

1990

New York Lemon Law's Minimum New Vehicle Warranty Protection Does Not Violate the Commerce Clause

Marianne L. Simonini

Follow this and additional works at: <http://lawcommons.luc.edu/lclr>

 Part of the [Consumer Protection Law Commons](#)

Recommended Citation

Marianne L. Simonini *New York Lemon Law's Minimum New Vehicle Warranty Protection Does Not Violate the Commerce Clause*, 2 Loy. Consumer L. Rev. 83 (1990).

Available at: <http://lawcommons.luc.edu/lclr/vol2/iss3/8>

This Recent Case is brought to you for free and open access by LAW eCommons. It has been accepted for inclusion in Loyola Consumer Law Review by an authorized administrator of LAW eCommons. For more information, please contact law-library@luc.edu.

Disclaimers of Permanent Hair Removal. In addition to the Commission's order requiring scientific support of permanency claims, the court also reviewed the Commission's requirement that Removatron include a disclaimer whenever its advertisements claimed that its machines removed hair, and send a copy of the order to prior purchasers. Removatron contended that this requirement was "corrective" — an advertising requirement that commanded disclosure regardless of the future advertisement's content. The court explained that directing Removatron to send a copy of the order to all past purchasers was not a corrective advertisement requirement; rather, this requirement would guarantee full compliance with the Commission's order. Moreover, requiring the disclaimer in future advertisements was not corrective but was an affirmative advertising requirement that demanded disclosure only when certain claims were made. The order was not corrective because the Commission only required Removatron to include the disclaimer when the company claimed that its machine removed hair.

Sufficient Evidence. Removatron also challenged whether sufficient evidence supported the Commission's findings. Removatron first attacked the finding that it had deceived the public by conveying the message that scientific tests supported its permanency claims. The company attempted to defend its advertisements by advancing several arguments. Removatron contended that the company never claimed that its machine was 100% effective in permanently removing hair for all people all the time. The court found it irrelevant that Removatron did not explicitly make this claim. The overwhelming message of the advertisement that the machine would remove hair permanently for most people most of the time was sufficient to support the Commission's findings.

Additionally, Removatron contended that the company qualified its advertisements by stating that the machine would not work on everyone and that one could only attain permanent hair remov-

al after several treatments. Again, the court disagreed with Removatron and held that these qualifications were inadequate and ineffective because they failed to dispel the message of the permanency claim. Furthermore, Removatron argued that the only relevant audience was the beauty industry. The court found that the relevant audience, in addition to the beauty industry, included potential purchasers and customers of purchasers. Purchasers and customers were the relevant audience because Removatron's sales personnel gave brochures and other information to the purchasers, who passed the information on to potential clients. Therefore, Removatron's advertisements reached an audience outside of the beauty industry.

Removatron also argued that "clinically tested" did not mean "supported by rigorous scientific tests." The company claimed that a lay person could determine that "clinically tested" simply meant that the product had been successful in a clinical setting, not that well-controlled scientific tests had been performed. The court rejected this argument and held that Removatron failed to offer any proof that the lay person would be able to make this distinction.

At the same time that Removatron petitioned for review of the Commission's order, the government sought an injunction *pendente lite*. An injunction *pendente lite* forbids an act and takes effect during the actual progress of a suit. The government sought this injunction because Removatron continued to make its deceptive claims during the course of the lawsuit. Since the Commission's order would not otherwise be binding on Removatron if Removatron appealed the case to the United States Supreme Court, the court granted the injunction. The court concluded that the injunction was necessary to prevent future economic harm to potential purchasers who would be exposed to the deceptive advertisements.

Cathleen R. Martwick

NEW YORK LEMON LAW'S MINIMUM NEW VEHICLE WARRANTY PROTECTION DOES NOT VIOLATE THE COMMERCE CLAUSE

New York's "Lemon Law", N.Y. Gen. Bus. Law § 198-a, provided a minimum warranty of two years or 18,000 miles for each new car purchased and registered in the State of New York. An organization representing the domestic and foreign car industry challenged the statute, charging that it impermissibly interfered with interstate commerce. In *Motor Vehicle Manufacturing Association of United States v. Abrams*, 720 F. Supp. 284 (S.D.N.Y. 1989), the United States District Court for the Southern District of New York held that section 198-a(b) of the Lemon Law did not per se violate the commerce clause, U.S. Const. art. 1, § 8, cl. 3, by regulating manufacturers, agents and dealers who did business outside of New York. However, the court struck down the portion of the statute requiring out-of-state dealers and agents to send written notice of owner complaints to the manufacturers. The court upheld the remainder of the statute because its benefits clearly exceeded the burdens it imposed on interstate commerce.

Background

The Motor Vehicle Manufacturing Association of the United States ("the Association") included trade associations that represented the interests of domestic and foreign car manufacturers, importers, and distributors. The Association claimed that section 198-a(b), which in effect established a minimum level of new vehicle warranty protection, violated the commerce clause of the United States Constitution. According to the Association, section 198-a(b) was per se invalid under the commerce clause because it regulated interstate commerce, it "opened the door" to inconsistent state regulation of an area requiring uniformity, and it impermissi-

(continued on page 84)

New York Lemon Law (continued from page 83)

bly disadvantaged consumers in other states. In the alternative, the Association argued that the statute's burden on interstate commerce greatly exceeded any benefit to the State of New York.

Commerce Clause Analysis

The commerce clause provides that "Congress shall have Power . . . To regulate Commerce . . . among the several States." U.S. Const. art. I, § 8, cl. 3. The court noted that while this grant of congressional power implicitly limits the power of states to enact legislation affecting interstate commerce, the states possess a residuum of power to enact legislation of local concern that to some degree affects or regulates interstate commerce.

In analyzing whether section 198-a(b) unduly interfered with interstate commerce, the court applied the two-pronged test set forth by the United States Supreme Court in *Brown-Forman Distillers Corp. v. New York State Liquor Authority*, 476 U.S. 573 (1986). First, if a statute directly regulates interstate commerce, or if it effectively favors in-state interests over out-of-state interests, then the statute is invalid without further inquiry. A statute survives the per se test if it evenhandedly regulates or only indirectly affects interstate commerce. The court must then apply the balancing test to determine if the State's interests are legitimate, and if so, whether the State's interests clearly exceed the burden on interstate commerce.

No Per Se Violation

In addressing whether section 198-a(b) per se violated the commerce clause, the court first looked to the specific requirements of the statute. The statute provided that if a new car did not conform to all express warranties during the two years after delivery or first eighteen thousand miles, the consumer could report the defect to the car agent, dealer or manufacturer. N.Y. Gen. Bus. Law § 198-a(b). If the dealer or agent received a notice of defect, the dealer or agent

had to forward the notice to the manufacturer, and the manufacturer had to correct the defect at no charge to the consumer. N.Y. Gen. Bus. Law § 198-a(b).

The Association argued that the statute directly regulated out-of-state conduct because the "notice and repair" requirement was not limited to New York dealers. The court held that the Association misconstrued the statute to require out-of-state dealers to repair the cars. Rather, the statute imposed the repair obligation on the manufacturer, its agent or dealer, but the manufacturer decided how to repair the vehicles that developed problems while outside New York.

The court described how various car companies conformed to the statute. For instance, Ford Motor Company instituted a program under which New York owners would pay the cost of repairs to the out-of-state dealer and then be reimbursed by a New York dealer. General Motors instituted a program under which the New York owner would pay the cost of the deductible to the out-of-state dealer and then be reimbursed by a New York dealer. Both programs imposed no free repair obligation on the out-of-state dealer, and the State of New York apparently considered both programs to be in compliance with the statute.

The court stated, however, that the statute directly regulated out-of-state dealers by requiring them to forward notice of any defects to the manufacturer. The court held that this obligation, as harmless as it was, still regulated interstate commerce. Furthermore, the fact that New York courts lacked jurisdiction to enforce the notice obligation against an out-of-state agent or dealer reinforced the conclusion that the notice provision affected interstate commerce. That the agents and dealers had otherwise contracted with the manufacturers to service vehicles according to the manufacturers' warranty policies was irrelevant because the notice obligation was imposed by the statute, not by contract. Accordingly, the court

held that the statute violated the commerce clause insofar as it obligated out-of-state agents and dealers to send to manufacturers notice of owner complaints.

The Association next argued that the statute per se violated the commerce clause because the cost of the statute's warranty provision would increase automobile prices charged outside of New York. The court held that the record did not support this argument. The court distinguished section 198-a(b) from previous statutes invalidated by the United States Supreme Court in *Brown-Forman Distillers Corp. v. New York State Liquor Authority*, 476 U.S. 573 (1986), and *Healy v. Beer Institute*, — U.S. —, 109 S.Ct. 2491 (1989). For instance, the liquor price control statutes in *Brown-Forman* and *Healy* tied the prices that distributors could charge in-state to those charged in other states. The distributors could not change the prices charged outside the state without violating the statute.

The court stated that here neither the warranty provision nor the notice provision raised the concern expressed in the liquor price control cases. There was no reason to believe that the manufacturers who had to comply with section 198-a(b) would "not do what logic dictates and . . . pass along the added costs to the consumers who benefit from the statute, namely those who purchase and register their cars in New York." 720 F. Supp. at 289. Consequently, unlike the liquor price control statutes, section 198-a(b) did not set automobile prices charged outside of New York.

Statute's Benefits Do Not Exceed Its Burden

Because the repair obligation of section 198-a(b) did not per se violate the commerce clause, the court considered whether the State's interests exceeded the burden imposed on interstate commerce. In weighing the State's interest, the court considered the New York Attorney General's in-

vestigations of serious defects in various makes and models of new cars, which often were not discovered during the standard one year/12,000 mile warranty. In light of this, the court stated that the New York State legislature had enacted section 198-a(b) to redress the significant problem with the automotive industry's warranty practices.

The court disagreed with the Association's contention that the costs of complying with the law impacted adversely on interstate commerce. First, most automobile manufacturers were not affected by the statute because they offered warranties in excess of the statutory requirements. Second, many of those affected by the statute had simply passed along the costs of compliance to purchasers. For instance, Ford Motors charged New York consumers an extra \$115.00 for "Mandatory New York Repair Coverage" on a new car. Finally, manufacturers had shown an ability to adapt to other state regulations having a much greater impact on the distribution and manufacture of cars than did section 198-a(b). Automobile manufacturers had made such adjustments as reprogramming computers, changing advertising, tracing the ownership of vehicles and even offering distinct warranties. The record showed that manufacturers were able to make these adjustments with minimal disruption to the nationwide automobile distribution.

The Association further argued that it was impossible for manufacturers to put state-specific warranty information in vehicles prior to shipment to dealers. However, the court held that this claim was frivolous. Ford Motor Company currently disclosed the contents of section 198-a(b) to New York purchasers. Furthermore, as the record showed, manufacturers had little difficulty in disclosing other state-specific substantive information. Moreover, the court noted, section 198-a(b) did not require manufacturers to disclose anything. The court noted that even if the statute required disclosure, such disclosure would be feasible. By analogy, the credit card indus-

try disclosed the interest rates charged in all fifty states. Regardless, the court stated that disclosure is a "tolerable by-product" of doing business on the national level.

The Association finally argued that section 198-a(b) advantaged in-state business over out-of-state business. The court held that the statute did not advantage some manufacturers at the expense of others because the statute applied to all manufacturers equally. Accordingly, the court held that the benefits of section 198-a(b) exceeded the burdens it imposed on interstate commerce. Because the burden was minimal and did not discriminate against out-of-state businesses, the court upheld the section 198-a(b) repair provision.

Marianne L. Simonini

LANDOWNERS ARE NOT REQUIRED TO EXERCISE GREATER CARE TOWARD LICENSEES THAN INVITEES

In *Gallegos v. Phipps*, 779 P.2d 856 (Colo. 1989), the Colorado Supreme Court examined a Colorado landowner's duty to protect an invitee injured upon his land under a recently enacted landowner liability statute. 6A Colo. Rev. Stat. § 13-21-115 (1987). The court determined that the statute violated both the federal and state constitutional guarantee of equal protection by imposing on landowners a higher standard of care for licensees than for invitees.

Background

On December 28, 1986, appellant, Bernie L. Gallegos ("Gallegos") patronized The Ram, a restaurant and bar located in Georgetown, Colorado. Gallegos became visibly intoxicated during his visit there, and upon leaving The Ram, fell down a flight of stairs and was seriously injured. Gallegos brought suit against The Ram's management (Red Ram

Management) and the owners of the premises (Red Ram Venture) (all co-defendants are hereinafter referred to collectively as "Red Ram").

At the jury trial, Gallegos argued that Red Ram violated section 13-21-115 of the Colorado Revised Statutes, Colo. Rev. Stat. § 13-21-115 (1987), by serving Gallegos too much alcohol and then deliberately failing to exercise reasonable care to protect him against a known danger: the stairwell. Gallegos contended that the stairwell created a danger not ordinarily present on property of that type. Gallegos also argued, in the alternative, that section 13-21-115 denied him equal protection of the laws because it required landowners to warn licensees, but not invitees, of dangers on their property.

Red Ram offered evidence that not only were the stairs typical of those found in similar Georgetown buildings, but that the stairs were safely constructed and maintained. Red Ram further contended that Gallegos fell down the stairs while in a self-induced "drunken stupor."

The jury returned a verdict in favor of Red Ram, specifically finding that Gallegos' injuries were not caused by any dangerous condition at The Ram, that Red Ram did not deliberately fail to exercise reasonable care, and that Gallegos was injured by his own negligence.

The Colorado Supreme Court's Decision

Gallegos appealed directly to the Supreme Court of Colorado, asserting, among other things, that section 13-21-115 unconstitutionally violated his rights to equal protection under the laws. Specifically, he argued that the statutory scheme was arbitrary, unreasonable, and bore no rational relationship to a legitimate state objective because it provided less protection to invitees than to licensees. The statute caused similarly situated parties (tort victims) to be treated dissimilarly because tort victims of landowners must prove that the landowner acted deliberately, while victims of other types of tortfeasors need only prove negli-

(continued on page 86)