

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

DANIEL CHRISTOPHER DRUMMOND)
AND PAULANN PERRY,)
INDIVIDUALLY, AND ON BEHALF OF)
ALL OTHERS SIMILARLY SITUATED,)
PLAINTIFFS,)

v.)

VOLVO GROUP NORTH AMERICA,)
LLC,)
DEFENDANTS.)
_____)

Civil Action No.: 2:14-cv-03460-RMG

CLASS ACTION COMPLAINT
(Non-Jury Trial Demanded)

The Plaintiffs, by and through their undersigned attorneys, individually and pursuant to Rule 23, Federal Rules of Civil Procedure (FRCP), for the benefit of all others who purchased boats equipped with the Volvo Penta engines and XDP Outdrives described herein, complain of Defendant as follows:

PARTIES

1. The Plaintiff, Daniel Christopher Drummond, is a citizen and resident of Charleston County, South Carolina, and Plaintiff, Paulann Perry, is a citizen and resident of Berkeley County, South Carolina. At all times mentioned in this Complaint, Mr. Drummond, Mrs. Perry and all others similarly situated were owners of Volvo Penta 5.7 L or 8.1 L model boat engines equipped with XDP outdrives .

2. The Defendant, Volvo Group North America, LLC. (“Volvo”) is a foreign, for profit corporation that is organized and existing under the laws of the State of Delaware.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction of this action pursuant to 28 U.S.C. §§ 1332(d) (2) and (6) because: (i) there are one (1) or more class members, (ii) there is an aggregate amount in controversy exceeding \$5,000,000, exclusive of interest and costs, and (iii) there is minimal diversity because at least one plaintiff and one defendant are citizens of different states. This Court has supplemental jurisdiction over any state law claims pursuant to 28 U.S.C. § 1367.

4. Venue is proper in this judicial district and division pursuant to 28 U.S.C. § 1391 because Defendant transacts business in this district and is subject to personal jurisdiction in this district. Additionally, the Defendant has advertised in this district and has received substantial revenue and profits from its dealerships' sales of the gas powered boat engines described below in this district; therefore, a substantial part of the events and/or omissions giving rise to the claims occurred, in part, within the district.

5. Defendant has conducted substantial business in this judicial district, and intentionally and purposefully placed gas powered engines into the stream of commerce throughout the United States.

FACTS

6. The Volvo Penta 5.70SXi and 8.10Si gas powered engines equipped with the XDP sterndrives with XXP TSKtransom shield Spec Numbers 3869293, 3869297, 3869347, 3869348, 3886856, 3886857 ("Engines") have a common defect (the "Engine Defect") leading to repeated breakdowns and malfunctions. The nature of the defect is that the U-joint bellows installed on Volvo's composite XDP outdrives buckle and make contact with the U-joint during high speed turning or loading maneuvers which causes water entry and corrosion of the U-joint and gimbal bearing.

7. Plaintiffs and other class members purchased boats that were equipped with these Engines and were sold these boats/engines under the false pretense that the Engines were of the highest quality and

best technology, when in fact they were defective, not fit for their intended purpose or use, and posed the risk of being unreasonably dangerous to the user and/or passengers.

8. This action arises from the Defendant's failure, despite their longstanding knowledge of a material design defect, to disclose to Plaintiffs and other consumers that the Engines are defective and the Defendant's inability or refusal to properly repair the Engines.

9. Volvo knew of the Engine Defect soon after boats equipped with the Engines began to be sold as evidenced by the huge number of boats owners notifying Volvo of problems they were experiencing and Volvo failed to make adequate and timely repairs.

10. The Engine Defect described herein has caused and will inevitably continue to cause extensive damage to Plaintiffs and the Class as alleged herein.

11. Plaintiffs and other class members have been forced to decide between buying expensive, brand new outdrives that are equipped with older technology, or being stuck with defective outdrives that render the boat nearly worthless and non-operational.

12. Not only did Volvo actively conceal the Engine Defect, but Volvo did not reveal that the existence of the Engine Defect would diminish the intrinsic and resale value of their boats, which it does.

13. Volvo has long been well aware of the Engine Defect as evidenced by the numerous complaints that have been made to Volvo by consumers, along with the three service bulletins they issued in late 2008, April 2009, and July 2009.

14. Upon information and belief, notwithstanding its longstanding knowledge of this design defect, Volvo has 1) refused to repair the Engines without charge when the Engine Defect manifests, 2) repaired or replaced the Engines inadequately resulting in future malfunctions, and 3) taken an unreasonably long time to attempt to repair the Engines resulting in substantial loss of use and loss of income due to boat owners having to pay storage costs while they waited on their Engines to be repaired,

4) unreasonably and without justification required the Plaintiffs and other class members to return the defective composite XDP Outdrives and all component parts to Volvo without compensation, and 5) knowingly misrepresented the extent of the design defect to the class members and knew that the Plaintiffs and class members were relying on this information.

CLASS ACTION ALLEGATIONS

15. Plaintiffs bring this class action under FRCP 23, for themselves individually and on behalf of a similarly situated class (“the Class” or “class members”), all of whom purchased boats which were equipped with Volvo Penta 5.70SXi and 8.10Si gas powered engines equipped with the XDP sterndrives with XXP TSKtransom shield Spec Numbers 3869293,3869297, 3869347, 3869348, 3886856,3886857 (“Engines”).

16. Members of the class are so numerous that joinder of all members is impracticable. The disposition of the members’ claims in a class action will provide substantial benefits to the parties and to the Court. During the class period, Defendant sold at least two thousand four hundred (2,400) of the Engines.

17. Plaintiffs’ claims are typical of the claims of the class. Plaintiffs and all members of the class sustained damages as a result of the Defendant’s defectively designed product and misconduct.

18. The named Plaintiffs and their counsel will fairly and adequately protect the interests of the class. The interest of the Class Representative is coincident with those of the class. Plaintiffs’ counsel will adequately represent the interests of the class.

19. A class action is superior to all other available methods for the fair and efficient resolution of this controversy because the damages suffered by individual class members may be relatively small whereas the expense and burden of individual litigation would make it difficult for the members of the class to individually address the wrongful acts of the Defendant. There will be no difficulty in the

management of this class action. There is a well-defined community of interest in the questions of law and fact relevant to this dispute, and those questions predominate over any questions that may only affect individual class members.

FIRST CAUSE OF ACTION
(Product Liability/Breach of Express and Implied Warranty)

20. Each and every allegation contained in this Complaint which is not inconsistent with this cause of action is hereby incorporated by reference as if repeated verbatim herein.

- a) That by act, word, and/or deed at the time of sale, the Defendant made certain Express Warranties, certain Implied Warranties of Merchantability, and certain Implied Warranties of Fitness for a Particular Purpose, regarding the Engines, which was a part of the basis of the bargain and/or which arose by operation of law.
- b) Plaintiffs and other class members rightfully and reasonably relied upon the warranties of Defendant to their great detriment and damage.
- c) That Volvo expressly and impliedly warranted that the Engines at issue were fit, in good condition, of merchantable quality, and were fit for a particular purpose, namely to be used as boat engines in boats, when in fact, the Engines were unfit, not of merchantable quality, and not fit nor suited for Plaintiffs or other class members' purpose; and
- d) That by reason of and in consequence of Defendant's breach of express and implied warranties, Plaintiffs suffered the damages as set forth herein for which Defendant is liable to Plaintiffs and other class members.

21. Defendant breached this warranty by selling the Plaintiffs and other class members the Engines with the known Engine Defect, making them of low quality and causing them to fail prematurely and/or fail to function properly.

22. Defendant further breached this warranty by failing to repair and/or replace the Engines adequately and in a timely manner when the engines failed during the applicable warranty periods.

23. Despite Volvo's knowledge, Volvo continues to breach its warranties, and has intentionally failed to notify Plaintiffs and other Volvo Penta owners of the composite XDP Outdrive Defect.

24. This intended failure to disclose known defect(s) is malicious and was carried out with willful and wanton disregard for the rights and economic interests of Plaintiffs and Class members.

25. Defendant's breach of warranty caused the herein described damages to Plaintiffs and Class members.

26. Volvo's attempt to disclaim or limit these express warranties is unconscionable and unenforceable under the circumstances here. Specifically, Volvo's warranty limitation is unenforceable because they knowingly sold a defective product without informing consumers about the defect, and the consumers lacked the ability to comply with their warranty obligations to repair the defect.

27. The time limits contained in Volvo's warranty period were also unconscionable and inadequate to protect Plaintiffs and members of the Class. Among other things, Plaintiffs and Class members had no meaningful choice in determining these time limitations, the terms of which unreasonably favored Defendants. A gross disparity in bargaining power existed between Volvo and Class members, and Volvo knew or should have known that the Engines were defective at the time of the sale and would fail well before their useful lives.

28. Plaintiffs and Class members have complied with all obligations under the warranty, or otherwise have been excused from performance of said obligations as a result of Defendant's conduct described herein.

SECOND CAUSE OF ACTION
(Quantum Meruit/Unjust Enrichment)

29. Each and every allegation contained in this Complaint which is not inconsistent with this cause of action is hereby incorporated by reference as if repeated verbatim herein.

30. Plaintiffs and class members have conferred a financial benefit upon Volvo by being forced to return the Engines and all component parts contained within the Engines to Volvo.

31. Volvo has realized that benefit by retaining the defective Engines/component parts and subsequently using them for financial gain without compensating Plaintiffs and class members.

32. Volvo has retained the financial benefit of these Engines/component parts that they required Plaintiffs and class members to return to them, thereby making it unjust for Volvo to retain the Engines without paying Plaintiffs and class members for this value.

THIRD CAUSE OF ACTION
(Conversion)

33. Each and every allegation contained in this Complaint which is not inconsistent with this cause of action is hereby incorporated by reference as if repeated verbatim herein.

34. Plaintiffs and class members owned the Engines and had an interest in them.

35. Volvo converted the Engines to their own use by requiring Plaintiffs and class members to return the Engines to them and not be compensated for doing so.

36. Volvo's use of the Engines was without the permission of Plaintiffs or class members and at a minimum, Volvo's use of the Engines was coerced by financial incentive.

37. As a result of the Defendant's actions, Plaintiffs and Class members have suffered economic damages including but not limited to costly repairs, loss of boat use, lost income, substantial loss in value and resale value of the Engines, and other related damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this case be certified and maintained as a class action, for a non-jury trial, and for judgment against the Defendant as follows:

For economic, compensatory, and general damages on behalf of all members of the Class;

For prejudgment interest at the statutory rate as allowed by law;

For punitive damages, as applicable;

For reasonable attorneys' fees and reimbursement of all costs for the prosecution of this action as allowed by law;

For such other relief as the Court may deem just and proper or that Plaintiffs are entitled to.

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August 27, 2014.
Hampton, South Carolina.