

MICHIGAN RV LAW

A newsletter for RV Dealers and Manufacturers

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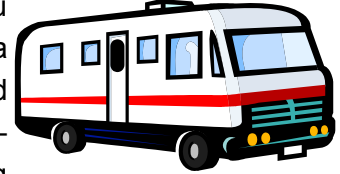
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2003, THE FIRST SIX MONTHS

As our Spring, 2003 edition of Michigan RV Law Newsletter goes to print, RV sales are up and the economy is improving. Unfortunately, for some companies' litigation claims are also up and new law firms looking to sue manufacturers and dealerships have joined the Michigan litigation scene. We have seen issues pertaining to arbitration clauses, warranty disclaimers and the Michigan Consumer Protection Act being heavily litigated in the first 6 months of 2003. In this edi-

tion you will find a featured article regarding revocation claims and other additional useful information. If you have any questions pertaining to this newsletter, Michigan law or litigating RV cases feel free to contact our primary editor, Michael Dolenga at (248) 988-9922 or mdolenga@dolengalaw.com.



MICHIGAN RV LAW NEWSLETTER **PLANS A SEMINAR**

Many of our clients and contacts have expressed an interest in a seminar discussing litigation strategies and the law. Therefore, we have decided to hold a **seminar on Tuesday August 26, 2003**. With this edition of the Michigan RV Law Newsletter you will find an insert, which serves as a registration form. Tuition is only \$100.00 for an educational seminar that promises to provide you with a wealth of information regarding state and federal law pertaining to consumer/commercial litigation, tips on handling RV cases, an opportunity to network with others

in the RV industry and strategies from leading experts handling RV litigation for manufacturers and dealerships.

Reserve your spot at the seminar early, as seating is limited. You may reserve your spot by filling out the enclosed form and mailing or faxing it to us. You may also reserve a seat, or obtain additional information regarding this seminar, by sending an e-mail to Michael Dolenga at mdolenga@dolengalaw.com or Jeff Nowicki at jnowicki@dolengalaw.com.



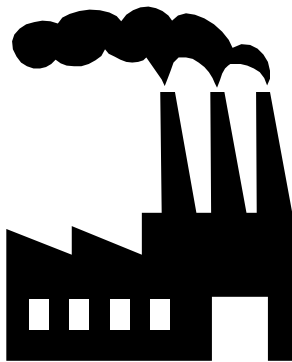
Legal Tidbits REVOCATION CLAIMS

The primary claim that Plaintiffs bring against RV manufacturers and dealerships in any lawsuit is a claim for revocation. Essentially, this potential cause of action requests a complete buy back, with reimbursement of all money paid by the consumer, as well as payment of costs and attorney fees for the litigation. It is the “hammer” that Plaintiffs’ attorneys use in negotiating, and it is the highest level of exposure that RV manufacturers and dealerships have in consumer litigation in Michigan. This article discusses how claims for revocation can be dismissed through appropriate legal maneuvering. The law regarding revocation claims against manufacturers and claims against dealerships is different. Therefore, this article is divided into two categories: Revoking against manufacturers and Revoking against dealerships.

REVOCATION CLAIMS AGAINST MANUFACTURERS

Michigan has a few cases that directly discuss revocation against manufacturers and allow this claim to be dismissed against a manufacturer that is not “in privity” with the consumer. Essentially, this means that if the manufacturer does not have a contract, or sales agreement, with the consumer, the consumer may not be able to pursue a claim for revocation against a remote manufacturer. In the RV setting, since most RVs are sold through independent, authorized RV dealerships, most RV manufacturers are not “in privity” with the end consumer, and most judges will dismiss a claim for revocation against an RV manufacturer.

The leading Michigan case on this



topic is Henderson v Chrysler Corp., 191 Mich App 337, 477 NW2d 505 (1991). In Henderson, the Michigan Court of Appeals explicitly stated that the remedy of revocation of acceptance is not a viable cause of action against a remote manufacturer. In that case, the Plaintiff brought a lawsuit against the manufacturer of his motor vehicle. The court indicated that revocation is generally utilized only against the immediate seller and that the claim of revocation is “inextricably connected” to the contractual relationship between the buyer and the seller. Therefore, the court dismissed the buyer’s claim against the manufacturer. Since this is a published Michigan Court of Appeals decision it is a binding law in Michigan. Therefore, remote manufacturers can move for a dismissal of any revocation claim filed against them.

REVOCATION CLAIMS AGAINST DEALERSHIPS

Claims for revocation against a dealership are more complicated than claims for revocation against a manufacturer. Dealerships are best able to seek dismissal of a revocation claim if they have appropriate disclaimer language in their sales paperwork with the consumer. If the dealership's sales paperwork has appropriate disclaimer language in it, and better yet, if it has "AS IS" language in it, then it may be possible to have a revocation claim filed against a dealership immediately dismissed.

In Michigan, the revocation statute indicates that a buyer may revoke acceptance of goods if they have a nonconformity that substantially impairs the value of the goods to the consumer. If the RV is sold without warranties, with a disclaimer of all manufacturers warranties, or, more appropriately, "AS IS", then the revocation statute may not apply. The reasoning is that in order for a buyer to use the revocation statute the RV must have a nonconformity that substantially impairs the value of the RV. If the RV is sold AS IS as to the dealership then it cannot have any nonconformities.

"If the court is convinced that revocation is a remedy for breach of warranty, and all warranties are disclaimed, then the consumer should not be able to sue the dealership for revocation."

A variety of different cases have addressed this issue in Michigan. Some have resolved the issue in favor of the consumer and others have gone the way of the dealership. However, dealership attorneys normally argue that the sales agreement is the controlling document and that if it has appropriate disclaimer language in it then there are no warranties, express or implied, from the dealership. Therefore, the claims for revocation should be dismissed against the dealership.

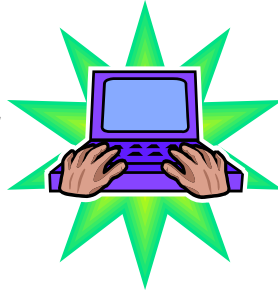
Another way of arguing this in court is that revocation is actually a remedy for breach of warranty, not a freestanding cause of action. If the court is convinced that revocation is a remedy for breach of warranty, and all warranties are disclaimed, then the consumer should not be able to sue the dealership for revocation.

Notably, revocation claims against dealerships are one of the most complicated areas of Michigan law and courts at all levels have gone in different directions on this topic. We recommend that you consult with an attorney specializing in this area to decide the best way to proceed if you are a dealership that is sued for revocation.

MICHIGAN RV LAW NEWSLETTER **NOW AVAILABLE ON-LINE**

The attorneys primarily responsible for this newsletter are employed with Dolenga & Dolenga, PLLC. We recently developed a website, and have placed all past editions of this newsletter on the website.

This edition, and all future editions will also be posted on the website. The website address is www.dolengalaw.com. You can find the



newsletter in adobe acrobat, i.e., pdf, format by going to the website and then

clicking on the link for RV Newsletter on the home page. If you missed any past editions this is your opportunity to re-view previous newsletters.

Also, feel free to distribute it electronically to your family, friends and business associates in the RV industry.

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