Prudential Mootness A Valuable Tool In Auto Class Actions

By **Ian Edwards and Brandon Boxler** (April 5, 2023)

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There's no use beating a dead horse.

Courts are increasingly affirming that adage in the context of automotive class actions, applying the doctrine of prudential mootness to dismiss claims based on alleged vehicle defects that automakers have already agreed to fix for free.

On March 22, the U.S. District Court for the Eastern District of Michigan added to this growing body of case law in Pacheco v. Ford Motor Co.[1]

The putative class in Pacheco alleged that certain Ford vehicles are defective because their engine design can allow oil or fuel vapors to accumulate near ignition sources, creating a risk of fire.

However, before the plaintiffs filed suit, Ford had already agreed to repair the defect for free in a recall supervised by the National Highway Traffic Safety Administration.

The Pacheco court held that the NHTSA-supervised recall made the case prudentially moot because "there is no effective relief the court can provide."[2] In other words, the recall will redress the alleged injury, leaving nothing for the court to do. The court therefore dismissed the case.

Applying prudential mootness to cases like Pacheco makes sense. It prevents plaintiffs from using litigation to pursue a double recovery.

When an automaker agrees in a government-supervised process to make customers whole by fixing an alleged defect at no cost to them, a court order requiring the automaker to compensate consumers for the alleged defect would be duplicative. It would require the automaker to pay for the same repair twice while giving a windfall to customers.

Courts should continue to exercise their discretion to dismiss these types of cases, even if a putative class alleges that a NHTSA-supervised recall remedy is inadequate.

Prudential Mootness Explained

In 1991, the U.S. Court of Appeals for the Sixth Circuit observed in U.S. v. Street that "mootness has two distinct branches, one stemming from Article III jurisdictional limitations and one stemming from discretionary or prudential considerations."[3]

As the U.S. Supreme Court explained in County of Los Angeles v. Davis in 1979, a case is jurisdictionally moot "when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome."[4]

On the other hand, as the U.S. Court of Appeals for the District of Columbia Circuit explained in Chamber of Commerce v. U.S. Department of Energy in 1980, the separate concept of prudential mootness addresses "not the power to grant relief but the

court's discretion in the exercise of that power."[5]

According to the D.C. Circuit in that case, prudential mootness — sometimes called equitable mootness — applies in situations where

> a controversy, not actually moot, is so attenuated that considerations of prudence and comity for coordinate branches of government counsel the court to stay its hand, and to withhold relief it has the power to grant.[6]

Writing for a unanimous U.S. Court of Appeals for the Tenth Circuit in 2012, then-U.S. Circuit Judge Neil Gorsuch described the origins and purposes of the prudential mootness doctrine in Winzler v. Toyota Motor Sales USA Inc.[7] Recognizing the remedial discretion of courts, he explained that cases should be dismissed as prudentially moot when "the relief sought no longer has sufficient utility to justify decision ... on the merits."[8] If

> the anticipated benefits of a remedial decree no longer justify the trouble of deciding the case on the merits, equity may demand not decision but dismissal. When it does, [courts] will hold the case "prudentially moot."[9]

That was the situation in Winzler, where a plaintiff was pursuing claims based on an alleged vehicle defect that Toyota, in a recall, agreed to "repair or replace ... at no cost."[10]

Although not without critics,[11] almost every circuit court has adopted the doctrine of prudential mootness.[12] Most courts consider the doctrine in the context of a Rule 12(b)(1) motion to dismiss, reasoning that federal courts lack subject matter jurisdiction to hear claims that are moot.[13]

But other courts, including the U.S. District Court for the District of New Jersey last year in Rose v. Ferrari North American Inc., reason that the doctrine is properly considered in the context of a Rule 12(b)(6) motion because "prudential mootness is different than Article III mootness," and so "Rule 12(b)(1) does not appear the proper basis on which to move."[14]

Either way, courts have dismissed all kinds of cases as equitably moot.

The U.S. Court of Appeals for the First Circuit, for example, applied the doctrine in 2000 in Federal Deposit Insurance Corporation v. Kooyomjian to affirm a judgment against unsecured creditors asserting claims against a failed bank because the FDIC had determined the unsecured creditors' claims "could not be satisfied out of [the bank's] receivership assets and were therefore worthless."[15]

The Kooyomjian court reasoned that, even if the unsecured creditors prevailed on their claim, they would never recover "in light of [the] FDIC's worthlessness determination."[16]

In Greenbaum v. U.S. Environmental Protection Agency in 2004, the Sixth Circuit applied the doctrine in an environmental dispute, refusing to order the EPA to reopen its rulemaking process after the agency approved various environmental programs without strictly following statutory requirements.[17]

The Greenbaum court reasoned that vacating the rule would not provide any meaningful relief, as the agency would simply reach the same result in a duplicative rulemaking.[18]

What these and other prudential mootness cases have in common is that the court can provide little to no practical benefit to the plaintiff without a substantial waste of resources

or a prohibited double recovery.

The court therefore exercises its discretion to focus its attention, instead, on cases and controversies for which the Article III power can provide meaningful relief to redress unremedied injuries.

Prudential Mootness in Automotive Class Actions

Increasingly, courts are applying prudential mootness in automotive class actions when a putative class sues to recover damages for an alleged defect, but the defendant automaker already has agreed to a NHTSA-supervised recall that will repair the allegedly defective part for free.

In these situations, as Judge Gorsuch wrote in Winzler, considerations of comity for coordinate branches of government come into play because in a NHTSA-supervised recall, the manufacturer "sets into motion the great grinding gears of a statutorily mandated and administratively overseen national recall process."[19]

Once the NHTSA and the automaker have initiated a recall, as explained in Winzler, "there remains not enough value left for the courts to add in [a] case to warrant carrying on with the business of deciding its merits."[20]

The case, therefore, is prudentially moot because the automaker voluntarily agreed to a recall to replace the allegedly defective part or to reimburse owners who already incurred costs to repair their vehicles.[21]

As the NHTSA has explained, the agency monitors

> each safety recall to make sure owners receive safe, free, and effective remedies from manufacturers according to the Safety Act and Federal regulations.[22]

And the NHTSA is statutorily empowered to levy fines if the automaker fails to fulfill its recall obligations.[23]

Put simply, a NHTSA-supervised recall is not mere lip service. The agency has teeth to ensure automakers provide effective recall remedies.

An automaker's government-backed promise to completely repair an alleged defect via recall leaves plaintiffs who are pursuing claims based on the same alleged defect without a meaningful injury for courts to redress. The plaintiffs will be made whole as a practical matter; the NHTSA will make sure of it.

Forcing the automaker to also defend an expensive class action arising from the same alleged defect would be inequitable.

Courts therefore properly exercise their equitable discretion, defer to their coequal branch of government and dismiss these lawsuits as prudentially moot.[24]

The "Inadequate" Recall Remedy Argument

Cases dismissed on the grounds of prudential mootness implicitly recognize that the recall will fix the alleged defect. Although even the recent Pacheco decision recognized that prudential mootness might not apply "if the recall remedy leaves Plaintiffs 'without complete

relief,'"[25] courts should defer these types of recall-related disputes to the agency that oversees recalls: the NHTSA.

Otherwise, class action plaintiffs might artfully plead around prudential mootness by imagining a way to criticize a recall remedy as inadequate, undermining the NHTSA's authority and blurring the separation of powers.

In fact, such artful pleading is what the plaintiffs tried to do in Pacheco. The putative class in that case alleged that Ford's recall did not fix the underlying defect. The court, however, rejected these efforts and found that the plaintiffs had "not shown a cognizable danger that the recall remedy supervised by the NHTSA will fail, but only that they disagree with the approach taken by Ford to fix the problem."[26]

Even if a putative class could articulate a meaningful dispute with the adequacy of a NHTSA-supervised remedy, courts still should dismiss these cases as equitably moot. The National Traffic and Motor Vehicle Safety Act — which governs the recall process — allows members of the public to petition the NHTSA "for a hearing to determine whether a manufacturer's recall has reasonably met the notification or remedy requirements of the Act."[27]

During that petition process, if the secretary of transportation

> decides a manufacturer has not reasonably met the [notice or] remedy requirements, the Secretary shall order the manufacturer to take specified action to meet those requirements and may take any other action authorized under this chapter.[28]

In other words, the NHTSA has an administrative process to resolve disputes over the adequacy of a recall remedy.

Thus, courts should still apply the prudential mootness doctrine in cases where a putative class alleges that a recall is inadequate, because, as established in 2004 in the U.S. District Court for the Southern District of Indiana in In re: Bridgestone/Firestone Inc., "Congress intended that members of the public bring their concerns to the NHTSA, not to the courts."[29]

Or, in Judge Gorsuch's words in Winzler, the gears that drive a national recall process include a mechanism for resolving disputes as to a recall's effectiveness.[30] That is where such disputes should be resolved.[31]

Conclusion

Applying the prudential mootness doctrine to automotive class actions that allege defects subject to a NHTSA-supervised recall makes sense. It promotes federalism and comity between coequal branches of government, ensures that limited judicial resources are spent providing meaningful relief and furthers Federal Rule of Civil Procedure 1's goal of securing "the just, speedy, and inexpensive determination of every action and proceeding."[32]

After all, these cases involve defendants that have already done the right thing without a court order. The automaker has agreed to undertake the great expense of ensuring that customers receive a safe, free and effective fix for an alleged defect.

Any litigation seeking more relief for the same alleged defect is just beating a dead horse.

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[1] Pacheco v. Ford Motor Co., 2023 U.S. Dist. LEXIS 49032 (E.D. Mich. Mar. 22, 2023).

[2] Id. at *13.

[3] United States v. Street, 1991 U.S. App. LEXIS 11463, at *5 (6th Cir. May 21, 1991).

[4] County of Los Angeles v. Davis, 440 U.S. 625, 631 (1979).

[5] Chamber of Commerce v. United States Department of Energy, 627 F.2d 289, 291 (D.C. Cir. 1980).

[6] Id. (citing Warth v. Seldin, 422 U.S. 490, 948-500 (1975)).

[7] Winzler v. Toyota Motor Sales U.S.A. Inc., 681 F.3d 1208, 1210 (10th Cir. 2012).

[8] Id. (quotation marks omitted).

[9] Id.

[10] Id. at 1209.

[11] See, e.g., One2One Commc'ns LLC, 805 F.3d 428, 438 (3d Cir. 2015) (Krause, J., concurring) (urging the court to reconsider equitable mootness and describing it as "a legally ungrounded and practically unadministrable judge-made abstention doctrine" (quotation marks omitted)).

[12] See, e.g., F.D.I.C. v. Kooyomjian, 220 F.3d 10, 14-15 (1st Cir. 2000); In re Continental Airlines, 91 F.3d 553, 558-59 (3d Cir. 1996) (en banc); United States v. (Under Seal), 757 F.2d 600, 603 (4th Cir. 1985); 281-300 Joint Venture v. Onion, 938 F.2d 35, 38 (5th Cir. 1991); Greenbaum v. EPA, 370 F.3d 527, 534-35 (6th Cir. 2004); Ali v. Cangemi,419 F.3d 722, 724 (8th Cir. 2005) (en banc); Hunt v. Imperial Merch. Servs. Inc., 560 F.3d 1137, 1142 (9th Cir. 2009); Fletcher v. United States, 116 F.3d 1315, 1321 (10th Cir. 1997); Penthouse Int'l, Ltd. v. Meese, 939 F.2d 1011, 1019 (D.C. Cir. 1991).

[13] See, e.g., Nasoordeen v. FDIC, 2010 U.S. Dist. LEXIS 32045 (C.D. Cal. Mar. 17, 2010).

[14] Rose v. Ferrari North American Inc., 2022 U.S. Dist. LEXIS 194015, at *6 n.6 (D.N.J. Oct. 25, 2022).

[15] FDIC v. Kooyomjian, 220 F.3d at 13.

[16] Id.

[17] Greenbaum v. United States EPA, 370 F.3d 527, 534 (6th Cir. 2004).

[18] Id.

[19] Winzler v. Toyota Motor Sales U.S.A. Inc., 681 F.3d 1208, 1210 (10th Cir. 2012).

[20] Id. at 1211.

[21] Sharp v. FCA United States LLC, __ F. Supp. 3d. __, 2022 U.S. Dist. LEXIS 194163, at *27 (E.D. Mich. Oct. 25, 2022).

[22] NHTSA, "Safety Issues & Recalls," https://www.nhtsa.gov/recalls (last visited Mar. 28, 2023); see also 49 U.S.C. § 30120(e) ("If the Secretary decides a manufacturer has not reasonably met the remedy requirements, the Secretary shall order the manufacturer to take specified action to meet those requirements and may take any other action authorized under this chapter.").

[23] 49 U.S.C. § 30165.

[24] See, e.g., Cheng v. BMW of N. Am. LLC, 2013 U.S. Dist. LEXIS 107580, at *11 (C.D. Cal. July 26, 2013) (applying the prudential mootness doctrine to dismiss claims against BMW because the automaker agreed in a voluntary recall to completely repair the alleged defect).

[25] Pacheco v. Ford Motor Co., 2023 U.S. Dist. LEXIS 49032, at *9 (E.D. Mich. Mar. 22, 2023) (quotation marks omitted).

[26] Id. at *11.

[27] Ctr. for Auto Safety & Pub. Citizen, Inc. v. NHTSA, 452 F.3d 798, 802 (D.C. Cir. 2006) (quoting 49 U.S.C. §§ 30118(e), 30120(e)).

[28] 49 U.S.C. §§ 30118(e), 30120(e).

[29] In re Bridgestone/Firestone Inc., ATX, ATX II & Wilderness Tires Prods. Liab. Litig., 153 F. Supp. 2d 935, 946 (S.D. Ind. 2001).

[30] Winzler, 681 F.3d 1208, 1211 (10th Cir. 2012).

[31] The doctrines of administrative exhaustion or prudential exhaustion might compel the same result. That is, insofar as a plaintiff disputes the remedy a NHTSA-supervised recall provides, the plaintiff should at least wait to exhaust the agency dispute-resolution process before involving the courts.

[32] Fed. R. Civ. P. 1.