

latimes.com/business/autos/la-fi-autos-honda-smallclaims-20111227,0,959031.story

latimes.com

Car owner takes legal fight away from lawyers

Heather Peters is miffed that her Civic doesn't get its claimed fuel economy, and she isn't satisfied with a proposed settlement. So she's trying a new approach to litigation.

By Jerry Hirsch, Los Angeles Times

December 27, 2011

Heather Peters is an angry consumer who knows she has little chance of winning a war with Honda Motor Co. and its army of high-priced lawyers.

advertisement

The Los Angeles resident is miffed that her 2006 Honda Civic hybrid doesn't get its claimed fuel economy. And she isn't satisfied with a proposed class-action lawsuit settlement that would give trial lawyers \$8.5 million while Civic owners would get as little as \$100 and rebate coupons for the purchase of a new vehicle.

But Peters believes that she found a venue where she can win justice and where Honda can't spend a single dollar on legal help.

On Jan. 3 she'll take her case to Small Claims Court in Torrance, where California law prohibits Honda from bringing an attorney. She's asking for the maximum of \$10,000 to compensate her for spending much more on gasoline than expected. Honda said the Civic would get about 50 miles per gallon, but because of technical problems the car gets closer to 30 mpg.

What's more, Peters is using urging Honda owners across the country to do the same. Peters' DontSettleWithHonda.org website and a DontSettleWithHonda Twitter account include a link to state-by-state instructions for filing these lawsuits, which have low fees and minimal paperwork. Honda sold about 200,000 of the hybrids over a six-year period, and because of resales, as many as 500,000 people are eligible to file claims against Honda.

"I want them to know they can file in Small Claims Court and that it is not so scary," Peters said.

If she's successful in getting others to follow her example, Peters could inspire a whole new litigation strategy in the auto industry and other businesses. Working together but filing lawsuits independently, consumers could

f i i h i d i d l l i i f f l i i d

"This could create a lot of problems in the industry," said Aaron Jacoby, the Los Angeles defense attorney who heads the automotive industry group at the Arent Fox law firm.

Attorneys said social networking and the Internet make it easier for groups of claimants to find one another and map out tactics such as the one Peters has devised.

Apartment dwellers for years have used a similar strategy, banding together to file individual cases against the same landlord in Small Claims Court.

"You might have 10 plaintiffs suing the same defendant, but with different claims, and requesting that all the cases be heard at the same time," said Nicholas Aquino, Small Claims Court advisory program manager for the Los Angeles County Department of Consumer Affairs.

He said mass filings could become a trend.

"Governments are cutting back on everything, including consumer protection. The Small Claims Court is the forum of last resort for the everyday person," Aquino said. "It gives a consumer an opportunity to have an issue addressed in court."

To be sure, there are hurdles that might dissuade people from pursuing the stratagem en masse.

Although there is relatively little red tape, Small Claims Court still requires plaintiffs to prepare arguments. And they have to make a court date and possibly miss work to attend the hearing, Jacoby said.

Some states allow the litigants in small claims actions to be represented by attorneys — giving big companies with high-priced legal staffs an advantage over mom-and-pop plaintiffs.

"It could be a daunting task for some," Jacoby said.

But in California and other states where companies can only be represented by non-attorney employees, there also could be some benefits, beginning with "cutting the attorneys out of the equation in these cases," said Richard Cupp Jr., who teaches product liability law at Pepperdine University.

For many consumers, traditional class-action lawsuits remain the only feasible way to pursue claims against a big company. These suits group plaintiffs together to make the potential total payout big enough to interest attorneys in taking on the litigation, which requires costly evidence gathering and discovery.

But the results have been uneven. Attorneys often collect millions of dollars while the payments to the claimants could be just a fraction of their actual losses.

The Honda class-action litigation has been working its way through the courts for years. The first cases were filed in 2007 by Civic hybrid owners who alleged that the automaker advertised false claims about fuel economy.

Honda has acknowledged that the battery on 2006 through 2008 Civic hybrids "may deteriorate and affect the vehicle's performance and safety."

A proposed settlement was rejected last year in federal court in Riverside by Judge Virginia Phillips, who agreed with 26 attorneys general and multiple consumer groups who argued that the deal did not pay Civic owners enough.

The renegotiated settlement covers original and subsequent owners of 2003 through 2009 model year Civic hybrids. All would get \$100 in cash, and then either a \$500 transferable rebate that they could sell or a \$1,000 non-transferable rebate on a new Honda or Acura.

Owners of the 2006 through 2008 hybrids would get \$100 more and an additional \$500 rebate voucher that they could use or sell. Other benefits include an extra year of battery warranty and the option to seek greater damages through a mediation service.

A judge in San Diego County Superior Court is expected to decide whether to accept the settlement March 16. Attorneys for the plaintiffs said their clients got a good deal.

"We are proud of the settlement we have reached. We believe we have created substantial value for the members of the class," said William H. Anderson, a Washington, D.C., class-action attorney who was on the team representing the Honda owners.

Claimants have until Feb. 11 to choose whether to take the proposed settlement or file their own small-claims actions as Peters has done.

Chris Martin, a spokesman for American Honda Motor Co. in Torrance, declined to discuss Peters' case or the proposed class-action settlement. "We can't comment on pending litigation," he said.

Some legal experts said they would be watching Peters' guerrilla strategy with interest.

"This is very creative," said Donald Earl Childress III, who teaches civil procedure at Pepperdine University School of Law. "For Honda this would be like the buzzing bee flying around you that you don't want to swat because it might sting you, but you need to do something about it."

If successful, Peters, a state employee, could win damages many times the payment she would derive from the settlement. It helps that she's a former attorney herself (she let her license expire a decade ago), and thus has an easier time navigating the legal system than a typical consumer.

Although Peters hopes that others might also pursue their claims in Small Claims Court, she said if she wins a significant award, the figure could be used to scuttle the proposed class-action settlement in favor of one that would exact more money from the automaker.

"I a

jerry.hirsch@latimes.com

Copyright © 2011, [Los Angeles Times](#)