects of the trial judge's decision. The Government's principle contention was that the trial judge erred as a matter of law by accepting the truth of the representative consumer testimony, but holding that this testimony plus other complaints were legally insufficient to demonstrate a defect. According to the Government, the occurrence of lock-up under conditions in which drivers would not expect it was sufficient under the Act to demonstrate the presence of a defect. The Court of Appeals acknowledged that the Act was concerned with the real-world performance of cars. The court cautioned, however, that previous cases did not suggest that a car is defective under the Act regardless of whether the car, the driver, or the roadway is responsible. In order to demonstrate a defect within the meaning of the Act, the Government must show

that the vehicle itself is defective—either in its performance, construction, components, or materials. Thus, the Government had to demonstrate that the incidents of skidding occurred under circumstances in which, absent a defect, they would not have otherwise occurred. The Court of Appeals held that the consumers were not capable of determining whether the incidents they had experienced would not have occurred otherwise. The court did not hold, however, that consumer-complaint evidence alone could never suffice to demonstrate a defect under the Act. Instead, the court limited its decision to the facts of this case, in which consumer-complaint testimony did not prove a defect.

In addition to the consumer complaints, NHTSA also relied on the *relative* complaint rates for X-cars and for other cars to show that the X-cars were defective. NHTSA claimed the different complaint rates indicated that the X-cars, rather than other factors, were responsible for the skidding. The Court of Appeals rejected this argument because the number of complaints for the model X-cars was probably increased by the excessive publicity surrounding them. According to the court, the film clip which described the X-car was witnessed by approximately 53 million viewers, and follow-up newspaper and television stories added to the

public's awareness. As evidence that this publicity affected the complaint rate, the court noted that GM and NHTSA received more complaints during the two weeks following the release of the film clip than they had in the previous 3½ years. Thus, GM was able to explain the high rate of complaints by reference to a factor other than vehicle malfunction. As a result, the skidding experienced by consumers was not linked to any malfunction in GM's model X-cars.

Finally, the Government objected to GM's use of test data to rebut the Government's evidence of a defect. According to the Government, GM could rebut the Government's evidence in only two ways: 1) by showing that any failure in the braking system resulted from gross and unforeseeable owner abuse or neglect; or 2) by showing that any failure in the braking system occurred in non-dangerous situations. The court rejected this contention. Instead, the Court of Appeals held that the test data was relevant to show that the skidding could have been caused by factors other than vehicle malfunction, and that GM's X-car was no more likely to experience skidding than other cars. The court also rejected the Government's claim that the tests used by GM were unrepresentative, and affirmed the trial court's judgment in favor of GM.

Peggy Healy

FEDERALLY INSURED STATE CHARTERED MINNESOTA BANKS MAY CHARGE 21.75 PERCENT INTEREST ON AGRICULTURAL LOANS WITHOUT VIOLATING STATE USURY LAWS

The Minnesota Supreme Court in *Vanderweyst v. First State Bank of Benson*, 425 N.W.2d 803 (1988), held that pursuant to federal law, 12 U.S.C. § 1831d(a) (1982), state chartered, federally insured banks have "most favored lender" status and can charge interest on agricultural loans at the highest rate available to any competing lender under state law. As a result, banks could charge up to 21.75 percent on agricultural loans without violating Minnesota's usury laws.

Federally Insured, State Chartered Banks Have "Most Favored Lender" Status

The Minnesota Supreme Court consolidated four cases for appeal: *Vanderweyst v. First Bank of Benson*, 408 N.W.2d 208 (Minn. App. 1987); *Walsh v. First Bank of Pennock* (and *Heimark v. Norwest Bank Montevideo*), 409 N.W.2d 5 (Minn. App. 1987); and *Bandas v. Citizens State Bank of Silver Lake*, 412 N.W.2d 818 (Minn. App. 1987). In

each case, the Minnesota bank charged higher interest rates on agricultural loans than on other loans. The plaintiffs sued the banks for violation of the state usury laws. In three cases, *Vanderweyst*, *Walsh*, and *Heimark*, the actual interest rates ranged from 11.85% to 16%; in *Bandas*, the plaintiff alleged the bank charged 51.52% interest.

The borrowers contended that: (1) the federally insured, state chartered banks do not have "most favored lender" status; therefore, the banks do not have a choice between interest rates under 12 U.S.C. § 1831d(a); and, (2) under Minnesota law, the maximum interest rate that a lending institution can charge on agricultural loans is 4.5% in excess of the prevailing federal discount rate. MINN. STAT. ANN. § 334.011 (West 1981 & Supp. 1988).

The banks responded that pursuant to their "most favored lender" status under federal law, 12 U.S.C. § 1831d(a), they are allowed to charge the highest interest rate permitted by Minnesota law. According to Minnesota law, industrial loan and thrift institutions can charge 21.75% on agricultural loans; consequently, federally insured, state chartered banks are also authorized to charge 21.75% on agricultural loans. MINN. STAT. ANN. § 53.04 (West 1988). In all four cases, the trial

(continued on page 26)