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WISCONSIN'S "LEMON LAW" STATUTE HAS BEEN REVISED

Wisconsin's so-called "Lemon Law" statute, § 218.0171, Wis. Stats., has long been considered the most consumer-friendly Lemon Law in the country. The statute itself, and the numerous appellate court decisions which interpret it, made it extremely difficult for motor vehicle manufacturers who sold or leased new motor vehicles in Wisconsin to comply with the law on a pre-lawsuit basis and also made it very difficult to resolve lawsuits after they were filed. The revised law is intended to change this. The elimination of the double damages provision alone will create a much more level playing field for consumers and manufacturers. This and the other changes should hopefully result in a decrease in the number of lawsuits filed. Also, if a lawsuit is filed, the revisions to the law should make it more workable for manufacturers to resolve lawsuits, and encourage consumers' attorneys to do so as well.

Generally speaking, Wisconsin's Lemon Law was designed to protect consumers who purchased or leased new motor vehicles that turn out to be defective and the defects were not remedied within a reasonable period of time. If a new vehicle exhibited a warranty "nonconformity," a defect which substantially impaired the vehicle's use, value or safety, within the first year after the vehicle is delivered to the consumer and the consumer makes the vehicle available to the manufacturer or an authorized dealership for the necessary repairs, the manufacturer or dealership were required to make a reasonable attempt to repair the vehicle. If the manufacturer or dealership did not repair the vehicle after a reasonable attempt, such that the vehicle was "out of service" for at least 30 days due to warranty nonconformities or had a nonconformity that was subject to repair at least four times during that first year and the nonconformity continued, the consumer was entitled to request at his or her option that the manufacturer repurchase the vehicle and put the consumer back in the position he or she was in prior to purchasing the vehicle, or request that the manufacturer replace the vehicle with a comparable new vehicle. Significantly, the manufacturer was required to actually complete the vehicle repurchase or provide the comparable new motor vehicle within thirty (30) days from the consumer's request. That proved very challenging to manufacturers, especially when consumers were less than cooperative in providing all the necessary documentation and information which was necessary for the manufacturer to repurchase the vehicle or provide the comparable new motor vehicle.

If the manufacturer decided to comply with the consumer's request for a repurchase or a

comparable new motor vehicle, but did not actually provide the refund or replacement vehicle within the aforementioned thirty (30) days, the consumer was entitled to file a lawsuit and, if successful, was entitled to recover double damages and reasonable attorney fees. Note that reasonable attorney fees were recoverable by consumers if they were successful with their lawsuit, but manufacturers were not entitled to recover their attorney fees if they were successful defending a lemon law lawsuit.

On December 13, 2013, Governor Scott Walker signed into law a revised Wisconsin Lemon Law. The following are highlights of the revised law, but a thorough reading of the revised statute here will be necessary to fully understand it and for consumers and manufacturers to be able to comply with it.

EFFECTIVE DATE: The new law takes effect for new motor vehicles which are sold or leased on or after March 1, 2014.

DOUBLE DAMAGES: Double damages have been eliminated and consumers are now only entitled to single damages if they are successful with their Lemon Law case.

OUT OF SERVICE: The prior law did not provide a definition of "out of service," but the Wisconsin Court of Appeals held that "out of service" "includes those periods when the vehicle is not capable of rendering service as warranted due to a warranty nonconformity, even though the vehicle may be in the possession of the consumer and may still be driven in the performance of other services by the consumer." *Vultaggio v. GM*, 145 Wis. 2d 847, 886, 429 N.W.2d 93, 97 (Ct. App. 1988). The new law creates a definition of "out of service" in paragraph (1)(g) as follows:

> "Out of service," with respect to a motor vehicle, means that the vehicle is unable to be used by the consumer for the vehicle's intended purpose as a result of any of the following:
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> 1. The vehicle is in the possession of the manufacturer, motor vehicle lessor, or any of the manufacturer's authorized motor vehicle dealers for the purpose of performing or attempting repairs to correct a nonconformity.
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> 2. The vehicle is in the possession of the consumer and the vehicle has a nonconformity that substantially affects the use or safety of the vehicle and that has been subject to an attempt to repair under sub. (2) (a) on at least 2 occasions.

DEFINITION OF MOTOR VEHICLE: The new law at paragraph (1)(bt) creates a separate definition for a "Heavy-duty vehicle," which means any vehicle having a gross weight rating or actual gross weight of more than 10,000 pounds. Different rules apply to heavy-duty vehicles, which are not addressed in this writing.

ELECTION OF REFUND: This section of the law is essentially unchanged and still requires the manufacturer to actually provide the refund to the consumer within 30 days.

ELECTION OF A REPLACEMENT VEHICLE: If a consumer requests a replacement vehicle, the manufacturer has 30 days to agree in writing to provide the vehicle or a refund of the full purchase price plus other taxes, fees and collateral costs. It then gives the manufacturer 15 additional days ("45 days total") to provide the comparable new vehicle or refund. The statute specifically states that "[u]pon the consumer's receipt of this writing, the manufacturer shall have until the 45th day after receiving from the consumer the form specified in sub. (8)(a)2. to either provide the comparable new motor vehicle or the refund." If the manufacturer agrees to provide a comparable new motor vehicle, the manufacturer retains the right to provide a refund if a comparable new motor vehicle does not exist or cannot be delivered within this 45-day period.

STATUTE OF LIMITATIONS: The prior law provided a six year statute of limitations based on contract law. The new law now specifies that the statute of limitations to file an action expires three years from the date the vehicle was first delivered to the consumer.

DAMAGES: Other than the elimination of double damages, this provision essentially stays the same and allows consumers who are successful at trial to recover pecuniary losses, together with costs, disbursements and reasonable attorney fees.

REQUIREMENT THAT CONSUMERS AND MANUFACTURERS COOPERATE: While the previous statute did not specify any such requirement, the new law at section 218.0171(7)(b) states that if a court finds that any party to the action has failed to reasonably cooperate with another party's efforts to comply with obligations under this section, which hinders the other party's ability to comply with or seek recovery under this section, the court may extend any deadline specified in this section, reduce any damages, attorney fees, or costs that may be awarded under par. (a), strike pleadings, or enter default judgment against the offending party.

SUMMARY

Hopefully the revised Lemon Law statue will help to facilitate what the law was originally intended to accomplish for both consumers and motor vehicle manufacturers.