



National Association of Motor Vehicle Boards and Commissions

2015 Winter Workshop Agenda Meeting Minutes

January 23, 2015
Marines' Memorial Association
609 Sutter Street
San Francisco, CA 94102
415-673-6672

Maintaining Momentum in an Evolving Industry

Friday, January 23, 2015

10:00 a.m. - 11:00 a.m. **Lemon Laws – The Root of All Litigation?**
Johnathan Morrison

Johnathan Morrison provided an overview of the lemon law lawsuits filed against dealers in California which followed the attached powerpoint presentation.

Dealers generally try to indemnify themselves against the liability, but often a cause of action is included in the lemon law lawsuit regarding fraud by the dealer.

The attendees discussed the individual state lemon laws in California, Arkansas, Nebraska, and Oklahoma.

In California, there is a growth of the lemon law legal profession. Often the "lemon lawyer" is not actually interested in a lemon lawsuit, but instead is in the market to find consumers that have a case against a dealership, including class actions, for other problems related to the transaction process. The goal is to get an upset consumer into the office and then find a technicality in the transaction.

Jim Moors with NADA discussed the lemon law actions recently, and the fact manufacturers want uniformity in law and a last chance effort to remedy.

The presentation concluded with practical approaches for the dealer, manufacturer and customer to handle the lemon law process and included the following: 1) Consult manufacturer about detection and notification requirements and recommendation (if any); 2) Train service team to track and report repeat service customers; 3) Make periodic follow-up calls to customers; 4) Coordinate with sales and finance staff who handle customer complaints; 5) Get the factory involved early.

Mr. Morrison's presentation is attached.

12:45 p.m. – 2:00 p.m.

Planning Discussion for Fall Meeting

The group then moved on to a discussion regarding coordination of the Fall meeting. The decision was approved to host the Fall meeting in Phoenix, Arizona.

There was unanimous approval to send a representative to the Western regional meeting of American Association of Motor Vehicle Administrators.

2:00 p.m.

Adjournment

The motion to adjourn was approved and seconded.

Dealership Lawsuit Tracker



California Lemon Law Breakdown by 12 Most-Frequent Defendants				
#	Factory	Lemon Leases YTD*	% of Lemon Law Claims*	Market % (Through 3Q 2014)**
1	General Motors	521	27.57%	7.5%
2	Ford Motor Co.	446	23.28%	10.4%
3	Chrysler Group	166	8.76%	7.3%
4	BMW N.A.	175	9.39%	4.7%
5	Nissan N.A.	162	8.41%	9.1%
6	Volkswagen Group	135	7.15%	5%
7	Mercedes-Benz	81	4.28%	3.9%
8	Hyundai	68	3.57%	4.1%
9	Honda/Acura	45	2.34%	1.8%
10	Toyota/Lexus	34	1.77%	22.3%
11	Kia	41	2.13%	2.8%
12	Jaguar/Land Rover	22	1.14%	0.7%
	Total	1,926		

*Source: Estimates from Auto Advisory Services' Legibus Tracking

**Source: California New Car Dealers Association Auto Outlook Report, Third Quarter

***Lexus/Lexus N.A. Excluded from breakdown

California Lemon Law 2011-2014 (YTD)		
Year	Lemon Law YTD Brands Issued*	Lemon Law Leases
2011	4,950	1,246
2012	7,599	1,861
2013	7,418	2,119
2014	7,500 (YTD)**	1,926 (YTD)

*Source: California Department of Motor Vehicles
 **Estimated based upon 4142 Brands Issued in Q1 and Q2

***Lawsuits Against Top-12 Automaker Lemon Law Defendants (as of 9/30/2014) from Auto Advisory Services' Legibus Tracking

The Lemon Law



- California's Song-Beverly Consumer Warranty Act:
 - Establishes "implied" warranties unless specifically disclaimed ("As Is");
 - Requires that "express" warranties meet certain requirements;
 - Requires that manufacturers must either:
 - 1) replace goods; or
 - 2) reimburse the buyer in an amount equal to the purchase price paid by the buyer (with an offset for use prior to discovering the defect)
 if unable to repair the goods to conform to the warranty after a reasonable number of attempts.

The Lemon Law



Oklahoma:

- **Covered Vehicles:** The Lemon Law covers any new motor-driven vehicles that are required to be registered, except vehicles above 10,000 pounds gross vehicle weight and the living facilities of motor homes.
- **Lemons:** A new vehicle may be a lemon if there is a defect covered by the warranty which substantially impairs the use and value. However, the defect cannot be the result of abuse, neglect or unauthorized modifications or alterations.

The Lemon Law



- **Presumption:**
 - Attempted to fix the same defect four or more times during the warranty period or one year following the date of the original delivery of the vehicle, whichever is earlier; or
 - The vehicle is out of service because of the repairs for a total of 30 business days during the same period.
- **Relief:**
 - accept a return of the vehicle from the consumer and refund the full purchase price including fees and taxes, but excluding interest, less a reasonable allowance for the consumer's use of the vehicle; or
 - replace the vehicle with a comparable new model acceptable to the consumer, if one can be agreed upon.

The Lemon Law



- **Relief:**

- After receiving payment of a reasonable offset for use by the consumer, replace the motor vehicle with a replacement motor vehicle acceptable to the consumer; or
- Repurchase the motor vehicle from the consumer and refund the full purchase price or lease price, less a reasonable offset for use and less a reasonable offset for physical damage sustained to the vehicle while under the ownership of the consumer.

- **Defenses:**

- The nonconformity does not substantially impair the use, value, or safety of the vehicle;
- The nonconformity is the result of an accident, abuse, neglect, or unauthorized modification or alteration by persons other than the factory or dealer; or
- The claim by the consumer was not filed in good faith.

The Lemon Law



Nebraska:

- **Covered Vehicles:** New vehicles purchased for personal, family, household, or business purposes.
- **Lemons:** Vehicle does not conform to warranties, and the consumer reports the problem to the factory or dealer during the warranty term or one year following the date of original delivery to a consumer (whichever is the earlier).
- **Defense:** (1) The alleged nonconformity does not substantially impair such use and market value or (2) the nonconformity is the result of abuse, neglect, or unauthorized modifications or alterations by a consumer.

The Lemon Law



- **Considerations:**

- Lemon Lawyers take complaints about vehicles, ask the customer to send all documents received, and interview the customer about the purchase process.
- They are really looking for technical (preferably DMS-generated) non-compliance by the dealer.
- The key to avoiding lawsuits is to prevent the customer from calling a Lemon Lawyer.

The Lemon Law



- **Practical Approaches:**

- Consult manufacturer about detection and notification requirements and recommendations (if any);
- Train service team to track and report repeat service customers, including:
 - Multiple visits to dealership for repair;
 - Include "Could Not Replicate" as repair attempt; and
 - Take note of complaints about *other* dealership failed repair or "Could Not Replicate" experiences.
- Make periodic follow-up calls to customers;
- Coordinate with sales & finance staff who handle customer complaints.
- **GET FACTORY INVOLVED EARLY**