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Nissan Escapes Price-Fixing Class Action

By **Nick Brown**

Law360, New York (May 24, 2010) -- A Wisconsin appeals court has affirmed a state judge's dismissal of Nissan Motor Co. Ltd. from a price-fixing class action implicating several major automakers, agreeing that Wisconsin courts don't have personal jurisdiction over Nissan.

Under Wisconsin law, a foreign company is not subject to personal jurisdiction for actions committed by a subsidiary, and lead plaintiff David Rasmussen failed to demonstrate the special circumstances needed to invoke other statutes, a three-judge panel on the Wisconsin Court of Appeals ruled Thursday.

Rasmussen argued that Wisconsin law assigns personal jurisdiction to any company with significant dealings in the state, even if the company's agent — in this case Nissan North America Inc. — carries out the act in its stead.

But Wisconsin case law applies that rule to partnerships, not corporations, the court said.

"A partnership ... is fundamentally different from a corporation, where the subsidiary's acts are not generally imputed to the parent," the court said.

The ruling dismisses Nissan's parent company from a class action accusing most major car companies, including Nissan, Ford, Honda, General Motors, Toyota, Chrysler and Mercedes Benz, of conspiring to keep new car prices higher in the U.S. than in Canada.

As part of the controversy, U.S. Nissan dealers agreed not to honor warranties on Nissans imported from Canada as a way to prevent lower-priced Canadian Nissans from being exported to the U.S., Rasmussen alleged.

Rasmussen pointed to another state statute allowing courts to exercise jurisdiction if a foreign party's out-of-state action caused injury inside Wisconsin, provided that the party's products were sold or consumed in Wisconsin in the ordinary course of trade.

But the court concluded that Rasmussen had failed to make a showing on its face that injury had occurred inside the Badger State.

The plaintiff posed the alternative argument that the lower court erred by limiting discovery in a way that denied him the information needed to prove Nissan's susceptibility to personal jurisdiction.

The lower court ordered Rasmussen to direct his jurisdictional questions to Nissan North America rather than Nissan Japan, depriving him of the chance to gain information about Nissan Japan's activities in Wisconsin separate from Nissan North America's, he contended.

But the court said Rasmussen had every opportunity to talk directly with the parent company pursuant to a special master's order granting him permission to depose the president of Nissan Japan. That the plaintiff chose not to exercise this right, instead reaching stipulations with Nissan on the bulk of the discovery dispute, was not the fault of the court, the panel said.

The case stretches back to 2003, when Rasmussen initially filed suit. The current appeal came on the heels of a lengthy discovery dispute culminating in a Wisconsin state court's dismissal of Nissan Japan for lack of personal jurisdiction, a reversal of its initial ruling.

During the three-year discovery run, a special master granted Rasmussen permission to depose Nissan Japan corporate representatives to discuss warranty policies and contracts between Nissan Japan and Nissan North America. The court decided in August 2006 that the carmaker lacked sufficient contacts in Wisconsin to sustain it as a defendant in the case.

An attorney for the plaintiff class said his client would appeal the ruling to the Wisconsin Supreme Court.

Legal counsel for Nissan declined to comment on the record.

Judges Charles P. Dykman, Margaret J. Vergeront and Paul Lundsten sat on the panel for the appeals court.

Von Briesen & Roper SC represents the plaintiffs.

O'Neil Cannon Hollman DeJong & Laing SC represents Nissan.

The case is Rasmussen et al. v. General Motors Corp. et al., case number 2007AP000035, in

the Wisconsin Court of Appeals.

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