



California Consumer Law Alert

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Should Businesses Fear the Honda Small Claims Court Verdict?

On February 1, 2012, Honda CRV Hybrid owner Heather Peters won a Los Angeles County small claims court case against American Honda Motor Co. Inc. ("Honda"). The award of close to \$10,000 received a tremendous amount of attention in the media and blogosphere because Peters won significantly more money than she would have earned had she remained a member of an existing consumer class action. This has led many to suggest that businesses should fear an influx of small claims lawsuits and more aggressive class action attorneys trying to protect their turf. This article addresses the realities of the *Peters* case, the unique circumstances that lead to the verdict and its effect on people and companies that do business in California.

California Small Claims Court Procedure & the Class Action Litigation

Small claims court provides individuals with a streamlined way to resolve disputes. In California, parties in small claims court are not allowed to be represented by lawyers. An attorney may only appear if the attorney is a party, or a member of a partnership or business organization that is a party. As of January 1, 2012, a party in small claims court can recover a maximum of \$10,000. Unlike parties in ordinary trial court, plaintiffs and defendants in small court have no right to pre-trial depositions, document requests or inspection requests. Once a verdict is reached at a small claims court trial, only the defendant may appeal. The trial on appeal is *de novo*, meaning the claim is tried fresh with new evidence. Although parties during the appeal process still do not have the right to a jury trial or pre-trial discovery, they may use lawyers and have the right to present and challenge evidence anew. If a small claims court appeal is found to have been pursued in bad faith, the court can award attorney fees to the winning party.

Under California law, consumers are permitted to file proposed class action lawsuits as long as the complaints assert rights or relief related to or arising out of the same transaction, occurrence or series of transactions, all of which have issues of law and fact in common. It is the burden of the lawyers for the consumers to prove the lawsuit should be permitted to proceed as a class action. Lawsuits become certified as class actions when lawyers for the consumers persuade the trial court that following factors exist: 1) common questions of law or fact are predominant; 2) there exists a representative with claims typical of the purported class; 3) the representative can adequately represent the class; and 4) a class action is a superior to alternative methods of resolution and provides benefits to the litigants and the court.

Plaintiffs' lawyers in consumer class actions almost always seek court permission to receive substantially higher payments known as *lodestar attorneys' fees*. By proving a class action settlement or verdict is a significant benefit to a class and/or the public, and is the result of a significant financial risk taken on by the lawyer, a consumer class action lawyer can reap fees that are double or triple their ordinary hour rate.

California consumers have an absolute right to exclude themselves from a class action settlement. Before a class a class action settlement is approved, the trial court has a great deal of power in determining if the settlement, including attorneys fees award is fair and reasonable. Once approved, a consumer who objects to the settlement has a tough burden to meet proving the trial court abused its discretion.

Honda Hybrids Under Attack

Beginning in March 2007, five California consumer lawsuits were filed, each alleging that the gas mileage estimates of fifty miles per gallon for Honda Hybrids were greatly inflated and instead were at least ten to twenty miles per hour lower. Based on negotiations between multiple sets of consumer class action lawyers and Honda's legal team, a preliminary settlement was reached that involved approximately 200,000 Honda Hybrid owners.

The proposed settlement requests the court approve close to \$8.5 Million for *lodestar* attorneys fees and expense reimbursement. The five named plaintiffs/consumers will receive between \$5,000 and \$12,500. The remaining members of the class will receive the following: (1) between \$100 and \$200; (2) between \$1,000 and \$1,500 in rebate certificates for new Hondas or Acuras; (3) twelve month/thirty-six thousand mile extension of the hybrid battery warranty; (4) and the ability to participate in an Alternative Dispute Resolution forum with Honda with no damages cap. The complete proposed settlement terms are located at www.hchsettlement.com.

Heather Peters purchased a brand new 2006 Honda Civic Hybrid in April 2006. Peters believes that in the first year of use, her Honda Hybrid ran close to ten miles under the fifty miles per hour estimate. According to Peters, the fuel economy got even worse after receiving a Honda-installed software download which was supposed to fix the problem.

Based on her dissatisfaction with Honda and the proposed class action settlement, Peters opted-out of the settlement and chose to proceed in small claims court. She also started the website www.dontsettlewithhonda.org which seeks to encourage other class members to opt-out and pursue Honda in small claims courts nationwide. Unlike the average Honda owner, Peters has a law degree and first obtained her California law license in 1991. In the early 2000s she did not pay the required annual fees and let her license lapse several times. Peters' law license was again lapsed in January 2008 and remained that way until after her small claims court trial.

Peters filed her small claims court case in early November 2011, just a month after the updated Honda class action settlement terms and notice were published. The small claims court hearing was held on January 3, 2012 before Superior Court Commissioner Douglas G. Carnahan. By proceeding in small claims court, Peters was successfully able to defeat Honda's multiple efforts to inspect her vehicle. Since the small claims rules do not allow such inspections and Peters did not agree to allow Honda to examine her car, the court denied Honda's requests. In an ordinary "one on one" lawsuit pursued in California superior court, Honda would most certainly have had the right to inspect the vehicle.

Peters also had a tactical advantage during the hearing because she is an attorney and the small claims rules prevented Honda from being represented by counsel at any stage of the proceedings. After post-hearing proceedings were completed, Peters reactivated her law license.

Commissioner Carnahan issued his written decision on February 1, 2012 which awarded Peters a total of \$9,867.19. Following the media frenzy about this case, Peters updated her website to offer for sale a CD containing the evidence used at her small claims court hearing. Now an active attorney, Peters is also using her website to advertise her services for other Honda consumers. The website remains quite critical of Honda, the lawyers involved on both sides of the settlement and the class action settlement. How many Honda consumers have been persuaded to opt-out of the class action remains to be seen. What is known is that the Plaintiffs' class action lawyers have posted a "myths vs. facts" matrix on their website, which seeks to address the criticisms that the settlement does not provide benefits to the Honda consumers. The complete analysis by the Plaintiffs' attorneys is contained at <http://chimicles.com/case/honda-hybrid>.

Looking Ahead

The disputes between Honda, Peters and the Honda consumers in the next few months should prove quite interesting. Consumers have only until February 11, 2012 to opt-out of the settlement. There will likely be a flurry of activity both by Peters and her supporters and Plaintiffs' lawyers to vie for the loyalty of the Honda consumers. Any consumer missing the deadline and then tries to opt-out later and fight the settlement, faces a tough burden. However, before a settlement is finalized, a judge is required to give great deference to the concerns of objecting class members. If a significant amount of consumers opt-out of the settlement, the entire settlement allocation, including the almost \$8.5 Million in attorneys fees may be in jeopardy. The motion for final approval for the settlement is set to be heard by Judge Timothy B. Taylor of the San Diego Superior Court on March 16, 2012. Honda has until March 2, 2012 to file an appeal from the small claims court decision. The appeal will be heard by a Los Angeles County Superior Court Judge, where both Honda and Peters will have the right to be represented by counsel.

The legend of Peters' victory may inspire many to pursue their own small claims cases, but whether a consumer is prepared or able to commit similar time or resources to complete the case is questionable. This is important because businesses can challenge a small claims verdict on appeal and can use lawyers to do so. Many consumers who seek to use small claims court may be unprepared or may be simply unable to afford lawyers to advise them before their small claims hearing or on appeal. This may place individual consumers at a significant disadvantage. Also, because plaintiffs generally do not have a right of appeal, consumers could find themselves on the losing end of a small claims case while boxed out of a class action settlement they rejected in order to be in small claims court. One important trend to watch is whether Peters will be involved in an advisory capacity in other Honda small claims court cases filed by consumers who opted-out of the class action. As the California small claims rules allow attorneys to give advice to small claims litigants both before and after the hearing, nothing prohibits Peters being retained by consumers to prepare for them for their hearing. In fact, Peters is advertising her services at a low cost to consumers seeking to fight Honda in small claims court.

Whether *Peters* or other hybrid cases against Honda will cause California businesses to incur increased expenses as a result of being targeted by both class actions and duplicative small claims court proceedings remains to be seen. The factors will include the degree of success the individual hybrid claims obtain and whether the *Peters* verdict is sustained on appeal. If in fact there is a rise in small claims court cases involving circumstances that usually are the subject of class actions, businesses will need to adapt and earmark resources to identify and train point people to handle the small claims hearings on their own. Companies will also need to partner with lawyers who can collaborate during the *preparation* process, which can increase the likelihood of success during the hearing. The partnership can also allow for businesses to develop streamlined procedures to prepare cost-effective appeals trials with lawyers already familiar with the claims.

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