

AB 200 Testimony

Mr. Chairman and committee members; I want to thank you for scheduling AB 200 for a hearing today and for giving us the opportunity to testify on our legislation.

Please – stop me if you have heard this one: a politician, a trial lawyer and a car salesman walk into a committee hearing... are you sure you haven't heard this one?

As we all know – these professions are among the 10 least trusted by the American people. Of course another profession is represented here today as well. The people who write headlines about our legislation using words like '*gutting*' or '*peel back*' – journalists just missed the bottom 10, they come in at number 11 for their handiwork.

Unfortunately, judges weren't part of that Gallup poll, but let's presume that they are closer to the top of the list than the bottom because that's where the story begins. The judiciary is a large part of the reason this legislation is before us today. Not because they did anything wrong, but because they had little discretion to do the right thing.

The Wisconsin Legislature adopted our present lemon law provisions in 1983 with the clear intention of allowing auto buyers who were dissatisfied with their purchase to be made whole and to do so without resorting to costly litigation against car companies who had far deeper pockets to rely on to defend themselves.

I believe we all support that legislative intent. In the court case I am referring to, it was clear that two circuit court judges, a jury, an appeals court and ultimately the Wisconsin Supreme Court all did the best they could balancing the letter of the law, the legislative intent and the ultimate fairness and appropriateness of the final award in the case.

Our case begins on April 30th, 2005 when our consumer purchased a new Mercedes-Benz. The consumer had a variety of problems with the vehicle and he retained Wisconsin's top lemon-law attorney who filed a notice that the consumer wanted a refund under the lemon law on October 26th of 2005.

Mercedes received that notice and under the law, it had 30 days to provide a refund to the consumer – the deadline was November 28th.

The consumer continued working with the dealership and considered accepting a completely different and newer model of Mercedes vehicle as a replacement. The negotiations continued until late in the day on November 23rd – the day before Thanksgiving – where the consumer informed the dealer that he did not want a replacement but wanted a refund. That left

Mercedes with exactly two business days to satisfy the consumers request; the Friday after thanksgiving and Monday the 28th – the last day on which a refund could be provided under the law.

The person responsible for the refund at Mercedes was out on the Friday but was in Wisconsin at the dealership early Monday and he began trying to contact the consumer's bank to get the final bank payout information. The representative was told that they would have to have the consumer's verbal permission in order to do that.

The representative contacted the consumer who agreed to provide that permission to his bank and the consumer also agreed to call the representative to let him know that he had done so.

As the afternoon continued, the representative did not hear back, nor had the bank received the authorization. The representative, knowing that the deadline was at the end of the business day, contacted the consumer's attorney. The attorney was out of the office.

The representative was not able to comply with the 30-day deadline and the following day – on the 29th, was informed that the consumer had filed an action under the lemon law seeking double-damages.

The complaint was dated Monday the 28th, the very day that the representative was trying to get in touch with the consumer and the attorney.

There are other mitigating details – including the fact that the consumer had clearly authorized a named loan officer to release of the payout numbers and Mercedes had this document in their possession. The courts did recognize that fact. But it also has to be considered - that as the deadline loomed on that Monday, the Mercedes representative was making a good-faith effort to accommodate the consumer's request and the consumer had on that very same day verbally agreed to assist the representative in obtaining the needed information.

But, because it was nearly impossible to establish intent on behalf of the consumer or that the consumer willfully prevented Mercedes from providing a refund – the matter was stuck in the courts and the letter of the law prevailed.

I don't believe that this legislature intended to prevent common sense from being applied but that is what happened in this case. As a result the consumer was awarded twice his pecuniary loss - \$117,285, more than \$50,000 in interest, \$10,000 in expenses and \$304,000 in attorney fees and litigation costs.

I would encourage all of you to read the case [*Marquez v. Mercedes Benz, 2012 WI 57*] for yourselves (*I will email committee members a copy*). It is quite straight forward and it really

does demonstrate a thoughtful attempt to consider every angle. The only way to fix this is legislatively.

As I have been told, Wisconsin is the only state in the country that continues to have a double-damage requirement – and I will emphasize – it’s a *‘shall’*, not a *‘may’* and there are no exemptions for reasonableness or acting in good faith or even trying your best while a consumer prepares to file suit.

I don’t even begrudge attorneys like the self-proclaimed lemon law ‘king.’ Predators will always find a gray and murky area in the law – and they will exploit it. Even after we fix the law, I am confident that the bottom-feeders will still find new deep and muddy water to hunt for new prey.

But I do believe that exploiting the lemon-law costs Wisconsin’s automobile consumers real money. I can’t quantify it – hopefully someone else here today can testify regarding that - but nobody could argue that a consumer is getting a better deal in Wisconsin because of the current law, particularly after the Supreme Court authorized a specific technique.

We all support the notion that consumers should have the ability to be made whole when making a purchase of this magnitude. Just about every state has taken this position and we treat the purchase of an automobile as something a bit more important than just a *“buyer beware”* proposition.

Our legislation will increase the timeline for providing a comparable new vehicle from 30 days to 45 days. Depending on the model and or color and option combinations, this can be quite difficult to do.

The bill also requires a manufacturer to use due diligence in finding a comparable new vehicle within the allotted time, and if that is not possible, provide a full refund to the consumer.

If a consumer changes their mind and wishes to change the remedy, the deadline is reset. This eliminates the problems associated with a last-minute deadline problem as the case I described and allows the manufacturer to properly comply with the law.

Our bill will also allow consumers to pursue negotiated settlements when neither an exact replacement nor refund will make the consumer whole. This is not possible under current law.

We also direct the Department of Motor Vehicles to develop forms for authorizing disclosure of bank loan information and for making a claim under the lemon law. Our intent is to eliminate confusion and prevent the unintended consequences we discovered in the case I cited.

Thank you again for your time and consideration. I am happy to take any of your questions.



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**Testimony of Terrence Polich
on behalf of the
Wisconsin Association for Justice
before the
Assembly Judiciary Committee
Rep. Jim Ott, Chair
2013 Assembly Bill 200
May 29, 2013**

Representative Ott and Committee members, my name is Terrence Polich. I am a partner with the Madison law firm of Clifford & Raihala. I serve on the Board of Directors for the Wisconsin Association for Justice (WAJ). Thank you for giving me the opportunity to speak against Assembly Bill 200.

Wisconsin's Lemon Law works. It is pro-consumer, pro-safety and can be managed by consumers on their own. The Lemon Law protects everyone who buys a new motor vehicle in this state, from a new car or pick-up to a semi-tractor trailer.

The Lemon protects the family that buys a new car for \$30,000 as well as the independent trucker who buys a new semi-tractor trailer for \$260,000. People expect when they pay for a new vehicle it will be dependable and they can get to their job, take their children to soccer practice or take a family vacation. For small businesses, like an independent trucker, a semi-truck is their pay check. Without a working vehicle, the trucker does not work. So when people put down thousands of dollars on a new vehicle and owe the bank much, much more, the Lemon Law is the most important protection for a consumer.

Wisconsin's Lemon Law was passed back in the 1980s because consumers kept buying new vehicles which turned out to be Lemons. Manufacturers kept refusing to provide refunds or replace the Lemons. If a consumer bought a Lemon the manufacturer would say the only remedy was to keep bringing the vehicle in for repairs. You couldn't sue the manufacturer because you had to pay your own attorney fees. The manufacturer would fight the case tooth and nail. By the time you made it to trial and "won" – normally taking years – you already paid more than you could ever recover in court – to your lawyer.

The Lemon Law fixed the problem by clearly defining what a Lemon is and by making the manufacturer pay your reasonable attorney fees if you won in court. Finally, you could take the car company to court if you were sold a Lemon.

Since the Lemon Law passed, thousands of Wisconsin motor vehicle buyers have been able to obtain a refund or a replacement. No lawyers or court involved. The law has been a tremendous success and has even helped improve the quality of new vehicles sold in Wisconsin.

The Lemon Law provides quantifiable measurements for determining if a vehicle is a Lemon. If a consumer has had 4 or more repairs for the same problem or if the vehicle is out of service for one or more problems for 30 or more days during your first year of ownership, Wisconsin's Lemon Law gives you the right to a full refund or a new vehicle.

If your new vehicle qualifies as a Lemon, all you have to do is write to the manufacturer and offer to transfer the lemon to the manufacturer. The Department of Transportation (DOT) has created a form with instructions for consumers to fill out and send to the manufacturer. (Attached) The manufacturer has 30 days to provide the refund or replacement. Consumers can do this on their own, they don't need a lawyer.

AB-200 weakens the Lemon Law. Attached is a chart that compares the major provisions in the current Lemon Law with the changes in AB-200. The bill makes it harder for a defective vehicle to qualify as a Lemon by redefining when a vehicle is a Lemon; lengthens the time period that a manufacturer has to respond to the vehicle owner, shortens the time people have to file suit; makes the compensation to be paid to the Lemon owner optional and less certain; eliminates the attorney fees requirement; and doesn't require a vehicle title be branded if returned as Lemon in a negotiated settlement.

One of the biggest changes is the addition of a definition of "commercial vehicle" with a 120-day period of time for the manufacturer to refund the money or replace the vehicle. Imagine not having a working vehicle for 4 months? It would be incomprehensible for most people that they would be without a vehicle for 30 days. However, if you are an independent trucker and had to be without a vehicle for 120 days, it could be the end of your business.

AB-200 is anti-small business. The bill is simply designed to protect the largest automobile, truck and RV manufacturers in the world – General Motors Corporation, Ford Motor Company, Chrysler Group LLC, BMW Group, Jaguar Land Rover, Mazda, Mercedes-Benz USA, Mitsubishi Motors, Porsche, Toyota, Volkswagen Group of

America, Volvo Cars North America, Recreation Vehicle Industry Association and the Truck and Engine Manufacturers Association

The changes to the Lemon Law are not helpful to consumers and small businesses. AB-200 will make it virtually impossible for anyone to successfully request Lemon Law relief without hiring a lawyer. Rather than having a new vehicle or a refund, consumers and small business owners will once again be involved in litigation for years against some of the largest companies and best attorneys. If a consumer or small business wins in court, the manufacturer may not have to pay any damages, including attorney fees. The consumer or small business is at a further disadvantage now that his or her attorney fees are already capped at three times the compensatory damages, while the car manufacturer can spend whatever they want. This will make the consumer or small business' long struggle to get what they bought in the first place, a properly functioning new vehicle, completely futile.

Since the Lemon Law was created, vehicle manufacturers have been held accountable for vehicle safety and quality. Because the manufacturers have been held accountable, vehicles have become safer and more reliable over the last 30 years.

The current Lemon Law protects consumers and small businesses. The law should not be weakened simply at the request of the very manufacturers and dealers that sell Lemons.

Please oppose AB-200.

ACTION BATTERY/ TRUCK #10 (LOST HOURS AND DOWN TIME)
278.75 MAN HOURS TOTAL

DATES	REG. HOURS (1.0)	OVERTIME (1.5)	DRIVE/TRAVEL (1.0)OR (1.5)	NUMBER OF EMPLOYEES AND BRIEF DISCRPTION
5/7/08	<u>4.0 X 2</u>		<u>8.0 X 2</u> (DRIVE FROM SOMERSET, WI TO ALEXANDRIA, MN AND RETURN TO SOMERSET, WI.)	4 TOTAL EMPLOYEES INVOLVED. (2 WAITING ON A REPLACEMENT VEHICLE, AND 2 EMPLOYEES WITH 2 VEHICLES TO BRING A REPLACEMENT VEHICLE AND RETURN TO THE SHOP.)
8/7/08	<u>3.5 X 2</u>			2 EMPLOYEES WAITING FOR REPAIRS. (BROOKS HANNA FORD)
10/6/08 - 10/7/08	<u>4.5 X 2</u>			2 EMPLOYEES WAITING FOR REPAIRS (SIOUX FALLS FORD)
11/5/08	<u>1.25 X 2</u>			2 EMPLOYEES DROPPING OF TRUCK AND GETTING A RENTAL CAR. (LANGDON FORD)
3/3/09 - 3/7/09	<u>24.0 X 1</u> WAIT TIME IN HOTEL	<u>4.0 X 1.5 X 1</u> WAIT FOR TOW TRUCK AND RIDE BACK. STEPHENSON, MI TO MARINETTE, WI	<u>6.0 X 1.5 X 1</u> SATURDAY RETURN TRIP TO SOMERSET, WI FROM MARINETTE, WI	1 EMPLOYEE WAITING FOR TOW, REPAIRS AND SATURDAY DRIVE TO SHOP IN SOMERSET, WI FROM MARINETTE, WI. (THE MOTOR COMPANY)
12/4/09	<u>3.5 X 2</u>			2 EMPLOYEES WAITING FOR TRUCK DIAGNOSIS AND RETAIN A RENTAL TRUCK. (KEN STILLWELL FORD)
12/22/09	<u>1.0 X 1</u>	<u>7.5 X 1.5 X 1</u>	<u>7.0 X 1</u>	1 EMPLOYEE FLIGHT TO ILLINOIS AND DRIVE BACK TRUCK TO SOMERSET, WI
3/2/10	<u>1.5 X 2</u>	<u>2.5 X 1.5 X 2</u>		2 EMPLOYEES WAITING FOR REPAIRS. (BITTERROOT MOTORS)
3/19/09 - 3/23/09	<u>30.5 X 2</u> WAIT TIME IN HOTEL	<u>1.0 X 1.5 X 2</u>		2 EMPLOYEES WAITING FOR REPAIRS. (BROOKS HANNA FORD)
3/23/09 - 3/25/09	<u>8.75 X 2</u> WAIT TIME IN HOTEL	<u>2.25 X 1.5 X 2</u>	<u>5.0 X 2</u>	2 EMPLOYEES WAITING FOR REPAIRS AND FLYING FROM MISSOULA, MT TO MINNEAPOLIS, MN THEN DRIVE

4/2/10 - 4/3/10				TO SOMERSET, WI (BOZEMAN FORD)
			<u>8.5 X 2</u> <u>11.5 X 1.5 X 2</u>	2 EMPLOYEES TO DRIVE THE TRUCK FROM BOZEMAN, MT TO SOMERSET, WI

IN	OUT	DAYS OUT OF SERVICE	REPAIR FACILITY	CONCERNS
March 17, 2008	March 18, 2008	2	Stillwater Ford	Cooling System; Driver reports that the vehicle has a coolant leak. Check and advise Press Test cooling system. Found leak from radiator at driver's side top of radiator at soldering for cooling fins. Ordered and replaced radiator. Filled cooling system retest for leaks. All okay.
May 8, 2008	May 12, 2008	5	Stillwater Ford	Repair fuel system.
May 12, 2008	June 5, 2008	24	Stillwater Ford	Not starting. Towed in. Metal shavings inside fuel bowl from high PSI pump. Replaced all fuel system components (not covered by warranty)
August 15, 2008	August 15, 2008	1	Brooks Hanna Ford	Vehicle is leaking coolant. Coolant system found to be leaking form radiator. Replaced radiator.
October 6, 2008	October 7, 2008	2	Sioux Falls Ford	Cooling system. Truck is overheating at idles on gauge. Also, no heat from heater. Pinpoint test and pressure test cooling system. Remove and replace leaking horizontal ECR cooler and reassemble and retest.
November 4, 2008	November 7, 2008	3	North Dakota Ford	Cooling system. Replaced radiator lines.
January 19, 2009	January 20, 2009	2	Cox Motors	Engine warranty recall, engine power is limited.
March 5, 2009	March 7, 2009	3		Towed in. Engine runs but no power. Replace fuel injection kit, etc.
March 9, 2009	March 10, 2009	2	Cox Motors	Engine misfires.
May 28, 2009	July 22, 2009	55	Cox Motors	Oil leak.
September 22, 2009	September 25, 2009	4	Cox Motors	Air conditioning not blowing cold air. Replaced compressor and clutch.

October 16, 2009	October 27, 2009	12	Cox Motors	Radiator leak. Replaced radiator. Small puncture from screw coming from trans cooler into radiator.
December 1, 2009	December 4, 2009	4	Ken Stillwell Ford	Check Engine Light on in dash. Lacks Power Pressure control valve on high pressure. Replaced high pressure fuel pump.
January 18, 2010	February 4, 2010	18	Cox Motors	Check tube keeps coming loose from turbo. Made repair. Check engine, oil leak, made repair.
February 5, 2010	February 8, 2010	4	Cox Motors	Check clunk in steering while turning. Verified. Repair attempted.
February 12, 2010	February 15, 2010	4	Cox Motors	Customer states vehicle is still leaking oil. Verified oil leak from axle area. Drained cooling system. Removed battery and coolant reservoir. Found left side glow plug harness leaking. Replaced left glow plug harness.
March 2, 2010	March 2, 2010	1	Bitterroot Motors	Customer states engine is low on power, Check Engine light is staying on. Turbo gauge fluctuates. Verified. Perform Koeo-Keor Test, set for vehicle. Over speed conditions. -warranty- Found the air filter box separated at air inlet tube from box assembly. Found the turbo heat shield separated from the turbo pipe at top of the engine. Glued as well. Note: found PCM wire harness and pass side firewall held together with electrical tape due to clip broken.
March 20, 2010	March 23, 2010	4	Brooks Hanna Ford	Check Engine light has been on and couldn't go over 30mph at times. Runs rough and as soon as it comes out of regen it goes back in.
March 23, 2010	April 8, 2010	17	Bozeman Ford	Towed in. Major computer regen. ECR works-Ford flew in an engineer from Detroit to Montana to look at truck.
June 7, 2010	June 24, 2010	18	Cox Motors	Oil leak, new glow plug harness.

Lemon Law Comparison

	Current Law	AB-200/ SB-182	Change
Reasonable Attempt to Repair Criteria	1) the same nonconformity is subject to repair 4 times and the nonconformity continues or 2) the motor vehicle is out of service for an aggregate of at least 30 days because of nonconformities.	Creates a definition of “out of service” 1) The vehicle is in the possession of the manufacturer, lessor or dealer to repair a nonconformity ; or 2) the vehicle is in the consumer’s possession and a) the vehicle’s nonconformity substantially affects the use or safety of the vehicle and there was a previous attempt to repair ; and b) the consumer has reported, in writing, the nonconformity to the manufacturer, lessor or dealer and they have refused to make the repairs .	It takes away certainty for the consumer by eliminating the number of times the car is subject to repair and the number of days out of service. The proposal uses ambiguous or undefined language, which will require interpretation. “Substantially affects the use or safety of the vehicle” is not defined. In addition, it places an additional burden on the consumer of reporting the problem in writing.
Election of Refund or Replacement of Vehicle	Manufacturer must respond within 30 days	Manufacturer must respond within 45 days for non-commercial vehicles. Adds new definition of commercial vehicle and manufacturer must respond within 120 days for commercial vehicles.	Lengthens the time for responding. This will be especially crucial for people who rely on their vehicles for work, like an independent trucker, who now could wait up to 120 days for a vehicle. The 45-day notice or the 120-day notice must be completed before a lawsuit can be filed.
Failure to Follow Procedures and Provide Information	Not in current law	If a consumer elects a refund, then within 30 days the consumer must provide the manufacturer with certain information required by the DOT. If the information is not provided the consumer cannot sue the manufacturer under the Lemon Law.	The law does not spell out what needs to be provided or the form and manner that the consumer must provide. And if you miss any deadlines, you are stuck with the Lemon.

Lemon Law Comparison

	Current Law	AB-200/ SB-182	Change
Statute of Limitations	Six years based on contact	24 months (Two years) from the date the vehicle was first delivered to the consumer.	Because the consumer must establish the claim under the Lemon Law during the first year, the 2-year limit from the delivery of vehicle is in reality about 1 year . This will likely mean many people will miss the deadline for filing a lawsuit.
Damages	People who prove their car is a Lemon SHALL receive the purchase price, finance charges, collateral cost, point of sale options, licensing fees and attorney fees.	People who prove their car is a Lemon MAY receive the purchase price, finance charges, collateral cost, point of sale options, licensing fees and attorney fees.	Under AB-200, the damages are discretionary. Even if a consumer proves his or her car is a lemon at trial, the jury does not have to refund the purchase price, or finance charges, or collateral costs, or licensing fees, or extended warranty costs, or ANYTHING. It may cost the consumer more to bring the case than the value of vehicle or other losses suffered by the consumer.
Double Damages	The Court shall award double damages to a consumer who proves his or her car is a Lemon.	None	AB-200 is weak on enforcement. Double damages give the lemon law teeth and leverage in negotiating with the manufacturer. Under the AB-200 you are not guaranteed even single damages if you win at trial. There is no longer any penalty for noncompliance.
Branding of Title	If a manufacturer buys back a car under the lemon law, they are required to brand the title – Manufacture Buyback and disclose the reasons it was bought back. Manufacturers must also give a new 12 month warranty to the new buyer and the new buyer pays less money because the car's a lemon.	If a court or jury determines the car is a Lemon, the title must be branded. However, if a consumer enters into a negotiated written settlement agreement, then no provision of the Lemon Law SHALL apply to the vehicle , including branding the title.	As long as no provision of the lemon law applies to the vehicle, the title will not have to be branded. It can be resold to someone else without any disclosure . Consumers buying used vehicle will be at the mercy of unscrupulous car sales people.

Motor Vehicle Lemon Law Notice

Demand for relief under s. 218.0171, Wisconsin Statutes

Print & complete, or click on first line. Tab to next field. Enter only as much text as will fit on a line.

Pursuant to the Wisconsin Lemon Law, I am notifying _____ of the following:

(check one) _____ *manufacturer*

My vehicle has been made available for repair at least 4 times for the same defect during its first year of warranty.

My vehicle has been out of service at least 30 days because of one or more defects during its first year of warranty.

Vehicle make _____ Model _____ Year _____ VIN (17 digits) _____

Name and city/state of selling or leasing dealer or leasing company _____

Date of vehicle delivery _____ Today's date _____

Name of financial institution that financed/leased vehicle _____ Loan account # _____

By providing this information, I authorize the manufacturer to contact this financial institution for financing information needed to calculate a refund. Authorization expires 35 days after the date of this form.

→ See back for vehicle defect and repair information ←

My vehicle has a defect(s) that substantially impairs its use, value or safety. I demand that the manufacturer give me *one* of the following within 30 days:

(check one)

A comparable new vehicle in accordance with the Lemon Law, plus collateral costs

A refund calculated in accordance with the Lemon Law, plus collateral costs

Description of collateral costs I have incurred in connection with vehicle repairs. (Examples include alternative transportation, towing costs.) _____

Description of non-removable options that have been added to my vehicle after the sale, but not included in the vehicle purchase price. (Examples include sunroof, rustproofing, roof rack, pinstriping, etc.) _____

Description of missing equipment or serious unrepaired vehicle damage. (*Do not include normal wear and tear such as minor dents, scratches, pitted glass, soiled carpets, minor stains or tears.*) _____

I offer to return my vehicle and transfer title after the manufacturer meets my demand for Lemon Law relief.

Owner name _____ Co-owner (if any) _____

Address _____

Home phone (optional) _____ Work phone (optional) _____

Fax (optional) _____ Owner signature _____

Vehicle repair information

I have made my vehicle available to an authorized dealership for repair because of the defect(s) on these dates:

Date in/out	Mileage	Dealership name	Problems you reported

We recommend you send this notice to the manufacturer by certified mail.

Keep a copy for your records.



150 South Fifth Street, Suite 3000
Minneapolis, MN 55402
Phone: 612.339.8682
Fax: 612.672.3200
www.bowmanandbrooke.com

Roshan N. Rajkumar
Direct: 612.672.3216
Email: roshan.rajkumar@bowmanandbrooke.com

May 29, 2013

Re: 2013 Assembly Bill 200/LRB-2179

Dear Chairman Ott and Members of the Assembly Judiciary Committee:

My name is Roshan Rajkumar, and I am General Motors LLC's warranty counsel for the State of Wisconsin. I have represented General Motors, as well as several other motor vehicle manufacturers, in Wisconsin Lemon Law matters for over twelve years. In those 12 years, I have witnessed Wisconsin consumer and commercial vehicle owners and their attorneys utilize the Wisconsin Lemon Law both reasonably and in patently abusive manners.

Today I am testifying regarding AB 200/LRB 2179 and recommended – and what I feel are necessary – changes proposed for the Wisconsin Lemon Law. The Wisconsin Lemon Law is known as one of the worst lemon laws in the country. Currently as written, should a manufacturer fail to provide a Wisconsin consumer or commercial vehicle owner with either a comparable vehicle or refund for a "lemon" within thirty (30) days of written notice, the Wisconsin Lemon Law provides for mandatory double damages and automatic recovery of attorneys' fees and costs. The statute, in its effort to provide Wisconsin consumer and commercial vehicle owners with a remedy for a perceived "lemon", has provided the local and national plaintiff's lemon law bar a method to manipulate the requirements of and abuse the process for utilizing the Wisconsin Lemon Law.

General Motors has a strong investment in Wisconsin and its people. General Motors has almost 600 employees in offices and customer care facilities, as well as 10,000 General Motors' retirees statewide. General Motors has 56 suppliers in Wisconsin that receive over \$1.2 billion annually in business. General Motors also has over 1.9 million registered GM vehicles in the state. And General Motors has approximately 145 authorized dealerships in the State of Wisconsin. In short, General Motors has been and always will be committed to Wisconsin, its citizens and its economy.

Therefore I am here today to ask for your support of AB 200/LRB 2179 and its amendments to the Wisconsin Lemon Law. Through these changes to the Lemon Law, Wisconsin will ensure its consumers have a strong remedy for relief from a "lemon" vehicle, but provide a remedy that is both fair and equitable.

MINNEAPOLIS

PHOENIX

DETROIT

SAN JOSE

LOS ANGELES

RICHMOND

COLUMBIA

DALLAS

AUSTIN



Wisconsin Automobile & Truck Dealers Association

WILLIAM A. SEPIC
President

150 E. Gilman Street — Level A
P.O. Box 5345
Madison, WI 53705-0345
(608) 251-5577 FAX: 251-4379
www.watda.org

May 29, 2013

To: Chairman James Ott and the Assembly Judiciary Committee

From: Wisconsin Automobile and Truck Dealers Association

William A. Sepic, President

Re: Assembly Bill 200 (in Support of)

Dear Chairman Ott & esteemed members of the Wisconsin Assembly Judiciary Committee

The Wisconsin Automobile and Truck Dealers Association urges your support and passage of Assembly Bill 200. The provisions in AB 200 represent amendments to section 218.0171 of the Wisconsin Statutes, better known as the "Lemon Law" that are long overdue.

The Wisconsin Automobile and Truck Dealers support the Lemon Law and highly value its' effectiveness in ensuring that new vehicle owners who experience significant operational issues with their new vehicle are taken care of quickly and fairly. In most cases, it is the dealer who helps direct their valued customers to the protections and process of making a lemon law claim with the manufacturer. In today's ultra-competitive motor vehicle market it is in the dealer's and manufacturer's best interest to make the claim process as fast, fair and satisfying to the customer, and not only to avoid penalties, but to retain their customer.

However, the current law stands out nationwide. Not because it works any better than the lemon law in every other state, but because of the shockingly high monetary judgments (and even settlements) that manufacturers have to endure. The current law is rigged to entice and allow attorneys and vehicle owners to delay claim satisfaction a mere 30 days, thereby entitling vehicle owners to double the purchase price and their attorneys to set a fee that has no relation to actual hours spent working on the claim. It assesses what is tantamount to punitive damages, without the necessity of showing any intent to do harm or malicious behavior on the part of the manufacturer.

AB 200, brings Wisconsin back in line with other states with regard to expediency and fairness in resolving vehicle performance issues. If AB 200 were to pass Wisconsin consumers will still be entitled to a full money refund within 30 days, a replacement vehicle within 45 days (120 for heavy trucks), and titles are still branded so subsequent buyers have notice that the vehicle had past problems. It also still has cost shifting provisions that require the manufacturer to pay reasonable attorney fees if the previous requirements are not met.

This bill is long overdue and we urge your support in passing it.

Jim's Pro-Services

663 E. Juneau Ave

P.O.Box 1051

Oconomowoc, WI. 53066

262-569-1001 262-569-1107 Fax

My name is Jim Sidders. Thank you for allowing me to speak to you today.

In 1998 I started my own towing and landscaping business, after being in the car business for over 26 years.

In 2000 I bought my 1st new Flatbed tow truck, a GMC Top Kick medium duty truck. With buying a new truck, I anticipated that it would be free from problems, and would not have to bring it in for repairs for some time, with the exception of normal maintenance.

After signing the papers at the dealer, I left with my 1st new truck. I was very happy and proud. But that feeling did not last very long. I made it approx. 20 miles when the truck broke down. The clutch pedal went to the floor, but would not come back up. I had to have the truck towed back to the dealer. It was repaired a few days later, and I picked it up again. During the 1st year that truck had approx. 6 clutches and 2 new transmissions installed in it. The truck had to keep going back to the dealer for repairs, and every time it went in, it was there from 3 to 10 or more days each time. I was told by someone in service the problem was with the throw out bearing, that it had weak springs in it. I asked to have them get a replacement one from a different source, but I was told they had to come from GMC even though they were defective.

The dealer was over 45 miles away, and every time it broke down, I would lose income and customers. There are no loaner trucks like that, so every time it went down, I had to refuse when my customers called me to tow a vehicle for them, after that happened a few times, they stopped calling.

In 2001 I bought a second flatbed from the same GMC dealer; I couldn't afford to keep losing business with the first truck continuing to break down.

From the very 1st day the 2nd truck had a very bad vibration in it. I kept taking it back to the dealer to try to fix the problem. They replaced drive shafts, tires and wheels, did alignments and other things, but the vibration would not go away. This truck was out of service numerous times for up to a week each time, and there were times both trucks were at the dealer at the same time. I had no choice but to file a claim under the Lemon Law on this one as well.

GMC truck refused to take the 2nd truck back, so we had to pursue taking them to court to force them to buy it back.

My monthly payment on each truck was close to \$2,000 per month. I was spending almost \$4,000 per month, for 2 new trucks that were in for repairs every month. I almost went out of business because the trucks were my business, when they were in the shop for the same repairs over and over again, I wasn't able to tow cars and trucks that I was asked to do. With the trucks always out of service I wasn't making any income, I didn't have a fleet of trucks then, so when they were down, I was for the most part out of business.

GMC did settle just before the 1st court date, so they didn't have to pay the double damages payment if I won, and it appeared I had a pretty good chance of winning.

Unfortunately I had a 3rd truck go back under the Lemon Law in 2003. I bought a new 1 ton dump truck for my landscape business. Every time it would rain, or was foggy out, the diesel engine would not run right. It had only about ¼ of the normal power it should have. That truck went in to the dealer numerous times to try to get it repaired as well. After numerous times, GMC sent their service manager out to see it. He called me and told me he found the problem, and it didn't have anything to do with GMC. He told me that whoever cut the hole in the roof to mount the yellow warning light did not seal it correctly, and water would come in thru the hole and get into the computer and short it out. I told him to lift the magnetic mounted warning light off the roof and tell me where the hole is. They did buy that truck back as well.

I then replaced the trucks with International Harvester trucks and have not had hardly any problems with them.

I lost thousands of dollars in revenue with the trucks going into the shops all the time, I went with new trucks to avoid having to have the trucks in the shop all the

time. It was hard enough to stay in business, just starting out, but with the lemons constantly going into the shop I was shut down often. Aside from the lost revenues, it cost me thousands of dollars in fuel and wages having to keep taking the trucks back to the dealer over 45 miles away. There were no closer places to take them to, and we gave them plenty of chances to correct the problems I was having with them. I did not get reimbursed for any of those costs.

The auto manufactures have corporate attorneys on salary. They are getting paid anyway. If the attorney fees provision gets removed from the current law. The small guy like me will have no recourse in getting rid of a lemon. If I had to pay for attorney fees on my trucks during the process, I would have been put out of business. I was almost put out of business with having the lemons, because the trucks are my business.

The only reason GMC settled on the 2nd truck just before we went to court is because they knew they would have to pay double if they lost the case.

When a person buys a new vehicle, they assume it will be free from defects, and would not have to be taking it back to get repaired all the time. The owner of a lemon has the vehicle for some time. They keep taking it back to the dealer to get the problem resolved. When it apparent the problem is not getting resolved, in Wisconsin we have the Lemon Law to help the little guy like me, either have the vehicle bought back or replaced. A lot of time goes by before the Lemon Law process begins. If the 30 day provision is removed, the manufacturer no longer has an incentive to get the customer taken care of in a timely manner. They will kept dragging it on and on till either the customer trades it in at a big loss, or just keeps having their life disrupted with owning a Lemon.

I ask you to leave the Lemon Law alone. It protects consumers like me. That is the reason the law was started to begin with, to protect the little guy like me from the big auto makers. Normally their cars and trucks are as intended, but every now and then a lemon is made and the current Lemon Law gives us consumers some relief when they get one.

Thank you for your time.

James M Sidders Jr.



AUTO ALLIANCE
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Alliance of Automobile Manufacturers

Statement in Support of AB 200

May 29, 2013

Dear Chairman Ott:

On behalf of the Alliance of Automobile Manufacturers, thank you for the opportunity to express our strong support for Assembly Bill 200. The Alliance is a trade association of twelve passenger car and light truck manufacturers including BMW Group, Chrysler Group LLC, Ford Motor Company, General Motors Company, Jaguar Land Rover, Mazda, Mercedes-Benz USA, Mitsubishi Motors, Porsche, Toyota, Volkswagen, and Volvo.

AB 200 closes loopholes and amends specific unfair provisions that have been repeatedly abused and led to absurd results. AB 200's changes will fix these problems and make the Lemon Law logical, strong, and effective.

Under current law, if a car is a lemon, the consumer may choose whether to get a replacement vehicle or a refund. The manufacturer must provide either the replacement vehicle or the refund to the consumer within 30 days or else harsh penalties apply. Unfortunately, some claimants have abused the system by taking steps to prevent a manufacturer from meeting the deadline. For example, a claimant could delay giving the manufacturer the information necessary to process a refund (such as who has the title or information needed to calculate the refund).

AB 200 fixes these problems by requiring claimants provide all of the information necessary to provide refunds. In addition, the bill authorizes the Department of Transportation to determine the appropriate form and manner to do that. AB 200 would also continue to give the consumer the option to change his or her mind to choose a refund or replacement. The bill would simply give the manufacturer time to accommodate the consumer's new request.

Wisconsin's Lemon Law is unique. There is no other state whose lemon law requires that a court award *double* damages. The Lemon Law should be about protecting consumers, not setting the stage for windfall damage awards. In one instance, a plaintiff was awarded a total of \$618,000 for a \$56,000 car.¹ These jackpot style awards are unfair and not in the spirit of the Lemon Law. Outrageous awards encourage litigation rather than quick, simple resolutions. AB 200 would eliminate the automatic doubling of damages and make the Lemon Law more similar to the law in other states.

Wisconsin's Lemon Law also requires that courts award attorney's fees to successful plaintiffs (though not for successful defendants). That is a departure from the tradition in American law where parties typically pay their own costs. AB 200 strikes a balance between the two: it would let courts decide whether to award attorney's fees to a plaintiff on a case-by-case basis, rather than requiring them to be awarded in every instance.

¹*Marquez v. Mercedes-Benz USA, LLC*, 2012 WI 57, 815 N.W.2d 314.

Alliance of Automobile Manufacturers

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AB 200 also contains other common sense amendments to the Lemon Law. For example, under the current law, plaintiffs can wait six years before filing a lawsuit under the Lemon Law. There is no reason to wait that long. In such a lengthy time period, evidence can be lost, memories faded, and witnesses become harder to find. AB 200 would set a more reasonable standard by requiring lawsuits to be filed within two years of the purchase.

AB 200 creates common sense solutions to problems that have surfaced in Wisconsin's Lemon Law. The Alliance respectfully asks this committee to vote in favor of AB 200. Please contact our local representative, Robert Fassbender at (608) 258-9506 or fassbender@hamilton-consulting.com if you would like to discuss this important issue further.

Sincerely,

Renée Wadsworth
Senior Manager, State Affairs

PROBLEMS WITH WISCONSIN'S LEMON LAW

THE MARQUEZ CASE

Wisconsin Supreme Court recently awarded Attorney Vince Megna – the self-proclaimed “Lemon Law King” – a victory that allowed him and his client to walk away with a \$618,000 award, including over \$300,000 in attorney fees, for a car purchased for \$56,000. The award was upheld despite the fact that Megna and the owner’s inaction made it impossible for the manufacturer to provide a refund payment within the statutory 30-day deadline. The case is *Marquez v. Mercedes-Benz USA, LLC*, 2012 WI 57.

Facts of the Case

The plaintiff, Marco Marquez, purchased a Mercedes-Benz E-series automobile that had mechanical problems triggering Wisconsin’s Lemon Law. After Mercedes-Benz was alerted that the car was a lemon, it began working with the owner and his attorney, Megna, to provide the owner the proper remedy. Originally, the owner sought a new vehicle, but instead of seeking a similar E-series he requested an S-series. Mercedes-Benz notified the owner that the 2007 S-series he requested had not yet been released to dealers, but told him that the company would work with him to get such a vehicle as soon as possible.

With just five days left remaining under the 30-day statutory deadline, the owner notified Mercedes-Benz that he changed his mind and instead wanted a refund. This was on the Wednesday (November 23, 2005) before Thanksgiving.

The Mercedes-Benz representative, Wade Messing, was not in the office Thursday or Friday because of the holiday, and instead traveled to Wisconsin on Monday, November 28 to issue the refund check to both the owner and his bank, which had issued a loan for the vehicle.

On November 28, Messing contacted the owner’s bank to obtain the auto loan payment information so he could issue the check, but the bank refused to provide the information citing privacy issues. The bank told Messing that if the owner called the bank and authorized the release of the information, it would provide the information to Messing.

Messing then contacted the owner and asked that he call the bank to provide the release. The owner told him he would do so and that he would call Messing back after he contacted the bank. However, the owner called neither the bank nor Messing. The owner further withheld from Messing that he had previously given a loan officer at the bank permission to release the payout figure to Messing.

After not hearing from the owner, Messing called Attorney Megna, who conveniently could not be reached. Megna’s office did not inform Messing that it had the payout number from the bank.

Because Messing did not have the requisite information to issue a refund check to both the owner and the bank, Mercedes-Benz was not able to issue a refund check to the owner within Wisconsin’s 30-day deadline. As a result, the owner’s attorney filed a lawsuit the next day alleging Mercedes-Benz violated Wisconsin’s Lemon Law. The complaint was actually dated November 28, 2005, meaning that Attorney Megna was preparing to seek the damages the very same day that he and his client were withholding information and failing to respond to Messing’s phone calls.

Wisconsin Supreme Court Decision

A jury, ruling in favor of Mercedes-Benz, determined that the owner and his attorney acted in bad faith by failing to call the bank so that Mercedes-Benz could access the bank account information. However, the circuit court judge issued a directed verdict in favor of the owner. The judge determined there was no credible evidence that the owner or his attorney intentionally thwarted Mercedes-Benz's efforts to provide a refund.

On appeal, the Wisconsin Supreme Court affirmed the directed verdict in favor of the owner. According to the majority decision, the "jury's finding that on November 28 the consumer intentionally prevented Mercedes-Benz from complying with the Lemon Law was impermissibly speculative." The majority further stated that the record contained no evidence of any such intentional conduct by the owner or his lawyer that would bar them from taking advantage of the Lemon Law's remedies.

Practical Effect of Decision for Automobile Manufacturers in Wisconsin

In her dissenting opinion, Justice Roggensack explained that under the majority's reasoning, no affirmative defense of thwarting a refund will be allowed unless the manufacturer can prove the owner had knowledge of the legal effect of his conduct on the statutory obligations that the Lemon Law places on the manufacturer.

For example, in its decision, the majority held that the manufacturer had to prove that the owner knew the statutory remedies would be triggered if the manufacturer did not pay him the refund within 30 days. According to the dissent, if this is indeed the new standard, it will be all but impossible for manufacturers to prove the owner acted in bad faith because most automobile purchasers are not attorneys and do not have knowledge of the Lemon Law's requirements and statutory deadlines.

Twice Pecuniary Loss Requirement Less Than 10 Percent of Award.

The double damages provision made up less than a quarter of the total award in the *Marquez* case, while attorney fees amounted to 62.5 percent of the \$408,466 Pre-Supreme Court award.

Award Category	Pre-Supreme Court Decision
Twice Pecuniary Loss	\$117,285.06
Prejudgment Interest	\$5,833.41
Statutory Interest	\$45,423.68
Statutory Costs	\$10,216.72
Litigation Costs	\$2,105.79
Attorney Fees	\$301,707.00
Total Award	\$482,571.66

Allowing for single, not double pecuniary loss would amount to a less than ten percent reduction of the final \$618,000 award in the *Marquez* case.

OTHER CASE EXAMPLES

“Lemon” Freightliner Operates for Two Years

Consumer took possession of a 2007 Freightliner Classic in September 2007. Although the first repair was within the first month at 2,972 miles, the consumer drove the car for two years and 200,000 miles before making his lemon law claim.

The customer requested reimbursement of purchase price. To satisfy reimbursement obligation under Wisconsin's lemon law, Daimler Trucks North America (DTNA) had to pay off customer's remaining loan for the vehicle. This totaled \$91,000. Because consumer drove and used the vehicle for two years and made payments under the note, DTNA had to reimburse him for "collateral costs" which included these payments. This amounted to \$56,151.47. Additional collateral costs related to improvements customer made to the vehicle totaled approximately \$6,000. The total cost to DTNA for this lemon law claim was \$153,151. The cost of the vehicle new in 2009 to customer was \$108,651.

\$3,550 Jury Award turns into \$215,000 Lemon Law Jackpot

Consumer brought a lemon law case alleging that it took too long to put gas in the tank and the gas gauge, which was an electronic bar graph, would incrementally jump as less fuel was in the tank. The car never broke down, never had a problem, never ran out of gas and no one else ever had a problem putting fuel in the tank. Nonetheless, the consumer demanded a complete refund under the lemon law. Any reasonable attempts at settlement were impossible by virtue of the fact that Attorney Vince Megna claimed that he had incurred over \$10,000 in attorney's fees within the first two weeks of filing the case.

At the commencement of trial, the consumer abandoned her Section 2(b) claim under the Wisconsin Lemon Law (which is the section of the lemon law which contains the presumptions and the rights to a full refund or a replacement). Instead, the court allowed the consumer to pursue an action only under Section 2(a) of the lemon law, which allows for "pecuniary damages" if an alleged defect occurs within the first year and continues thereafter. Section 2(a) claims allow a plaintiff to still pursue an action under the lemon law even when the plaintiff cannot show four or more times/30 or more days - an outcome never intended by the framers of the Lemon Law. In any event, the court allowed the case to go to trial.

The jury did not believe that the consumer ever had an issue with putting gas in the car, but because the dealer adjusted the gas gauge to accommodate the consumer two times (once within the first year and then one time thereafter) the jury felt that the consumer had a Section 2(a) claim. The jury awarded \$3,550 to the consumer. Megna petitioned for fees under the lemon law, and the court awarded \$215,000 after a 3-day trial. In other words, the Court awarded fees on a factor approximately 75 times greater than the underlying award.

Plaintiff Disappears making Selection of Comparable Vehicle Impossible

Another case with Vince Megna in Waukesha County involved vehicle pulling claims. Rather than fight the case, the manufacturer decided to settle pre-suit. Plaintiff wanted a comparable vehicle and the manufacturer provided one within the 30-day period. Plaintiff was conveniently absent during the week before the expiration of the 30 days, so he could not pick up the vehicle.

On the 30th day, which was a Sunday, Plaintiff claimed he came back into town and went to the dealership where the comparable replacement had been delivered and that the replacement was unsatisfactory because he could see through the window that the fabric on the seats looked "a little more pinched" than the fabric on his original vehicle. As a consequence, Plaintiff claimed that the manufacturer did not provide a comparable replacement within 30 days, and two days later Vince Megna filed suit.

Rejection of Comparable Vehicle to Bust 30-Day Deadline

Dissatisfaction of Customers with Current System

Vehicle was provided within 30-day period, but lemon lawyer argued it was not a "comparable" new motor vehicle because the customer's original vehicle had pin striping and clear coat (both aftermarket items) and these items were not on the replacement vehicle. The attorney filed suit seeking double damages. After about 60 days of negotiating, the lemon lawyer decided that the vehicle provided would suffice so long as these aftermarket items were added and that manufacturer pay \$1,500 in attorney's fees.

After settlement, the customer contacted the manufacturer to complain that he was required to pay the lemon lawyer \$2,500 in attorney's fees in addition to the manufacturer's fees. He said that he would have accepted the replacement vehicle regardless of the aftermarket items but his attorney advised him otherwise. He stated he regretted ever hiring the lemon lawyer.

Rejection of Comparable Vehicle to Bust 30-Day Deadline

A customer requested a replacement vehicle, and a new vehicle was shipped to the dealer and inspected by the customer. The lemon lawyer refused it, stating that it was not "comparable" because the vehicle had 17" inch alloy wheels when the original had 16" inch wheels. Alleging a violation of the lemon law and seeking double damages and attorney fees, the lemon lawyer sued. While the case was settled out of court, the manufacturer incurred substantial costs, including flying an analyst to Wisconsin for a deposition.

Rejection of Comparable Vehicle Award in ADR

For all of calendar year 2002, and 2003 through September, General Motors had 162 breach of warranty and/or lemon law lawsuits filed in Wisconsin. Thirty-four of those cases had a prior dispute resolution case with the Better Business Bureau. Fourteen of the cases that entered dispute resolution were closed as ineligible, customer withdrew, or no decision for some other reason. Of the 20 cases with a favorable decision, 7 customers or 35 percent, rejected a mandated repurchase and went on to file a lawsuit.

Of the 162 cases, 128 had no dispute resolution record because it is so well known that the ADR process doesn't work in Wisconsin; GM commonly does not require customers to resort to it. That is, requiring the customer who has retained a lemon attorney to proceed through arbitration, and ultimately, rejection of an award only increases the attorney fees and the overall cost of the case, and delays resolution for the customer.

Commercial Inability to Provide Comparable Vehicle Within 30 Days

The customer requested a comparable commercial truck to replace a truck that was several years old. Unfortunately, no new trucks met the older truck's specifications. For example, the old truck

had a Caterpillar engine that was no longer available, and the older truck had various installed items not available from the factory, some of which posed safety concerns.

Because of the customer's insistence on a "comparable" vehicle, there were unavoidable delays in getting a vehicle custom built that met his specifications. After the fact, the customer's attorney acknowledged that the highly customized commercial truck industry made any demands for a comparable vehicle infeasible and that he would never again recommend a customer take that route.

Truck Manufacturers Paying for Problems Related to Improperly Installed Components

A customer had the dealer install a body on a commercial truck that was too big for the original rear suspension. Also installed was a liftable pusher axle without adding reserve air capacity to bring the vehicle to code causing the truck to quickly lose air for the liftable axle and resulting in frequent brake "shutdowns" while the system aired up. In addition, the tire size was increased on the front axle to handle the extra weight from the large dump body and payload causing the tires to rub on suspension components. The manufacturer bought back the vehicle, including the improperly installed components and incurred other costs associated with the problems unrelated to their vehicle.

Lemon Lawyer Taking Steps to Bust the 30-day Deadline

After taking possession of the vehicle, the customer alleged that she experienced a variety of operational problems that were not repaired, which led to her lemon lawyer demanding a replacement vehicle. Upon a diligent search, the manufacturer could not locate a comparable vehicle in Wisconsin, but informed the customer that if she found an acceptable replacement, they would arrange for its delivery. Despite requests for a response, the attorney waited close to three weeks to inform the manufacturer that they had found a replacement at a Wisconsin dealership, but informed the manufacturer the replacement would have to be provided within the 30-day deadline.

The manufacturer contacted that dealership and was informed the vehicle was no longer available, so they explained to the customer that the only way to meet the 30-day deadline was to provide a refund. The refund check was sent to the dealership for customer pick-up. When the dealership called the customer to ask whether she planned to come, she responded that she wanted to pick up the check but that her attorney would not allow it. During this time period, the customer also arbitrated her claim at the Better Business Bureau (as required by Wisconsin law) and was awarded a replacement vehicle. The customer rejected that award. The lemon law attorney then promptly filed suit for double damages and attorney fees.

Opting for Litigation Instead of Accepting Award

In response to the customer's request for a refund, the manufacturer and customer exchanged correspondence, including an agreement that a refund would be provided. The check was sent to a local dealership for pick-up. When the dealer contacted the customer to inform him his check was at the dealership, the customer stated that he should contact his lawyer. The lemon lawyer refused to accept the check since by then the 30-day deadline had passed. In addition, the customer was awarded repurchase through dispute resolution. The lemon lawyer, nevertheless, filed suit requesting a refund, double damages and attorney fees.

Opting for Litigation Instead of Accepting Award

Although the dealership attempted on several occasions to repair alleged leaks (sometimes repaired, sometimes not located, always at different locations), the customer alleged the vehicle to be a lemon. As required before filing suit under the Wisconsin Lemon Law, the customer applied for arbitration through the Better Business Bureau. The BBB ultimately awarded the customer a repurchase. Despite the relief awarded to him, it was rejected and a suit was filed seeking double damages, which were ultimately awarded.

Opting for Litigation Instead of Accepting Award

Consumer was represented by a large law firm specializing in lemon law cases. Her attorney filed a claim with the Better Business Bureau by sending a letter requesting a repurchase of her vehicle. After reviewing the written submissions, the arbitrator awarded the consumer the vehicle's purchase price, taxes, and finance charges. The arbitrator even included an award of \$1200 in attorney fees, although the consumer's lawyer never requested specific amounts and never submitted any bills.

Upon receiving the decision, the consumer's attorney requested that the award be modified to increase the attorney fees. The arbitrator agreed and changed his award to increase the attorney fees to the amount requested. The consumer rejected the arbitrator's award and chose to litigate.

Opting for Litigation Instead of Accepting Award

Consumer was represented by a prominent Wisconsin firm known for representing consumers in lemon law lawsuits. A claim was filed with the Better Business Bureau seeking replacement of the consumer's vehicle. During attempts to mediate the claim, the manufacturer offered the consumer the option of a replacement or a repurchase under the lemon law. This was rejected by the consumer's attorney, and the case went to arbitration. A written hearing was requested.

After reviewing all the submissions, the arbitrator awarded the consumer a replacement under the lemon law. The attorney had not even requested attorney fees, but the arbitrator included attorney fees in the award with a notation that the amount was to be determined. Again, the consumer received everything she was entitled to under the lemon law. The award was rejected and a lawsuit was filed

Inability to Locate Comparable Vehicle

A customer had a 2000 4WD pickup (cab and chassis) with a dump box. During the 30-day period he demanded a replacement. The manufacturer could not locate a vehicle with a dump box (as required by Wisconsin law) within 30 days. The customer's attorney filed suit and changed his demand to a refund. The manufacturer had to settle the case for more than the value of the vehicle, and pay substantial attorney fees.

COMPARISON TO NATIONAL AVERAGES (GM data –2002)

- Wisconsin overall repurchase rate (lemon law returns) is 45% above national average, 9th highest nationally
- Wisconsin Lemon Law suits filed at a rate 46% above national average, 6th highest nationally
- Wisconsin legal settlements average 38% above national average, 6th highest nationally
- **Wisconsin is the ONLY state to be in the top 10 for all three of the above categories**
- Wisconsin is the ONLY state that mandates automatic double damages merely for defending (and losing) a lawsuit

Note: Ford Motor Company had similar experiences, with a 69% higher litigation rate, resulting in payouts 58% higher than the national average. This data was compiled in 2002 relating to lemon law proposals at that time. The Alliance of Automobile Manufacturers is attempting to compile updated comparisons, but nothing has occurred in Wisconsin since 2002 to suggest the problem has lessened. In fact, recent cases suggest the cost associated with Wisconsin's law is worsening the state's competitiveness.

**Testimony by Alison Nelson, Ford Motor Company,
before the Wisconsin Assembly Judiciary Committee regarding
Lemon Law Reform – AB 200
May 29, 2013**

Good morning Mr. Chairman and members of the committee. My name is Alison Nelson and I am a managing counsel for Ford Motor Company in our Consumer Litigation Division. In this capacity I oversee Ford's lemon law programs in all 50 states. I have been performing this task for Ford for the past 10 years.

From this vantage point I would like to convey Ford's strong support for Assembly Bill 200 and to commend the committee for undertaking this effort to reform Wisconsin's lemon laws.

Wisconsin is an important state for Ford Motor Company. There are 115 Ford Dealers with about 3,400 employees selling our world-class vehicles. Annually we purchase about \$530 million dollars worth of goods and services from 82 suppliers in Wisconsin. In short, we value Wisconsin.

Unfortunately, Wisconsin lemon laws are among the most onerous in the United States. Compared to our experience in the rest of the United States the costs associated with Wisconsin lemon laws rank among our highest costs. From January 2006 to the present, Wisconsin ranks 4th for our legal settlements and 11th in our overall buybacks nationally.

However, I'd like to underscore the importance Ford places on the customer. Our One Ford plan states that we are dedicated to "serving customers in all markets with a full family of vehicles – small, medium and large; cars, utilities and trucks; each delivering the highest quality, fuel efficiency, safety, smart design and value". On the occasion that a consumer has issues with a vehicle, we work closely with the Dealer and the customer to resolve the issue. We also have a strong relationship with the Better Business Bureau to resolve conflicts.

The reason Wisconsin has a poor ranking in legal costs and vehicle buybacks is because Wisconsin's present lemon law attorneys game the system – not for the consumer, but for themselves. One of our best examples of the potential impact of Wisconsin's lemon law is the Red v Blue Escape lawsuit that we have pending. In this case, the plaintiffs requested a replacement of a 2010 Red Ford Escape with stone interior. The plaintiffs refused to participate in the selection of the comparable vehicle or provide any direction on what they thought was comparable. With plaintiff refusing to provide input on the vehicle selection, the most comparable vehicle we could locate within the time limitation was a 2012 Blue Ford Escape with charcoal interior. All of the equipment and accessories were the same. The plaintiff rejected the offer. The lawsuit claims that Ford failed to provide a comparable vehicle based on the exterior and interior color. It was all a big bait and switch game. If we lose, the plaintiff will receive double damages and all the attorney fees.

We have many similar anecdotes regarding the consequences of Wisconsin Lemon Laws. We urge you to support AB 200.

Lemon Law Comparison

I. Reasonable Attempt to Repair Criteria

Current Law	AB-200/ SB-182	Change and Comment
<p>1) the same nonconformity is subject to repair 4 times and the nonconformity continues or</p> <p>2) the motor vehicle is out of service for an aggregate of at least 30 days because of nonconformities.</p> <p>3) The term “out of service” has been defined by case law for over 25 years:</p> <p>“...we conclude 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 service by the consumer. To hold otherwise would eviscerate the law, preventing consumers whose vehicles are operable, but riddled with nonconformities, from seeking redress under [the Lemon Law].”</p> <p><i>Vultaggio v GM</i>, 145 Wis. 2d 874, 886, 429 N.W.2d 93, 97 (Ct. App. 1988).</p>	<p>Creates a definition of “out of service”</p> <p>1) The vehicle is in the possession of the manufacturer, lessor or dealer to repair a nonconformity; or</p> <p>2) the vehicle is in the consumer’s possession; and</p> <p style="padding-left: 20px;">a) the vehicle’s nonconformity substantially affects the use or safety of the vehicle and there was a previous attempt to repair; and</p> <p style="padding-left: 20px;">b) the consumer has reported, in writing, the nonconformity to the manufacturer, lessor or dealer and they have refused to make the repairs.</p>	<p>This eliminates non-conformities that substantially impair the value of a vehicle from being counted, and creates an area of dispute as to whether a warranted item relates to use or to value.</p> <p>It places an additional burden on the consumer of reporting the problem in writing.</p> <p>Most consumers will not know to make a written complaint when the dealer says: “we can’t duplicate the problem” and gives the vehicle back without making a service slip out. At that point, the consumer doesn’t know the vehicle is on its way to becoming a Lemon. In addition, in that case the manufacturer can argue it has not refused to make repairs; they were simply unable to do so. Incompetence and inability to repair are not the same as a refusal. Thus proving the vehicle was “out of service” leaves the parties to litigate whether the failure to repair was a refusal or a good faith inability to repair.</p> <p>The lack of certainty created thus requires litigation and creates the inability to settle, because 30 years of case law defining the existing Lemon Law no longer applies.</p>

II. Election of Refund or Replacement of Vehicle

Current Law	AB-200/ SB-182	Change and Comment
<p>Must replace or refund 30 days from receipt of notice</p>	<p>Must replace or refund 45 days from notice, 120 days if a commercial vehicle. Manufacturer has the option to refund if no comparable vehicle available.</p>	<p>There is a problem for some commercial vehicle manufacturers because of manufacturing schedules and scarcity of product. Specialty vehicles such as tow trucks and dump trucks must be manufactured to specification to be comparable to the vehicle being replaced, a process that oftentimes takes more than 30 days. It would not be unreasonable to allow additional time to physically replace the vehicle, when replacement is requested. However, nothing stops the manufacturer from making a determination that the</p>

Lemon Law Comparison

		<p>vehicle is a lemon, qualified for replacement or refund within 30 days. Most non-commercial vehicle manufacturer have been replacing vehicles within 30 days for 30 years.</p> <p>The problem with allowing a manufacturer to unilaterally refund instead of replacing is the deduction for use of the vehicle. Particularly with high mileage commercial vehicles, the formula for calculating “reasonable use” can result in dramatic reductions of the refund, and the inability of the consumer to replace the vehicle. Reasonable use is calculated by multiplying the purchase price times the actual mileage at the time of the first tender of the vehicle for repair which eventually made it a Lemon, divided by 100,000. A vehicle with 20,000 miles is thus discounted by 20% in making a replacement. An over-the-road tractor/trailer might still accumulate 50,000 miles in 10 months and then become a Lemon, after repeated shop visits in the last two month of the year, thereby reducing the refund to 50% of the purchase price – a sum that might not even pay the lien off. With respect to specialty vehicles such as tow trucks, box van delivery vehicles, highway plow trucks, etc., there are unlikely to be comparable vehicles available as these vehicles are usually assembled upon order. As such, the owner’s option for replacement is not available, as a practical matter, and a refund would leave them without a vehicle and without sufficient funds to buy a new one.</p>
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III. Extending the Response Time to 45 Days, and 120 Days for Commercial Vehicles

Current Law	AB-200/ SB-182	Change and Comment
<p>Manufacturer must respond within 30 days.</p>	<p>Manufacturer must respond within 45 days for non-commercial vehicles.</p> <p>Adds new definition of commercial vehicle and manufacturer must respond within 120 days for commercial vehicles.</p>	<p>Lengthens the time for responding. This will be especially crucial for people who rely on their vehicles for work, like an independent trucker, who now could wait up to a quarter of a year for a vehicle. The 45-day notice or the 120-day notice must be completed before a lawsuit can be filed. This makes it difficult to meet the 2-year statute of limitations if mediation is required before suit.</p> <p>Major passenger vehicle manufacturers are all now attuned after 30 years to meeting the 30-day replacement schedule. This is sometimes done by allowing a slight upgrade of the vehicle to entice the consumer’s acceptance. A comparable vehicle that might not be the same color, but can be made acceptable by adding other accessories. This has been commonly done over the years in resolving such cases. There is simply no need to enlarge the 30-day deadline for non-commercial vehicles.</p>

Lemon Law Comparison

IV. Failure to Follow Procedures and Provide Information

Current Law	AB-200/ SB-182	Change and Comment
<p>Not in current law.</p> <p>The current DOT forms include lien holder information and authorize release of that information to the manufacturer. Even when the form is used, manufacturers still demand the consumer obtain the information.</p> <p>Manufacturers often demand forms and information that is not necessary to the refund, including Powers of Attorney to transfer title to avoid branding, and warranties from the consumer as to the condition of the vehicle or satisfactory inspections. None of these items are required by the Lemon Law.</p>	<p>If a consumer elects a refund, then within 30 days the consumer must provide the manufacturer with certain as yet unspecified information required by the DOT. If the information is not provided, the consumer cannot sue the manufacturer under the Lemon Law.</p>	<p>The law does not spell out what needs to be provided or the form and manner that the consumer must provide. And if you miss any deadlines, you are stuck with the Lemon.</p> <p>It also allows the manufacturer to request information 25 days after the November 28th refund request and escape the Lemon Law if the consumer out of town for a week and takes more than 5 days to get the information back. [It also creates the uncertainty of when a request is "timely," since no deadline for the Manufacturer is set]</p> <p>Nothing is actually necessary from the consumer to comply with a refund request. Any lien on title shows on the records of WisDOT. The mileage should be on the request or in service records. A joint check can then be tendered to satisfy the refund obligation.</p>

V. Statute of Limitations

Current Law	AB-200/ SB-182	Change and Comment
<p>Six years based on contact.</p>	<p>24 months (Two years) from the date the vehicle was first delivered to the consumer.</p>	<p>It is unfair to allow the owner of a Lemon, later repaired, to use it for 4 or 5 more years and then demand a new vehicle. I raised this issue the last time a Lemon Law proposal was before the legislature. However, requiring suit in 2 years is also unfair.</p> <p>Because the consumer must establish the claim under the Lemon Law, which accrues over the first year of operation, this is effectively a one year statute of limitation. If the request is made promptly after the end of the first year and mediation is required or it is a commercial vehicle, the time to file suit is compressed to a few months. Some Lemons are not shown to be a Lemon until after the one year period, when the fifth attempt at repair is required [demonstrating the earlier four attempts were unsuccessful], or a recall proves an unrepaired problem did, in</p>

Lemon Law Comparison

	<p>fact, exist and can now be repaired. Some consumers negotiate with the manufacturer for months, thinking they will be treated fairly, waiting for an answer. This makes the deadline for filing suit unrealistic. At least three years should be permitted, or the statute of limitations should be stayed during certified mediation.</p>
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VI. Damages

Current Law	AB-200/ SB-182	Change and Comment
<p>People who prove their car is a Lemon SHALL receive the purchase price, finance charges, collateral cost, point of sale options, licensing fees and attorney fees.</p>	<p>People who prove their car is a Lemon MAY receive the purchase price, finance charges, collateral cost, point of sale options, licensing fees and attorney fees.</p>	<p>Under the proposed changes, the damages are discretionary and no longer necessarily relate to the purchase price:</p> <p>¶ 10 In Wisconsin: The measure of damages for breach of warranty is the difference at the time and place of acceptance between the value of the goods accepted and the value they would have had if they had been as warranted, unless special circumstances show proximate damages of a different amount. Wis. Stat. § 402.714(2).</p> <p><i>Mayberry v. Volkswagen of America, Inc.</i> 2004 Ct. App. 64, ¶ 10.</p> <p>Manufacturers are now free to argue this is the standard to apply in Lemon Law cases, because the standard set in <i>Hughes v. Chrysler</i>, 197 Wis. 2d 973 (1996) no longer holds. As such, Even if a consumer proves his or her car is a lemon at trial, the jury does not have to refund the purchase price, or finance charges, or collateral costs, or licensing fees, or extended warranty costs, or ANYTHING. It eliminates any definition of what are appropriate damages to be awarded. As to any vehicle eventually repaired by the time of trial, [commonly 1 to 2 years later], the manufacturers will argue there is no pecuniary loss because it is now fixed, and/or will demand a credit for use awaiting trial.</p> <p>This provision eliminates the ability of the consumer to use Summary Judgment to decide the case without trial. EVERY CASE WOULD HAVE TO BE TRIED. This means it will always cost the consumer more to bring the case than the value of the vehicle or other losses suffered by the consumer, with no assurance of recovering anything, even if they prove the vehicle was a lemon. Why should a manufacturer bother settling? No attorney would accept the case on a contingency. As such, the Lemon Law would cease being a consumer protection law and would become a financial trap for the ill-advised consumer who attempts to enforce what little rights it provides.</p>

VII. Double Damages

Lemon Law Comparison

Current Law	AB-200/ SB-182	Change and Comment
<p>The Court shall award double damages to a consumer who proves his or her car is a Lemon.</p> <p>This is the provision that distinguishes Wisconsin's Lemon Law from other states, and makes it work.</p>	None	<p>AB-200 is weak on enforcement. Double damages give the lemon law teeth and leverage in negotiating with the manufacturer. Under the AB-200 you are not guaranteed even single damages if you win at trial. There is no longer any penalty for non-compliance.</p> <p>The mandatory award of double damages was added to the Lemon Law in 1986 when the original discretionary award allowed "up to double" proved inadequate at obtaining compliance with the law by manufacturers.</p>

VIII. Branding of Title

Current Law	AB-200/ SB-182	Change and Comment
<p>If a manufacturer buys back a car under the lemon law, they are required to brand the title – Manufacture Buyback and disclose the reasons it was bought back. Manufacturers must also give a new 12-month warranty to the new buyer and the new buyer pays less money because the car is a lemon.</p>	<p>If a court or jury determines the car is a Lemon, the title must be branded. However, if a consumer enters into a negotiated written settlement agreement, then no provision of the Lemon Law SHALL apply to the vehicle, including branding the title.</p>	<p>As long as no provision of the lemon law applies to the vehicle, the title will not have to be branded. It can be resold to someone else without any disclosure. Consumers buying used vehicles will be at the mercy of unscrupulous car sales people.</p> <p>Manufactures typically ignore the branding requirement by obtaining a Power of Attorney from the Consumer, with which the title is laundered through a non-branding state, even if it is resold in Wisconsin.</p>

VIII. Written Settlement Agreements

Current Law	AB-200/ SB-182	Change and Comment
<p>Any waiver by a consumer of rights under this section is void.</p>	<p>A written settlement agreement as to any non-conformity exempts the vehicle from the Lemon law</p>	<p>The waiver of rights section was originally included to prevent consumers from unwittingly waiving valuable rights for no or nominal compensation. Typically the waiver is in a form presented as a matter of "routine," perhaps as a condition to being given a loaner car, or as part of setting a dispute as to one non-conformity, when the manufacturer knows other problems are looming.</p> <p>Example: Fuel injectors fail and the manufacturer claims it is the fault of bad gas. It agrees to replace the injectors once for a release of all claims. One month later the engine blows up and the car is in the shop for 45 days. The consumer is out of luck.</p>

Lemon Law Comparison

		<p>Another common dodge is the proposal that “we will extend the warranty, so you don’t have to worry.” Sometimes this very “consideration” is given to those whose vehicles are already Lemons, but only the manufacturer with the warranty records and knowledge of the law realizes it.</p>
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IX. Other Issues and Claims

Supporters of the proposed legislation have claimed Wisconsin’s Lemon Law makes vehicles more expensive, the legislation will “clarify” the law, will prevent abuse of the law by consumers, and is a needed “reform.”

If Wisconsin’s law has raised vehicle prices, it is a cost increase shared nationwide since manufacturers still use one nationwide suggested retail price. In fact, the legislation confuses the law, making the outcome of any legitimate Lemon Law claim uncertain, and throws out 30 years of well-understood case law. The lack of standards created also deprives the consumer of the ability to receive a prompt judgment through Summary Judgment procedure. Manufacturers routinely abuse and fail to comply with the statute, while consumer “abuse” is rare. In the often-cited case involving Attorney Magna, Mercedes could have avoided the whole problem by simply issuing a joint check within 30 days – something it could have done unilaterally, without any cooperation from Attorney Magna.

Repealing the law – and make no mistake that is what this legislation would do – does nothing but encourage manufacturers to go back to treating consumers with indifference, as they did in the early 1980’s. For almost 30 years Wisconsin’s Lemon Law has been our premier consumer protection law. This legislation, as it stands, therefore qualifies as the most anti-consumer legislation proposed in the last three decades.



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Lemon Law Summaries

- Information derived from State and Federal Lemon Laws.
- Generally, Repair Attempts may refer to one or more attempts to fix the same defect or multiple defects within the entire product.
- Warranty Period refers to the Manufacturer's Express Warranty. Where the Coverage Period lists more than 1 option, the period applies to that option which occurs first.
- Refer to Lemon Law Statutes for detailed information on the State and Federal Lemon Laws.
- In most States, you will need to hire an attorney and take the manufacturer (not the dealer) to Court in order to resolve a Lemon Law dispute. If a State utilizes an Arbitration Board to resolve disputes, you sometimes must first present your case to the Arbitration Board (lawyer not required) and if you are not satisfied with the outcome, you may then sue in a Court of Law. However, some arbitration programs are not administered by the State but instead are private programs; click here to read an important article about these programs before participating.
- Even if you don't think you have a lemon under these statutes, you may be a victim of auto fraud. Click here to learn about your basic consumer fraud rights and for important tips on how to prevent yourself from being victimized.

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Location	Lemon Law Coverage	Repair Interval and Coverage Period
All States	Consumers everywhere are protected by the Federal Lemon Law which applies to all consumer products, including automobile, trucks, motorcycles, RVs, boats, and all other ordinary consumer products including computers and household appliances.	3 to 4 repairs for the same problem, or 6 to 8 repairs to the entire product during the warranty period.
		Warranty period + up to 4 additional years.
Alabama	Every vehicle intended primarily for use and operation on the public highways which is self-propelled. Excludes motor homes or any vehicle with a GVW of 10,000 pounds or more.	3 repair attempts or 30 calendar days out of service.
		1 year or 12,000 miles
Alaska	Any land vehicle having four or more wheels, that is self-propelled by a motor, is normally used for personal, family, or household purposes, and is required to be registered. Does not include a tractor, farm vehicle, or a vehicle designed primarily for off-road use.	3 repair attempts or 30 business days out of service.
		Warranty period or 1 year.
Arizona	A self-propelled vehicle designated primarily for the transportation of persons or property over the public highways. Only the chassis portion of a motor home is covered.	4 repair attempts or 30 calendar days out of service.
		Warranty period, 2 years or 24,000 miles.
Arkansas	Any self-propelled vehicle licensed, purchased, or leased and primarily designed for the transportation of persons or property over the public streets and highways, but does not include mopeds, motorcycles, the living facilities of a motor home, or vehicles over 10,000 pounds GVW. The 10,000 pound limit does not apply to motor homes.	1 repair attempt for a defect that might cause death or serious injury or 3 repair attempts for the same defect or 5 repair attempts for separate problems, or 30 calendar days out of service.
		2 years or 24,000 miles.
California	A new motor vehicle that is used or bought for use primarily for personal, family, or household purposes. Includes the chassis portion of motor homes.	2 repair attempts for a defect that might cause death or serious injury or 4 repair attempts or 30 calendar days out of service.
		18 months or 18,000 miles.
Colorado	A self-propelled private passenger vehicle, including pickup trucks and vans, designed primarily for travel on the public highways and used to carry not more than 10 persons. Excludes motor homes and motorcycles.	4 repair attempts or 30 business days out of service.
		Warranty period or 1 year.
Connecticut	Passenger and commercial motor vehicles.	4 repair attempts or 30 calendar days out of service.
		2 years or 18,000 miles.
	Passenger motor vehicles. Does not include motor	4 repair attempts or 30

Delaware	homes (other than the chassis) or motorcycles.	business days out of service.
		Warranty period or 1 year.
District of Columbia	Any vehicle sold or registered that is designed for transporting persons. Excludes buses, motorcycles, motor homes and recreational vehicles.	4 repair attempts or 30 days out of service.
		2 years or 18,000 miles.
Florida	A new vehicle that is purchased or leased primarily for personal, family, or household purposes. Does not include vehicles run only on tracks, off-road vehicles, trucks over ten thousand pounds gross weight, the living facilities of recreational vehicles or motorcycles or mopeds.	3 repair attempts or 30 calendar days out of service.
		24 months.
Georgia	Any self-propelled vehicle, primarily designed for the transportation of persons or property over the public highways, that was leased, purchased or registered. Applies only to the chassis portion of motor homes. Does not include motorcycles or trucks with 10,000 pounds or more GVW.	1 repair attempt in the braking or steering system or 3 repair attempts or 30 calendar days out of service for other problems.
		1 year or 12,000 miles.
Hawaii	A self-propelled vehicle primarily designed for the transportation of persons or property over public streets and highways which is used primarily for personal, family, or household purposes. Does not include mopeds, motorcycles, or motor scooters, or vehicles over 10,000 pounds GVW.	1 repair attempt for a defect that might cause death or serious injury or 3 repair attempts or 30 business days out of service.
		Warranty period, 2 years or 24,000 miles.
Idaho	A new motor vehicle used for personal business use or personal, family or household purposes. Does not include a motorcycle, farm tractor, trailer or any motor vehicle with a gross laden weight over 12,000 pounds.	4 repair attempts or 30 business days out of service.
		Warranty period, 2 years or 24,000 miles.
Illinois	New cars. Light trucks and vans under 8,000 pounds. Recreational vehicles excluding trailers. Excludes motorcycles.	4 repair attempts or 30 business days out of service.
		1 year or 12,000 miles.
Indiana	Any self-propelled vehicle that has a declared gross vehicle weight of less than 10,000 pounds and is intended primarily for use and operation on public highways. Does not include conversion vans, motor homes, farm machinery, motorcycles, mopeds, snowmobiles, or vehicles designed primarily for offroad use.	4 repair attempts or 30 business days out of service.
		18 months or 18,000 miles.
Iowa	A self-propelled vehicle purchased or leased and primarily designed for the transportation of persons or property over public streets and highways, but does not include mopeds, motorcycles, motor homes, or vehicles over ten thousand pounds GVW.	1 repair attempt for a defect that might cause death or serious injury or 3 repair attempts or 30 calendar days out of service for other problems.
		2 years or 24,000 miles.
Kansas	A new motor vehicle which is sold or leased, and which is registered for a gross weight of 12,000 pounds or less. Does not include the customized parts of motor vehicles which have been added or modified by second stage manufacturers, first stage converters or second stage converters.	4 repair attempts for the same defect, or 10 repair attempts for separate problems or 30 calendar days out of service.
		Warranty period or 1 year.
Kentucky	All vehicles except conversion vans, motor homes, mopeds, motorcycles, farm machinery and vehicles with more than 2 axles.	4 repair attempts or 30 days out of service.
		1 year or 12,000 miles.
Louisiana	All vehicles under 10,000 pounds except motor homes, motorcycles, and vehicles used for commercial purposes only.	4 repair attempts or 30 calendar days out of service.
		Warranty period or 1 year.
Maine	Any vehicle purchased or leased. Excludes commercial vehicles over 8,000 pounds.	3 repair attempts or 15 business days out of service
		2 years or 18,000 miles.
	Any passenger car or truck with a rated capacity of 1 ton or less.	1 repair attempt in the braking or steering system or 4 repair attempts or 30 calendar days out of service

Maryland		for other problems. 15 months or 15,000 miles. 12 months or 12,000 miles for leased vehicles.
Massachusetts	All vehicles, except off-road vehicles, motor homes, motorcycles, and vehicles used for commercial purposes.	3 repair attempts or 15 business days out of service. 1 year or 15,000 miles.
Michigan	Any new car, van or truck bought by a resident of Michigan for personal or family use.	4 repair attempts or 30 business days out of service Warranty period or 1 year.
Minnesota	A new motor vehicle used for personal, family, or household purposes at least 40 percent of the time.	1 repair attempt in the braking or steering system or 4 repair attempts or 30 business days out of service for other problems. Warranty period or 2 years.
Mississippi	Vehicles used primarily for personal, family or household purposes. Excludes off-road vehicles, mopeds, motorcycles. Includes motor home chassis.	3 repair attempts or 15 business days out of service. Warranty period or 1 year.
Missouri	A new motor vehicle, primarily used for personal, family, or household purposes. Does not include commercial vehicles, off-road vehicles, mopeds, motorcycles or recreational vehicles.	4 repair attempts or 30 business days out of service. Warranty period or 1 year.
Montana	Any vehicle, including the nonresidential portion of a motor home, propelled by its own power, designed primarily to transport persons or property upon the public highways. Does not include trucks with 10,000 pounds or more GVW or motorcycles.	4 repair attempts or 30 business days out of service 2 years or 18,000 miles.
Nebraska	A new motor vehicle normally used for personal, family, household, or business purposes, excluding motor homes.	4 repair attempts or 40 days out of service. Warranty period or 1 year.
Nevada	A new motor vehicle normally used for personal, family or household purposes, except a motor home or off-road vehicle.	4 repair attempts or 30 calendar days out of service. Warranty period or 1 year.
New Hampshire	Any 4-wheel motor vehicle with a gross weight not exceeding 9,000 pounds. Also includes off highway recreational vehicles, mopeds and motorcycles.	3 repair attempts or 30 business days out of service Warranty period *plus* 1 year.
New Jersey	Passenger automobiles and motorcycles. Includes the non-living portions of motor homes.	3 repair attempts or 30 calendar days out of service. 2 years or 18,000 miles.
New Mexico	A passenger motor vehicle including an automobile, pickup truck, motorcycle or van normally used for personal, family or household purposes with a gross vehicle weight less than 10,000 pounds.	4 repair attempts or 30 business days out of service. Warranty period or 1 year.
New York	Any non-commercial motor vehicle purchased or leased, except for motorcycles, certain motor homes, and off-road vehicles.	4 repair attempts or 30 calendar days out of service. 2 years or 18,000 miles.
North Carolina	Any new motor vehicle other than a house trailer, provided that the vehicle does not have a gross vehicle weight of 10,000 pounds or more. This includes pickup trucks, motorcycles and most vans.	4 repair attempts or more than 20 days out of service during any 12 month period. 2 years or 24,000 miles.
North Dakota	Passenger motor vehicles and trucks 10,000 pounds GVW or less, normally used for personal, family or household purposes.	3 repair attempts or 30 business days out of service. Warranty period or 1 year.
Ohio	Passenger car, light truck (no more than one ton load capacity and not used in business), or motorcycle. Also includes chassis portion of motor homes.	3 repair attempts or 30 calendar days out of service. 8 repair attempts for different problems. 1 attempt to repair condition likely to cause death or serious bodily injury.

		death or serious bodily injury.
		1 year or 18,000 miles.
Oklahoma	Any motor driven vehicle required to be registered, excluding vehicles above 10,000 pounds GVW and the living facilities of motor homes.	4 repair attempts or 45 days out of service.
		Warranty period or 1 year.
Oregon	A new motor vehicle normally used for personal, family or household purposes.	4 repair attempts or 30 business days out of service.
		1 year or 12,000 miles.
Pennsylvania	Vehicles used primarily for personal, family or household purposes except motor homes, motorcycles, and off-road vehicles.	3 repair attempts or 30 calendar days out of service
		Warranty period, 1 year or 12,000 miles.
Rhode Island	An automobile, truck, motorcycle, or van having a gross vehicle weight of less than 10,000 pounds.	4 repair attempts or 30 calendar days out of service
		1 year or 15,000 miles.
South Carolina	Passenger motor vehicles including cars, vans, and small trucks.	3 repair attempts or 30 calendar days out of service
		1 year or 12,000 miles.
South Dakota	All vehicles intended primarily for use and operation on the public highways which is self-propelled. Does not include motor homes or vehicles with a GVW of 10,000 pounds or more.	4 repair attempts plus 1 final attempt.
		1 year or 12,000 miles.
Tennessee	Any motor vehicle not including motorized bicycles, motor homes, recreational vehicles or off-road vehicles and vehicles over 10,000 pounds GVW.	4 repair attempts or 30 calendar days out of service
		Warranty period or 1 year.
Texas	New vehicles, including cars, trucks, vans, motorcycles, all-terrain vehicles, motor homes and towable recreational vehicles.	4 repair attempts or 30 days out of service. 2 repair attempts for a serious safety hazard.
		Warranty period or 1 year.
Utah	A car or truck weighing less than 12,000 pounds, or a motor home.	4 repair attempts or 30 business days out of service.
		Warranty period or 1 year.
Vermont	Passenger motor vehicles and trucks under 10,000 pounds GVW. Does not include snowmobiles, motorcycles, mopeds, or the living portion of recreational vehicles.	3 repair attempts or 30 calendar days out of service.
		Warranty period.
Virginia	A motor vehicle used in substantial part for personal, family, or household purposes.	3 repair attempts or 30 calendar days out of service. 1 repair attempt for a serious safety defect.
		18 months.
Washington	Any new self-propelled vehicle, including a new motorcycle, primarily designed for the transportation of persons or property over the public highways. Does not include living portions of motor homes or trucks with 19,000 or more GVW.	4 repair attempts or 30 calendar days out of service. 2 attempts for a serious safety defect.
		2 years or 24,000 miles.
West Virginia	Passenger vehicles, pickup trucks, vans and motor home chassis used primarily for personal, family, or household purposes.	3 repair attempts or 30 calendar days out of service. 1 attempt for a condition likely to cause death or serious bodily injury.
		Warranty period or 1 year.
Wisconsin	All vehicles except mopeds, semi-trailers or trailers designed for use in combination with a truck or truck tractor.	4 repair attempts or 30 days out of service
		Warranty period or 1 year.
Wyoming	All vehicles under 10,000 lbs. GVW.	3 repair attempts or 30 business days out of service
		1 year.

H

Supreme Court of Wisconsin.
John L. HUGHES, Plaintiff-Respondent,
v.
CHRYSLER MOTORS CORPORATION, Defendant-Appellant-Petitioner.

No. 93-0208.

Argued Sept. 5, 1995.

Decided Jan. 17, 1996.

Buyer of automobile brought action pursuant to state "lemon law" against manufacturer, seeking pecuniary damages. The Circuit Court, Rock County, J.R. Long, J., granted summary judgment for plaintiff, awarding plaintiff twice amount of pecuniary loss as well as costs and attorney fees. Manufacturer appealed. The Court of Appeals, Dickman, J., 188 Wis.2d 1, 523 N.W.2d 197, affirmed, and defendant appealed. The Supreme Court, Bablitch, J., held that: (1) recovery of pecuniary damages under **lemon law** included recovery of purchase price of automobile, and (2) trial court did not abuse its discretion by awarding plaintiff attorney fees.

Affirmed.

West Headnotes

[1] Appeal and Error 30 ↪842(1)

30 Appeal and Error

30XVI Review

30XVI(A) Scope, Standards, and Extent, in General

30k838 Questions Considered

30k842 Review Dependent on Whether Questions Are of Law or of Fact

30k842(1) k. In general. Most Cited Cases

Statutory construction is question of law which state Supreme Court decides de novo without deference to decisions of lower courts.

[2] Statutes 361 ↪1082

361 Statutes

361III Construction

361III(A) In General

361k1082 k. Construction based on multiple factors. Most Cited Cases

(Formerly 361k217.2, 361k208, 361k188, 361k184, 361k181(1))

Supreme Court ascertains intent of legislature, to interpret statute, by examining language of statute and scope, history, context, subject matter, and purpose of statute.

[3] Statutes 361 ↪1308

361 Statutes

361III Construction

361III(K) Particular Classes of Statutes, Construction of

361k1306 Remedial Statutes

361k1308 k. Liberal or strict construction. Most Cited Cases

(Formerly 361k236)

Remedial statutes should be liberally construed to suppress mischief and advance remedy that statute intended to afford.

[4] Antitrust and Trade Regulation 29T ↪206

29T Antitrust and Trade Regulation

29TIII Statutory Unfair Trade Practices and Consumer Protection

29TIII(C) Particular Subjects and Regulations

29Tk204 Warranties and Service Contracts

29Tk206 k. Motor vehicles; "lemon" laws. Most Cited Cases

(Formerly 92Hk9 Consumer Protection)

Pecuniary loss within meaning of "lemon law," which allows consumer recovery of such loss from automobile manufacturer for manufacturer's failure to voluntarily replace or repurchase defective auto-

mobile within 30 days of consumer demand, includes purchase price of automobile; pecuniary loss is not limited to buyer's out-of-pocket expenses that were caused by manufacturer's violation of **lemon law**. W.S.A. 218.015.

[5] Appeal and Error 30 ↪984(5)

30 Appeal and Error

30XVI Review

30XVI(H) Discretion of Lower Court

30k984 Costs and Allowances

30k984(5) k. Attorney fees. Most

Cited Cases

Appellate review of award of attorney fees is limited to whether trial court properly exercised its discretion; trial court properly exercises its discretion if it employs logical rationale based on appropriate legal principles and facts of record.

[6] Costs 102 ↪194.36

102 Costs

102VIII Attorney Fees

102k194.24 Particular Actions or Proceedings

102k194.36 k. Vendor and purchaser; sales. Most Cited Cases

Trial court was within its discretion in deciding to award attorney fees to buyer in buyer's action against automobile manufacturer pursuant to state "**lemon law**," which allowed recovery of pecuniary losses from manufacturer for manufacturer's failure to replace or repurchase defective automobile, in light of trial court's exhaustive, detailed review of fees reflected in record. W.S.A. 218.015.

****148 *976** For the defendant-appellant-petitioner there were briefs by Jeffrey S. Fertl, Susan R. Tyn-dall and ***977** Hinshaw & Culbertson, ****149** Milwaukee and oral argument by Jeffrey S. Fertl.

For the plaintiff-respondent there was a brief by Edward Grutzner, Christofer C. Helwig and Grutzner, Holland & Vollmer, S.C., Beloit and oral argument by Edward Grutzner.

REVIEW of a decision of the Court of Appeals affirming a circuit court judgment. *Affirmed.*

BABLITCH, Justice.

Mr. Hughes bought a new car in 1990. It was, unfortunately, a lemon, a fact admitted by all parties. After the manufacturer failed to respond within the time limits set by law, Mr. Hughes sued the manufacturer, Chrysler, seeking among other things the amount of money he paid for the van as pecuniary damages. Under Wisconsin's "**lemon law**," any pecuniary damages awarded to a successful plaintiff are doubled. Chrysler argues that the purchase price of the car to the consumer is not a pecuniary damage within the meaning of the **lemon law**. We disagree. One purpose of the law, among others, is to provide an incentive for a manufacturer to put the purchaser of a new car back to the position the purchaser thought he or she was in at the time they bought the car. We conclude that the legislature intended to include the purchase price of the car to the consumer as pecuniary damages. Accordingly, we affirm.

The facts are not in dispute. Hughes purchased a new Dodge Caravan on January 11, 1990. During his ***978** first year of ownership, Hughes took the vehicle to a dealer to repair transmission defects on seven separate occasions. Hughes retained counsel after the repair efforts proved to be unsuccessful. On June 19, 1991, Hughes' counsel wrote to CT Corporation Systems, Chrysler's registered agent in Wisconsin, and demanded that Chrysler replace Hughes' car within 30 days with a "comparable new motor vehicle" without any further charge to him. Wisconsin Stat. § 218.015(2)(b)2.a and (c).

Having received no response within the 30 days provided by the statute, Hughes' counsel contacted Chrysler on July 29, 1991, and at Chrysler's request, mailed a copy of the June 19 demand letter. After Chrysler received a copy of the letter, Chrysler attempted to reach Hughes' counsel by telephone before discovering that Hughes had filed suit on August 22, 1991. On August 23, 1991, Chrysler sent Hughes a letter offering to replace his

vehicle without any charge for a model year upgrade or the mileage on his vehicle.

The circuit court granted Hughes' motion for summary judgment. The court then entered judgment for Hughes in the amount of \$74,371, which included double the amount he paid for the vehicle, attorney fees, and prejudgment interest. The court of appeals affirmed the circuit court. We granted Chrysler's petition for review.

[1][2][3] The first issue is whether the purchase price of the car to the consumer is pecuniary damages within the meaning of Wisconsin's so-called **lemon law**, Wis.Stat. § 218.015(7) (1993–94), the relevant part of which is *979 cited below.^{FN1} Statutory construction is a question of law which this court decides de novo without deference to the decisions of the lower courts. *Eby v. Kozarek*, 153 Wis.2d 75, 79, 450 N.W.2d 249 (1990). “The cardinal rule in all statutory interpretation, as this court has often said, is to discern the intent of the legislature.” *Scott v. First State Ins. Co.*, 155 Wis.2d 608, 612, 456 N.W.2d 152 (1990). This court ascertains that intent by examining the language of the statute and the scope, history, context, subject matter and purpose of the statute. *Id.*; see also *Voss v. City of Middleton*, 162 Wis.2d 737, 749, 470 N.W.2d 625 (1991). We are also aware that remedial statutes should be liberally construed to suppress the mischief and advance the remedy **150 that the statute intended to afford. *Madison v. Hyland, Hall & Co.*, 73 Wis.2d 364, 373, 243 N.W.2d 422 (1976).

FN1. All future statutory references are to the 1993–94 volume unless otherwise indicated. Wisconsin Stat. § 218.015(7) states:

In addition to pursuing any other remedy, a consumer may bring an action to recover for any damages caused by a violation of this section. The court shall award a consumer who prevails in such an action twice the amount of any pecu-

niary loss, together with costs, disbursements and reasonable attorney fees, and any equitable relief the court determines appropriate.

[4] Chrysler argues that a buyer's pecuniary loss is limited to the buyer's out-of-pocket expenses that were caused by the manufacturer's violation of the statute. Hughes disagrees. He argues that pecuniary loss within the meaning of the **lemon law** includes the purchase price of the car. Hughes contends that allowing the consumer to recover double the purchase price of the automobile effectuates the purposes of the **lemon law** and strengthens the rights of consumers in dealing with vehicle defects. We agree.

*980 The statute is silent as to whether pecuniary loss includes the purchase price of the vehicle. To determine the legislative intent behind the statute, we first examine the history of **lemon laws** in general. **Lemon laws** were enacted to deal with the increasing number of disputes between manufacturers and consumers over automobile warranties. Joan Vogel, *Squeezing Consumers: Lemon Laws, Consumer Warranties, and a Proposal for Reform*, 1985 Ariz.St.L.J. 589, 589. Warranty disputes were directly responsible for a considerable amount of litigation and have led to numerous legislative proposals. *Id.* The underlying reason for such legislation was clear. Harold Greenberg, *The Indiana Motor Vehicle Protection Act of 1988: The Real Thing For Sweetening the Lemon or Merely a Weak Artificial Sweetener?*, 22 Ind.L.Rev. 57, 57 (1989). For the average person, the purchase of an automobile was one of the most important of all consumer purchases in terms of significance and price. *Id.* However, for thousands of purchasers each year, this highly significant purchase became a virtual nightmare when the automobile refused to function properly, and the seller was unable, or unwilling to take action to remedy the situation. Julian B. Bell III, *Ohio's Lemon Law: Ohio Joins the Rest of the Nation in Waging War Against the Automobile Limited Warranty*, 57 U.Cin.L.Rev. 1015, 1015 (1989).

Prior to the enactment of **lemon laws**, the only kinds of remedial relief available to consumers were the statutory remedies of revocation of acceptance and breach of warranty under the Uniform Commercial Code. *See* Wis.Stat. §§ 402.602; 402.608; 402.313. Federal remedies also existed through the **Magnuson–Moss Warranty Act**. *See* 15 U.S.C. §§ 2301–2312 (1982). These state and federal remedies, however, did *981 not adequately protect the interests of the consumer in a typical lemon vehicle claim. Clifford P. Block, *Arkansas's New Motor Vehicle Quality Assurance Act—A Branch of Hope for Lemon Owners*, 16 U.Ark.Little Rock L.J. 493, 493 (1994). Purchasers of defective cars had no recourse other than to repeatedly bring their cars in for repairs.

The problems faced by the automobile consumer were accurately described in the following comments made at the hearings on a proposed federal Automobile and Warranty Repair Act:

I think there is probably no subject of more ... emotional concern and irritation, frustration, aggravation and outrage than the question of the automobile that does not work. When the consumer buys the car he thinks he is getting a car that will drive and that will service him. He thinks his warranty is going to mean that if anything goes wrong it will be fixed up well and promptly. The fact is that in all too many cases this does not happen....

Automobile Warranty and Repair Act: Hearings on H.R. 1005 before the Subcomm. on Consumer Protection and Finance of the House Comm. on Interstate and Foreign Commerce, 96th Cong., 1st Sess. 1 (1979) (introductory remarks of Rep. James H. Scheuer, Subcommittee Chairman); *see also* Greenberg at 57. By 1993, 48 states, including Wisconsin, had **lemon laws** available as remedial assistance to consumers who purchased defective new automobiles. *See* Block at 493.

Wisconsin's **lemon law**, Wis.Stat. § 218.015, became effective on November 3, 1983. Prior to its

passage, Wisconsin consumers relied on the same inadequate, uncertain and expensive remedies of the Uniform Commercial Code or the **Magnuson–Moss *982 Warranty Act**. Stephen J. Nicks, *Lemon Law II*, Wis.Bar Bulletin, Vol. 60, No. 7, July 1987, at 8. Wisconsin's **lemon law** provides **151 that if a new motor vehicle does not conform to an applicable express warranty, the nonconformity shall be repaired before the expiration of the warranty or one year after delivery of the vehicle, whichever is sooner. Section 218.015(2)(a). If the nonconformity is not repaired after a reasonable attempt to repair, the manufacturer must accept return of the vehicle, and at the direction of the consumer, either replace the vehicle or refund to the consumer the full purchase price plus any sales tax, finance charge, costs, less a reasonable allowance for use. Section 218.015(2)(b) 1 and 2. A reasonable attempt to repair means either that the nonconformity is subject to repair four times and the nonconformity continues or that the vehicle is out of service for an aggregate of at least 30 days because of warranty nonconformities. Section 218.015(1)(h)1 and 2.

The Wisconsin **lemon law** is violated when the manufacturer fails to voluntarily replace or repurchase the lemon vehicle within 30 days after receipt of the consumer's Wis.Stat. § 218.015(2)(c) demand. This failure to voluntarily comply with the **lemon law** establishes a violation of the law and triggers the § 218.015(7) remedies of the law. Section 218.015(7) provides that:

The court shall award a consumer who prevails in such an action twice the amount of any pecuniary loss, together with costs, disbursements and reasonable attorney fees, and any equitable relief the court determines appropriate.

Wisconsin's **lemon law** was created to be a self-enforcing consumer law that provides “important *983 rights to motor vehicle owners.” Memorandum from Bronson C. La Follette, Attorney General, to Members of the Legislature, Re: AB 434, Auto “**Lemon Law**” Changes, Oct. 14, 1985, Wis. Act 205. The intent behind the law was

to “improve auto manufacturers’ quality control ... [and] reduce the inconvenience, the expense, the frustration, the fear and [the] emotional trauma that lemon owners endure.” Statement by Vernon Holschbach, co-sponsor of the bill, “*Lemon*” *Car Bill Has Sweet, Sour Sides*, Wisconsin State Journal, March 2, 1983. In *Hartlaub v. Coachmen Ind., Inc.*, 143 Wis.2d 791, 422 N.W.2d 869 (Ct.App.1987), the court of appeals stated that, “[a]s to legislative object, Wisconsin’s **Lemon Law** is obviously remedial in nature. As such, we should construe the statute with a view towards the social problem which the legislature was addressing when enacting the law.” *Id.* at 801, 422 N.W.2d 869.

In the 1985–86 legislative session, Wis.Stat. § 218.015(7) was amended to make the award of double damages and reasonable attorney fees mandatory rather than discretionary. Nicks, *Lemon Law II* at 11. In the initial section, the statute stated that a consumer “may bring an action for twice the amount of any pecuniary loss...” *Id.* The amended language states that the “court shall award a consumer who prevails ... twice the amount of any pecuniary loss...” Section 218.015(7) (1985) (emphasis added). This amendment clarified that when a consumer prevails in a court action under the **lemon law**, the court must award double damages and attorney fees.

Based on this history, we conclude that the legislature intended to include the purchase price of the car as pecuniary damages. We come to this conclusion for the following reasons.

*984 First, if we accept Chrysler’s definition of pecuniary loss, then the remedy provided by the statute does not significantly improve upon those remedies available to the consumer before the enactment of the **lemon law**. See the Magnuson–Moss Warranty Act, 15 U.S.C. §§ 2301–2312. Certainly the law is intended to do more than simply parrot the remedies previously available to the consumer.

Second, by including the purchase price of the

car as part of the pecuniary loss, the statute provides an incentive to the manufacturer to promptly resolve the matter by making it far more costly to delay. If the only damages available were out of pocket costs, the statute would provide scant incentive to move with dispatch. The imposition of double damages as punishment for a failure to comply with the statute provides the necessary incentive.

Another reason to allow double or triple damages is to persuade manufacturers to **152 settle legitimate warranty disputes so that consumers are not forced to litigate. The manufacturer will have to consider more carefully the costs of litigating the dispute when there is the prospect of double damages as well as attorney’s fees and other costs.

Vogel, *Squeezing Consumers* at 662 (discussing the importance of Wisconsin’s **lemon law** as the only **lemon law** to allow for the recovery of double damages).

Third, a potential recovery must be large enough to give vehicle owners the incentive to bring suits against these corporations. Nicks, *Lemon Law II* at 48. The threat of double damages increases the bargaining power of individual consumers.

These corporations not only have the wealth and will to exhaust an individual litigant, but also control*985 vast amounts of technical expertise on the very mechanical aspects the consumer is challenging. Without the sweetener of double damages in a sufficient amount and reasonable attorneys’ fees, few consumers would bring such actions.

Id. at 48.

The only case to address the appropriate measure of damages under Wis.Stat. § 218.015(7) is *Nick v. Toyota Motor Sales*, 160 Wis.2d 373, 466 N.W.2d 215 (Ct.App.1991). The issue in *Nick* was whether the term “pecuniary loss” included the pur-

chase price of the consumer's vehicle. The court of appeals held that pecuniary loss included the amount of the purchase price he actually paid, whether by down payment or loan payments. *Id.* at 383, 466 N.W.2d 215.

The *Nick* rule produces anomalous results depending on whether a consumer borrows money to buy a car or pays for the car entirely in cash. See Stephen J. Nicks, *A New Twist on the Lemon Law*, Wisconsin Lawyer, Oct. 1991 at 25. For example, if a consumer pays \$20,000 in cash for a car and proves lemon law liability, *Nick* says that the pecuniary loss of that consumer is \$20,000 which is then doubled as damages of \$40,000. However, if this same consumer did not pay cash but merely gave a down payment of \$2,000, *Nick* says the pecuniary loss would be \$2,000 (the amount actually paid out by the consumer) and only that amount would be subject to doubling. The consumer would then recover double damages of \$4,000. The secured creditor would receive the unpaid principal and any interest owed. The amount owing to the secured creditor would not be subject to doubling.

Therefore, calculating damages under *Nick* produces major double damage differences, depending on how the consumer paid for the vehicle. *Id.* Based on the *986 above example, the first consumer gets \$40,000 (\$20,000 doubled) and the second consumer gets \$4,000 (\$2,000 doubled).

Nick did not address this double damage disparity. However, under *Nick*'s rationale, a credit purchaser with little down payment or trade-in is in a significantly weaker position with respect to the manufacturer than is a consumer who pays the full purchase price of the vehicle. The converse is equally true. This result is inconsistent with the legislative goal of encouraging manufacturers to deal promptly and fairly with all purchasers of new vehicles. For that reason, any language in *Nick* contrary to our holding here that pecuniary loss includes the full purchase price of the vehicle to the consumer is overruled.

We realize that car manufacturers do not deliberately set out to manufacture a lemon. Quite the opposite. In fact, it is in their own best interest not to do so. However, an unfortunate fact of life, seemingly as inevitable as night following day, is that occasionally a "lemon" will slip through the line. And when that happens, another unfortunate fact of modern day life is that the cost to the unlucky consumer who purchases that "lemon" is far more than the cost of the car: interrupted, delayed, or even cancelled schedules; the time and the trouble, as well as the anxiety and stress that accompany those changes, the apprehensions that result every time the consumer gets back into that automobile wondering "what next?" Dependability is a prime objective of every new car buyer. When that is taken away, the loss is far greater than the cost of the car. It is this fact that the legislature recognized when they enacted the lemon law. Its principle**153 motivation is not to punish the manufacturer who, after all, would *987 far prefer that no "lemons" escape their line. Rather, it seeks to provide an incentive to that manufacturer to promptly return those unfortunate consumers back to where they thought they were when they first purchased that new automobile.^{FN2}

FN2. In *Hartlaub v. Coachmen Ind., Inc.*, 143 Wis.2d 791, 422 N.W.2d 869 (Ct.App.1987), the court of appeals stated that the recovery of such "damages are imposed for punitive purposes." *Id.* at 804, 422 N.W.2d 869. Failure to comply, of course, results in the imposition of punishment. The consumer's pecuniary loss is doubled.

Chrysler makes one further argument. Chrysler contends that because it offered to give Hughes a new vehicle 35 days after the deadline, Hughes' pecuniary loss should be limited to the out-of-pocket expenditures Hughes made during those 35 days. We find no merit in this argument. If we were to accept Chrysler's approach, a manufacturer could routinely refuse to provide a replacement vehicle to

a consumer in order to wait and see whether the consumer would actually file suit. The statute demands that a manufacturer respond within 30 days. Wisconsin Stat. § 218.015(2)(c). Chrysler did not respond within the 30 days required by the law. We will not rewrite the statute.

Given all the above, we hold that Hughes can recover double the amount of the purchase price of his automobile. This result is both consistent with the court of appeals' decision in *Nick* and consistent with the underlying purposes and goals of the **lemon law**.

Chrysler asks us to address one further issue: whether the circuit court erroneously exercised its discretion by awarding Hughes \$35,141 in attorney's fees. Chrysler claims that Hughes' counsel spent an unreasonable amount *988 of time on the case, and that the total amount billed by Hughes' counsel exceeded that charged by other attorneys doing similar work.

[5] Appellate review of an award of attorney's fees is limited to whether the circuit court properly exercised its discretion. *Chmill v. Friendly Ford-Mercury*, 154 Wis.2d 407, 412, 453 N.W.2d 197 (Ct.App.1990). A circuit court properly exercises its discretion if it "employs a logical rationale based on the appropriate legal principles and facts of record." *Village of Shorewood v. Steinberg*, 174 Wis.2d 191, 204, 496 N.W.2d 57 (1993) (citing *Petros v. City of Watertown*, 152 Wis.2d 692, 696, 449 N.W.2d 72 (Ct.App.1989)).

[6] In this case, we conclude that the circuit court did not erroneously exercise its discretion by determining and awarding attorney fees. The circuit court made an exhaustive, detailed review of the fees as reflected in the record. Although we might decide otherwise, this determination is discretionary with the circuit court. A review of the extensive record made by the court as to this issue precludes us from finding an erroneous exercise of discretion. Accordingly, we affirm the court of appeals in all respects.

The decision of the court of appeals is affirmed.

Wis., 1996.

Hughes v. Chrysler Motors Corp.

197 Wis.2d 973, 542 N.W.2d 148, 64 USLW 2472

END OF DOCUMENT

To: Mitsubishi Fuso Truck of America, Inc.
Customer Service Representative
2015 Center Square Road
Logan Township, NJ 08085

Motor Vehicle Lemon Law Notice
Demand for relief under s. 218.0171, Wisconsin Statutes

Pursuant to the Wisconsin Lemon Law, We are notifying you, Mitsubishi Fuso Truck of America, Inc. , that our vehicle has been out of service at least 30 days because of one or more defects during its first year of warranty. In addition, Mitsubishi Fuso Truck of America, Inc. has failed to repair our vehicle in violation of Wis. Stat. §218.0171(2)(a).

Vehicle make: Mitsubishi Fuso Model: FE160 Year: 2012 VIN (17 digits):JL6BNK1A9CK013794
Name and city/state of selling dealer: Madison Truck Sales, Inc., Madison, WI.
Date of vehicle delivery: April 13, 2012 Today's date: May 20, 2013

Name of financial institution that financed/leased vehicle: None.
By providing this information, I authorize the manufacturer to contact this financial institution for financing information needed to calculate a refund. Authorization expires 35 days after the date of this form.

See attached for vehicle defect and repair information

Our vehicle has defects that substantially impair its use, value and safety. We demand that Mitsubishi Fuso Truck of America, Inc. give us a comparable new vehicle in accordance with the Wisconsin Lemon Law, within 30 days, plus collateral costs.

Description of collateral costs we have incurred in connection with vehicle repairs. (Examples include alternative transportation, towing costs.) unnecessary cleaning of battery connections, July 18, 2012 - \$37.45.

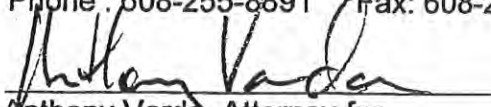
Description of non-removable options that have been added to our vehicle after the sale, but not included in the vehicle purchase price. (Examples include sunroof, rustproofing, roof rack, pinstriping, etc.)
Van Graphics (\$ 1,690.00) Purchase price included van box and lift gate.

Description of missing equipment or serious unrepaired vehicle damage. (Do not include normal wear and tear such as minor dents, scratches, pitted glass, soiled carpets, minor stains or tears.) NONE.

We offer to return our vehicle and transfer title after Mitsubishi Fuso Truck of America, Inc. meets our demand for Lemon Law relief.

Owners' names: DISTRICT COUNCIL OF MADISON, INC. - SOCIETY OF ST. VINCENT de PAUL

Address: C/O Attorney Anthony Varda
DEWITT, ROSS & STEVENS, S.C.
2 E. Mifflin Street, Suite 600
Madison, WI 53703
Phone : 608-255-8891 Fax: 608-252-9243



Anthony Varda, Attorney for
DISTRICT COUNCIL OF MADISON, INC.
- SOCIETY OF ST. VINCENT de PAUL

Vehicle repair information

DISTRICT COUNCIL OF MADISON, INC. - SOCIETY OF ST. VINCENT de PAUL made its Mitsubishi Fuso Truck available to an authorized dealership for repair because of the defect(s) on these dates:

Date in/out	Mileage	Dealership name	Problems you reported
5/16-29/2012 (13 days)	1831	Madison Truck Sales, Inc.	Fuel injector failed
6/8-26/2012 (19 days)	3175	Madison Truck Sales, Inc.	Towed in; electrical problems; reset breaker and inspected battery
7/18/2012 (1 day)	5087	Madison Truck Sales, Inc.	Disconnect and reconnect battery; clean battery connections
12/3-7/2012 (4 days)	13210	Madison Truck Sales, Inc.	Recalls MF000002, C1005320, and C1005620; install new fuel line clamp
1/22-31/2013 (8 Days)	15412	Madison Truck Sales, Inc.	Repair plugged crank case breather
2/7-13/2013 (6 Days)	16415	Madison Truck Sales, Inc.	Hose clamp cut through coolant hose
2/14-27/2013 (14 days)	16692	Madison Truck Sales, Inc.	Failed starter
3/19-4/29/2013* (26 days to 4/13/2013)	17999	Madison Truck Sales, Inc.	Engine light on , no power, diagnostics unable to determine problem; replaced Mass Air Flow Sensor
4/5-24/2013* (Included above)	18786	Madison Truck Sales, Inc.	Reprogram ECM and additional diagnostics; unable to determine problem causing lack of power

The vehicle was out of service 91 days in the first year.

u:\emonlaw\demd7-00.doc WisDOT 7/00

* This vehicle was returned with an uncorrected warranty non-conformity in violation of Wis. Stat. §218.0171(2)(a). The vehicle remains "out of service" until the non-conformity was repaired, even if it is in the possession of the owner. See *Vultaggio v. General Motors Corp*, 145 Wis.2d 874, 429 N.W.2d 869 (Ct. App. 1988).

MEMORANDUM

TO: Senator Petrowski

FROM: Anthony Varda

DATE: May 28, 2013

RE: Proposed Lemon Law Reforms

Suggested Lemon Law Reforms:

1. Put in the law the elements that must be in the Lemon Law demand letter.
 - a. Require selection of repair or replacement
 - b. Require name of lien holder
 - c. Require mileage at first incident
 - d. Require contact information
 - e. Require dealer's name, date of delivery and purchase price
 - f. Require itemization of other damages
2. If demand does not fulfill statutory elements, 30 days not triggered but Manufacture must respond to demand within 30 days requesting missing information; providing the missing information starts the 30 days.
3. Changing the request between refund and replacement restarts the 30 days.
4. If Manufacturer commits in writing to repair or replacement, as requested, within 30 days, in compliance with the Lemon Law, it gets 15 more days on the deadline to perform, 60 days if a commercial vehicle.
5. Refund requirement is fulfilled by delivering into the possession of the Consumer, his agent, or the lien holder a joint check in the refund amount; the consumer is obligated to deliver clear title and the vehicle within 7 days of payment or Manufacturer entitled to specific performance, issuance of a clear title in its name, double damages and attorney's fees from any party receiving the check or proceeds of the check.
6. If manufacturer elects to refund, although consumer requested a replacement, then no deduction for use.
7. Rights accrue and vest in one year from delivery; suit must be filed within 3 years.
8. Eliminate right to jury trials.
9. Add good faith provision: "Good Faith Required. If the court finds that either party has intentionally failed to reasonably co-operate with the other party's efforts to comply with obligations under this section, for purposes of hindering the other party's ability to comply with or seek recovery under this section, the court may extend deadlines set herein, reduce the penalty damages or attorneys fees and costs awarded, or strike pleadings and enter default judgment."
10. Make any forum selection clause requiring enforcement of the warranty or Lemon Law rights outside Wisconsin illegal. [See Wis. Stat. 779.135(2) for example]

Assembly Judiciary Committee Hearing – May 29, 2013

Public Testimony of the Truck and Engine Manufacturers Association On Wisconsin Assembly Bill 200

**Presented by
Joseph L. Suchecki
Director, Public Affairs**

Mr. Chairman and Members of the Committee:

I am Joe Suchecki, Director of Public Affairs with the Truck and Engine Manufacturers Association (EMA). EMA is the trade association that represents all the major manufacturers of heavy-duty trucks as well as the manufacturers of engines used in a variety of on-highway vehicles and nonroad equipment; lawn, garden and utility equipment; and stationary generators. EMA represents our 28 member companies on state and federal legislation and regulation related to emissions, safety, manufacturing, and warranty and franchise issues. Several EMA members have facilities and operations here in Wisconsin including Briggs and Stratton, Caterpillar, Cummins, Inc., John Deere, GE Waukesha Engines, Kohler and Navistar.

I am here today to voice EMA's strong support for Assembly Bill 200 that provides practical and well-reasoned amendments to Wisconsin's lemon law. Wisconsin's lemon law was crafted to help assure that consumer complaints regarding motor vehicle warranty issues were resolved quickly. It is one of the very few state lemon laws in the country that applies to commercial and heavy-duty vehicles.

The changes to existing law proposed in Assembly Bill 200 are needed for two main reasons.

First, the existing law applies the same process and requirements to resolve warranty issues for medium and heavy-duty vehicles as it does for light-duty automobiles. For example, if a vehicle owner requests a replacement truck, a manufacturer must deliver a comparable truck within 30 days. Because almost all commercial and heavy-duty vehicles are custom built to the specifications of the purchaser, it is often impossible to provide a comparable vehicle under the current law within a 30-day time period. Truck and bus manufacturers simply cannot go to a dealer's lot somewhere and find a comparable vehicle – they need to be manufactured and assembled to specifications. The fact that essentially all heavy-duty trucks are not mass-produced but built to owner specifications can subject truck manufacturers to double damages under current law because there is no way they can physically comply with the required timeline that is based on a light-duty automobile model where the cars are mass-produced.

Another key difference between commercial vehicles and cars is that car manufacturers are vertically integrated and truck and bus manufacturers are not. A heavy-duty truck is likely to have a chassis from the vehicle manufacturer, an engine from another manufacturer, a transmission or axle from another manufacturer and a body from yet another manufacturer. For that reason, the actual vehicle manufacturer may not have warranty responsibility for all components. For example, under federal law, the emissions warranty and certification requirements remain with the engine manufacturer. The lack of complete vertical integration in the heavy-duty vehicle industry creates a need to address the real differences between car and truck manufacturers on this issue.

Second, the existing law provides opportunities to abuse the system by providing incentives to vehicle owners and their attorneys to game the system in order to obtain larger cash settlements from manufacturers. By law, any rewards are automatically doubled if the 30-day time period to supply a replacement is not met. Owners can use defective vehicles for years and then require a new replacement under the law. Owners often demand new vehicles or refunds and claim that non-essential component of the vehicle affect use and performance.

Truck manufacturers have been subject to the same problems and unjust settlements under the current law as have the light-duty sector. Some examples include:

- One manufacturer was forced to pay double damages, as well as transaction fees and interest payments even though the manufacturer offered the vehicle owner a settlement check but the vehicle owner refused to accept the check within the 30-day time period and then sued for the double damages.
- Another manufacturer was forced to pay a vehicle owner more than 1.5 times the value of the original truck even though the vehicle owner drove the truck for over two years and put on more than 200,000 miles before making his claim. In this way, the owner essentially got the manufacturer to pay for the owners loans on the vehicle.
- Out of state trucking companies are claiming delivery to a Wisconsin address and then making a lemon law claim under Wisconsin law to get double damages, even though the truck was never registered or used in Wisconsin.
- Vehicle owners are making an initial warranty claim, and then driving the vehicle for years before making a lemon law claim, and thus gaming the system to get a new vehicle at no cost. This has resulted in manufacturers providing a brand new replacement vehicle even though the owner kept the vehicle in service and doing work for many years before making a claim. Some of those claims are for frivolous repairs, such as door seal leaks that do not significantly affect the overall performance of the vehicle.

Assembly Bill 200 addresses those issues by more clearly defining out-of-service, deleting automatic double damages and leaving the determination of appropriate awards to the courts, providing a more reasonable time frame for the owner to make a claim, and for commercial vehicles, extending the time period allowed for replacement vehicles to 120 days rather than 30 days.

The amendments proposed in AB 200 do not change the basic consumer protections inherent in the current lemon law for vehicle owners in Wisconsin, but they do close the loopholes and incentives that allow abuse and inappropriately large settlements, awards and attorney fees. The language in the current law not only results in unjustified and high costs for manufacturers doing business in Wisconsin but also is bad for Wisconsin consumers since they are the ones who must eventually pay for those large settlements through increased vehicles costs in the state.

EMA and its members support the need to ensure that motor vehicle owners in Wisconsin continue to have a fair and reasonable process to resolve vehicle warranty disputes. The proposed amendments do nothing to take away that process.

Finally, while EMA supports the bill, we seek an additional amendment to address the definition of commercial motor vehicle. The bill currently defines commercial vehicles as vehicles over 26,000 pounds. In reality vehicles over 10,000 pounds are generally classified as medium and heavy duty vehicles, are almost always used for commercial purposes and are built to specifications and not mass produced. Thus, we ask the committee to approve an amendment to the bill to define heavy-duty vehicles as vehicles over 10,000 pounds and to apply the proposed 120 day period to provide a replacement vehicle to all heavy-duty vehicles and not just those over 26,000 pounds.

Thank you for the opportunity to speak today, and I would be happy to answer any questions that you may have.

Comments of
The Recreation Vehicle Industry Association
In Support of AB 200
Madison, WI
May 29, 2013

Good Morning.

My name is Jay Landers. I am the Senior Director of Government Affairs for the Recreation Vehicle Industry Association (RVIA) and I am here today in support of AB 200, a bill that amends the Wisconsin lemon law to bring it more in synch with lemon laws in other states.

RVIA is a national trade association that represents the manufactures of recreation vehicles including motorhomes and their component suppliers.

Background:

Lemon laws were first conceived as a mechanism that allowed consumers to find some relief when their automobile had multiple or frequent non-conformities. It makes sense that a product everyone depends on so much and is expensive should have this protection. We depend on our cars to go to work, church, pick up kids, do errands etc. Cars have become a necessity – especially in areas without mass transit.

Unlike automobiles, motorhomes are not a necessity. They are discretionary products. But they are part vehicle and they certainly can be expensive. So inclusion in the lemon law is understandable. But the reality is – the lemon law was enacted with automobiles in mind. As a result, motorhomes often can meet the presumption of a lemon law due to the lemon law

process. However, unlike automobiles, motorhomes are not used on a daily basis. They are essentially a “house on wheels” and as such, there are that many more things that can go wrong.

Motorhomes are a bit more like trucks in that they are both multi-stage manufactured vehicles. But motorhomes are really the ultimate multi-stage vehicle. In fact, all motorhomes have many, many separate warrantors: from the chassis, to the engine, to the transmission often all from different manufacturers/warrantors – to all the house-half components: the refrigerator, generator and the microwave makers, again all different warrantors.

The lemon law process in Wisconsin is unique in that it technically allows a motorhome to be a lemon as a result of applying automobile warranty repair logic to motorhomes.

Regarding Double Damages provision:

Motorhome manufacturers’ survival as a business depends on pleasing their customers, especially because they produce a discretionary product. For that reason alone, even without a lemon law, motorhome manufacturers must take care of their customers. Unfortunately, because these products are built by humans occasionally one may roll off line and into a dealer’s lot.

RVIA believes the lemon law’s principal motivation should not be to punish the manufacturer who, after all, would far prefer that no lemons’ escape their line, but rather to provide another incentive to that manufacturer to promptly restore the fortunes of those unfortunate consumers back to where they were when they first purchased that new vehicle.”

RVIA believes that the current provision that requires vehicle manufacturers who lose a lemon law adjudication to pay double the value of the vehicle plus attorneys fees is overly punitive.

Moreover, that provision has a disparate financial impact on motorhome manufacturers, compared to other vehicles, given the higher cost of motorhomes the lower production volumes and small business characteristics of motorhome manufacturers.

The fact is, the motorhome industry has only a few significant manufacturers – and none of those companies even come remotely close to any auto manufacturer in size, scope or resources.

There are currently about 27 motorhome manufacturers - most of those companies are small or medium sized, family owned businesses. Of that 27, maybe 3 or 4 of them produce an overwhelming majority of the motorhomes sold in the US. And just for comparison purposes, in 2012, a total of 156 motorhomes were shipped to Wisconsin. (Source: RVIA) Compare that to the 313,194 cars and light trucks sold in Wisconsin in the same time frame (Source: NADA) and you can begin to see the disparity between the two industries.

A small volume high-line motorhome manufacturer could easily find itself on thin, financial ice if they were to receive a lemon law judgment that required them to lay out hundreds of thousands of dollars beyond making the consumer whole. Motorhome manufacturers are willing to stand behind their products but feel the double damages provision is excessively punitive and has the potential to jeopardize their entire company.

Regarding Days Out of Service provision:

RVIA also supports the proposed amendments surrounding the clarification of the phrase "days out of service." Given the usage patterns for a motorhome, it is critical that everyone is clear on the meaning of "days out of service."

It is not uncommon for motorhome owners to take their motorhome to a dealer with a laundry list of "things" or "issues" that need to be fixed. The owner tells the dealer what is wrong, but that he doesn't need the motorhome for a few weeks or until mid-summer. So the consumer takes the motorhome back home and the dealer gets busy ordering parts and working on other coaches that are there in the yard. When the parts are available and the timing is convenient for the consumer the repairs are made. However, under the current statute, the lemon law clock is nevertheless ticking?!

That provision makes little sense particularly in the case of a motorhome which is half vehicle and half temporary living quarters. For instance if an appliance has failed, the motorhome can still be safely used. Failure of one component that is incapable of providing service as warranted should not trigger the running of a lemon law clock.

RVIA believes that limiting the 'days out of service' to the time it actually takes to make a repair is fair – especially given the fact that some repairs to motorhomes take considerably longer than repairs to an automobile. AB 200's language is consistent with most lemon laws that define this element as "out of service for repair."

Regarding Statute of Limitations:

Motorhomes are the ultimate vehicles for “road trips.” Such trips can last for weekends, weeks or multiple weeks at a time. Under the current law, the statute of limitations for filing a lemon law claim is six years. If something is going to go wrong, it is likely to appear within the first year after purchase. Given the expense of a motorhome and the rationale for its use – extended periods of time away from home – it makes little sense for a consumer to wait 6 years before filing a lemon law claim. That time frame is simply an invitation for litigation. The proposed 24 month statute of limitations is consistent with more than a dozen other states where the limitation periods range from 12 to 24 months.

Lastly, it should be noted that motorhome manufacturers are not trying to get out from under the lemon law. In fact, RVIA has worked with the International Association of Lemon Law Administrators and together created a lemon law that is specifically tailored to address our unique issues. Such a law has been enacted in Florida and we are in preliminary discussions with a number of other state lemon law administrators to enact the same law.

Thank you.



TO: Members of the Assembly Judiciary Committee

FROM: Jason Culotta
Director, Tax & Transportation Policy
Wisconsin Manufacturers & Commerce

DATE: May 29, 2013

RE: Support for Assembly Bill 200

Wisconsin Manufacturers & Commerce (WMC) appreciates the opportunity to provide input on Assembly Bill 200, which would reform our state lemon law by repealing the mandatory double damages provided for under current law.

WMC is the state's largest business trade association, with over 3,500 members in the manufacturing, service, health care, retail, energy, banking and insurance sectors of our economy. WMC is dedicated to making Wisconsin the most competitive state in the nation to do business, and toward that end, we support legislation encouraging a legal environment that provides fairness under the law and the application of reasonable and clear standards. With those principles in mind, we respectfully request your support of Assembly Bill 200.

Our current lemon law requires a manufacturer to provide a comparable new vehicle or a refund for a lemon within 30 days of the vehicle owner's request. The principle tenets of the law, providing the owner with a new vehicle or a refund in a timely fashion, remain under Assembly Bill 200.

By removing the double damage provision, an incentive would be removed for delaying the resolution of lemon law disputes.

In Section 218.0171(7) of the statutes it is stated: The court shall award a consumer who prevails in such an action twice the amount of any pecuniary loss, along with costs, disbursements and reasonable attorney fees, and any equitable relief the court determines appropriate.

The courts have interpreted "pecuniary loss" to include the vehicle's purchase price, meaning that the vehicle owner is awarded twice the vehicle's cost.

Manufacturers who fail to deliver the refund or a new vehicle within 30 days, for whatever reason, are liable for double damages, attorney fees, and other costs.

The mandatory double damage provision coupled with the recovery of attorney fees allowed for under current law encourages delay in resolution of these cases beyond the 30-day statutory deadline.

The Wisconsin Supreme Court's recent ruling in *Marquez v. Mercedes-Benz USA, LLC*, 2012 WI 57, amply demonstrates this point.

After being alerted that the car was a lemon, the manufacturer began working with the owner and his attorney to arrange for a comparable vehicle. While the owner did initially seek a comparable vehicle, he changed his mind with five days left under the 30-day statutory deadline and instead requested a refund.

Due to this request being made the day before Thanksgiving, an agent of the manufacturer arrived in Wisconsin on the Monday following that weekend to issue a refund check to the owner. That same day, the agent contacted the owner's bank to obtain the auto loan information necessary to write the check. The bank told the agent that due to privacy concerns the owner would need to call and authorize the release of information.

The agent made this request of the owner, who agreed to call the bank but then declined to do so. The agent then called the owner's attorney, who could not be reached.

Consequently, the manufacturer could not issue the refund check due to the lack of necessary information. The owner's attorney filed a lemon law suit against the manufacturer the following day.

The subsequent court action resulted in a ruling from the state Supreme Court that replaced the cost of a \$58,000 vehicle with over \$700,000 in damages.

Rulings like these issued under the current lemon law encourage attorneys to run out the 30-day statutory deadline, hit the lemon law jackpot, and give our state a reputation of being a hostile place in which to do business.

Assembly Bill 200 will continue to allow consumers to receive a comparable new vehicle or a full refund in a timely fashion similar to current law, but without the excess of the current double damage provision. Thank you for your thoughtful consideration of our support for Assembly Bill 200.