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Defective Vehicles Leave Consumers With Sour Taste

What practitioners need to know about the country's first lemon law

By **SERGEI LEMBERG**

Vehicle defects sour the lives of many consumers. By some estimates, anywhere between 1 percent and 3 percent of all vehicles sold in the United States qualify as "lemons." Yet lemon law and warranty statutes remain a mystery to most practitioners. Because defects plague so many vehicles, many lawyers will be called upon to peel away the layers of lemon law and warranty legislation.

State lemon laws protect purchasers of vehicles affected with recurring defects that a dealer is unable or unwilling to correct after a number of

attempts. Connecticut was the first state to enact lemon law legislation. Since then, all other states and the District of Columbia have followed suit. In addition to lemon law, the federal Magnuson Moss Act and varied state contact statutes provide relief for aggrieved consumers.

Connecticut lemon law is limited to motor vehicles purchased or leased within the State of Connecticut. Therefore, a Connecticut client who purchased a vehicle in another state may have to look to the law of the state of purchase for lemon law coverage. This restriction sets Connecticut apart from the neighboring states of Massachusetts and New York, whose lemon laws cover vehicles trans-

ferred to—as well as purchased in—those states.

States differ on the type of vehicles covered by lemon law. Connecticut's lemon law extends broadly to all "motor vehicles," defined as all vehicles up to 26,000 pounds, including passenger cars, commercial motor vehicles, and motorcycles. By comparison, New York lemon law limits coverage only to vehicles used for personal or family purposes, but expands it to motor homes that meet certain requirements.

Massachusetts lemon law covers cars, but not vehicles used for business purposes or motor homes.

The duration of lemon law coverage also varies by state. In Connecticut, lemon law covers defects that arise within the first 2 years or 24,000 miles of a vehicle's operation. In New York, the defects must arise in the first 2 years or 18,000 miles. Massachusetts' lemon law provides by far the shortest time period of one year or 15,000 miles of ownership. Thus, not only the state of purchase, but also the type of vehicle and the duration of ownership may determine whether lemon law applies to a client's case.

To be considered a lemon, a vehicle has to have a defect that substantially impairs its use, market value, or safety. The defect must continue to exist after a number of repair attempts or after the vehicle has spent the required number of days at the shop.

In all three states, a lemon can ripen in three different ways. First, it may have a defect that is likely to cause death or seri-

ous injury. For such a defect, Connecticut affords only two repair opportunities. If the defect recurs after the second repair, the vehicle is deemed a lemon. Under most states' law, for non-safety related problems, the dealer and/or manufacturer has a "reasonable number of opportunities" to cure a problem. If the same problem exists after the last repair attempt, the vehicle is a lemon.

What counts as "reasonable" differs: Connecticut and New York afford four repair attempts, while Massachusetts allows three repair attempts plus a fourth 'final' cure opportunity.

Another way for a vehicle to qualify as a lemon involves a calculation of days it remains out-of-service for any number of unrelated problems. In Connecticut and New York, a vehicle may qualify as a lemon if it has been out of service for repairs for a total of thirty calendar days for any number of unrelated problems. In Massachusetts, time out of service must exceed fifteen business days.

Damages

A consumer successful in a lemon law claim may be entitled to a replacement of the lemon with a new comparable motor vehicle or a refund of the full price paid, less a reasonable deduction for mileage. The consumer may recover incidental damages, such as registration fees and other costs associated with the car purchase. Finance charges incurred after the problem is first reported to the dealer and during any subsequent period when the vehicle is out of service for repairs may also be recoverable.

Attorneys' fees may also be recoverable in a successful lemon law action or arbitration



Sergei Lemberg practices in the areas of consumer law, bankruptcy and litigation. He can be reached at slemberg@lemborglaw.com.

in both Massachusetts and Connecticut. New York arbitrators, however, have no authority to award attorneys' fees. Under Connecticut law, a manufacturer may recover attorneys' fees as well upon the finding that a lawsuit or arbitration was brought "without any substantial justification."

Used car lemon laws apply to the sales of used vehicles. Connecticut used car lemon law does not provide aggrieved consumers a right to a refund of the vehicle, but merely regulates the minimum length of warranties. The extent of the coverage is based on the purchase price.

If the car costs between \$3,000 and \$5,000, a warranty covering the full cost of parts and labor must extend for at least thirty days or 1,500 miles; if the motor vehicle costs more than \$5,000, the same warranty must be extended for at least sixty days or 3,000 miles. Similar provisions in Massachusetts and New York, in addition to regulating the

length of used car warranties, provide a right to a refund.

Forum Selection

Forum selection becomes an important part of advising clients with respect to their rights. Connecticut, Massachusetts and New York offer state-sponsored mechanisms for the resolution of lemon law disputes. Manufacturers themselves sometimes maintain arbitration programs, but resort to such mechanisms is rarely required as a precondition to a state-sponsored arbitration or a lawsuit.

In Connecticut, a consumer has the choice of either suing the manufacturer or dealer directly, or filing a complaint with The Department of Consumer Protection's arbitration panel. The arbitration panel's decision is final and binding.

Magnuson Moss Act

Even if a vehicle falls outside the cover-

age of lemon law, consumers may still gain relief under the Magnuson Moss Act and state warranty law. As with any other transaction for the sale of goods, an aggrieved car purchaser may bring claims for breach of contract and for breach of express and implied warranties made during the sale. The Magnuson Moss Act in effect creates a federal cause of action for the breach of these warranties and protects the right to attorneys' fees for successful litigants.

Statistics show that incurable vehicle defects affect millions of consumers across the country. Such problems exist not only in cheaper vehicles but also in luxury cars—some of which regularly show up on lists of top lemon vehicles. Careful analysis of the facts of a client's case in relation to applicable lemon law coverage that varies state-by-state may allow for an effective resolution of a client's lemon problem. ■