

MICHIGAN RV LAW

A newsletter for RV Dealers and Manufacturers

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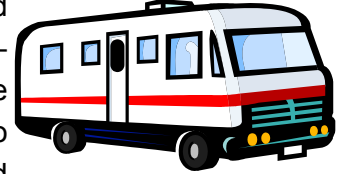
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2003, THE SUMMER MONTHS

As our fall, 2003 edition of Michigan RV Law Newsletter goes to print, RV sales continue to grow and the economy is on the rise. The industry has increased its investment in Go Rving, and RVIA is predicting one of the highest RV shipment totals ever in 2004. However, with this increased business comes increased risk. In our end of the industry we have seen the number of lawsuits against RV dealers and manufactures continue to grow, but through the coordinated efforts of defense counsel, manufactur-

ers and dealerships we have also continued



to achieve many excellent results in the defense of RV litigation. We hope that you continue to find this newsletter useful, and encourage you to contact our primary editor, Michael Dolenga at (248) 988-9922 or mdolenga@dolengalaw.com if you have any questions regarding the newsletter or suggestions for future articles.

MICHIGAN RV LAW NEWSLETTER **SEMINAR A SUCCESS**

At the request of many of our clients and contacts in the RV industry we held a seminar on August 26, 2003 pertaining to RV law. The turn out was good, and the response to the information and materials obtained by those attending was overwhelmingly positive.

Comments from the attendees included things like "the topics were extremely useful" and the faculty "should be teaching at a University." The attendees also found the documentation provided to them extremely useful. Indeed, one in-

dividual summed up their experience by indicating "I enjoyed the seminar and would recommend it to everyone in the RV industry."

As a result of the success of the August 26, 2003 seminar the Michigan Association of Recreational Vehicles and Campgrounds ("MARVAC") has requested that we hold another seminar. For further information regarding the next seminar, planned for November 5, 2003, please see page 4 of this newsletter.



Legal Tidbits

Avoiding Liability Through the Sales Process

Jeff Nowicki is an attorney with Dolenga & Dolenga, PLLC. Jeff's practice includes assisting manufacturers and dealerships in avoiding liability in litigation. The following is a condensed version of an article written by Jeff, and recently published by the National RVDA's magazine, RV Executive Today. For a complete copy of the article, or to discuss more ways your company can avoid liability contact Jeff at 248-988-9922 or jnowicki@dolengalaw.com.

As often as I jokingly hear, "It was a pleasure to meet you Jeff. I hope to never see you again," I know that this comment is always made with some sincerity. The fact is, however, if you have

not yet met me, or one of my colleagues, you may in the near future. However, our time together can be brief and painless if you know a little bit about the law, how Plaintiff's plead their cases and certain tactics for avoiding liability.

A dealership that has recognized its risks ahead of time and prepared its ownership and employees to meet the challenges of litigation can often achieve complete dismissal from these lawsuits. The key to successful defending these lawsuits begins before the customer walks in the door. Having a game plan in place and a well-drafted Purchase Agreement can eliminate liability in most lawsuits.

GAME PLAN

Dealerships and sales individuals who follow a well thought out game plan are the most successful in avoiding liability. Once they become accustomed to the plan they will cover the important points that must be addressed with the consumer to avoid liability. Further, if a lawsuit results from a sale they made they will make better witnesses if they have followed the game plan. Juries weigh the credibility of the sales staff versus the Plaintiff. A sales person who follows a game plan can testify with confidence before a jury that he or she always follows the same ritual during the sales process. The sales individual can walk a jury through the process with confidence and leave little doubt in the jury's mind that the important details regarding the sale were discussed with the consumer. This will also provides your attorney with ample ammu-



nication to cross-examine the Plaintiff, which can help discredit the Plaintiff's testimony.

Additionally, each sale unfolds in a unique way. Thus, a little flexibility is required in any game plan. By following a "bend don't break" philosophy your game plan can be effective in every sale. There should be enough flexibility in your game plan to answer a consumer's questions when they are presented to allow the consumer to feel comfortable with the sale. However, the important principals incorporated in your game plan should not be overlooked or brushed aside when adjustments are made to the game plan.

Having even a simple game plan in place covering the important issues below will help eliminate, or at minimum, limit your dealership's liability.

EXPLAINING WARRANTIES

All manufacturers offer some form of a limited, express warranty to consumers. Most dealerships offer no warranties. Most consumers, however, do not completely understand this, or at least, testify that they did not understand this when they purchased the RV.

Thus, step one in avoiding liability is to educate the consumer. This may seem like a “no brainer” but many consumers testify that they had no idea that the warranty was offered by the manufacturer and not by the dealership. This be-

“step one in avoiding liability is to educate the consumer”

comes even more complex if your dealership is an authorized repair facility for the manufacturer of the coach and/or chassis. Plaintiffs often testify that the sales staff told them “if you have any problems bring the RV back and we will take care of you”, which, although

generally true, can lead to some confusion. By simply explaining to the customer that the warranties come from the manufacturer and not from the dealership, but the dealership will assist the customer in obtaining repairs by performing the repairs under the manufacturer’s warranty the roles of the dealership and the manufacturer are made clearer.

Nevertheless, warranties can be a strong selling point for consumers. Thus, when showing different models to a consumer explaining the RV

manufacturer’s warranty, the chassis manufacturer’s warranty and the role of the dealership in providing service may give the consumer the extra incentive he/she may need to purchase the unit and clear-up any potential confusion.

PURCHASE AGREEMENT

By properly explaining warranties to a purchaser a dealership can avoid any express warranty liability. The key, however, to successfully litigating claims for revocation and breach of implied warranties hinges on the Purchase Agreement. A well-drafted Purchase Agreement will exclude all warranties and create an “AS IS” sale between the dealership and the purchaser. An “AS IS” Agreement is designed to eliminate any potential cause of action for revocation and breach of implied warranty against the dealership.

The rebuttal argument to AS IS language brought by Plaintiffs is usually that the exclusionary language is not conspicuous. Plaintiff attorneys always argue that the consumer did not see the language, understand it or read it

to exclude warranties. This argument gains momentum if the language is contained in “boilerplate” paragraphs on the reverse side of the Purchase Agreement.

Nonetheless, a well-drafted Purchase Agreement can defeat these arguments. The Purchase Agreement will use the type of print that alerts the consumer to the terms and conditions on the reverse side. This language should be in all capital letters, in bold and/or red type. Further, the disclaimer language on the reverse side should also be in a type that stands out from the rest of the language. In addition, having the consumer initial next to the disclaimer language creates an even greater burden for the Plaintiff to overcome.

MARVAC and MICHIGAN RV LAW NEWSLETTER **PLAN SEMINAR**

MARVAC has requested that we hold another seminar due to the feed back they received from our first seminar and many individuals desire to learn more about defending lawsuits brought against the RV industry, and, more importantly, how to prevent litigation against RV manufacturers and dealerships. As such, another seminar will be held on Wednesday, November 5, 2003 at the offices of MARVAC, located at 2222 Association Drive, Okemos, Michigan 48864. Topics covered during this seminar will include The Law of the RV Case, including Revocation Claims, Warranty Claims and Consumer Protection Act



Claims; The Sales Process, including Avoiding Liability through the Sales Process; The Plaintiff's Attorney's Perspective; and The Lemon Law. MARVAC will also update the attendees with important information about the RV industry, and attendees can question attorneys who specialize in RV litigation about any issues important to them.

For more information regarding this seminar you should contact Bill Sheffer, MARVAC director, at (517) 349-8881 or bsheffer@mmhrvca.org; or Michael Dolenga at (248) 988-9922 or mdolenga@dolengalaw.com.

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