

## **\$31M Verdict Reversed In Navistar Engine Defect Suit**

By **Mike Curley**

*Law360 (August 15, 2019, 5:31 PM EDT)* -- A Tennessee appeals court has reversed a \$31 million judgment against Navistar Inc. in a suit alleging that it sold faulty trucks to a trucking company, finding that the trucks did not count as "goods" under Tennessee's consumer protection law.

In a decision filed Wednesday, the Tennessee Court of Appeals found that the jury was mistaken in determining that Navistar delivered goods to Milan Supply Chain Solutions that were not up to standard. The Tennessee Consumer Protection Act's definition of "goods" is products sold to an individual for personal use, according to the appeals court.

As Milan is a business and purchased the vehicles for business use, it cannot seek relief and recovery under Tennessee's consumer protection law. Instead, its claims fall under warranty and contract law, the counts of which were dismissed before the suit went to trial, according to the opinion.

The trucks also did not fit the law's other definition of "goods," as a "franchise, distributor agreement or similar business opportunity," the panel found.

A Tennessee jury levied the \$31 million verdict in August 2017, when it found that Navistar committed fraud and violated the state's consumer protection laws when it sold Milan 243 heavy-duty trucks without mentioning problems with its Maxxforce diesel engines.

The panel also reversed the judgment on Milan's fraud claims, saying they were barred by the economic loss doctrine. As the source of Milan's complaint is the quality of the trucks it bought for business purposes, the center of the complaint is economic and monetary losses, which the panel also found fits contract and warranty law, not a tort claim such as fraud.

Milan, in turn, appealed the dismissal of its warranty claims, but the panel rejected that appeal, finding that Milan had waived that appeal because the company did not file a motion for a new trial raising the issue of those claims.

Finally, the appeals court affirmed a judgment awarding attorney fees to Navistar's co-defendant in the case, Volunteer International Inc., which sold the vehicles.

During the trial, the court awarded the fees in a directed verdict because Milan's witness testimony was largely positive, calling the company's contact within Volunteer an "honest, credible man," and because

Milan's counsel admitted their strategy was based on Navistar's actions, not Volunteer's.

Milan argued that the fact the claims against Volunteer survived summary judgment meant they were clearly not frivolous, but the appeals panel found the trial court did not abuse its discretion in rejecting that argument, finding that surviving summary judgment does not mean that a case has factual merit.

An attorney for Navistar and Volunteer International declined to comment, referring to a Navistar spokesperson.

Representatives for Milan and the Navistar spokesperson could not immediately be reached for comment Thursday.

Navistar and Volunteer International Inc. are represented by Roman Martinez and Kevin Jakopchek of Latham & Watkins LLP, Eugene N. Bulso Jr. and Paul J. Krog of Leader Bulso & Nolan PLC and Jeff Patterson and Clayton Callen of Hartline Barger LLP.

Milan is represented by Clay Miller and Lawrence R. Lassiter of Miller Weisbrod, Marty Phillips and Adam Nelson of Rainey Kizer Reviere & Bell and Donald Capparella of Dodson Parker Behm & Capparella PC.

The case is Milan Supply Chain Solutions Inc. v. Navistar Inc. et al., case number C-14-285, in the Court of Appeals of Tennessee.

--Additional reporting by John Kennedy. Editing by Jay Jackson Jr.