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State Lemon Law Coverage Terms: Dissecting the Differences

by Philip R. Nowicki, Ph.D.

State "lemon laws" provide consumers statutory protection against defects when purchasing vehicles. Attorneys and consumers should be aware of the fact that state "lemon laws" differ significantly from state to state. Uninformed consumers, unaware of the differences in state lemon laws, may inadvertently relinquish critical statutory protections when purchasing vehicles across state lines.

This article analyzes the lemon law coverage terms in effect July 1, 1997, in all 50 states as well as the District of Columbia.¹ Section I addresses general warranty coverage terms, differing impairment standards, and issues relating to place of purchase or registration. Section II delineates coverage term issues of non-traditional vehicles and non-traditional usage of vehicles. Section III addresses coverage term issues pertaining to rights and reporting periods and attempts by consumers to repair defects. This article concludes by analyzing the 1997 legislation and the possible impact it may have on lemon law coverage terms.

SECTION I

A threshold issue for any lemon law case is where the vehicle was

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purchased. The place of purchase determines which state's law the consumer must look to for protection. After determining the applicable state law, the consumer must look to the general warranty coverage terms since each state's general warranty coverage differs significantly. Finally, a state's definition of impairment may create barriers for consumer protection. These three issues are addressed in this

section.

Place of Purchase or Registration

In 25 states, lemon law coverage is limited to vehicles purchased in that state.² Fifteen of these states explicitly cover leased vehicles which must be acquired in those states for the lessees to receive protection.³ Another state, Iowa, covers vehicles purchased or leased in that state and vehicles purchased or leased in other states if the consumer is an Iowa resident at the time his or her rights are asserted.

Some lemon laws, such as those of Arizona, Illinois, South Dakota and Virginia, are silent as to the place or type of transaction that triggers coverage, but agency officials are inclined to deem an in-state sale (or, if applicable, lease transaction) as the governing criteria.⁴ New Hampshire and Ohio are also silent. However, New Hampshire recognizes in-state acquisitions or registrations in its criteria for eligibility for state-run arbitration.⁵ Ohio covers in-state sales and also recognizes coverage for vehicles registered in that state, but purchased elsewhere, viewing it as a condition for manufacturers to be licensed to do business in that state.⁶ The District of Columbia and 12 other states, besides New Hampshire and Ohio, provide coverage for vehicles purchased or registered in those states.⁷ However, Vermont requires the in-state registration to occur within 15 days of lease or purchase.

Alaska, Maryland and Oklahoma use in-state vehicle registration as the

coverage determinant. Seven other states are even more restrictive, limiting coverage to those consumers who purchase (or, if applicable, lease) and register vehicles in those states.⁸ However, in one of these states, Indiana, nonresidents who purchase or lease the vehicle in that state are also covered.

The coverage variations create interesting scenarios. For example, Maryland consumers who buy in West Virginia can opt for coverage under both lemon laws. Conversely, West Virginia consumers who buy in Maryland become lemon law "nomads," falling outside the scope of either state's criteria. Across the country, double or no coverage is more the rule, and single state coverage the exception, when consumers buy their vehicle in one state and register it in another. Consequently, the majority of transferred military personnel and those who move to other states after acquiring their vehicles will find themselves with a choice of lemon law remedies, or none at all.

Warranty Coverage Terms

The terms of the vehicle's warranty can play a factor in what is and what is not covered under a state's lemon law. For example, several states tie coverage of a vehicle's defects to the terms of the manufacturer's written warranty. In Alabama, Alaska, Colorado, Georgia, Kentucky, New York, South Carolina, South Dakota and Wyoming, coverage of a vehicle's defects is tied to the terms of the manufacturer's written

warranty. Fifteen states, Arizona, California, Connecticut, Maine, Montana, Nebraska, Nevada, North Carolina, North Dakota, Oklahoma, Oregon, Tennessee, Texas, Utah and Wisconsin, appear to have the same application. They limit warranty coverage to any applicable express warranty and the manufacturers' written warranties disclaim all other express warranties.

Six states, Delaware, Louisiana, Minnesota, Ohio, Pennsylvania and West Virginia, also limit coverage to the manufacturer's written warranty as it "pertains to the vehicle's condition and fitness for use." New Jersey has the same provision, but also provides implied warranty protection (discussed below). In Mississippi, Missouri and New Mexico, the consumer's warranty rights stem from the manufacturer's written affirmation of fact or promise in connection with the sale of the vehicle which relates to the nature of the material or workmanship, or promises to meet a specified level of performance over a specified period of time. In these states, a brochure prepared by the manufacturer that promises "an especially quiet ride" may create a warranty obligation that the manufacturer might otherwise not have to meet. Arkansas, Florida, Hawaii, Iowa, Virginia and Washington have similar language, but also apply it to other manufacturer expressions. Arkansas, Virginia and Washington consumers also get certain implied warranty rights (discussed below).

In Illinois, New Hampshire and

Vermont, consumers get the benefit of any express warranty as that term is defined under their state's Uniform Commercial Code. It appears that, in these states, certain representations made by the dealer could create warranty rights that the manufacturer would have to honor. Michigan has the same provision, but limits such warranties to those made by the manufacturer. Consumers in Idaho also get the benefit of any express warranty, other than statements of value, opinion or commendation of the vehicle, or representations of general policy concerning buyer satisfaction. Indiana consumers are covered when the defect or condition does not conform to the applicable manufacturer's warranty, or is one that substantially impairs the use, market value, or safety of the motor vehicle. The second provision is unique for any state since it is set apart from the first provision and the rest of the statute does not confine it to any type of warranty.

In the District of Columbia and New Jersey, consumers get the protections of the manufacturer's implied warranty. Virginia and Washington consumers get the benefit of any implied warranty. In Kansas, Massachusetts and Rhode Island, consumers are covered in similar fashion. The Massachusetts and Rhode Island laws cover defects that do not conform to any applicable express or implied warranty. In Kansas, any applicable warranty can provide coverage. Maryland consumers get all express and implied warranty coverage provided under that state's Uniform Commercial Code. The implied

warranties are of merchantability and fitness for a particular purpose.⁹ In Arkansas, consumers get the benefit of the implied warranty of merchantability. Consumers in these jurisdictions should have implied warranty rights at least for their respective state law's term of protection, or the term of the manufacturer's express warranty, whichever occurs first.¹⁰

Impairment Standard

One area where states appear to be in agreement is the use of the term "impairment." In most states, to qualify for relief, a defect or condition must substantially impair the use, value or safety of the vehicle.¹¹

In thirty-one states, the words, "use," "value," and "safety," comprise the potential elements of vehicle impairment.¹² One state, Texas, requires that the defect or condition affecting safety is one that creates a serious safety hazard. Fifteen states refer only to "use" and "value."¹³ New York and North Carolina simply use "value." The District of Columbia, Iowa and Tennessee specify the elements of vehicle impairment by definition only.

Often, the consumer only needs to prove one element of impairment to become eligible for protection under the state's lemon law. In some states,¹⁴ however, the consumer must prove that the defect impaired both the vehicle's *use and value*. Consequently, cosmetic flaws such as bad paint, frayed upholstery or trim, or even a misaligned dashboard, which affect

value are not likely to be covered, since they do not impair the vehicle's use.

States use the term "value" differently. For instance, Wyoming uses the term "fair market value" instead of "value." While twenty-five other states use "market value."¹⁵ The word "market" makes the impairment test less subjective. Presumably, the test is whether the defect substantially reduces the resale price of the vehicle, when compared to similar vehicles without the defect. In Texas, the defect must cause a substantial loss in market value. Massachusetts arbitrators must consider "whether the motor vehicle's market value is at least ten percent lower than it would have been, but for the nonconformity(s)."¹⁶

Many states use the term, "impairment of the vehicle to *the consumer*" to determine impairment.¹⁷ This phrase makes the impairment test more subjective. Consequently, the test for impairment of use, value or safety includes a personal dimension, provided the consumer's concerns are genuine or reflective of a particular need or purpose. Interestingly, 11 of these states also use the term "market value" instead of "value."¹⁸ Many other states, however, do not refer to impairment "to the consumer."¹⁹ This suggests that more weight will be given to other tests of impairment, including warranty repair costs, vehicle down-time, the projected life of the component with the defect, technical reports, or the "reasonable person" standard.

Surprisingly only a handful of states²⁰ define "impairment." In some

instances, the definitions elevate the degree of impairment the consumer must prove. In Alaska, for impairment of use, the defect must be one that "prevents a motor vehicle from being operated or makes the vehicle *unsafe to operate*." In Georgia, for impairment of value, the defect must "diminish the resale value of the new motor vehicle *more than a meaningful amount* below the average resale value for comparable motor vehicles." In other instances, the definitions appear to help consumers. Tennessee, Washington and the District of Columbia only require the consumer to prove the vehicle's resale value has been diminished "below average." The benefits to consumers are less clear in Virginia, where consumers must show the defect renders the vehicle "unfit, unreliable, or unsafe for ordinary use or reasonable intended purposes." Given the wide array of use, value and safety issues common to lemon law disputes, some of these definitions are arguably both a help and a hindrance as to what constitutes substantial impairment.

SECTION II

After ascertaining which state's lemon laws apply and how much warranty coverage is afforded, a consumer must next determine if their particular vehicle is afforded protection. Non-traditional vehicles such as recreational vehicles, conversion vehicles, trucks, and motorcycles are covered in some states while not in others. The variety of

coverage between states applies equally to leased, demonstration and used vehicles as well as vehicles used for business.

Recreational Vehicles and Conversion Vehicles

Twenty-seven states have lemon laws protecting purchasers of motor homes. In seven states, the entire vehicle is covered including living facilities.²¹ Ten states either exclude living facilities or specifically exempt facilities for cooking, sleeping, waste disposal, etc.²² Consumers in these states can expect coverage for such problems as water leaks, wind noise or defects in the cabin affecting passengers. Ten states limit coverage to the chassis or self-propelled portion of the vehicle.²³ Most recreational vehicle manufacturers utilize a separate chassis manufacturer such as Chevrolet, Freightliner, Ford, GMC, Oshkosh or Spartan. Even for the chassis, consumers are likely to receive a separate warranty for the engine and transmission from such companies as Cummins Engine and Allison Transmission. Since a consumer's rights are often tied to the manufacturer that issues the warranty, recreational vehicle owners who experience a broad array of problems may be pitted against four, five, or even six manufacturers in a lemon law action.²⁴

Most lemon laws cover conversion vehicles. Conversion vehicles are vehicles sold with modifications made by a company other than the

nameplate manufacturer. However, twelve states either specifically exclude conversions or may not cover conversions where the statutory definition of "manufacturer" is limited to the entity that manufactured the vehicle. Those states are Alabama, Alaska, Indiana, Kansas, Kentucky, Massachusetts, Nevada, Ohio, Oregon, Rhode Island, South Dakota and Wyoming. Montana covers vehicle conversions, except pickup truck campers, while North Dakota excludes interior equipment from its conversion coverage.

Trucks and Motorcycles

All lemon laws cover light trucks that are used primarily for personal, family or household purposes. Colorado, Michigan, Minnesota and Virginia specify pickup trucks in their motor vehicle definitions. Kentucky limits coverage to vehicles with no more than two axles.

Thirty-one states limit truck coverage by weight, but few share the same limit.²⁵ At one end of the spectrum, South Carolina and West Virginia exclude any truck with a gross weight in excess of 8,000 lbs. This threshold excludes such trucks as the Ford F-250 4x4, the Chevrolet ³/₄-ton 4x4, and the Dodge Ram 2500.²⁶ Conversely, Connecticut covers passenger and commercial motor vehicles weighing up to 26,000 lbs. gross vehicle weight rating. Consequently, Class 6 truck manufacturers such as Hino, Mack and Navistar,²⁷ generally not associated with lemon laws, may be potentially

liable under Connecticut's law.

For many truck owners, one pound makes all the difference in lemon law coverage in several states. Trucks such as the Chevrolet C/K Crew Cab 4-door pickup and the GMC Sierra Crew Cab 4-door pickup can carry a gross vehicle weight rating of 10,000 lbs.²⁸ and are covered in Arkansas, Hawaii and Iowa, which include vehicles *up to* that weight limit, but not in Alabama, Georgia, Montana and South Dakota, which cover vehicles *less than* that weight limit. Several other states utilize a 10,000 lb. limit, but apply it to declared gross weight (Arizona), or unladen weight (Wyoming), or registered gross weight (North Dakota). Florida has a limit of up to 8,000 lbs. gross vehicle weight, which is the maximum gross weight as declared by the owner or person applying for registration.²⁹ Ohio caps coverage at a one-ton carry load, which is comparable to a 10,000 lb. gross vehicle weight rating.

Fourteen states and the District of Columbia do not indicate a weight limit; however, in six of these states, Alaska, California, Massachusetts, Missouri, New Jersey and Pennsylvania, trucks are either excluded if used for commercial purposes under the definition of "motor vehicle" or under the definition of "consumer" which conditions primary use of the vehicle to personal, family or household purposes. These caveats essentially eliminate most big trucks from coverage. Of the other eight states, Nebraska provides the broadest coverage, having no weight

restrictions, while expressly covering use for business purposes.³⁰ In Nebraska, companies that purchase Class 8 trucks (exceeding 33,000 lbs. gross vehicle weight rating)³¹ from such manufacturers as Freightliner and Kenworth are uniquely afforded lemon law protections.

Twenty states cover motorcycles, either expressly in the lemon law definition of "motor vehicle" or by reference to the registration definition of "motor vehicle" which includes motorcycles.³² Washington requires the motorcycle to have an engine displacement of at least 750 cubic centimeters. Virginia's law applies to both motorcycles and mopeds. Texas' law, in addition to motorcycles, covers all-terrain vehicles.

Leased, Demonstration and Used Vehicles

Leased vehicles or lessees are expressly covered in thirty-two states and the District of Columbia³³ In 14 of these states, eligibility is conditioned upon the length of the lease, ranging from as little as a lease agreement that exceeds 60 days for New Jersey to a minimum two-year lease for New Hampshire and Vermont.³⁴

In eleven states, consumers who lease vehicles may be covered if their lease agreements hold them responsible for having warranty items repaired.³⁵ In these states, the definition of "consumer" includes a separate clause that creates coverage for "any other person entitled by the terms of

the warranty to enforce the obligations of the warranty." In one of these states, Ohio, a 1994 decision by a state appellate court upheld such an interpretation.³⁶ Another, Montana, covers any other person entitled to the benefits of the warranty.

Lessees may be covered in Idaho and Nevada. These states also cover other persons who can enforce the warranty terms, but include the clause under the definition of "buyer" rather than "consumer." The lemon laws of Alaska, Kentucky and Pennsylvania exclude mention of leased vehicles, lessees, or other persons who can enforce the warranty terms. Michigan expressly excludes lessees from its definition of "consumer."

Twenty states expressly cover demonstrator or previously untitled vehicles.³⁷ One of these states, Texas, covers any motor vehicle not previously subject to a retail sale. Another, Wisconsin, applies to executive vehicles as well as demonstrators.

New York covers used vehicles provided they are purchased, leased, transferred or registered in that state within the first two years or 18,000 miles of operation from the date of original delivery, whichever occurs first. In twenty-two states and the District of Columbia, used motor vehicles appear to be covered in the definitions of "consumer," which refer to "any person to whom such motor vehicle is transferred during the duration of the warranty period."³⁸ A similar clause is found in the laws of

fifteen other states; however, the transferee's use of the vehicle must be for the same purposes as the transferor who either acquired the vehicle for purposes other than resale, or used the vehicle primarily for personal, family or household purposes.³⁹ Consequently, if the original consumer transfers the vehicle to a dealer, who subsequently sells the used vehicle, it is unclear whether the second consumer is covered. Seven other states, Alabama, Arkansas, Iowa, Michigan, North Carolina, South Carolina and South Dakota do not reference transferees under their definition of "consumer," but do include "any other person entitled by the terms of the warranty to enforce its provisions." Consumers who buy used vehicles during the warranty coverage periods of the laws of these states may have residual benefits.⁴⁰

Business Use

Vehicles acquired by businesses or used primarily for business purposes are likely covered to some degree in forty-six states, plus the District of Columbia. However, only Nebraska expressly and unconditionally provides protection for consumers who primarily or exclusively utilize their vehicles for business purposes. On the other hand, Massachusetts expressly excludes coverage when primary use of the vehicle is for business purposes. California, Illinois and Pennsylvania limit coverage to primary use of the vehicle for personal, family or household purposes. Minnesota

requires use of the vehicle for personal, family or household purposes at least forty percent of the time.

The term "consumer" is broadly defined in some states, thereby, possibly allowing for coverage of a business vehicle. Arizona, Arkansas, Connecticut, Delaware, Indiana, Iowa, Kansas, Montana, New Hampshire, North Carolina, Oklahoma, Rhode Island and Wisconsin define a "consumer" as the purchaser (or, if applicable, the lessee) of the vehicle, other than for purposes of resale, and coverage is not conditioned upon any particular use of the vehicle. The District of Columbia and Utah have the same general provision, but the District of Columbia limits coverage to natural persons and Utah restricts coverage to individuals. Kentucky covers any resident person who buys a vehicle in that state.

Other states have conflicting clauses in their definition of "consumer" making coverage of business usage of the vehicle unclear. For example, Colorado, Idaho, Louisiana, Nevada, New Mexico, North Dakota, Oregon and South Carolina define a "consumer" as "a person who normally uses the vehicle for personal, family, and household purposes," with a further reference that also includes "any other person entitled by the terms of the warranty to enforce its obligations." Eight other states use the same definition of "consumer," except five, Florida, Mississippi, Missouri, New York and West Virginia, use "primarily" (instead

of "normally"), and three, Alabama, South Dakota and Virginia, use "substantially." The conflicting clauses in these sixteen states force the question: Does use of a vehicle primarily, or even exclusively, for business purposes negate lemon law coverage when the manufacturer's warranty permits such use? Although major manufacturer warranties deny coverage when damage to the vehicle is a result of misuse or improper operation of the vehicle, none void the warranty for business or commercial use of the vehicle.⁴¹

Three of these states, Florida, Mississippi and Virginia, recognize in their legislative intent, the hardship a defective vehicle imposes on the consumer. Arguably, such hardship is greater on the newspaper carrier, florist, realtor, carpet cleaner or yard person than on most other consumers. In Florida, a 1987 ruling by a state appellate court upheld coverage for a vehicle registered in a business name, since the entity was "a person entitled by the terms of the warranty to enforce its obligations."⁴² The Florida New Motor Vehicle Arbitration Board, since its inception in 1989, consistently has found primary or exclusive use of vehicles for business purposes to be covered in more than twenty rulings.⁴³

Other states appear to provide coverage for business use for most vehicles, by describing the type of vehicles that qualify under the definition of "motor vehicle." Louisiana, Missouri and New Mexico have other language in their definitions of "motor vehicle" that, to some

degree, clarify coverage. Louisiana's definition of "motor vehicle" excludes "vehicles used exclusively for commercial purposes," which can be inferred to cover a broad array of vehicles (other than those restricted by weight) primarily designed or used for business purposes. New Mexico's definition of "motor vehicle" includes passenger motor vehicles "normally used for personal, family or household purposes." This definition is consistent with the definition of "consumer product" under the Magnuson/Moss Warranty Act and suggests that once it is established that the vehicle is the type normally used for this kind of purpose, the business nature of its use is moot.⁴⁴ Missouri's definition of "motor vehicle" excludes "vehicles used as a commercial motor vehicle." Construed as a restriction on the type of vehicle covered, rather than its use, lends support that business use of a noncommercial-type vehicle is covered.

Business use or business ownership of vehicles is sanctioned in eight other state lemon laws with varying restrictions. Hawaii explicitly covers business use, provided the vehicle is also used for personal use, and restricts coverage for business entities to one vehicle acquisition per year. Maine, Tennessee and Vermont cover any business or commercial enterprise which registers no more than two vehicles. Michigan covers vehicles acquired by a business, provided the business purchases fewer than ten vehicles per year. In Georgia, a business that acquires a vehicle is covered, provided it possesses no more

than three new vehicles, has ten or fewer employees and has a net annual income of no more than \$100,000. Maryland excludes fleet purchases of five or more vehicles. Washington excludes fleet purchases of ten or more vehicles. These provisions imply coverage for all other vehicles (within weight or class limits) acquired by businesses or used for business purposes.

New Jersey excludes from its definition of "motor vehicle" commercial vehicles or trucks primarily used or designed to transport property. Alaska includes motor vehicles "normally used for personal, family or household purposes" in its definition of "motor vehicle." This excludes vehicles manufactured for commercial purposes. On the other hand, primary or exclusive use for business purposes of a vehicle designed for personal needs is likely covered. Ohio covers "passenger vehicles designed to carry not more than nine persons" or "noncommercial vehicles used exclusively for purposes other than engaging in business for profit."⁴⁵ These provisions exclude most commercial vehicles, but it is unclear whether passenger vehicles primarily used for business purposes, or noncommercial vehicles used for business purposes, as opposed to those designed and used to generate a profit, are covered.

SECTION III

Defect Reporting Period

Lemon law coverage is contingent upon a defect being first reported to the manufacturer or dealer within a prescribed period (several states define this period as the "lemon law rights" period). In most instances, the "reporting" occurs when the vehicle is brought to the dealership for repair. In 10 states, the defect must be reported within the earlier of the first year or 12,000 miles of operation of the vehicle.⁴⁶ In 16 states, the defect reporting period is limited to the first year or term of the manufacturer's express warranty, whichever occurs first.⁴⁷ Pennsylvania uses the earlier of the first year, 12,000 miles, or the manufacturer's express warranty term. Wyoming covers defects reported within the first year.

The District of Columbia and the remaining twenty-two states have longer coverage periods. Massachusetts and Rhode Island provide coverage during the earlier of the first year or 15,000 miles of operation of the vehicle. Maryland affords coverage to the earlier of fifteen months or 15,000 miles. Ohio recognizes the first year or 18,000 miles, whichever occurs first. Indiana provides a coverage period of the earlier of eighteen months or 18,000 miles.

Florida uses eighteen months or 24,000 miles, whichever occurs first, while Virginia is simply eighteen months.⁴⁸ Connecticut, Montana, New Jersey, New York and the District of Columbia provide coverage for the earlier of two years or 18,000 miles. In Maine, the coverage period is two

years, 18,000 miles, or the term of the manufacturer's express warranty, whichever occurs first.

In Arizona, Hawaii, Iowa and Washington, reported defects are covered for two years, 24,000 miles, or the term of the manufacturer's express warranty, whichever occurs first. In Minnesota, the period is the earlier of two years or the manufacturer's express warranty term. In North Carolina and West Virginia, consumers are covered if they report the defect within the first year or the term of the manufacturer's express warranty, *whichever occurs later*. In Arkansas, it is the first two years or 24,000 miles, *whichever occurs later*.

New Hampshire and Vermont tie the coverage period to the term of the manufacturer's express warranty. For most motor vehicles, this is the earlier of three years or 36,000 miles. However, consumers who acquire luxury vehicles such as those made by Acura, BMW, Cadillac, Jaguar, Lexus, Lincoln, Mercedes-Benz, Saab and Volvo get basic coverage warranty terms of four years or 50,000 miles, whichever occurs first, or longer (Infiniti's is four years/60,000 miles). Several manufacturers provide even longer warranties for drive train components such as the engine, transmission, differential and drive shaft. For example, Hyundai, Isuzu, Kia, Mitsubishi, Nissan, Subaru and Toyota cover these components for the earlier of five years/60,000 miles, Infiniti and Lexus for six years/70,000 miles and Volkswagen for ten years/

100,000 miles.⁴⁹

Application of the current manufacturers' express warranty terms as the exclusive coverage period affords broader protection for most consumers. However, most of the warranties refer to mileage on the odometer, whereas most states that have a mileage cap apply it to mileage attributable to the consumer's operation of the vehicle. Some manufacturer warranties still limit repair of certain components such as brake rotors and clutch disks or adjustments such as wheel alignment to one year or 12,000 miles.⁵⁰ Many recreational vehicle warranties are limited to one year or 15,000 miles, whichever occurs first.⁵¹ Finally, as recent as 1988, most manufacturer warranties covered basic components for only the first year or 12,000 miles.⁵² Over the past 30 years, automobile warranties have vacillated between short and long coverage periods.⁵³ The current trend of warranties of long duration has been good for consumers who acquire automobiles, particularly those covered by the New Hampshire and Vermont lemon laws.⁵⁴

Multiple Repairs of the Same Defect

State lemon laws afford the manufacturer and its authorized dealer multiple opportunities to cure the same defect or condition. The District of Columbia and thirty-nine states allow four opportunities to cure the same substantial defect or condition.⁵⁵ Some

states (discussed below) allow fewer attempts to repair serious safety defects.

Ten states that afford four opportunities for repair follow a “three plus one” approach. That is, the same substantial defect may be repaired at least three times, and then the manufacturer must be afforded a final repair opportunity following receipt of written notice from the consumer. In Arkansas, Florida and Iowa, the manufacturer has ten days from the date the vehicle is delivered for the final repair to cure the defect. In Alabama and Georgia that period is fourteen days, and in Michigan, five business days. In Massachusetts, the manufacturer has seven days to cure the defect from the date it became aware of three prior attempts. In Alaska, the manufacturer has thirty days from the date it receives written notice from the consumer to perform the final attempt. In New Hampshire and Vermont, the manufacturer gets a final repair attempt between the time the consumer files for arbitration and the time the hearing must be held, which is within forty days in New Hampshire and within forty-five days in Vermont. However, if the consumer is not satisfied with the corrective work, the case goes forward to arbitration. New York’s “three plus one” provision only applies to recreational vehicles; automobile manufacturers have four attempts to repair. In North Carolina, the manufacturer, has fifteen days from receipt of written notice to perform

repairs, while in Tennessee, the period is ten days from receipt of notice. In Missouri, manufacturers have ten days following written notification and delivery of the vehicle. However, these states do not require such notice to be made after the third attempt. Most of the other states that allow the manufacturer four repair attempts require the consumer to give written notice, but do not specify when the notice must occur or the time period within which such repairs must be performed.

Nine states’ lemon laws permit only three attempts to repair the same defect.⁵⁶ Three states, Maine, New Jersey and South Carolina, have a “two plus one” provision. In Maine, the manufacturer has seven business days to cure the defect, following receipt of written notice, while in New Jersey that period is ten calendar days. In South Carolina, the manufacturer has ten business days to cure the defect after the vehicle is delivered for the final repair. Ohio and Pennsylvania also provide for three repair attempts, but do not require written notice to the manufacturer. Hawaii, Mississippi and West Virginia specify three attempts, provided the consumer has given prior written notice of the defect to afford the manufacturer an opportunity to repair. Mississippi provides ten working days to cure the defect, commencing on the day of delivery of the vehicle for repair. In Virginia, if the manufacturer has received actual notice of the defect through a letter, response to a complaint, inspection of the vehicle or meeting

with the consumer or dealer, three repair attempts suffices. However, if none of these conditions has been met, the consumer, after three repair attempts, must then notify the dealer or manufacturer in writing, and the manufacturer has an additional opportunity to repair the vehicle within fifteen days.

Two states have "four plus one" provisions which allow the manufacturer or its authorized dealer five opportunities to cure the same defect.⁵⁷ In Rhode Island, the manufacturer has seven days to cure the defect from the date it became aware of four prior repair attempts. In South Dakota, the consumer must give written notice after at least four repair attempts. The manufacturer then has fourteen days from the date the vehicle is delivered for repair to cure the defect.

Safety-Related Defects

A manufacturer is afforded fewer attempts to repair safety-related defects under certain state lemon laws. In twelve states, a vehicle is presumed to be a "lemon," if it has a serious safety defect that cannot be repaired within either one or two attempts. Serious safety defects are described differently by the states, however, Arkansas, Connecticut, Hawaii, Iowa, Ohio and West Virginia classify serious safety defects as those likely to cause death or serious bodily injury if the vehicle is driven. The District of Columbia, Virginia and Washington describe serious safety defects as those that

reduce the ability to control the vehicle or create a risk of fire, explosion or other life-threatening malfunction. Texas uses the term serious safety hazard. Georgia refers to a life-threatening malfunction or nonconformity, and has a fewer repair threshold if the defect is in the braking or steering system. Maryland limits safety defects to a failure in the braking or steering system. In Minnesota, similarly, a serious safety defect is defined as a complete failure in the braking or steering system likely to cause death or serious bodily injury.

Some states permit a manufacturer only one opportunity to repair safety-related defects. In the District of Columbia, Minnesota and Ohio, the manufacturer or its authorized dealer gets one repair attempt for serious safety defects. In Hawaii, Maryland, Virginia and West Virginia, the manufacturer gets one repair attempt as long as the consumer gave prior notice of the defect. Hawaii and West Virginia require such notice to be in writing.

Other states provide for two repair attempts for safety-related defects. Washington allows two repair attempts for serious safety defects. So does Connecticut, provided that both attempts occur within the first year. Other states employ a "one plus one" approach. Arkansas, Iowa and Texas require at least one repair attempt, written notice to the manufacturer, and then a final opportunity to repair. Georgia has the same provision for braking or steering defects, but

requires two repairs followed by notice and a final repair for all other serious safety defects.

Days Out-of-Service

All fifty-one lemon laws have a days-out-of-service provision to address excessive vehicle downtime at the dealership for repairs to one or more defects. A majority of these states require the vehicle to be out of service by reason of repair for a cumulative total of thirty calendar days.⁵⁸ Some of these states, however, have different criteria to qualify for relief. Of these states, Kentucky has the highest threshold, applying the thirty days to the same defect. Georgia requires that fifteen of the days accrue within the first year or 12,000 miles, whichever occurs first. In Washington, fifteen of the days must accrue within the term of the manufacturer's express warranty. In Texas, there must be at least two repair attempts within the first year or 12,000 miles, whichever occurs first, and after thirty days, a nonconformity must still exist. In Michigan, the "days" standard does not require an existing defect, but one provision to obtain relief is that a defect or condition continues to exist.

Some states measure "days" differently. For instance, in Florida, the days out of service commence on the day the vehicle is brought in for repair and end on the day the consumer is notified that the repairs have been completed,⁵⁹ while in Vermont, a day does not qualify if the consumer has the vehicle for a major part of the day.

Arkansas excludes legal holidays under its "days" standard. Many states merely limit the days to business days.⁶⁰ Consequently, weekend and holiday vehicle down time may not count. Indiana also requires that a nonconformity must still exist after the "days" threshold has been met. In Idaho, days are not considered out of service if the consumer is provided a loaner vehicle. In New Hampshire, if the consumer has the vehicle for a major part of the day, that day is not considered as a day out of service.

Other states have cumulative day totals of more than thirty days. Nebraska requires that the vehicle be out of service by reason of repair for a cumulative total of forty days. Oklahoma requires forty-five days. Delaware requires more than thirty days out of service, commencing on the day the consumer brings the vehicle in for repair. Montana requires thirty business days out of service with the period to commence after the consumer has notified the manufacturer or dealer (presumably the first time the consumer brings the vehicle in for repair).

A few states, however, require that the vehicle be out of service for fewer than thirty days. New Jersey requires the vehicle to be out of service by reason of repair for a cumulative total of twenty days, and that a nonconformity still exists. New Jersey then requires the consumer to give notice after the days requisite has been met, affording an opportunity for final repair. In North Carolina, a consumer is potentially eligible for relief if the

vehicle has been out of service twenty or more business days during any twelve-month period. Maine, Massachusetts and Mississippi use fifteen business days as their reasonable number threshold.

The vast majority of state lemon laws do not require that a nonconformity exist after the last day out of service.⁶¹ This is because these provisions are tailored to remedy excessive time without the use of the vehicle, rather than failed attempts to cure defects. However, Alaska, Georgia, Massachusetts and Rhode Island have notice or other requirements tied to a final opportunity to repair (ranging from seven business days to thirty days) that must be given *after* the vehicle has been out of service the requisite number of days. This implies there must be an existing nonconformity in need of correction. The incongruous language also has the effect of adding days (out of service) spent on the final repair. If defects are cured on this final opportunity, it is unclear whether the consumer can still apply the days-out-of-service provision, or how new problems are treated. In Georgia, a consumer is ineligible for state-run arbitration, unless a nonconformity still exists.⁶² In Massachusetts, on the other hand, consumers are eligible for state-run arbitration by showing the manufacturer had a final opportunity to cure the nonconformity(s).⁶³ New Hampshire and Vermont also have a final repair opportunity after the "days" threshold has been met. That

period commences after the consumer files for manufacturer-sponsored or state-run arbitration. However, if the consumer is not satisfied with the corrective work, the case goes forward to arbitration within the time period when a hearing must be held.

Some states require that the consumer give the manufacturer a specific period of time to correct defects. Alabama, Maine, Mississippi, Missouri, North Carolina, South Carolina, South Dakota, Tennessee and Virginia require anywhere from ten to fifteen consecutive days within which the manufacturer must correct defects reported in writing. If notice is given in advance of the cumulative "days" threshold, consumers can avoid or reduce the delay resulting from the subsequent repair. However, if consumers wait too long to give notice, such that the final repair corrects these defects after the "days" threshold has been met, consumers may be ineligible for relief, at least according to a recent state-run arbitration decision in Maine.⁶⁴ In Iowa, consumers must accrue twenty days before they give notice, and allow ten cumulative days thereafter for repairs to conform the vehicle to the warranty. In Michigan, it is twenty-five days, then notice, and then five business days to repair the defect or condition. In New York, consumers with recreational vehicles give written notice after three repair attempts for the same defect or twenty-one days out of service, whichever occurs first. If they do not notify the manufacturer, subsequent days may

not be taken into account. Because of these notice and repair time-frames, it is likely that consumers in these states will experience more than thirty days out of service before they can invoke their rights.⁶⁵ In Florida, consumers must give notice after fifteen or more days out of service, and then afford the manufacturer or dealer at least one opportunity to inspect or repair the vehicle. If notice is given after thirty days accrue, the consumer is only obligated to give the manufacturer or dealer that one opportunity to inspect or repair. Arkansas limits its notice and final repair requirement to attempts for the same defect, not days out of service.⁶⁶

Multiple Defects

Consumers who experience multiple defects with their vehicles requiring several trips to the dealership often believe their dispute is eligible for lemon law relief; however, many fail to meet either the "attempts" or the "days" thresholds.⁶⁷ Three states recognize the frequency and potential hardship of this situation, and provide a unique standard to cover multiple defects. Kansas gives the manufacturer and its authorized dealers ten attempts to repair substantial defects. Ohio limits the number of repair attempts to eight. Arkansas provides for five repair attempts, provided they occur on separate occasions.

Reasonable Number of Attempts Coverage Period

In most states, a vehicle is "presumed" to be a "lemon" if it cannot be repaired within a reasonable number of attempts within a certain coverage period.⁶⁸ The burden of proof is then shifted to the manufacturer to show that, under the circumstances, that number was not reasonable. In twenty-seven states and the District of Columbia, the period in which a defect must be reported (usually the first repair visit) coincides with the period within which the presumption that a reasonable number of attempts must occur.⁶⁹ Two other states have incongruous language concerning their time periods. Vermont requires the *first repair* for a defect to occur *within* the express warranty term; however, it limits the consumer's right to arbitration if the *final repair* proves unsatisfactory for the *duration* of the express warranty. West Virginia requires the consumer to report the defect within the first year or term of the manufacturer's express warranty, *whichever occurs later*, but limits a reasonable number of attempts to repair that defect to the first year or term of the manufacturer's express warranty, *whichever occurs earlier*. Consequently, consumers who first experience defects after the first year of operation of the vehicle, may not be eligible for lemon law relief.

Iowa and Washington have defect reporting periods similar to the period within which a reasonable number of attempts must occur, which is the first

two years or 24,000 miles, whichever occurs first. However, the defect reporting period also *contains the term of the manufacturer's express warranty*. That provision does not affect consumers who experience problems covered by the current basic warranties of automobile manufacturers. However, some Washington consumers who acquire recreational vehicles (not covered in Iowa) will be impacted if their chassis warranties only cover the first year of use, and a defect first occurs within the second year.

In Pennsylvania, the consumer must first report the defect within the first year, 12,000 miles, or term of the manufacturer's warranty, whichever occurs first. However, there is no specified time period within which a reasonable number of attempts must occur. Pennsylvania's presumption provision, however, does reference a reasonable number of attempts to repair or correct a nonconformity. A nonconformity is defined as "a defect or condition which substantially impairs the use, value or safety of a new motor vehicle and does not conform to the manufacturer's express warranty." Consequently, the presumption likely can be applied to cover repair efforts for the duration of that warranty term.

In Indiana, the consumer must first report the defect within the first eighteen months or 18,000 miles, whichever occurs first. Like Pennsylvania, Indiana's law does not specify a time within which a reasonable number of attempts must occur.

However, the consumer has two years to bring an action from the time the defect is first reported. Consequently, it is likely that repair attempts undertaken during the additional two-year period can be considered.

Of the other seventeen states, nine extend the defect reporting period to cover subsequent repair efforts under certain circumstances. Florida, Michigan, Mississippi, Missouri, Oregon and Virginia provide the extension when the defect has been reported, but not cured by the expiration of the coverage period. In Florida, that period may be extended for six more months, giving consumers as much as twenty-four months, depending on mileage accrued, to meet the presumption.⁷⁰ In Michigan, repairs for existing defects can be applied to meet the presumption if they are made within the term of the manufacturer's express warranty, or even after, if that period expires before the repairs are performed. Mississippi, Missouri, Oregon and Virginia do not provide a specific time-frame for the extension, but instead have time limits from the date of delivery of the vehicle when a lawsuit must be filed. This, in effect, caps the period to meet the presumption. In Mississippi and Missouri, that period is eighteen months.⁷¹ In Virginia, it is at least eighteen months,⁷² and in Oregon, it is as much as twenty-four months, depending upon mileage accrued. Alaska, Massachusetts and Rhode Island also extend the coverage period, but only for purposes of the final repair attempt. In Alaska, that period is

fifteen months (three months beyond the one-year coverage period). Massachusetts and Rhode Island do not specify a time-period for the final repair, but that repair would have to be made before the deadline to file a claim. In Massachusetts, consumers have eighteen months from the date of delivery to qualify for state-run arbitration, while in Rhode Island, consumers have as many as three years, depending upon mileage accrued, to bring a lawsuit.

Eight states provide longer coverage periods to meet the reasonable number of attempts presumption. In Alabama, Georgia, South Carolina, South Dakota and Texas, the consumer must first report the defect within the first twelve months or 12,000 miles, whichever occurs first. Alabama and South Dakota consumers get the benefit of the presumption of a reasonable number of attempts, if the attempts occur within the first twenty-four months or 24,000 miles, whichever occurs first. In Texas, consumers must have at least two repair attempts performed (or one attempt for a serious safety defect) within the first year or 12,000 miles. They get an additional year or 12,000 miles to meet the presumption for repair attempts, or a limit of two years or 24,000 miles, whichever occurs first, for days out of service. In Georgia, consumers get an additional two years or 24,000 miles, whichever occurs first, to meet the presumption from the date of the initial repair attempt.⁷³

The South Carolina law is not clear

as to whether there is an extension of time for a reasonable number of attempts to accrue. Consumers are entitled to relief if a substantial defect is not repaired within a reasonable number of attempts within the first year or 12,000 miles. However, the section that establishes a reasonable number of attempts specifies that they be performed within the manufacturer's express warranty term. Consequently, to meet the presumption, consumers should have the earlier of the term of the manufacturer's warranty, or the statutory time period to commence an action, which is three years from the date of delivery. In Minnesota, the consumer must first report the defect within the first two years or the term of the manufacturer's express warranty, whichever occurs first. The law affords consumers three years from the date of delivery for further repairs to meet the presumption of a reasonable number of attempts. In Wyoming, the consumer must report the defect within the first year, but should get the benefit of the presumption if a reasonable number of attempts were undertaken within one year or the (manufacturer's) express warranty, whichever is later. In North Carolina, consumers must report the defect within the first year or term of the manufacturer's express warranty, whichever occurs later. Consumers are entitled to relief if a substantial defect is not repaired within a reasonable number of attempts no later than twenty-four months or 24,000 miles. The statute does not specify "whichever occurs first," and presumably as a

remedial statute, consumers should be covered for the duration of either period.

CONCLUSION

Recent Proposed Changes in State Lemon Laws

Florida

In 1997, Florida enacted several amendments which affect lemon law coverage terms.⁷⁴ The amendments went into effect on October 1, 1997, but only apply to vehicles acquired on or after that date. The amendments extend the defect reporting period (lemon law rights period) from eighteen months or 24,000 miles, whichever occurs first, to twenty-four months with no mileage limitation. However, the revisions eliminate the six-month rights extension consumers may receive if the defect was reported during the lemon law rights period, but not cured. The changes also allow recreational vehicle manufacturers a cumulative total of sixty, instead of thirty, days out of service by reason of repair before the vehicle is presumed to be a "lemon."

Pennsylvania

Pennsylvania has proposed legislation which would affect several coverage terms.⁷⁵ It would expand coverage to include leased vehicles and the chassis portion of recreational vehicles. It would eliminate the requirement that the vehicle both be

purchased *and* registered in Pennsylvania. Vehicles acquired in another state would be covered as long as the consumer is a Pennsylvania resident and the vehicle is titled for the first time in Pennsylvania. Defects would be covered provided they were first reported within the earlier of the first twelve months or 12,000 miles of operation. Two attempts to repair defects in the braking or steering system likely to cause death or serious bodily injury would constitute a reasonable number.

Other changes would either clarify or reduce the scope of coverage. The proposal would cover trucks up to 10,000 lbs. gross vehicle weight rating. The consumer would have the earlier of eighteen months or 18,000 miles to meet the presumption that a reasonable number of attempts had occurred. Under the current law, this coverage period is not specified and arguably runs for the term of the manufacturer's express warranty. The proposal adds a notification requirement after the third repair attempt, creating a "three plus one" standard. Under the existing law, three repair attempts is presumed to be a reasonable number. The legislation has passed the Senate, and is pending in the House. It is likely that it will be further modified and acted upon in 1998.⁷⁶

Vermont

Proposed amendments to the Vermont law are primarily designed to expand coverage to include large trucks.⁷⁷ The changes would eliminate

the 10,000 lbs. gross vehicle weight limit and the provision which excludes business and commercial enterprises from coverage if they register or lease three or more vehicles. They would also eliminate the requirement that a vehicle be registered in Vermont within fifteen days of the date of purchase or lease. The proposal is pending, and will not be acted upon until the 1998 legislative session.

California

Proposed revisions to the California lemon law would cover consumers who use their vehicles for business purposes, provided the person or entity has no more than five vehicles registered under its name.⁷⁸ Other changes would increase the defect reporting and reasonable number of attempts coverage period from the earlier of twelve months or 12,000 miles, to twenty-four months or 24,000 miles, whichever occurs first. Furthermore, two repair attempts on a safety defect would be presumed to be a reasonable number, provided the consumer had directly notified the manufacturer of the need for the repair of that defect. Like Vermont, the amendments are pending, and will not be acted upon until the 1998 legislative session.

Endnotes

¹ See ALA. CODE § 8-20A-1-6 (1993); ALASKA STAT. § 45.45.300-360 (Michie 1996); ARIZ. REV. STAT. ANN. § 44-1261-1266 (West 1994 & Supp. 1996); ARK. CODE ANN. § 4-90-

401-417 (Michie 1996); CAL. CIV. CODE §§ 1793.2, 1793.22 (West Supp. 1997); COLO. REV. STAT. § 42-10-101-107 (1993); CONN. GEN. STAT. ANN. § 42-179-186 (West 1992); DEL. CODE ANN. tit. 6, §§ 5001-5009 (1993); D.C. CODE ANN. § 40-1301-1304 (1990); FLA. STAT. ch. 681 §101-118 (1995); GA. CODE ANN. § 10-1-780-794 (1994); HAW. REV. STAT. § 481I-1-4 (1993); IDAHO CODE § 48-901-919 (1997); 815 ILL. COMP. STAT. § 380/1-8 (West 1993 & Supp. 1997); IND. CODE ANN. § 24-5-13-1-24 (Michie 1996); IOWA CODE ANN. § 322G.1-15 (West Supp. 1997); KAN. STAT. ANN. § 50-645 (1994 & Supp. 1996); KY. REV. STAT. ANN. §§ 367.840-846 (Michie 1996); LA. REV. STAT. ANN. §§ 51:1941-1948 (West 1987); ME. REV. STAT. ANN. tit.10, §§ 1161-1169 (West 1997); MD. CODE ANN., COM. LAW, II §§ 14-1501-1504 (1990 & Supp. 1996); MASS. GEN. LAWS ANN. ch. 90, § 7N 1/2 (West 1989 & Supp. 1997); MICH. COMP. LAWS ANN. §§ 257.1401-1417 (West 1990); MINN. STAT. ANN. § 325F.665 (West 1995); MISS. CODE ANN. § 63-17-151-165 (1996); MO. ANN. STAT. §§ 407.560-579 (West 1990); MONT. CODE ANN. §§ 61-4-501-533 (1995); NEB. REV. STAT. 60-2701-2709 (1988); NEV. REV. STAT. ANN. §§ 597.600-670 (Michie 1994); N.H. REV. STAT. ANN. § 357-D:1-12 (1995); N.J. STAT. ANN. § 56:12-29-49 (West Supp. 1997); N.M. STAT. ANN. § 57-16A-1-9 (Michie 1995); N.Y. GEN. BUS. LAW § 198-a (McKinney 1988 & Supp. 1997); N.C. GEN. STAT. § 20-351 (1993); N.D. CENT. CODE § 51-07-16-22 (1989 & Supp. 1997); OHIO REV. CODE ANN. §§ 1345.71-77 (Anderson 1993); OKLA. STAT. ANN. tit. 15, § 901 (West 1993); OR. REV. STAT. §§ 646.315-375 (1988 & Supp. 1994); PA. STAT. ANN. tit. 73, § 1951-1963 (West 1993); R.I. GEN. LAWS § 31-5.2-1-13 (1994 & Supp. 1996); S.C. CODE ANN. § 56-28-10-110 (Law. Co-op. 1991 & Supp. 1996); S.D. CODIFIED LAWS § 32-6D-1-11 (Michie Supp. 1997); TENN. CODE ANN. § 55-24-201-211 (1993); TEX. REV. CIV. STAT. ANN. art. 4413(36), 6.07 (West Supp. 1997); UTAH CODE ANN. § 13-20-1-7 (1996); VT. STAT. ANN. tit. 9, §§ 4170-4181 (1993); VA. CODE ANN. § 59.1-207.9-16 (Michie 1992);

WASH. REV. CODE ANN. § 19.118.005-904 (West 1989 & Supp. 1997); W. VA. CODE § 46A-6A-1-9 (1996); WIS. STAT. ANN. § 218.015 (West 1994); WYO. STAT. ANN. § 40-17-101 (Michie 1997), [hereinafter code sections are referenced by state name].

² See Alabama, Arizona, California, Colorado, Connecticut, Florida, Illinois, Kansas, Louisiana, Maine, Massachusetts, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, North Carolina, North Dakota, Oregon, Rhode Island, South Dakota, Utah, Virginia, West Virginia, *supra* note 1.

³ See California, Connecticut, Florida, Illinois, Louisiana, Maine, Massachusetts, Minnesota, Mississippi, Missouri, North Carolina, North Dakota, Oregon, Rhode Island and Utah, *supra* note 1.

⁴ Telephone Interview with Hugh Hegyi, Arizona Attorney General's Office (May 13, 1997); Telephone Interview with Steve Rotello, Illinois Attorney General's Office (May 13, 1997); Telephone Interview with Palmer Hanson, South Dakota Attorney General's Office (May 14, 1997); Telephone Interview with David Irvin, Virginia Attorney General's Office (May 22, 1997).

⁵ See letter from Pat Sangillo, State of New Hampshire, Department of Safety, Motor Vehicle Arbitration Board, to "consumer" (form letter accompanying arbitration application).

⁶ Telephone Interview with Ted Barrows, Ohio Attorney General's Office (May 9, 1997).

⁷ See Arkansas, Delaware, Georgia, Hawaii, Idaho, Minnesota, New Jersey, New York, Texas, Vermont, Wisconsin, Wyoming, *supra* note 1.

⁸ Indiana, Kentucky, New Mexico, Pennsylvania, South Carolina, Tennessee, Washington, *supra* note 1.

⁹ See MD. CODE ANN., COM. LAW I §§ 2-312-315 (1997).

¹⁰ See Magnuson/Moss Warranty Act, 15 U.S.C. § 2308 (1994).

¹¹ Forty-five states use the term "substantially impairs." Alabama, South Dakota, Virginia and the District of Columbia use the term "significantly impairs." Mississippi and Missouri just use the word "impairs."

¹² See Alabama, Arkansas, California, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Kentucky, Maine, Massachusetts, Mississippi, Missouri, Montana, New Hampshire, New Jersey, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Texas, Utah, Vermont, Virginia, Washington, Wisconsin, *supra* note 1.

¹³ See Alaska, Arizona, Colorado, Kansas, Louisiana, Maryland, Michigan, Minnesota, New Mexico, Nebraska, Nevada, North Dakota, Oklahoma, West Virginia, Wyoming, *supra* note 1.

¹⁴ See Arizona, Colorado, Kansas, Maryland, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Wyoming, *supra* note 1. However, in Montana, the consumer is also eligible for relief by showing substantial impairment of the vehicle's use and value *or* safety.

¹⁵ See Alaska, Arkansas, Colorado, Hawaii, Idaho, Illinois, Indiana, Louisiana, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Montana, New Hampshire, New Mexico, Nebraska, North Dakota, Oregon, Rhode Island, Texas, Utah,

Vermont, Virginia, West Virginia, *supra* note 1.

¹⁶ See MASS. REGS. CODE tit. 201, § 11.10(11)(a) (1993).

¹⁷ See Arizona, California, Connecticut, Georgia, Kansas, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, South Carolina, Vermont, Virginia, West Virginia, Wyoming, *supra* note 1.

¹⁸ See Maryland, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Mexico, Oregon, Vermont, West Virginia, *supra* note 1.

¹⁹ See Alabama, Alaska, Arkansas, Colorado, Delaware, Florida, Hawaii, Idaho, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Massachusetts, New Jersey, North Dakota, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Utah, Washington, Wisconsin, *supra* note 1.

²⁰ See Alaska, Georgia, Hawaii, Iowa, Tennessee, Virginia, Washington, District of Columbia *supra* note 1.

²¹ See Alaska, Illinois, Maine, Oregon, Texas, Wisconsin, *supra* note 1; MINN. STAT. ANN. § 168.011(25)(3)(b) (West Supp. 1997).

²² See Arkansas, Delaware, Florida, Missouri, Montana, New Jersey, Ohio, Oklahoma, South Carolina, Vermont, *supra* note 1.

²³ See Arizona, California, Georgia, Kansas, Mississippi, New York, Utah, Virginia, Washington, West Virginia, *supra* note 1.

²⁴ From January 1996 through August

1997, there were 71 cases submitted by recreational vehicle owners to the Florida New Motor Vehicle Arbitration Board. In seven cases, one manufacturer was named as a party; in 50 cases, two were named; in seven cases, three were named; in seven cases, four were named; in one case, five were named; and, in one case, six were named. The seven cases involving four manufacturers were Niebruegge v. Winnebago, Spartan, Cummins and Allison (96-0043/WPB), Bolser v. Winnebago, Oshkosh, Cummins and Allison (96-0200/TLH), Hirsch v. Winnebago, Spartan, Cummins and Allison (96-0246/ORL), Bell v. Fleetwood, Spartan, Cummins and Onan (96-0487/ORL), Coon v. Holiday Rambler, Oshkosh, Cummins and Allison (96-0922/TLH), Smith v. Coachmen, Spartan, Cummins and Allison (97-0098/ORL), and Shelnut v. Fleetwood, Freightliner, Allison and Onan (97-0832/TPA). The one case involving five manufacturers was B.A.P., Inc. v. Winnebago, Freightliner, Cummins, Allison and Onan (96-0406/TLH). The one case involving six manufacturers was Ramey v. Holiday Rambler, Spartan, Cummins, Allison, Pacbrake and Nelson Industries (96-0341/TLH). The cases are unpublished.

²⁵ See Alabama, Arizona, Arkansas, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Montana, New Hampshire, New Mexico, North Carolina, North Dakota, Oklahoma, Rhode Island, South Dakota, Tennessee, Utah, Vermont, Washington, Wyoming, *supra* note 1; CONN. GEN. STAT. ANN. § 14-1(11) (West Supp. 1997); OHIO REV. CODE ANN. § 4501.01(H) (Anderson 1997); S.C. CODE ANN. § 56-3-630 (Law. Co-op. Supp. 1996); W. VA. CODE § 17A-10-1 (1996).

²⁶ Telephone Interview with Cathy Skaar of the Wisconsin Department of Transportation (June 4, 1997).

²⁷ See U.S. Medium/Heavy Duty Truck Sales, April & YTD, AUTOMOTIVE NEWS, May 26, 1997, at 22.

²⁸ See 1996-Model Light-Truck Specifications, AUTOMOTIVE NEWS, Oct. 9, 1995, at 8i-9i.

²⁹ See FLA. STAT. ch. 320.01(12)(b) (1995).

³⁰ In addition to Nebraska, the other seven states are Delaware, Mississippi, Nevada, New York, Oregon, Texas and Wisconsin.

³¹ R. L. POLK, *New Vehicle Registration Service, Trucks by GVW* (1995).

³² See Alabama, Arizona, Kansas, Maine, Massachusetts, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, South Dakota, Texas, Virginia, Washington, Wisconsin, Wyoming, *supra* note 1.

³³ See Arkansas, California, Connecticut, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Oregon, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, Washington, Wisconsin, *supra* note 1.

³⁴ See Arkansas, California, Florida, Hawaii, Illinois, Indiana, Iowa, Maryland, Massachusetts, Minnesota, New Hampshire, New Jersey, Rhode Island, Vermont, *supra* note 1.

³⁵ See Alabama, Arizona, Colorado, Nebraska, New Mexico, Ohio, Oklahoma, South Dakota, Virginia, West Virginia and Wyoming, *supra* note 1.

³⁶ See *Pertuset v. Ford Motor Company*, 645 N.E.2d 1329, (Ohio Ct. App. 1994).

³⁷ See Alabama, California, Florida, Georgia, Hawaii, Idaho, Iowa, Illinois, Michigan, Mississippi, Missouri, Nebraska, North Carolina, Pennsylvania, South Carolina, South Dakota, Texas, Virginia, Washington, Wisconsin, *supra* note 1.

³⁸ See Arizona, Connecticut, Delaware, Hawaii, Idaho, Indiana, Maine, Maryland, Massachusetts, Montana, Nevada, New Hampshire, New Jersey, New Mexico, Ohio, Oklahoma, Tennessee, Texas, Utah, Vermont, Washington, Wyoming, *supra* note 1.

³⁹ See Alaska, Colorado, Florida, Louisiana, Minnesota, Mississippi, Missouri, Nebraska, North Dakota, Oregon, Pennsylvania, Rhode Island, Virginia, West Virginia, Wisconsin, *supra* note 1.

⁴⁰ See Arkansas Office of the Attorney General, *A Consumer's Guide to the Arkansas Lemon Law*, at 4. That publication indicates that, if within the first two years after the original delivery date of the vehicle or for the first 24,000 miles, whichever occurs last, the vehicle is transferred to someone else, that owner or person leasing the vehicle is also covered under the Lemon Law. See *id.*

⁴¹ See 1997 Audi Warranty USA; 1996 BMW Service Warranty Information; 1997 Cadillac Warranty, Creating a Higher Standard; 1996 Dodge Dakota Warranty Information; 1997 GMC Light Duty Truck, Warranty and Owner Assistance Information; 1996-Model Warranty Information Booklet, Ford & Mercury Cars & Light Trucks; 1997 Lexus Owner's Manual Supplement, Warranty, Maintenance, and General Information; 1997 Mazda Warranty Information; 1997 Mercedes-Benz Owner's Service and Warranty Information; 1996 Saab

Warranties & Service Record Booklet; 1996 Saturn Warranty & Owner Assistance Information; 1997 Volkswagen Warranty USA.

⁴² See *Results Real Estate, Inc. v. Lazy Days R.V. Center, Inc.*, 505 So. 2d 587 (Fla. Dist. Ct. App. 1987).

⁴³ See *DeBenedictis v. Chrysler* (89-0071/ORL); *Perry v. GM-Chevrolet* (89-0089/WPB); *Ford v. Chrysler* (90-0029/TPA); *Gill v. Chrysler/Utilimaster* (90-0155/FTM); *Retherford v. GM-GMC* (90-0263/ORL); *Knapp v. Alfa Romeo* (90-0701/STP); *Land v. Chrysler* (91-0335/TLH); *Aronoff v. Toyota* (91-0498/WPB); *Osborne v. Ford* (91-0529/ORL); *Foster v. Mercedes-Benz* (92-0808/FTL); *Byer v. Mercedes-Benz* (93-0283/MIA); *Bloom/Florida Water Treatment, Inc. v. Mercedes-Benz* (93-0715/TPA); *Grundman v. GM-GMC* (94-0029/FTL); *Wehnes v. Mercedes-Benz* (94-0154/JAX); *Value Camera & Electronics v. GM-Pontiac* (95-0339/MIA); *Pressler & Associates, Inc. v. Ford* (95-0569/TPA); *Vorraso v. Ford* (95-0691/WPB); *Temp Tech A/C Corp. v. Ford* (95-0733/ORL); *Grand v. Mercedes-Benz* (95-0919/ORL); *Grochowski/Widdis v. Nissan* (95-0932/ORL); *McNeil v. Mercedes-Benz* (95-1032/JAX); *H & G Cable Construction Company, Inc. v. Ford* (95-1168/FTM); *Cordell v. National RV/Ford* (96-0664/TLH). The cases are unpublished.

⁴⁴ See 15 U.S.C. § 2301(1) (1994).

⁴⁵ See Ohio Rev. Code Ann. § 4501.01(E) (Anderson 1997).

⁴⁶ See Alabama, California, Georgia, Idaho, Illinois, Kentucky, Oregon, South Carolina, South Dakota, Texas, *supra* note 1.

⁴⁷ See Alaska, Colorado, Delaware, Kansas, Louisiana, Michigan, Mississippi, Missouri, Nebraska, Nevada, New Mexico,

North Dakota, Oklahoma, Tennessee, Utah, Wisconsin, *supra* note 1.

⁴⁸ Effective October 1, 1997, Florida's "lemon law rights period" was extended to 24 months from the date of original delivery of the vehicle to the consumer, with no mileage limitation.

⁴⁹ See *Few Makers Change Warranties*, AUTOMOTIVE NEWS, Nov. 3, 1997, at 24.

⁵⁰ See 1996 Dodge Neon Warranty; the 1997 Mazda Warranty; 1996 Saab Warranty (which covers components such as wiper blades and drive belts for one year or 16,000 miles, whichever occurs first).

⁵¹ See 1997 Airstream Warranty; 1997 Georgie Boy Warranty; 1997 Winnebago Warranty.

⁵² See *Japan Ups Warranties*, AUTOMOTIVE NEWS, Dec. 19, 1988, at 18.

⁵³ FEDERAL TRADE COMMISSION, *Staff Report on Automobile Warranties* (Nov. 18, 1968) at 84.

⁵⁴ In North Carolina and West Virginia, a reasonable number of attempts must occur in a period less than the term of the current manufacturer warranties. Consequently, the longer manufacturer warranties are of limited benefit to consumers in these two states.

⁵⁵ Two of these states, North Dakota and Wyoming, use the phrase, "subject to repair more than three times."

⁵⁶ See Hawaii, Maine, Mississippi, New Jersey, Ohio, Pennsylvania, South Carolina, Virginia, West Virginia, *supra* note 1.

⁵⁷ See Rhode Island, South Dakota, *supra* note 1.

⁵⁸ See Alabama, Arizona, Arkansas, California, Connecticut, District of Columbia, Florida, Georgia, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Nevada, New York, Ohio, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, Washington, West Virginia, Wisconsin, *supra* note 1.

⁵⁹ See FLA. ADMIN. CODE ANN. r. 2-30.001 (1997).

⁶⁰ See Alaska, Colorado, Hawaii, Idaho, Illinois, Indiana, Missouri, New Hampshire, New Mexico, North Dakota, Oregon, Utah, Wyoming, *supra* note 1.

⁶¹ The only exceptions are Indiana, New Jersey, Texas, and possibly Michigan.

⁶² See GA. COMP. R. & REGS. r. 122-14-.03(f) (1991).

⁶³ See MASS REGS. CODE tit. 201, § 11.02(2)(e) (1993).

⁶⁴ State of Maine, Lemon Law Arbitration Program, *Masek v. Ford*, Case # 96-96 (Apr. 14, 1997).

⁶⁵ See State of FLORIDA ATTORNEY GENERAL *Lemon Law Arbitration Program Annual Reports* (1990-92). Prior to July 1, 1992, Florida had the same "days" provision as Iowa (discussed above). For 103 cases qualifying under the "days" standard submitted for arbitration in 1990, the vehicle was out of service an average of 34.9 days when the manufacturer was notified, and an average of 22.8 days thereafter, or a total of 57.7 days. For 119 cases qualifying under the "days" standard submitted for arbitration in 1991, the vehicle was out of service an average of 34.6 days when the manufacturer was notified, and an average of 20.6 days

thereafter, or a total of 55.2 days. For 52 cases qualifying under the "days" standard submitted for arbitration from January through June 1992, the vehicle was out of service an average of 44 days when the manufacturer was notified, and an average of 20.8 days thereafter, or a total of 64.8 days.

⁶⁶ Compare ARKANSAS OFFICE OF THE ATTORNEY GENERAL, *A Consumer's Guide to the Arkansas Lemon Law*, at 7. That publication directs the consumer to give written notice to the manufacturer for a final chance to repair the defect after the third unsuccessful repair attempt or *after the 30 cumulative calendar day period*.

⁶⁷ See STATE OF NEW YORK ATTORNEY GENERAL *New Car Arbitration Program Annual Reports* (1987-90). The consumers' failure to provide evidence of at least four repair attempts for the same problem was the leading reason out of ten categories why the claims were rejected for arbitration. See STATE OF FLORIDA ATTORNEY GENERAL *Lemon Law Arbitration Program Annual Reports* (1989-92). The consumers' failure to show evidence of at least four repair attempts for the same problem was either the first or second most prevalent reason (out of as many as 18 categories) why the claims were rejected.

⁶⁸ In 46 states and the District of Columbia. Indiana uses the word, "considered," instead of "presumed" (to be a reasonable number). However, in Massachusetts, Washington and Wisconsin, the vehicle is "deemed" to be a "lemon" upon proof by the consumer that the manufacturer was given a reasonable number of attempts within the coverage period.

⁶⁹ See Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Hawaii, Idaho, Illinois, Kansas, Kentucky, Louisiana, Maine, Maryland, Montana, Nebraska,

Nevada, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Ohio, Oklahoma, Tennessee, Utah, Wisconsin, *supra* note 1.

⁷⁰ If, prior to the first 18 months of operation of the vehicle, the consumer accrues 24,000 miles, then the lemon law rights extension would run six months from that date.

⁷¹ In both of these states, the consumer also can file within 90 days following the final action of a panel of a manufacturer's informal dispute settlement procedure that complies in all respects with 16 C.F.R. Part 703.

⁷² The consumer also has 12 months to file a claim from the final action taken by the manufacturer in its dispute settlement procedure, if that period is longer than the lemon law rights period (which is 18 months).

⁷³ See GA. COMP. R. & REGS. r. 122-9-01(q)(2) (1990).

⁷⁴ See 1997 FLA. LAWS ch. 245.

⁷⁵ See S. 763, Pa. General Assembly (Pa. 1997). The proposed law would also create an independent arbitration process, administered by the Pennsylvania Attorney General's Office.

⁷⁶ Telephone Interview with John Kelly, Pennsylvania Attorney General's Office (Aug. 8, 1997).

⁷⁷ See S. 4, Vt. General Assembly (Vt. 1997).

⁷⁸ See S. 289, Cal. General Assembly (Cal. 1997).

