

IN THE SUPREME COURT OF TEXAS

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No. 98-0539
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FORD MOTOR COMPANY, LEIF JOHNSON FORD, INC. AND FRED CAPDEVIELLE,
PETITIONERS

v.

BARRY SHELDON, MATTHEW RUETER, MARGARET DUNAYER, JOHN PORTER,
WILLIAM DOBBS, JAMES BEASLEY AND B. J. SANDERS, INDIVIDUALLY AND ON
BEHALF OF ALL OTHERS SIMILARLY SITUATED, RESPONDENTS

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ON PETITION FOR REVIEW FROM THE
COURT OF APPEALS FOR THE THIRD DISTRICT OF TEXAS
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Argued February 9, 1999

JUSTICE BAKER, dissenting.

Ford alleges that this Court has jurisdiction over its petition for review because: (1) section 6.06(g) of the Texas Motor Vehicle Commission Code gives this Court jurisdiction over class certification decisions involving motor vehicle licensees such as Ford; and (2) the court of appeals' decision in this case conflicts with prior decisions of this Court and other courts of appeals. I conclude that section 6.06(g) of the Motor Vehicle Commission Code is an unconstitutional special law and that the court of appeals' decision does not conflict with the prior decisions Ford cites. Accordingly, this Court should dismiss Ford's petition for review for want of jurisdiction. Because

it does not do so, I respectfully dissent.

I. SECTION 6.06(g)

Ford alleges that this Court has jurisdiction under section 6.06(g) of the Texas Motor Vehicle Commission Code. *See* TEX. REV. CIV. STAT. art. 4413(36), § 6.06(g). Although the Purchasers concede that the section vests this Court with jurisdiction, they assert that the section is unconstitutional because it violates the prohibition against special laws. Because I agree with the Purchasers that section 6.06(g) is a special law, I would declare it void. Accordingly, it cannot confer jurisdiction.

A. SPECIAL LAW

The Texas Constitution prohibits the Legislature from enacting special or local laws when a general law can be made applicable. *See* TEX. CONST. art. III, § 56. It also specifically prohibits the Legislature from enacting any local or special law “regulating the practice or jurisdiction of . . . any judicial proceeding or inquiry before courts.” TEX. CONST. art. III, § 56. A special law impermissibly distinguishes between groups on some basis other than geography. *See Texas Boll Weevil Erad. Found. v. Lewellen*, 952 S.W.2d 454, 465 (Tex. 1997).

Section 56's prohibition of special and local laws was designed to prevent “the granting of special privileges and to secure the uniformity of law throughout the State as far as possible,” and to stop the lawmakers from trading votes for “the advancement of personal rather than public interest.” *Miller v. El Paso County*, 150 S.W.2d 1000, 1001 (Tex. 1941). Despite the constitutional prohibition on special and local laws, courts have recognized that the Legislature can make

classifications for legislative purposes. *See Maple Run Mun. Util. Dist. v. Monaghan*, 931 S.W.2d 941, 945. But such classification must have a reasonable basis, that is, it must be “based upon a reasonable and substantial difference in kind, situation, or circumstance bearing a proper relation to the [statute’s] purpose.” *Rodriguez v. Gonzales*, 227 S.W.2d 791, 793 (Tex. 1950). In other words, the defined class must be “substantial” and have “characteristics legitimately distinguishing it from the rest of the State so as to require legislation peculiar thereto.” *Miller*, 150 S.W.2d at 1002; *see also Smith v. Decker*, 312 S.W.2d 632, 636 (Tex. 1958) (classification must have a foundation in difference of situation).

B. ANALYSIS

Generally, a party challenging a trial court’s class certification decision is allowed interlocutory review of that decision only to the courts of appeals. *See* TEX. CIV. PRAC. & REM. CODE § 51.014(3). This Court does not have jurisdiction to review the court of appeals’ judgment unless there is a dissent in the court of appeals’ opinion or the court of appeals’ decision conflicts with a decision of this Court or another court of appeals. *See* TEX. GOV’T CODE §§ 22.225(b)(5),(c); 22.001(a)(1),(2). But in 1997, the Legislature enacted section 6.06(g) of the Texas Motor Vehicle Commission Code, which gives the Supreme Court jurisdiction to review interlocutory appeals of class certification decisions, regardless of dissent or conflict, when a motor vehicle licensee is a party. *See* TEX. REV. CIV. STAT. art. 4413(36), § 6.06(g). Motor vehicle licensees include automobile dealers, manufacturers, converters, representatives, lessors, lease facilitators, and those who perform or offer to perform repair services on a motor vehicle. *See* TEX. REV. CIV. STAT. art. 4413(36), §§ 1.03(20), 4.01(a). Thus, section 6.06(g) carves out an exception to the statutory rule

for parties that are members of any of the above categories. Section 6.06(g)'s classification is broad enough to include a numerically substantial class, but because the classification has no reasonable basis, it is an unconstitutional special law.

There is nothing in section 6.06(g), its sparse legislative history, or the parties' arguments that hint at a reasonable basis for providing Supreme Court review of interlocutory class certification decisions involving motor vehicle licensees and not providing it for any other class litigant. Nor can I conceive of a reasonable basis. Any difference between class certification decisions involving motor vehicle licensees and decisions involving insurance companies, computer companies, oil companies, tax preparers, hospitals, credit card companies, investment companies, accounting firms, and any entity providing important consumer goods and services does not warrant an exclusive right to Supreme Court review. There is nothing unique about 6.06(g) cases other than the presence of a motor vehicle licensee. That presence makes no difference in class certification decisions, and therefore, should not make a difference in the appellate review available.

Although class certification is a fact-intensive inquiry, the class certification requirements are the same regardless of the underlying subject matter or the parties' identities. *See* TEX. R. CIV. P. 42. Professor Newburg makes this point while discussing the different categories of tort class actions. *See* NEWBURG, NEWBURG ON CLASS ACTIONS § 17.06 (1992). He points out that class treatment will depend chiefly on applying the class certification requirements rather than on whether the suit is a mass accident, toxic tort, or products liability case. *See* NEWBURG, NEWBURG ON CLASS ACTIONS § 17.06 (1992). Review of class certification also depends on applying the class certification requirements, rather than the subject matter or parties involved. Nothing about a motor

vehicle licensee's presence in a class affects whether the class is proper.

In *Miller*, this Court invalidated a statute analogous to the one at issue here. *See Miller*, 150 S.W.2d at 1002-03. In *Miller*, the statute provided an economic development tax only in counties meeting certain population requirements. *See Miller*, 150 S.W.2d at 1002-03. When the Legislature enacted the statute, the statute applied only to El Paso County. *See Miller*, 150 S.W.2d at 1002. The Court held that the statute's classification not only lacked a reasonable basis material to the statute's purpose, but the class of counties it created was not distinct *in any substantial manner* from any other counties in the State. *See Miller*, 150 S.W.2d at 1002.

Similarly, in *Rodriguez v. Gonzales*, this Court struck down an act that set out special procedures for collecting delinquent taxes. *See Rodriguez*, 227 S.W.2d at 794. The act only applied to parcels of land greater than 1,000 acres that were situated in counties bordering Mexico and whose title emanated from the King of Spain. *See Rodriguez*, 227 S.W.2d at 794. This Court held that there was nothing special about these estates that warranted different treatment for tax collection purposes. *See Rodriguez*, 227 S.W.2d at 794 (“There is no substantial difference in the situation or circumstance of border counties relating to suits for delinquent taxes upon which to base the classification.”).

The Court holds that section 6.06(g) is not a special law but a general law because many consumers spend a lot of money on automobiles. ___ S.W.3d ___, ___. In doing so, the Court pays only lip service to the reasonable basis test and instead cites Commerce Department statistics and the Texas Almanac to show that class certification decisions involving motor vehicle licensees affect many citizens. But this Court has made clear that “the primary and ultimate test of whether a law

is general or special is whether there is a reasonable basis for the classification made by the law, and whether the law operates equally on all within the class.” *Maple Run*, 931 S.W.2d at 945. “The significance of the subject matter and the number of persons affected by the legislation are merely factors, albeit important ones, in determining reasonableness.” *Maple Run*, 931 S.W.2d at 947. Further, even if the significance of an automobile purchase distinguishes that purchase from other consumer transactions, the significance of that purchase has nothing to do with the decision to certify or decertify a class.

As the Court concedes, no other jurisdiction has a law like section 6.06(g) and with good reason -- it is implausible, much less reasonable. Section 6.06(g) lacks any reasonable basis for its classification, including any substantial difference in kind, situation, or circumstances bearing a proper relation to the statute’s purpose — despite the Court’s hollow attempt to manufacture one. *See Rodriguez*, 227 S.W.2d at 793. By holding that section 6.06(g) is not a special law, the Court mocks the Constitutional prohibition of special laws and undermines our special law jurisprudence. In any event, we all know what is going on here!

II. CONFLICTS JURISDICTION

Ford also asserts that, regardless of section 6.06(g), this Court has jurisdiction over its petition for review because the court of appeals’ decision conflicts with other cases on four issues: (1) whether questions of law or fact can be common in a class action when the jury might answer them differently for each class member; (2) whether common issues predominate when individualized trials are required to resolve claimant-specific liability issues, defenses, and damages; (3) whether liability and damages can be tried separately in a single cause of action; and (4) whether

a proposed class must be defined so that it is administratively feasible at the outset to determine if an individual is a class member. I do not believe that this case meets the standard for conflicts jurisdiction.

A. APPLICABLE LAW

In the absence of a dissent or conflict, an appeal of an interlocutory class certification order is final in the court of appeals. *See* TEX. GOV'T CODE § 22.225(b)(3); TEX. CIV. PRAC. & REM. CODE § 51.014(3). It is very difficult for a party to establish conflicts jurisdiction. *See Gonzalez v. Avalos*, 907 S.W.2d 443, 444 (Tex. 1995). To establish conflicts jurisdiction, a party must show that “the conflict is on the very question of law actually involved and determined . . . in both cases.” *Christy v. Williams*, 298 S.W.2d 565, 567 (Tex. 1957). The test is whether one case would overrule the other if the same court rendered both decisions. *See Coastal Corp. v. Garza*, 979 S.W.2d 318, 319-20 (Tex. 1998). Furthermore, “cases do not conflict if a material factual difference distinguishes their holdings.” *Coastal Corp.*, 979 S.W.2d at 320. But this standard does not require identical facts for two cases to conflict. *See Coastal Corp.*, 979 S.W.2d at 320. The conflict must involve the court’s conclusion, not merely the reasoning by which the court reached the conclusion. *See Coultriss v. City of San Antonio*, 179 S.W. 515, 516 (Tex. 1915).

Conflicts analysis does not require determining whether the courts of appeals’ decisions were correctly decided, but only determining whether a conflict exists that meets conflicts jurisdiction requirements.

B. ANALYSIS

Ford first asserts that this case conflicts with *RSR* and *Wente* on the issue of whether

questions of law or fact can be common under Rule 42(a)(2) of the Texas Rules of Civil Procedure when a jury might answer them differently for each class member. *See RSR Corp. v. Hayes*, 673 S.W.2d 928, 932-33 (Tex. App.--Dallas 1984, writ dismissed w.o.j.); *Wente v. Georgia-Pacific Corp.*, 712 S.W.2d 253, 257 (Tex. App.--Austin 1986, no writ). Under Rule 42(a)(2), a trial court must find that there are questions of law or fact common to the class as a prerequisite to a class action. *See TEX. R. CIV. P. 42(b)(2)*.

In *RSR*, the Fifth Court of Appeals decertified a class because common questions did not predominate over individual issues. *See RSR*, 673 S.W.2d at 933. Residential property owners had sued the owners of a lead smelter, claiming that airborne lead emissions caused personal injury and property damage. *See RSR*, 673 S.W.2d at 929. The owners alleged a variety of damages and several theories of liability. *See RSR*, 673 S.W.2d at 932-33. The trial court certified a class that included all property owners living within a two-mile radius from the smelter. *See RSR*, 673 S.W.2d at 929. The court of appeals reversed, holding that common issues did not predominate because some owners did not suffer any injury, the personal injuries alleged differed for each class member, and because the owners had asserted various theories of liability that could be answered differently among class members. *See RSR*, 673 S.W.2d at 932-33.

Here, the court of appeals held that four questions were common to the class: (1) whether the paint process was defective because it lacks spray primer; (2) whether Ford knew of the defect; (3) whether Ford had a duty to disclose the defect; and (4) how the discovery rule applied. The court distinguished *RSR* by noting that the *RSR* class was much broader because it included various types of injuries and included all landowners without regard to whether lead was on their land. Here, the

class members allege one type of damage and the class only includes cars that had peeling paint.

I do not agree with Ford that the alleged conflict between *RSR* and the court of appeals' opinion in this case meets the standards for conflicts jurisdiction. First, Ford alleges this case conflicts on whether issues are common to the class under Rule 42(a)(2). But the actual question considered and decided in *RSR* was whether common issues predominated under Rule 42(b)(4). In short, the courts of appeals in *RSR* and in this case did not hold differently on the same question of law. *See Coastal Corp.*, 979 S.W.2d at 322. Furthermore, the *RSR* parties asserted numerous causes of action. Here, the parties assert only one. Additionally, *RSR* involved certification of personal injury claims in addition to property claims. *See RSR*, 673 S.W.2d at 932. This Court has noted that courts should distinguish personal injury mass tort actions from property damage class actions. *See Coastal Corp.*, 979 S.W.2d at 321. Finally, there was undisputed evidence in *RSR* that 70% of the class members within the defined geographic area did not have hazardous levels of lead on their land. *See RSR*, 673 S.W.2d at 931. Here, the court of appeals limited the class to people whose cars had peeling paint. For these reasons, we do not have conflicts jurisdiction in this case based on *RSR*.

Conflicts jurisdiction in this Court does not arise if the alleged conflict is between two decisions of the same court of appeals. *See TEX. GOV'T CODE* § 22.225(c); *see also Dixon v. Southwestern Bell Tel. Co.*, 607 S.W.2d 240, 241 (Tex. 1980). I therefore do not need to analyze the alleged conflict between *Wente* and this case because the same court of appeals issued both opinions.

Second, Ford asserts that the court of appeals decision conflicts with three other cases on the

issue of whether common issues predominate under Rule 42(b)(4) when individualized trials are required to resolve claimant-specific liability issues, defenses, and damages. *See E & V Slack, Inc. v. Shell Oil Co.*, 969 S.W.2d 565 (Tex. App.--Austin 1998, no pet.); *Remington Arms Co. v. Luna*, 966 S.W.2d 641 (Tex. App.--San Antonio 1998, no pet.); *Life Ins. Co. v. Brister*, 722 S.W.2d 764 (Tex. App.--San Antonio 1986, no writ).

I need not consider *Slack* to determine whether conflicts jurisdiction exists because the same court of appeals decided *Slack* and this case. *See* TEX. GOV'T CODE § 22.225(c); *see also* *Dixon*, 607 S.W.2d at 241.

In *Luna*, the Fourth Court of Appeals reversed a class certification because it determined that a class action was not a superior method of resolving the controversy. *See Luna*, 966 S.W.2d at 642. The court considered only the part of Rule 42(b)(4) providing that a class action must be the superior method of resolving the controversy and expressly refused to consider the issue of whether common questions predominated over individual questions. *See Luna*, 966 S.W.2d at 644; TEX. R. CIV. P. 42(b)(4). Ford alleges that this case conflicts with *Luna* on whether common questions predominate. But because the *Luna* court expressly refused to consider it, there can be no conflict on that question. *See Coultriss*, 179 S.W. at 516.

In *Brister*, the Fourth Court of Appeals upheld a trial court's certification of a class of employees who alleged that they did not receive disability benefits as promised. *See Brister*, 722 S.W.2d at 767. The class members alleged breach of contract and misrepresentation based on an employer's written statements in an Employee Benefit Plan. *See Brister*, 722 S.W.2d at 767. The court had to consider whether common issues predominated in the unique context of a

misrepresentation case. *See Brister*, 722 S.W.2d at 774. The court noted that in consumer actions where the alleged misrepresentations vary with each transaction, individual issues would likely predominate and a class action would not be proper. *See Brister*, 722 S.W.2d at 774. The court held that the test for whether common questions predominate is not whether common questions outnumber the individual ones, but instead whether common issues will be the object of most of the litigants' and court's efforts. *See Brister*, 722 S.W.2d at 772. Finally, the court stated that a judgment for the class should settle the controversy except for the individual members providing proof of their claim. *See Brister*, 722 S.W.2d at 772. The court upheld the class certification, holding that common issues predominated because a single, uniform misrepresentation was alleged. *See Brister*, 722 S.W.2d at 774.

I do not find that the alleged conflicts between *Brister* and this case afford this Court conflicts jurisdiction. Importantly, this case involves property damage claims while *Brister* involved a cause of action with several elements that focused on individual, not group, determinations. *See Brister*, 722 S.W.2d at 774. Further, the court in *Brister* and the court of appeals in this case agree that the test of whether common issues predominate is whether common or individual issues will be the object of litigant's efforts rather than the number of common or individual issues. *See Brister*, 722 S.W.2d at 772; *Sheldon*, 722 S.W.2d at 72. Ford does not point to any conflict between *Brister* and this case that meets the standard for conflicts jurisdiction.

Third, Ford alleges that the court of appeals' opinion conflicts with prior cases holding that liability and damages cannot be tried separately when they are indivisible elements of a single cause of action. *See Otis Elevator Co. v. Bedre*, 776 S.W.2d 152 (Tex. 1989) (per curiam); *Eubanks v.*

Winn, 420 S.W.2d 698 (Tex. 1967); *Iley v. Hughes*; 311 S.W.2d 648 (Tex. 1958); *Greater Houston Transp. Co. v. Zrubeck*, 850 S.W.2d 579 (Tex. App.--Corpus Christi 1993, writ denied). These cases also do not meet the standard necessary to give this Court conflicts jurisdiction.

In *Otis Elevator*, this Court held in a personal injury case that a court could not remand the issue of one party's negligence while refusing to also remand the question of whether another party was contributorily negligent. *See Otis Elevator*, 776 S.W.2d at 153. Partial remand is only permissible where the issues are severable. *See Otis Elevator*, 776 S.W.2d at 153. Similarly, in *Iley*, this Court held that liability and damages issues could not be tried separately in a personal injury case. *See Iley*, 311 S.W.2d at 651. Likewise, *Eubanks* expresses Texas courts' aversion to piecemeal trials. *See Eubanks*, 420 S.W.2d at 701 (holding that a court could not grant a new trial on liability, allow the defendant to confess liability, and then award damages under the original verdict because that severed contested issues of liability and damages in a personal injury case).

This case differs from *Iley*, *Otis Elevators*, and *Eubanks* in several key aspects. Most importantly, this case is a property damage case but all the cases Ford cites are personal injury cases. Courts and commentators have recognized that special considerations exist when juries consider liability and damages separately in a personal injury case. *See Iley*, 311 S.W.2d at 650-51; *see also* 9 CHARLES ALLEN WRIGHT, ET AL., FEDERAL PRACTICE AND PROCEDURE § 2390, at 508 (1995). Furthermore, here the court of appeals did not find that the trial court had entirely separated liability and damages because the certification order did not mention bifurcating the trial. *See* 965 S.W.2d at 68 n.2. Rather, the court of appeals assumed, and the parties agreed, that some bifurcation would be necessary in this class action. *See* 965 S.W.2d at 68 n.2. The court of appeals decided that the

individual trials would likely include aspects of liability and damages together so the bifurcation would be permissible. *See* 965 S.W.2d at 69. This decision does not deal directly with the types of bifurcation considered in *Iley, Eubanks, and Otis Elevators*. Because of these differences, Ford cannot demonstrate a “well-defined” and direct conflict between this case and *Iley, Eubanks, or Otis Elevators* to establish conflicts jurisdiction. *See Coultriss*, 179 S.W. at 516-17.

The *Zrubeck* case simply does not consider the same issue as this case; therefore, no conflict exists between the two. *See Coastal Corp.*, 979 S.W.2d at 319-20. In *Zrubeck*, the trial court bifurcated the exemplary damages part of a personal injury case. *See Zrubeck*, 850 S.W.2d at 581. Eleven jurors found the defendant negligent and awarded actual damages. *See Zrubeck*, 850 S.W.2d at 584. In the second part of the trial, ten jurors, including the one who voted against liability in the first phase, found exemplary damages. *See Zrubeck*, 850 S.W.2d at 581. The court of appeals held that the defendant failed to preserve error on that issue. *See Zrubeck*, 850 S.W.2d at 581. In dicta, the court commented that because this was a “separate” trial, the same ten jurors did not have to agree on liability and damages. *See Zrubeck*, 850 S.W.2d at 581. No party raised that issue here.

Finally, Ford states that the court of appeals’ decision conflicts with *Reserve Life Insurance Co. v. Kirkland* on whether a proposed class must be defined so that it is administratively feasible, at the proceeding’s outset, for the trial court to determine whether a particular individual is a class member. *See Reserve Life Ins. Co. v. Kirkland*, 917 S.W.2d 836, 840 (Tex. App.--Houston [14th Dist.] 1996, no writ).

In *Kirkland*, the court defined class members as persons who purchased a major medical policy in Texas from the defendant corporation. *See Kirkland*, 917 S.W.2d at 840. The corporation

argued that the definition was too vague to determine whether an individual was a class member. *See Kirkland*, 917 S.W.2d at 840. The court of appeals disagreed and held that the class definition did not contain vague terms. *See Kirkland*, 917 S.W.2d at 840. Rather, class membership could be easily ascertained through company records. *See Kirkland*, 917 S.W.2d at 840. The court noted in dicta that class definitions in other cases were vague because the definitions contained terms relating to the plaintiff's state of mind. *See Kirkland*, 917 S.W.2d at 840. The *Kirkland* definition did not contain state-of-mind terms nor was that material to the court's holding. *See Kirkland*, 917 S.W.2d at 840.

Any statements in *Kirkland* about the plaintiff's state of mind were dicta, and conflicts jurisdiction does not arise from statements that were immaterial to the court's holding. *See Benson v. Jones*, 296 S.W. 865, 867 (Tex. 1927). Thus, Ford cannot show that the differences between this case and *Kirkland* satisfy the standard for conflicts jurisdiction.

Because none of the cases Ford cites conflict with the court of appeals' decision here, I conclude that this Court does not have conflicts jurisdiction over Ford's petition for review.

IV. CONCLUSION

I would hold that section 6.06(g) is an unconstitutional special law. I would also hold that the court of appeals' opinion does not conflict with any opinions Ford cites in alleging conflicts jurisdiction. Accordingly, I would conclude that the Court is without jurisdiction to consider the merits of this petition. Because the Court concludes otherwise, I dissent.

James A. Baker,
Justice

OPINION DELIVERED: May 11, 2000