

Dodge Truck Recall Shows How Fast Action Can Moot Claims

By **Rachel Raphael and Lily Ting Hsu** (December 15, 2022, 4:03 PM EST)

When a company is deciding whether to voluntarily recall one or more of its products, one of the most common concerns is the potential for adverse publicity and the increased risk of a subsequent lawsuit. For companies that act fast and work with the regulator to make consumers whole, that recall may be an effective tool that stops a forthcoming lawsuit in its tracks.

A recent ruling by Judge Linda V. Parker of the U.S. District Court for the Eastern District of Michigan in *Sharp v. FCA US LLC*[1] illustrates the power of quick and comprehensive recall.

In *Sharp*, three owners of model year 2018-2019 Dodge Ram 3500 trucks filed a putative nationwide class action against FCA and Cummins on behalf of current and former owners and lessees of heavy-duty Dodge Ram trucks with allegedly defective turbodiesel engines.

Shortly after the plaintiffs filed their initial complaint in October 2021, FCA announced a voluntarily safety recall in conjunction with the U.S. National Highway Traffic Safety Administration, or NHTSA, the U.S. federal government agency responsible for monitoring vehicle safety and initiating recalls for safety issues.

Pursuant to the recall, FCA agreed to (1) replace the allegedly defective components, and (2) reimburse owners for any repair costs already incurred as a result of the alleged defect.

The plaintiffs amended their complaint twice to incorporate additional plaintiffs and state-specific claims. On March 18 of this year, FCA moved to dismiss the plaintiffs' second amended complaint in *Sharp* on various grounds, and on Oct. 25, the court granted FCA's motion in its entirety based on the doctrine of prudential mootness.[2]

As explained by the court in *Sharp*, mootness:

[d]escribes a situation where events in the world have so overtake a lawsuit that deciding it involves more energy than effect, a waste of effort on questions now more pedantic than practical. In some cases, mootness bears a constitutional countenance, acting as a jurisdictional bar against even entertaining a case. Other times mootness carries a more prudential complexion, permitting



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us to withhold relief we have the authority to grant. Other times still, a case finds itself mooted by a tangle of constitutional and prudential considerations.[3]

For the court in Sharp, quick action by FCA and oversight by NHTSA were critical to the decision. Judge Parker noted that remedial commitments from a government branch had specific graving when considering whether to dismiss claims on the basis of prudential mootness:

They are taken seriously "because they are generally trustworthy" and "because affording a judicial remedy on top of one already promised by a coordinate branch risks needless inter-branch disputes over the execution of the remedial process and the duplicative expenditure of finite public resources." [4]

In Sharp, the plaintiffs had filed their lawsuit within days of an FCA and NHTSA investigation into the Ram trucks, and within two weeks of the lawsuit being filed, FCA announced its voluntary recall that offered to replace affected vehicle components and reimburse owners for any out-of-pocket costs. FCA had notified NHTSA of potential problems with its vehicles, and voluntarily subjected itself to NHTSA oversight and potential NHTSA penalties.

The Sharp court rejected the plaintiffs' argument that the mootness doctrine applies only when the damages sought are equitable rather than monetary. The plaintiffs sought "benefit of the bargain" damages based on the theory that they had overpaid for defective vehicles.

The court in Sharp reasoned that the recall effectively addressed any diminished-value injury because, once repaired, the vehicles would be returned to their original worth. Thus, the recall mooted alleged injury regardless of whether it was monetary or equitable in nature.

The court also rejected the plaintiffs' argument that the recall would be ineffective. On this point, NHTSA's oversight was enough to ensure that FCA would uphold its promise to remedy the recalled vehicles.[5]

Importantly, however, Judge Parker noted that, although NHTSA's role was central to her ruling, the remedial commitment need not be from a government branch.

On Nov. 30, 2020, for example, the U.S. District Court for the Eastern District of Michigan dismissed plaintiffs' claims in Flores v. FCA US LLC[6] on mootness grounds because FCA had initiated a customer service campaign on its own accord to reimburse consumers or replace engine cooling fans in the vehicles at issue.

The prudential mootness doctrine may not win the day in the case of every recall, of course. Where a lawsuit involves alleged personal injury or damage to other property, replacing the allegedly defective component and reimbursing for out-of-pocket costs is unlikely to be enough.

Likewise, even where only economic injury is alleged, if recall or other customer service measure involves installing another, allegedly defective part, a court might not be persuaded to dismiss.

A case in point: Days after Judge Parker's ruling in Sharp, Judge William Ray of the U.S. District Court for the Northern District of Georgia denied Mercedes' motion to dismiss in Rosen v. Mercedes-Benz.[7] In that case, Mercedes urged the court to apply the prudential mootness doctrine because Mercedes had created a warranty program providing repairs and reimbursements.

The court in Rosen was not persuaded that Mercedes' proposed remedy would make consumers whole, because the service procedure provided under the warranty program was a replacement with the same, allegedly defective part.[8]

Whether a voluntary recall or other customer service measure will successfully end litigation depends on various factors, including the timing of the company's actions, regulator involvement, the type of remedy offered, and the nature of relief sought. Nevertheless, FCA's early win in Sharp demonstrates the power of a recall to defeat a product-related lawsuit.

And as recognized by the court in Sharp, most circuits — including the First, Third, Fourth, Fifth, Sixth, Eighth, Tenth and D.C. Circuits — have adopted the prudential mootness doctrine. No circuit or district court has rejected it.

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[1] Sharp et al. v. FCA US LLC et al., No. 21-12497, 2022 WL 14721245 (E.D. Mich. Oct. 25, 2022).

[2] Id. at *10.

[3] Id. at *6 (quoting Winzler v. Toyota Motor Sales USA Inc., 681 F.3d 1208, 1209 (10th Cir. 2012)).

[4] Id. at *6 (quoting Winzler, 681 F.3d at 1211).

[5] Id. at *9.

[6] Flores v. FCA US LLC, No. 19-10417, 2020 WL 7024850 (E.D. Mich. Nov. 30, 2020).

[7] Rosen v. Mercedes-Benz, No. 1:21-cv-00787 (N.D. GA, Nov. 1, 2022).

[8] Id.