

MICHIGAN RV LAW

A newsletter for RV Dealers and Manufacturers

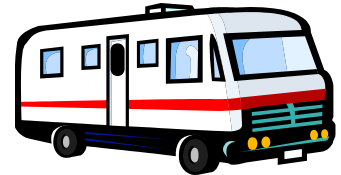
Volume III, Issue II

Spring 2004

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SRING 2004 ISSUE



In the last edition of this newsletter we mentioned that this edition, to be printed in the Spring, would discuss a variety of different cases that manufacturers and dealerships could use to get litigation against them dismissed. We apologize for the delay in getting this newsletter circulated, but our editors have been quite busy using these cases to get other lawsuits dismissed. Fortunately, some of our readers contacted us upon receipt of the last newsletter about our list of cases, and we were able to help out many of you who

were looking for more immediate assistance.

This newsletter discusses Opinions that can assist the RV industry in getting lawsuits dismissed. Many of these cases were handled by Michael Dolenga and/or Jeff Nowicki. If you wish further information about them, copies of the pertinent Opinions or assistance in defending claims brought against you, feel free to contact Michael or Jeff at (248) 988-9922, or mdolenga@dolengalaw.com or jnowicki@dolengalaw.com.

Summary of Recent RV Cases

In *Nicolai*, (23rd Judicial District Court Case No.: 00-02-3565-GC), Judge Sutherland dismissed the dealership from the lawsuit as a result of appropriate disclaimer language on the Purchase Agreement and a statute of limitations defense. He also partially dismissed the RV manufacturer as a result of various issues raised regarding how Michigan judges should interpret Michigan's Uniform Commercial Code. The case went to trial, and at the end of the trial Judge Sutherland dismissed the remaining claims against the RV manufacturer due to limitations and disclaimers in the RV manufacturer's warranty.

In *Chiasson*, (United States District Court, for the Eastern District of Michigan, Case No.: 01-CV-74809), Judge Steeh considered arguments from an RV manufacturer that is similarly situated to almost all RV manufacturers sued in Michigan (i.e. "remote" manufacturer of RV's sold by a Michigan dealership). Judge Steeh considered how to interpret Michigan's Uniform Commercial Code on claims of revocation, implied warranties, express warranties, Michigan Consumer Protection Act and others. He granted the Motion, and his Opinion has been cited by a number of other judges who preside over similar cases. [Continued on page 2]

In *Watson*, (United States District Court, for the Western District of Michigan, Case No.: 1-02-CV584), Judge Quist granted a Motion for Summary Judgment that has been called the seminal case in Michigan for RV litigation by a number of attorneys involved in these types of matters. After Judge Quist's granting of that Motion, the Plaintiff (consumers) moved for rehearing. Judge Quist denied that Motion, and the *Watson* Opinion is still good law today. In essence, Judge Quist's Opinion stands for the proposition that a dealership that uses a properly worded Purchase Agreement, with appropriate language disclaiming warranties, cannot be sued in the State of Michigan for an allegedly defective RV. Judge Quist completely dismissed the dealership from the *Watson* lawsuit, and many other judges have followed his Opinion in dismissing dealerships in other RV litigation. As to the manufacturer, Judge Quist dismissed the overwhelming majority of the case, such that he left only breach of warranty claims against the manufacturer, which limited the Plaintiff's damages to diminution in value. That limitation prevented the Plaintiffs from claiming revocation (i.e. a "buy back") and, ultimately, allowed the manufacturer to settle the lawsuit for substantially less than what the Plaintiffs were claiming.

Subsequent to Judge Quist's Opinion in *Watson*, other Trial Courts have read and followed his Opinion. For example, in *Cragg*, (Lapeer County Circuit Court Case No.: 01-030782-CP), and *Gosioco*, (Lapeer County Circuit Court Case No.: 01-030783-CP), the Trial Court dismissed the overwhelming majority of all allegations against the RV dealership and the RV manufacturer based upon the same reasoning used by Judge Quist in *Watson*.

At about the same time that Judge Quist made his ruling in *Watson*, Opinions were issued from other judges who used substantially the same rationale to dismiss most of the allegations against the RV Manufacturer and the RV dealership. These Opinions were issued in *Mason*, (Oakland County Circuit Court Case No.: 01-033972-CP), and *Pope*, (Oakland County Circuit Court Case No.: 02-039383-CP). In addition, the *Pope* case proceeded to arbitration. After hearing all testimony in the case, the arbitrator entered an award of zero against the dealership and a minimal amount against the manufacturer.

After these Opinions a number of courts have looked to *Watson* or other cases to help them interpret Michigan's Uniform Commercial Code, and the allegations made in RV litigation. Five different judges from the United States District Court for the Eastern District of Michigan have ruled on substantially similar Motions. In addition, several cases are currently pending in the Western District of Michigan where judges have indicated that these Opinions will likely be followed. In cases where Opinions have been rendered, the overwhelming portion of the allegations against the manufacturer and dealership, if not all of the allegations, have been dismissed. Some of these cases have dealt with the interpretation of State and Federal consumer law, while others have dealt with arbitration clauses. Generally speaking, the rulings on the arbitration issues have been positive for RV manufacturers and dealerships. In addition, the issues in the arbitration cases have been similar to the other cases as they dealt with things like conspicuousness and the conscionability of Purchase Agreements and warranties. The recent federal cases are *Gernhardt*, (United States District Court, Eastern District of Michigan, Case No. 03-73917), *Michels*, 298 F Supp 2d 642 (ED Mich, 2003), *Ducharme*, (United States District Court, Eastern District of Michigan, Case No.: 03-70729) and *Pack*, (United States District Court, Eastern District of Michigan, Case No.: 03-73601). [Continued on page 3]

Interestingly, many Federal Court Judges have started referencing the other Federal Court Opinions, and in one of the most recent cases, *Pack*, Judge Steeh actually indicated that he disagrees with the Judge Duggan's Opinion in *Michels*. Unfortunately, although the Judge Duggan granted a substantial portion of the Dismissal Motion in *Michels*, and, in fact, dismissed the RV dealership from the case, he rendered a lengthy Opinion denying certain portions of the request to dismiss the RV manufacturer. Since Judge Duggan published the *Michels* Opinion, certain judges have indicated that it should be followed. For example, in *Cramer*, (United States District Court, Eastern District of Michigan, Case No. 04-70072) Judge Friedman denied most of the requests for dismissal, indicating, in part, that Judge Duggan's Opinion in *Michels* was important to him. In addition, in *Hadorn*, (Macomb County Circuit Court Case No. 03-4737-CP), Judge Druzinski also denied significant portions of a Dismissal Motion based, in part, on the *Michels* decision. Fortunately, the RV manufacturer and dealership in both of those cases have taken an aggressive stance on these Opinions that appear to have been wrongly decided. Thus, the *Hadorn* matter is on appeal and follow-up Motions have been filed in *Cramer* in an effort to get that Opinion reversed. If the appellate process works the *Hadorn* matter may give Defendants in these actions substantial ammunition to use to defeat these lawsuits. Please watch further newsletters for updates regarding the *Hadorn* lawsuit.

The most significant, recent, twist in our analysis of Michigan RV cases is that Judge Steeh has decided to publish his Opinion in *Pack*. Notably, since certain judges have followed portions of the *Michels* decision, because it is the most recently published decision in Michigan RV law, we believe that many judges will now change their mind, or future judges will look more favorably upon the *Pack* decision, as it will now be published as well. Importantly, the dealership in *Pack* was dismissed because of an arbitration provision within the Purchase Agreement. The judge wrote many positive things about the defenses available to dealerships when they have a properly drafted Purchase Agreement in these types of cases. He also granted the overwhelming majority of the Motion as to the RV manufacturer, such that his opinion is similar to Judge Quist's in *Watson*.

In addition to these cases, the Michigan Supreme Court has made an important pronouncement in an automobile case that reflects favorably on arbitration clauses and should help the RV industry defeat lawsuits against it as well. In *Abela v General Motors Corp.*, 469 Mich 603, (2004) the Michigan Supreme Court held that an arbitration clause in an employee purchase plan was appropriate, not invalidated by the Federal Magnuson Moss Warranty Act and binding upon a consumer who purchased a General Motors vehicle. The Court also determined that the Federal Arbitration Act preempts many of the State laws that are used in consumer litigation and that the lawsuit should be dismissed. That case is extremely beneficial to RV dealerships and manufacturers that attempt to get these lawsuits dismissed pursuant to arbitration provisions in their Purchase Agreements or warranties. [Continued on page 4]

Conclusion *[Article begins on page 1]*

As you might suspect, the allegations in RV cases are somewhat varied. Thus, distinguishing characteristics came up in each of these matters that may change how a judge views a Dismissal Motion in any litigation that you have. Notwithstanding this, the allegations in almost every RV lawsuit are substantially similar. As a result, we have seen the development of a subcategory of commercial and consumer litigation in the Michigan and Federal Courts sitting in Michigan. Many RV lawyers argue that a subcategory of case law has evolved through the cases discussed above and that it has precedential or persuasive value to all courts that preside over litigation between consumers, RV manufacturers, dealerships and component part manufacturers, such as chassis manufacturers. Almost every judge hearing an RV case has agreed that these cases are important to his or her decision, and our survey of the law has indicated that the RV industry has been about 80%-90% successful in getting all or most of the claims against them dismissed. This has resulted in a complete dismissal of lawsuits, or settlements for much less than the claim for revocation or "buy back" made in RV litigation, which can cause substantial exposure to manufacturers and dealerships.

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