

MICHIGAN RV LAW

A newsletter for RV Dealers and Manufacturers

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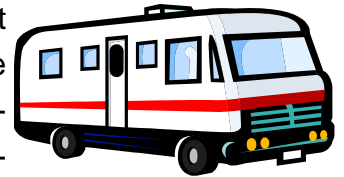
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INTRODUCTION

Through this part of 2004 we have seen continued booming sales in the RV industry and much litigation to go with it. Fortunately, we have been quite successful in defending these claims in Michigan, and we are happy to provide this newsletter as a follow up to the last newsletter we sent, in which we discussed a variety of different

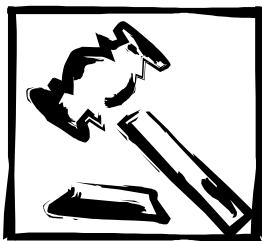
cases that can be used to defend litigation filed in Michigan and throughout the country. This newsletter addresses five important cases that have been litigated in Michigan State and Federal Courts recently.



UPDATED CASE LAW REVIEW

In our last newsletter we discussed many different cases that attorneys defending RV manufacturers and dealers use to get litigation against their clients dismissed. Using that case law we obtained five excellent results during the past several months, and are updating our last newsletter with a discussion of those cases to make sure that anyone involved in litigation knows of these opinions and continues to use them so that we can build the body of case law, which currently exists to defend these types of claims. If you have any questions regarding these cases, or would like additional details, please contact Michael Dolenga or Jeff Nowicki.

In *Parsley v Monaco Coach Corporation* and *Pitts v Monaco Coach Corporation*, Motions for Summary Judgment (i.e., to dismiss) were filed before the judge presiding over those cases, Chief Judge Robert Holmes Bell, of the United States District Court, Western District of Michigan. Judge Bell analyzed the body of case law, which we term RV litigation, and granted the overwhelming majority of the Motions for Summary Judgment. Judge Bell's opinions can be found at *Parsley v Monaco*, 327 F. Supp 2d 797, (WD. Mich 2004), 2004 WL 1660991 and *Pitts v Monaco* 330 F. Supp 2d 918, (WD. Mich 2004), 2004 WL 1660946.



UPDATED CASE LAW (continued from page one)

Notably, in each of the cases mentioned the consumers' alleged the usual types of claims that are brought against RV dealerships and RV manufacturers. Judge Bell dismissed almost all of the allegations, such that after his opinion the cases were dwindled down to the following allegations:

<u>Count</u>	<u>Monaco</u>	<u>Dealership</u>
Implied Warranty of Merchantability	Dismissed	Dismissed
Magnuson-Moss Warranty Act-Express	In	Dismissed
Magnuson-Moss Warranty Act-Implied	Dismissed	Dismissed
Implied Warranty of Fitness	Dismissed	Dismissed
Revocation	Dismissed	Dismissed
MCPA	In	In

Judge Bell also made the Plaintiffs more specifically allege how they believe the Defendants violated the Michigan Consumer Protection Act ("MCPA"). As such, subsequent to receiving Judge Bell's opinion, the attorneys representing the consumers amended their complaints to specify their MCPA claims. As a result of that we followed up with the Court and requested a dismissal of the MCPA claims against the dealership. Upon receipt of our Motion, the opposing attorney stipulated to the relief requested. As such, the dealerships were then completely dismissed from each of these lawsuits, without any payment to the consumers.

Judge Bell's opinions are excellent because they clarify that privity is required for a consumer to bring a claim in Michigan for revocation of acceptance of contract or any implied warranties. That opinion, together with appropriate disclaimer language in the dealerships purchase agreement, allowed us to obtain a complete dismissal of the revocation claim, as well as a complete dismissal of all implied warranty claims. With that having been accomplished, the consumers can no longer claim a "buy back." As such, the only relief they could obtain is diminution in value, which is substantially less than the revocation of acceptance, or buy back, claim.

The other important aspect of Judge Bell's opinions pertains to the Michigan Consumer Protection Act claim. Although he did not outright dismiss those claims, he forced the consumers to amend their complaint to specifically state how they believe each of the Defendants violated the Michigan Consumer Protection Act. This substantially narrowed the scope of the MCPA claim, and, we believe narrowed it to only a breach of warranty claim against the manufacturer. As noted above, raising various arguments regarding that, we were able to convince opposing counsel of our position, and they voluntarily dismissed the MCPA claim against the dealership. Then we are only faced with, essentially, defending breach of warranty allegations against Monaco.

As a result of these excellent opinions from Judge Bell, the *Pitts* matter ultimately settled for an amount, that was substantially less than what the consumers were claiming. The *Parsley* matter is still pending before Judge Bell, and Monaco intends to file another Motion for Summary Judgment to see if the remaining allegations against Monaco can be dismissed.

Treadaway v RV Manufacturer and Dealer is another important decision to RV jurisprudence. *Treadaway* was pending before Judge Cleland in the United States District Court for the Eastern District of Michigan. We filed a Motion for Summary Judgment to get the manufacturer and the dealer-

ship dismissed from the lawsuit. Judge Cleland granted the entire Motion and completely dismissed the case against both Defendants. Judge Cleland decided not to publish his opinion. Therefore, we do not have a cite for its publication. We do, however, have copies of the opinion available if anyone would like it.

Notably, the consumer in *Treadaway* brought the same types of allegations that are listed above, as well as others. Through appropriate discovery tactics, we were able to narrow the scope of the allegations against the Defendants and then file a Motion for Summary Judgment to have the entire case dismissed. Using expert analysis of the RV and the same types of legal arguments as outlined above, in addition to some newer arguments regarding what constitutes an express warranty pursuant to Michigan's Uniform Commercial Code, we convinced Judge Cleland that the consumer had no case against either Defendant. As such, he entered an order of complete dismissal and *Treadaway* was dismissed.

Interestingly, subsequent to the dismissal, Plaintiff's counsel claimed that Plaintiff would file a Motion for Re-Hearing and/or Appeal, if the Defendants did not pay a small settlement amount. The Defendants declined to do so, and the Plaintiff did not appeal. As such, *Treadaway* is completely dismissed, and stands as good law in the State of Michigan and the Federal Courts as to how the courts should interpret Michigan's Uniform Commercial Code and RV law.

The *Treadaway* decision discussed and followed much of Judge Steeh's opinion in *Pack v Damon*. That opinion was discussed in our last newsletter. Subsequent to the last newsletter, another Motion for Summary Judgment was filed in *Pack v Damon*. As a result, the entire lawsuit was dismissed. The citation for the first *Pack* decision is *Pack v Damon*, 320 F. Supp 2d 254 (ED. Mich. 2004). The citation for the second *Pack* decision is not yet available. Interestingly, the law firm representing the consumer in *Pack* is the same law firm that represented the consumer in *Treadaway*. They elected to appeal the decision in *Pack*. As such, *Pack v Damon* is currently pending before the United States Court of Appeals for the Sixth Circuit. We are hopeful that Judge Steeh's opinion will be affirmed in its entirety. If so, manufacturers and dealers will have a substantial, written opinion from the Sixth Circuit Court of Appeals to rely upon in defending RV litigation in Michigan. Importantly, the decision addresses all allegations outlined above and the appropriateness of an arbitration clause in a dealership's purchase agreement. In addition, another excellent trial court decision, *Ducharme v A&S* is also on appeal with the Sixth Circuit Court of Appeals. If both cases are affirmed, i.e., decided in favor of the defense, we will have two excellent written opinions from the Sixth Circuit.

The last important case to be litigated in Michigan recently was a trial. In *Gilkeson v RV Manufacturer*, Wayne County Circuit Court Civil Action No.: 03-321061-CP, we attempted to get much of the lawsuit dismissed as we did in the above noted cases by using the cases cited in our previous newsletter. Unfortunately, the judge in *Gilkeson* did not agree with our arguments or follow the many decisions previously cited. As such, he left open a variety of different avenues for the consumers to succeed at trial, including obtaining a full buy back on their revocation of acceptance claim. As a result, the manufacturer and dealer decided to proceed to trial. The case ended up being a fascinating example of how juries react to RVs with lengthy repair histories, where the dealership and manufacturer make efforts to satisfy their customers. In the end, the jury decided that the dealership delivered conforming goods. As such, they awarded the consumers nothing on the claim for revocation of acceptance. In addition, the jury decided that the manufacturer repaired everything with the RV except for a few minor items, and that those items could still be repaired. As such, the jury awarded the consumers nothing on the claim for breach of warranty. As a result of the jury awarding the consumers zero, the manufacturer and dealer are now entitled to costs against the consumers. A Motion for Reimbursement of certain litigation fees and costs is currently pending before the Court, and the consumers have not appealed.

Summation of RV Law

As noted in our last newsletter a body of case law is developing regarding RV litigation. About 75-80% of the decisions have come down in favor of RV manufacturers and dealers. Of those cases, several have been extremely favorable to the RV manufacturers and dealers. Unfortunately, a small segment of judges are still ruling in opposite to appropriate language in purchase agreements, or finding that purchase agreements are not binding for various reasons and/or ignoring the limitations in manufacturers' warranties. Hopefully, we will be able to obtain enough positive opinions to squeeze out this minority and continue to develop RV case



law in a fashion that will make it easier for RV manufacturers and dealers to get litigation against them dismissed or settled for an appropriate amount. To that end, we ask that you contact us with any questions you have regarding the decisions discussed in this newsletter, or our last newsletter, and that you continue to keep us advised of any cases you have, especially those that have written opinions from judges that can be used by other attorneys defending RV litigation.

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