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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

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## GM Tries To Dump Defective Transmission Suit

By **Reenat Sinay**

Law360 (December 2, 2019, 3:01 PM EST) -- General Motors LLC is urging a Michigan federal court to throw out a proposed class action accusing the company of selling vehicles with faulty transmissions, arguing consumers couldn't prove the automaker knew about the defects when the cars were sold, among other flaws in the suit.

In its dismissal bid Friday, GM contended the 104 claims brought by the proposed class in a consolidated suit — including breach of warranty, consumer protection, fraudulent omission and unjust enrichment claims — all fail for a multitude of reasons.

While the consumers allege "hundreds of thousands" of GM vehicles equipped with 8L90 or 8L45 model transmissions suffered from a design flaw, their descriptions of the symptoms experienced by drivers are varied and vague, GM said.

"Plaintiffs never define this purported 'transmission defect' or identify the causes of their alleged transmission issues," the car manufacturer said. "Although they mention GM advertisements generally referencing the performance of GM's 8-speed automatic transmissions, plaintiffs do not plead that they saw or relied on any specific materials in making the decision to purchase or lease their vehicles."

"They do not identify any GM statements specifically related to the alleged transmission defect," GM added.

The proposed class alleges two automatic transmission models used in GM vehicles manufactured between 2015 and 2019 cause significant shaking and shuddering when changing gears. Drivers reported that shifting is sometimes so violent it feels as if they were hit by another vehicle.

The shuddering is related to internal issues in transmissions and torque converters that damage the components, and GM's inability to resolve the known defect makes it liable for breaches of warranty and state consumer protection laws, the consumers say.

Several suits were consolidated by U.S. District Judge David M. Lawson in September, and Theodore J. Leopold of Cohen Milstein Sellers & Toll PLLC **was appointed lead counsel** for the proposed class.

In its bid to toss the amended complaint Friday, GM laid out several arguments as to why the consumers' various claims fail.

The auto manufacturer said breach of express warranty claims come up short because the limited warranty covers manufacturing flaws, not alleged design problems. Likewise, breach of implied warranty claims don't work because the drivers didn't argue that the cars were unfit to be on the road at the time of sale, according to the filing.

The consumers don't provide enough detail to support allegations of state consumer protection violations, and fraudulent omission claims fail because the proposed class doesn't specify what information GM supposedly omitted or why it was deceptive, the auto manufacturer said.

GM also took aim at the proposed class definitions for a nationwide class and an Oregon subclass.

"Plaintiffs' nationwide class allegations should be stricken for the independent reason that there is no named plaintiff from 18 states, and plaintiffs cannot represent putative class members from other states," the company said.

GM contended there was no actual defined Oregon subclass and therefore no way to tell if it fulfilled federal requirements for a class action.

On Friday, GM also filed a 585-page answer to the consumers' Sept. 30 amended complaint, denying all allegations against the company and asking the court to enter judgment in its favor on all claims.

The consumers' attorney, Leopold, told Law360 on Friday that they're anxious to respond to GM's dismissal motion and begin the discovery process.

"We look forward to starting discovery so that we can begin to establish with GM's own documents and engineers' testimony just how widespread the transmission defects run across GM's model lines," he said. "Bringing true justice to the entire class that has been damaged is our number one goal."

Representatives for GM did not immediately respond Monday to requests for comment.

GM is represented by Kathleen Taylor Sooy, Jerome A. Murphy, Jared A. Levine and Rachel P. Raphael of Crowell & Moring LLP and Stephanie A. Douglas of Bush Seyferth PLLC.

Lead counsel for the plaintiffs is Theodore J. Leopold of Cohen Milstein Sellers & Toll PLLC. The plaintiffs are also represented by Douglas J. McNamara, Julia A. Horwitz and Karina G. Puttieva of Cohen Milstein Sellers & Toll PLLC, Berger Montague PC, Kessler Topaz Meltzer & Check LLP, Capstone Law APC, The Miller Law Firm, Gordon & Partners PA, Keller Rohrback LLP and Michael L. Pitt of Pitt McGehee Palmer & Rivers PC.

The case is Francis et al. v. General Motors LLC, case number 2:19-cv-11044, in the U.S. District Court for the Eastern District of Michigan.

--Additional reporting by Mike Curley. Editing by Janice Carter Brown.