

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DENICE HURTADO and
JOHN HURTADO,

Plaintiffs.

vs.

Case No. 00-CV-73764

MERCEDEZ BENZ,

HON. AVERN COHN

Defendant.

MEMORANDUM AND ORDER DENYING
PLAINTIFF'S MOTION FOR A DECLARATORY JUDGMENT

I. Introduction

This is a products liability case based upon a breach of implied warranty. Plaintiffs Denice Hurtado and John Hurtado, husband and wife, are suing defendant Mercedes-Benz USA, LLC (Mercedes) for injuries sustained when a side air bag deployed while Denice Hurtado (Hurtado) was engaged in a "hard braking maneuver" in her Mercedes Benz vehicle in order to avoid a collision. Hurtado says the air bag should not have deployed because there was no collision. Hurtado claims (1) breach of warranty of fitness, (2) negligence (based on defective design and/or manufacture) and (3) loss of consortium (as to John Hurtado).

Before the Court is Hurtado's motion for a declaratory judgment, requesting a ruling that M.C.L.A. § 600.2946a, which sets a cap for non-economic damages of \$280,000.00 in products liability cases is "unconstitutional and inapplicable to this

case.” For the reasons which follow, the motion is DENIED.¹

II. Background

On September 2, 1999, while driving her 1987 Mercedes 420 SEL, Hurtado broke hard in order to avoid a collision. The collision was avoided but the side air bag deployed, causing her injuries. Specifically, Hurtado suffered from and/or continues to suffer from, TMJ dysfunction, a broken forearm, recurrent headaches, blunt trauma to the eye and other injuries. She is suing Mercedes for her injuries, seeking to recover economic and non-economic damages and loss of consortium.

III. Analysis

A.

In 1995, Michigan enacted a series of “tort reform”² statutes. See 1995 P.A. 249, eff. March 28, 1996. As part of the “tort reform,” the legislature placed a cap on the amount of recoverable non-economic damages in products liability actions of \$280,000.00. Specifically, M.C.L.A. § 600.2946a provides:

Product liability actions; noneconomic damages, limitations; application of limitations; itemization and calculation of damages

Sec. 2946a. (1) **In an action for product liability, the total amount of damages for noneconomic loss shall not exceed \$280,000.00**, unless the defect in the product caused either the person's death or permanent loss of a vital bodily function, in which case the total amount of damages for noneconomic loss shall not exceed \$500,000.00. On the effective date of the amendatory act that added this section, the state treasurer shall adjust the limitations set forth in this subsection so that the limitations are equal to the limitations provided in section 1483. After that

¹The Court ordinarily would have oral argument on this motion. However, in this case, oral argument is not necessary. See E.D. Mich. LR 7.1(e)(2).

²The Court places “tort reform” in quotations so as to remain neutral as to whether the 1995 statutes are properly characterized as reform legislation.

date, the state treasurer shall adjust the limitations set forth in this subsection at the end of each calendar year so that they continue to be equal to the limitations provided in section 1483.

(2) In awarding damages in a product liability action, **the trier of fact shall itemize damages into economic and noneconomic losses. Neither the court nor counsel for a party shall inform the jury of the limitations under subsection (1). The court shall adjust an award of noneconomic loss to conform to the limitations under subsection (1).**

(3) The limitation on damages under subsection (1) for death or permanent loss of a vital bodily function does not apply to a defendant if the trier of fact determines by a preponderance of the evidence that the death or loss was the result of the defendant's gross negligence, or if the court finds that the matters stated in section 2949a are true.

(4) If damages for economic loss cannot readily be ascertained by the trier of fact, then the trier of fact shall calculate damages for economic loss based on an amount that is equal to the state average median family income as reported in the immediately preceding federal decennial census and adjusted by the state treasurer in the same manner as provided in subsection (1).

(Emphasis added).

B.

Hurtado argues that the cap on non-economic damages violates her Seventh Amendment rights under both the federal and state constitutions because it deprives her of the right to have a jury determine the amount of her non-economic damages. She also argues that the damage cap violates her First Amendment right of access to the courts. Hurtado notes that other state supreme courts have struck down similar damage cap provisions as violative of the Seventh Amendment. She further notes that several Michigan trial courts have struck down § 600.2946a as unconstitutional, and that at least two of these cases are pending in the Michigan Court of Appeals. Hurtado further argues that the damage cap violates separation of powers because the legislature effectively created a statutory remittitur, thereby unduly encroaching on the

judiciary's role to determine if an award is excessive and also forces a plaintiff to forego part of a jury award without consent and without the option of a new trial.

Mercedez argues that Hurtado's motion seeking declaratory relief is "premature, procedurally improper, jurisdictionally deficient and substantively wrong." Basically, Mercedez says that Hurtado cannot properly seek declaratory relief via a motion - such a request must be made in a "pleading," i.e. a complaint. Mercedes also argues that the request is premature because liability has not been established, much less the amount of Hurtado's damages and a declaratory ruling at this point would result in an advisory opinion. Finally, Mercedez argues that should the Court consider the merits of Hurtado's request, § 600.2946a is constitutional.

Hurtado replies that a declaratory ruling is not premature because her rights are presently adversely affected by the cap. She argues that she might be adversely affected by sanctions under the mediation rules if she rejects mediation. She also says that Mercedez has used the damage cap as "leverage" in settlement discussions and will no doubt do the same in mediation.

C.

Putting aside whether Hurtado's motion for declaratory relief is procedurally proper, Mercedez's argument that Hurtado's motion is premature is well taken. Hurtado's fear of mediation sanctions are unfounded. This case is not in mediation, there is no obligation to mediate in the federal courts, and there are no sanctions unless the parties consent. Second, the fact that the cap has been used in settlement discussions is insufficient to make the issue ripe for decision. See Calderon v. Ashmus, 523 U.S. 740, 747 (1998) ("attempts to gain a litigation advantage by obtaining an

advance ruling” [by a request for declaratory relief as to the availability of a state affirmative defense that may be raised in a habeas proceeding] ... “would not resolve the entire case or controversy ... but would merely determine a collateral legal issue governing certain aspects of their pending or future case.”)

Additionally, as Hurtado notes, at least five Michigan trial courts have ruled that statutory damage caps on a variety of tort claims are unconstitutional. However, Hurtado also says that at least two cases addressing the damages cap at issue here are pending in the Michigan Court of Appeals.³ In Strzelecki v. Daimler-Chrysler, 99-002331 (Presque Isle Cir. Ct. Dec. 15., 1999)(granting plaintiff declaratory relief and holding § 600.2946a unconstitutional) an application for leave to appeal filed is still pending. In Kenkel v. Rite Aid of Michigan, 98-813958, (Wayne County Cir. Ct. May 11, 1998)(issuing a judgment declining to reduce non-economic damage award based on a prior ruling on a motion for entry of judgment that § 600.2946a is unconstitutional), a claim of appeal was filed on August 15, 2000 and the appeal remains pending.

In Strzelecki, the trial court deemed it appropriate to address plaintiff’s claim for declaratory relief prior to trial. However, in Kenkel, the trial court did not address the issue until after the case went to trial and the jury awarded plaintiff non-economic damages in excess of the statutory cap. The approach in Kenkel is the better course -- it is appropriate to defer ruling on Hurtado’s constitutional challenge until such time, if at all, she prevails at trial and is awarded non-economic damages in excess of

³Hurtado also submits Tumpkin v. Roura Iron Works, Inc., 99-911477-NP (Wayne County Cir. Ct. May 2, 2000) (granting plaintiff’s request for a declaratory ruling and holding that § 600.2946a is unconstitutional). Hurtado does not say whether this case is also on appeal.

\$280,000.00. This is particularly so given that the issue is pending in the Michigan Court of Appeals.

The Court recognizes that a definitive answer might increase the likelihood of resolution of this case. However, a decision on Hurtado's request for declaratory relief under the circumstances would merely be advisory. The parties must do their best in this uncertainty, being mindful that this case is in federal court on diversity jurisdiction.

SO ORDERED.

_____/s/_____
AVERN COHN
UNITED STATES DISTRICT JUDGE

Dated: January 24, 2002
Detroit, Michigan