IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

MICHAEL MAYEW and KAREN MAYEW,	)	
Plaintiffs,	)	
v.	)	C.A. No. 07C-10-044 PLA
CHRYSLER, LLC,	)	
Defendant.	)	

Submitted: September 18, 2008
Decided: October 1, 2008

ON DEFENDANT'S MOTION TO EXCLUDE PLAINTIFFS' EXPERT
GRANTED

ON DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT
GRANTED

ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT
GRANTED in part; DENIED in part

David L. Lieberman, Esquire, KIMMEL & SILVERMAN, P.C., Wilmington, Delaware, Attorney for Plaintiffs.

Vicki L. Goodman, Esquire, MARSHALL, DENNEHEY, WARNER, COLEMAN & GOGGIN, Wilmington, Delaware, Attorney for Defendant.

ABLEMAN, JUDGE

I. Introduction

After purchasing a new 2007 Jeep Grand Cherokee (the "Jeep") from Chrysler, Plaintiffs Michael Mayew and Karen Mayew (collectively "Plaintiffs") noticed that the Jeep's Tire Pressure Monitoring System Light (the "Light") turned on and off intermittently, even though the tire pressure was sufficient. After several unsuccessful attempts to have the defect repaired, Plaintiffs filed a Complaint against Chrysler, LLC ("Chrysler") asserting claims under Delaware's Lemon Law,[1] the Magnuson-Moss Warranty Improvement Act,[2] and the Delaware Consumer Fraud Act.[3]

Chrysler has now filed three motions: (1) a Motion for Summary Judgment seeking judgment in its favor on all counts; (2) a Motion for Partial Summary Judgment seeking judgment in its favor as to Delaware's Lemon Law (Count I) and the Delaware Consumer Fraud Act (Count III); and (3) a Motion to Exclude Plaintiffs' Expert. After reviewing the record, the Court concludes that the expert opinions of Stephen J. Ruch ("Ruch") must be excluded as unreliable under Delaware Rule of Evidence 702 and

[1] 6 *Del. C.* §§ 5001-5009.

[2] 15 U.S.C. §§ 2301-2312.

[3] 6 *Del. C.* §§ 2511-2527.

Daubert v. Merrell Dow Pharmaceuticals, Inc.[4] Plaintiffs' claims under Delaware's Lemon Law and Delaware's Consumer Fraud Act also fail as a matter of law because Plaintiffs cannot establish a substantial impairment to the value, safety, or use of their Jeep, nor can they demonstrate any fraud, misrepresentation, or concealment. Despite the lack of expert testimony, however, Plaintiffs have offered circumstantial evidence suggesting the presence of a manufacturing defect under the Magnuson-Moss Federal Warranty Improvement Act. For the reasons set forth more fully hereafter, Defendant's Motion to Exclude Plaintiffs' Expert is granted; Defendant's Motion for Partial Summary Judgment is granted; and Defendant's Motion for summary judgment is granted in part and denied in part.

II. Statement of Facts[5]

On or about August 8, 2007, Plaintiffs Michael Mayew and Karen Mayew purchased a new 2007 Jeep Grand Cherokee from Brandywine Chrysler-Jeep, a Chrysler-authorized dealer of new and used vehicles.[6] The purchase price was $30,941.00. Chrysler issued several warranties and

[4] 509 U.S. 579 (1993). The Delaware Supreme Court adopted the *Daubert* standard for expert testimony in *M.G. Bancorporation, Inc. v. Le Beau*, 37 A.2d 513, 522 (Del. 1999).

[5] The facts are taken from the well-pleaded allegations in Plaintiffs' Complaint. *See Spence v. Funk*, 396 A.2d 967, 968 (Del. 1978).

[6] Docket 1 (Compl.), ¶ 3.

guarantees to Plaintiffs regarding the workmanship of the vehicle and/or remedial action to be taken in the event that the vehicle did not meet the promised specifications.

On or before August 17, 2007, when the Jeep had registered 456 miles, Plaintiffs complained, *inter alia*, that the Tire Pressure Monitoring System Light indicator on the dashboard remained illuminated.[7] Chrysler reset the tire pressure to 36 PSI, the specified tire pressure for the vehicle. Chrysler's repair attempt was ineffective and subsequent efforts to repair on three occasions, August 29, 2007, September 6, 2007, and September 14, 2007, were all without success.[8]

Plaintiffs filed suit against Chrysler on October 4, 2007. In their Complaint, Plaintiffs allege that Chrysler violated the Delaware Automobile Warranty Act, also known as Delaware's Lemon Law (Count I),[9] the Magnuson-Moss Warranty Improvement Act (Count II),[10] and the Delaware

[7] *Id.*, Ex. B.

[8] *Id.*, ¶¶ 11-14. Plaintiffs subsequently sought six more repairs. *See* Docket 15 (Def.'s Mot. for Summ. J.), Ex. F (Expert Report of Stephen J. Ruch), at 1-2.

[9] 6 *Del. C.* §§ 5001-5009.

[10] 15 U.S.C. §§ 2301-2312.

Consumer Fraud Act (Count III).[11] As a result of these alleged violations of Delaware and federal law, Plaintiffs seek damages.

Plaintiffs and Chrysler engaged in arbitration on February 1, 2008. Plaintiffs testified that the Light intermittently turned on and off, that their tire pressure was low at certain times, and that there was a problem with their mileage-to-zero readout.[12] They admitted, however, that their only real issue was the Light and that the tires and tire pressure were not defective.[13] Plaintiffs also recognized that the warranty issued by Chrysler did not cover the tires, which were warranted by the tire manufacturer.[14] Other than the alleged problem with the Light, Plaintiffs admitted that the Jeep had no other problem or defect.[15]

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[11] 6 *Del. C.* §§ 2511-2527.

[12] *See* Docket 15, Ex B. (Arbitration Hr'g Tr.), at 15:22-16:4; Ex. C (Dep. of Karen Mayew), at 38:19-39:3.

[13] *See* Docket 14 (Def.'s Mot. for Partial Summ. J.), Ex B. (Arbitration Hr'g Tr.), at 15:22-16:4.

[14] *See* Docket 14, Ex B., at 35:4; Ex. E (Jeep Grand Cherokee 2007 Warranty Information).

[15] *See* Docket 15, Ex D. (Def.'s Req. for Admissions), at Nos. 17 & 18. Chrysler served Plaintiffs with Requests for Admissions on June 26, 2008 by first class mail and electronically. Plaintiffs' responses were due on July 29, 2008. Plaintiffs, however, failed to produce any responses to Defendant's Request for Admissions. Pursuant to Superior Court Civil Rule 36, Plaintiff's lack of answers means that all of Chrysler's requests are deemed admitted. *See* Super. Ct. Civ. R. 36(a) ("The matter is admitted unless, within 30 days after service of the request, . . . the party to whom the request is directed serves upon the party requesting the admission a written answer or objection

Plaintiffs also retained Stephen J. Ruch ("Ruch") as an expert. Ruch, an in-house expert associated with the law firm representing Plaintiffs, is an ASE master certified repair technician with many years of new and used vehicle dealership experience.[16] At his deposition, Ruch testified that he believed that the Light issue was related to a wiring problem with the CAN-B system.[17] Ruch testified that the tire pressure was normal,[18] and that he could not state for certain whether the wiring was the cause of the Light defect since the car would have to be disassembled for him to make that determination.[19] Ruch based his opinions on an inspection of the vehicle, a scan of the Jeep's computer system, and a road test of the car. He also opined on the Jeep's diminution in value by looking at Kelley's Blue Book, determining the condition of the car subjectively, and applying a formula created by experts hired by plaintiffs' law firms to determine a diminution percentage.[20]

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addressed to the matter. . . . "). Any matter that is deemed admitted is conclusively established. *See id.* R. 36(b).

[16] Docket 15, Ex. G (Supp. to Report of Stephen J. Ruch, 2/19/08), at 54:3-8; 65:1-3.

[17] *Id.*, Ex. E (Dep. of Stephen J. Ruch), at 54:3-8; 65:1-3.

[18] *Id.*, Ex. E, at 65:4-7.

[19] *Id.*, Ex. E, at 89:10-14.

[20] *Id.*, Ex. E, at 21:-24:12.

After arbitration, discovery ended on August 8, 2008. Trial is scheduled for January 9, 2009.

III. Parties' Contentions

Chrysler filed three motions in succession: a Motion for Summary Judgment, a Motion for Partial Summary Judgment, and a Motion to Exclude Plaintiffs' Expert. Chrysler essentially argues that, even assuming the Light malfunctions, Plaintiffs' Lemon Law claim fails as a matter of law because the malfunction does not constitute a substantial impairment. Since the Lemon Law claim fails, Plaintiffs' Delaware Consumer Fraud Act claim also fails as a matter of law because there have been no allegations of fraud, misrepresentation or concealment. Finally, Chrysler notes that Ruch's testimony is speculative because his opinion was not based on reliable methods. Since Ruch did not address other potential causes of the Light's intermittent illumination, Chrysler submits that Plaintiffs cannot sustain their burden of proof under the Delaware Lemon Law, the Delaware Consumer Fraud Act, and the Magnuson-Moss Federal Warranty Improvement Act. In the alternative, should the Court deny summary judgment, Chrysler argues that Ruch's testimony is unreliable under *Daubert v. Merrell Dow Pharmaceuticals, Inc.*[21] and should be excluded.

[21] 509 U.S. 579 (1993).

In response, Plaintiffs contend that the problem with the Jeep is not solely with the intermittent illumination of the Light, but rather that the Light is a "symptom" of a problem with the tire pressure monitoring system as a whole.[22] Plaintiffs argue that the malfunctioning of the tire pressure monitoring system qualifies as a substantial impairment because they cannot trust the system as a result of the Light's unreliability and had to subject the Jeep to fifteen repair attempts over the course of their first year of ownership. As to Ruch's testimony, Plaintiffs argue that *Daubert* should be applied flexibly to admit Ruch's testimony as non-scientific but specialized expert opinion. Plaintiffs assert that Kelley's Blue Book values, upon which Ruch's methodology relies, are widely used in the automotive industry. Plaintiffs emphasize, however, that they consider Ruch's methodology outside the layperson's grasp because his specialized knowledge permits him to objectively assess vehicles for warranty defects.

IV. Standard of Review

When considering a motion for summary judgment, the Court's function is to examine the record to ascertain whether genuine issues of material fact exist and to determine whether the moving party is entitled to

[22] *See* Docket 19, ¶ 2.

judgment as a matter of law.[23] The court must "view the evidence in the light most favorable to the non-moving party."[24] "The moving party bears the initial burden of demonstrating that the undisputed facts support his legal claims."[25] If the proponent properly supports his claims, the burden "shifts to the non-moving party to demonstrate that there are material issues of fact for resolution by the ultimate fact-finder."[26] Summary judgment will not be granted if, after viewing the record in a light most favorable to the non-moving party, there are material facts in dispute or if judgment as a matter of law is not appropriate.[27] If, however, the record reveals that there are no material facts in dispute and judgment as a matter of law is appropriate, then summary judgment will be granted.[28]

V. Analysis

1. The Admissibility of Plaintiffs' Expert Testimony

Delaware Rule of Evidence 702 governs the admissibility of expert testimony. Where scientific, technical or other specialized knowledge will

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[23] Super Ct. Civ. R. 56(c).

[24] *Storm v. NSL Rockland Place, LLC*, 898 A.2d 874, 880 (Del. Super. 2005).

[25] *Id.* at 879.

[26] *Id.* at 880.

[27] *Id.* at 879.

[28] *Id.*

help the trier of fact determine a claim at issue, a witness may offer an opinion if: (1) he bases the testimony on sufficient facts or data; (2) he bases the testimony on reliable principles and methods; and (3) he has applied the principles and methods reliably to the facts.[29] When applying Rule 702, the Court must determine whether the testimony will assist the trier of fact, and whether the testimony amounts to scientific knowledge.[30]

The United States Supreme Court has defined "scientific knowledge'" as "any body of known facts or . . . any body of ideas inferred from such facts or accepted as truths on good grounds."[31] "Good grounds" means that the testimony "must be supported by appropriate validation . . . based on what is known."[32] In essence, to be admissible, the witness's testimony must be reliable and have a relevant basis.[33]

The trial judge must make a preliminary assessment to determine whether the witness's testimony is scientifically valid and can be applied properly to the facts at issue by evaluating: (a) whether the theory in

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[29] D.R.E. 702.

[30] *McLaren v. Mercedes Benz USA, LLC*, 2006 WL 1515834, at *2 (Del. Super. Mar. 16, 2006) (citing *Daubert*, 509 U.S. at 589).

[31] *Daubert*, 509 U.S. at 590 (citations omitted).

[32] *Id.*

[33] *McLaren*, 2006 WL 1515834, at *2.

question can be, and has been, tested; (b) whether the theory has been subjected to peer review and publication; (c) the theory's known or potential error rate, and the existence of standards controlling its operation; and (d) whether the theory has widespread acceptance within a relevant scientific community.[34] The proponent of the proffered expert testimony must establish by a preponderance of the evidence that the testimony is relevant and reliable.[35]

Ruch's "methodology" for determining the diminution in value associated with the problem with the Light involved using the Kelley Blue Book to determine the difference between the car in "excellent" condition—*i.e.*, the car when it was brand new—and the car's current value, based on his subjective determination that the car is in "fair" condition.[36] He testified that this methodology was used by all experts hired by firms that pursue plaintiffs' claims under lemon laws.[37] While this method of diminution may be used by other plaintiffs' firms, Ruch conceded that this "theory" has not

[34] *Id.* at *3 (citing *Daubert*, 509 U.S. at 593-94).

[35] *Juliano v. Am. Honda Motor Co. Inc.*, 2006 WL 3307756, at *2 (Del. Super. Nov. 8, 2006) (citing *Minner v. Am. Mortgage & Guar. Co.,* 791 A.2d 826, 843 (Del. Super. 2000)).

[36] Docket 13 (Def.'s Mot. to Exclude Pls.' Expert), Ex. D (Arbitration Hr'g Tr.), at 21:4-24-15; Docket 15, Ex. F at 4.

[37] Docket 13, Ex. D, at 25:5-15.

been subjected to peer review or publication and that he learned it merely by speaking with other experts.[38] Indeed, Ruch has candidly admitted that his "theory" of determining diminution of value could be applied by any layperson who looks at a Kelley Blue Book.[39] Ruch offered no explanation for the basis on which he determines which Kelley Blue Book condition (i.e., excellent, good, fair, or poor) applies to a given defect. Finally, although other law firms filing lemon law claims may apply Ruch's methodology, Plaintiffs have failed to offer any evidence that this theory has been applied by the scientific community or accepted in the automotive industry.[40]

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[38] *Id.*, Ex. D, at 25:16-21.

[39] Specifically, in another case involving Ruch, Ruch admitted that any person could apply his diminution test:

> Q: Now, couldn't a consumer, . . . go onto the Kelley Blue Book's website and do the exact same thing you did?
> A: Yes.
> Q: Plug in the numbers, plug in the mileage and do the math. . . . I trust [the consumer] can figure it out?
> A: Sure he can figure it out.

Docket 13, Ex. G (Dep. of Stephen J. Ruch, 1/9/08), at 169:6-13.

[40] Notably, the Georgia Court of Appeals excluded a determination of a car's diminution in value under *Daubert* and Georgia's equivalent of D.R.E. 702 after the expert applied the same technique Ruch used in this case. *See Moran v. Kia Motors Am., Inc.*, 622 S.E.2d 439, 41 (Ga. Ct. App. 2005), *cert. denied*, 2006 Ga. LEXIS 229 (Ga. Mar. 27, 2006) ("Although the witness testified that he found his method reliable based on his experience in the industry, there was no evidence that the witness's method had been relied upon more widely in the automotive field, nor of the method's known rate of error, nor whether it had been reviewed by qualified experts other than its creators.").

Although this Court has applied the *Daubert* criteria flexibly to areas of expertise that are not expected to carry all of the traditional indicia of scientific acceptance, such as publication, reliability remains a prerequisite to admissibility of all expert opinions.[41] Moreover, given the existence of a ready market for vehicles with defects, methodologies for determining diminution would be susceptible to objective verification, and Plaintiffs have not shown that their methodology has been borne out as accurate. Simply stated, Plaintiffs have offered no evidence that Ruch's method is a reliable, scientifically-grounded basis to determine diminution in value. The Court therefore finds that Ruch's opinion on diminution is not reliable under either Rule 702 or *Daubert*.

Ruch's opinion regarding the cause of the Light problem is similarly unreliable. Ruch concluded that the Light defect results from a problem with the CAN-B wiring in the Jeep. He never even inspected the CAN-B module, however, because it was "inside the vehicle somewhere" and that would have required him to "take the car apart to look at it."[42] He formed his opinion instead by driving the car for a mile, confirming that the Light illuminated, scanning the vehicle's computer for a diagnostic code, and

[41] *See Durnan v. Butler*, 2004 WL 1790117, at *3 (Del. Super. July 24, 2004); *State v. Jones*, 2003 WL 21519842, at *2-3 (Del. Super. July 2, 2003).

[42] *See* Docket 15, Ex. E, at 54:14-15, 19.

determining that Chrysler was to blame. Ruch has not explained what computer diagnostic test he used, whether that test is peer-reviewed, the test's potential error rate, whether he controlled for other variables during his test, and whether other automobile technicians rely on the test or the system used to determine the presence of similar defects. Absent any showing that the test is controlled by scientific standards, Ruch's analysis is nothing more than his subjective opinion, based on an unreliable test, that the alleged defect is Chrysler's fault. Without any scientific basis to substantiate his opinion, his determination is not reliable under *Daubert* and must be excluded under Delaware Rule of Evidence 702.

Because Plaintiffs' expert testimony is unreliable under Rule 702 and *Daubert*, it is inadmissible. Defendant's Motion to Exclude Plaintiffs' Expert is therefore **GRANTED**.

2. Plaintiffs' Delaware Lemon Law Claim

Having determined that Ruch's opinion is unreliable, the Court turns next to the issue of whether there are any genuine issues of material fact precluding summary judgment.[43] The Delaware Automobile Warranty Act, also known as Delaware's Lemon Law, "requires a manufacturer or its

[43] The Court notes that the deadline for either party to identify expert witnesses has passed. *See* Tr. Scheduling Order. Therefore, because Plaintiffs have not identified any other expert witnesses, the Court must determine whether the Plaintiffs can prove their claim absent expert testimony. *See, e.g., McLaren*, 2006 WL 1515834, at *3.

authorized dealer to repair and correct any nonconformity in the vehicle during the term of warranty."[44] Before bringing a claim, a plaintiff must permit the dealer at least four opportunities to attempt to repair the alleged defect.[45] It is an affirmative defense to a claim under the Lemon Law that "the alleged nonconformity does not substantially impair the use, value or safety of the new automobile."[46]

To determine whether the car has a "substantial impairment," the Court applies a two-part test. The Court first considers the particular buyer's subjective circumstances and needs and next considers objectively whether the value of the car to the buyer has been impaired.[47] Determining whether the value of the car has been objectively impaired

> calls for evidence of something more than plaintiff's assertion that the nonconformity impaired the value to him; it requires evidence from which it can be inferred that plaintiff's needs were not met because of the nonconformity. In short, the nonconformity must *substantially* impair the value of the goods to the plaintiff buyer. The existence of substantial impairment depends upon the facts and circumstances in each case.[48]

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[44] *McLaren*, 2006 WL 1515834, at *3 (citing 6 *Del. C.* §§ 5002-03).

[45] *Fatovic v. Chrysler Corp.*, 2003 WL 21481012, at *4 (Del. Super. Feb. 28, 2003); 6 *Del. C.* § 5004(a)(1).

[46] 6 *Del. C.* § 5006.

[47] *Freedman v. Chrysler Corp.*, 564 A.2d 691, 699 (Del. Super. 1989) (citations omitted).

[48] *Id.* (quoting *Jorgensen v. Pressnall*, 545 P.2d 1382, 1384-85 (Ore. 1976)).

In *Freedman v. Chrysler Corp.*,[49] the plaintiff complained of his vehicle stalling and of a "grinding" noise in the transmission. Although a jury returned a verdict in plaintiff's favor, the Court granted judgment notwithstanding the verdict on behalf of the defendant dealer, finding that the plaintiff had failed to establish a substantial impairment:

> An automobile which is driven in a normal manner, and on a daily basis for fourteen months, compiling a total mileage of 15,353 miles, and not having been out of use longer than one day on each of the seven service visits during that time cannot be reasonably said to have mechanical defects which "substantially impair" its value. The vehicle may well have *defects* which were a nuisance to the owner, thus subjectively impairing the value of the automobile to him, but that does not end the inquiry. . . . A mechanical defect cannot reasonably be said to substantially impair a car's value if such defects do not hinder the owner's ability to drive the car on a daily basis for fourteen months, logging over 15,300 miles in the process.[50]

The record in this case likewise demonstrates that Plaintiffs cannot establish substantial impairment. Under the subjective aspect of the test, the Court accepts that the car's value was impaired in the sense that the defect is annoying to plaintiffs. Notwithstanding this nuisance concern, however, plaintiffs cannot demonstrate substantial impairment in the objective sense. Specifically, as of July 15, 2008, Plaintiffs have owned the Jeep for a year

[49] 564 A.2d 691 (Del. Super. 1989).

[50] *Id.* at 699.

and driven it close to 14,000 miles.[51] While the Light's intermittent illumination may have been a nuisance to Plaintiffs, it did not, as an objective matter, substantially impair the car's value as Plaintiffs were still able to drive it a significant distance in the year they owned it. This conclusion would remain the same even if the Court were to accept Ruch's opinion that the Light was defective, because the Plaintiffs' continued use of the Jeep objectively indicates that the car was not substantially impaired.

Similarly, the service visits for attempted repairs to the Jeep can hardly be said to constitute a substantial impairment when they did not interfere with Plaintiffs' ability to accumulate significant mileage.[52] The numerosity of repair visits is not necessarily a useful objective measure of impairment. A plaintiff's subjective belief that substantial impairment exists is not transformed into an objective showing simply because the plaintiff insists on repeated service visits for a nuisance issue that appears unremediable.

Moreover, the Light is not integral or, in other words, "substantial" to the car's functioning. Stated differently, even if the Light never functioned

[51] *See* Docket 14, Ex. G (Vehicle Evaluation Report).

[52] *See Freedman*, 564 A.2d at 600 (holding that seven short-term service visits over the course of a year did not constitute substantial impairment where car was still in daily use).

properly, the car would still continue to have substantial value, use, and safety. The Light is simply a warning device measure to remind the driver to check tire pressure. Despite Plaintiffs' insistence that their problem with the vehicle is not "solely" concerned with the Light, but rather with the tire pressure monitoring system, they have failed to show that the system itself serves any ultimate function other than illuminating the Light in the event of low tire pressure. Even the car's Owner's Manual explicitly recognizes that the Light should not serve as a substitute for an owner's duty to check the vehicle's tire pressure routinely, explicitly stating, "[T]he TPMS [Tire Pressure Monitoring System] is not a substitute for proper tire maintenance, and it is the driver's responsibility to maintain correct tire pressure, even if under-inflation has not reached the level to trigger illumination of the 'Tire Pressure Monitoring Telltale Light.'"[53] Significantly, Plaintiffs have not alleged any defect with the tires, tire pressure, or any other aspect of the Jeep. Thus, even accepting Plaintiffs' claim that the Light is defective, they have failed to make any showing that the Jeep's objective value is substantially impaired, which is a condition for relief under the Lemon Law.

Viewing the evidence in the light most favorable to Plaintiffs, the Court concludes that the Jeep's value, safety, or use is not substantially

[53] *See* Docket 14, Ex. H (Jeep Grand Cherokee 2007 Owner's Manual).

impaired as a result of the intermittent illumination of the Light. At most, the Light is a nuisance that does not permit recovery under the Delaware Automobile Warranty Act. Since Plaintiffs cannot demonstrate any substantial impairment, Chrysler is entitled to judgment as a matter of law. Defendant's Motion for Summary Judgment as to Count I is therefore **GRANTED**.

3. Plaintiffs' Delaware Consumer Fraud Act Claim

Plaintiffs, by reference to 6 *Del. C.* § 5009, have claimed a violation of the Delaware Consumer Fraud Act. Section 5009 provides that any violation of the Delaware Automobile Warranty Act is also a violation of Section 2513 of Title Six, which is the Delaware Consumer Fraud Act.[54] Section 2513 states, in pertinent part:

> The act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, or the concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale, lease or advertisement of any merchandise, whether or not any person has in fact been misled, deceived or damaged thereby, is an unlawful practice.[55]

[54] 6 *Del. C.* § 5009.

[55] 6 *Del. C.* § 2513. Although irrelevant for purposes of this motion, the Court notes that Section (a)(1) has been held unconstitutional. *State ex rel. Brady v. Preferred Florist Network, Inc.*, 791 A.2d 8 (Del. Ch. 2001).

Plaintiffs have failed to proffer any evidence that would persuade a reasonable fact-finder that a violation of Delaware's Lemon Law has occurred here, since they cannot prove the existence of a substantial impairment. Plaintiffs have also failed to offer any evidence that could possibly establish deception, fraud, false pretenses, false promises, misrepresentations, concealment, suppression, or omission of any material facts, on the part of Chrysler. Absent any such evidence, Plaintiffs' Claim under the Delaware Consumer Fraud Act must be dismissed. Defendant's Motion for Summary Judgment as to Count III is therefore **GRANTED**.

4. Plaintiffs' Magnuson-Moss Federal Warranty Improvement Act Claim

Plaintiffs' final claim is that Chrysler violated the Magnuson-Moss Federal Warranty Improvement Act (the "Magnuson-Moss Act"). The Magnuson-Moss Act established a statutory cause of action for consumers for alleged warranty and consumer protection claims that may be filed in either state or federal court.[56] Congress instituted the Magnuson-Moss Act to provide guidelines with respect to written warranties and to prevent attempts to disclaim implied warranties where a merchant has provided a

[56] *Dalton v. Ford Motor Co.*, 2002 WL 338081, at *4 (Del. Super. Feb. 28, 2002).

written warranty.[57] Any consumer injured by a supplier's failure to honor the written or implied warranties may sue under the Magnuson-Moss Act to recover damages and attorneys fees.[58] To determine whether the plaintiffs were damaged, the Court must analyze state law.[59]

For purposes of the Act, a plaintiff establishes damages by showing that the vehicle has a defect that is not repaired by the warrantor within a reasonable time.[60] Although expert testimony is normally required to establish that a product is defective, a defect can be established by circumstantial evidence alone if the matter is within the common knowledge of laymen.[61] For circumstantial evidence to support a *prima facie* case of a breach of warranty, however, the plaintiff must put forth evidence that "tend[s] to negate other reasonable causes of the injury sustained or there must be expert opinion that the product was defective."[62]

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[57] *Id.*; *McLaren*, 2006 WL 1515834, at *4.

[58] *McLaren*, 2006 WL 1515834, at *4.

[59] *Id.* (citing *Walsh v. Ford Motor Co.*, 807 F.2d 1000, 1012 (D.C. Cir. 1986)).

[60] *Id.* (citing 15 U.S.C. §§ 2304(1), 2310(d)(1)).

[61] *Fatovic*, 2003 WL 21481012, at *3.

[62] *Id.* (citing *Reybold Group, Inc., v. Chemprobe Techs., Inc.*, 721 A.2d 1267, 1270 (Del. 1998)).

Although the Court has excluded Plaintiffs' expert Ruch on *Daubert* grounds, there still exists a genuine issue of material fact, based on circumstantial evidence, as to whether Plaintiffs' Jeep is defective. Chrysler expressly warranted to repair or replace any defect in material or workmanship, excluding tires and Koss headphones, at no additional cost to Plaintiffs.[63] Plaintiffs complained of the Light issue after driving the car only 456 miles and returned to the dealership on at least four occasions for repair.[64] Plaintiffs have not modified the car, tampered with it, or engaged in any other behavior suggesting any basis for the defect other than a manufacturing defect. Assuming, without deciding, that Plaintiffs' Jeep had a Light on the dashboard that flickered intermittently, a layperson could find the Light to be defective even in the absence of expert testimony. Stated differently, it is within the common understanding of a layperson that a vehicle's tire pressure monitoring system light should not intermittently turn on and off unless there is a problem with the car's tire pressure, which is not the case here.

[63] *See* Docket 14, Ex. E (Jeep Grand Cherokee 2007 Warranty Information); Ex. G (Vehicle Evaluation Report).

[64] Docket 1, ¶¶ 10-13.

The Court recognizes that expert testimony may ultimately be necessary to establish whether Chrysler is at fault for the alleged defect.[65] Viewing the evidence in the light most favorable to Plaintiffs, however, Plaintiffs' circumstantial evidence establishes a *prima facie* case that Chrysler sold them a car with a defective light, negating other reasonable causes for the problem. Since circumstantial evidence is sufficient for a reasonable juror to conclude that Plaintiffs' Jeep was not sold as warranted, Defendant's Motion for Summary Judgment as to Count II must be denied.

VI. Conclusion

Plaintiffs have failed to establish by a preponderance of the evidence that their expert's testimony is reliable under *Daubert* and Delaware Rule of Evidence 702. Therefore, Defendant's Motion Exclude Plaintiffs' Expert is hereby **GRANTED**. Plaintiffs have also failed to establish a genuine issue of material fact regarding Count I (the Delaware Automobile Warranty Act Claim) and Count III (the Delaware Consumer Fraud Act Claim) of their Complaint, warranting dismissal. Therefore, Defendant's Motion for Partial Summary Judgment is hereby **GRANTED**; to the extent that Defendant's

[65] In this regard, the Court notes that Chrysler has submitted a vehicle evaluation report by an engineering analyst disputing Plaintiffs' contention that the alleged defect with the Light is due to the CAN-B wiring system. *See* Docket 14, Ex. G (Vehicle Evaluation Report). Although not dispositive, this report will certainly be strong evidence should this case proceed to trial.

Motion for Summary Judgment seeks a judgment in favor of Defendant for Counts I and III of the Complaint, it is hereby **GRANTED**. Plaintiffs have, however, established a genuine issue of material fact regarding Count II (the Magnuson-Moss Federal Warranty Improvement Act Claim) of their Complaint. To the extent that Defendant seeks summary judgment as to Count II of Plaintiffs' Complaint, the Motion for Summary Judgment is hereby **DENIED**.

IT IS SO ORDERED.

Peggy L. Ableman, Judge

Original to Prothonotary

cc: David L. Lieberman, Esq.
Vicki L. Goodman, Esq.