

MICHIGAN RV LAW

A newsletter for RV Dealers and Manufacturers

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INTRODUCTION

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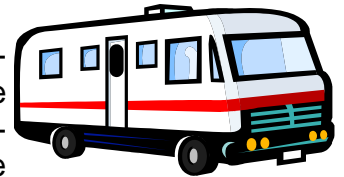
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Many of our recent newsletters have discussed the cases that have developed in Michigan in the last several months in the area of consumer and RV litigation. This has continued in the last few months, and our next newsletter will, again, likely be committed to reporting on some of this new case law. In this newsletter, we thought we'd get back to litigation prevention.

Recently, several RV magazines dedicated issues to lawsuit prevention, Finance and

Insurance and regulation of the RV industry. One

magazine saw fit to interview our primary editor, Michael Dolenga, on his thoughts pertaining to litigation prevention. Excerpts from the article/interview are reproduced below, with certain annotations and notations to, hopefully, assist our readers with their Risk Management and Litigation Prevention needs.



LIMITING LEGAL LIABILITY

Anyone who owns a business knows how easy it is for people to file a suit for any reason. Many times, the customer's attorney takes the suit on a contingent fee basis, meaning the consumer doesn't pay any legal fees unless he wins. That's of little comfort to an RV dealer who must make a choice between investing thousands of dollars in legal fees and spending hundreds of hours defending a frivolous lawsuit.

"The law is heavily favored to consumers," said Michael Dolenga, an attorney from Michigan who specializes in general civil litigation and representing RV dealers and manufacturers. There has been tort reform in a lot of areas, but there is still little or no protection for manufacturers or sellers of a good."

Many times, consumers file suits under statutes that have fee-shifting provisions which means if the dealer or manufacturer loses the case, they must pay the legal fees incurred by the consumer. "They can be on the hook for incidentals like insurance, registration fees and even interest on the loan," said Dolenga. "A dealer can sell a motorhome for \$100,000, but if the deal goes bad it can quickly turn into a \$150,000 case."



LIMITING LEGAL LIABILITY (continued from page one)

The most common allegations facing RV dealers and manufacturers are breach of warranty, (express and implied), lemon laws (in states where they apply) and violations of other Federal and State consumer protection acts. Irrespective of what a manufacturer and dealer have done to protect themselves, it remains one of the most plaintiff and consumer-oriented areas of the law.

WRITING STRONG WARRANTIES

Manufacturers can protect themselves by having appropriately written warranties that follow federal and state laws. "Although many state laws may not agree with each other, federal statutes are usually broad enough to comply with all 50 states," said Dolenga. Of course, consultation with an expert in the state where manufacturers sell their products is necessary to ensure full compliance. This way warranties will contain the proper exclusions and limitations.

When it comes to warranty claims, manufacturers can protect themselves and their dealers by creating channels of communication to learn about potential problems before a case goes into litigation. Implementing strong quality control measures to detect problems with new RVs before they are shipped also helps reduce manufacturer liability. "There is always a case in which a bad one gets through," said Dolenga. "But by having strong customer service personnel, manufacturers are often able to take care of cases before or immediately after a suit is filed."

WRITING STRONG PURCHASE AGREEMENTS

The No. 1 thing RV dealers can do to protect themselves is to use a well-written purchase agreement when completing a sale. This is not a job that dealers should attempt to undertake without getting legal counsel. Every RV dealership prepares an agreement that contains exclusions and limitations which spell out what the dealers is and is not willing to take responsibility for in selling or servicing the RV. There are a host of laws that govern how those agreements must be written.

"If a dealer doesn't use the right language in preparing the sales agreements, courts will void the exclusionary content of

the agreement and/or fail to enforce the contracts at all," said Dolenga. "I can't tell you the number of cases I have had where the dealer had appropriate language in the contract so

that irrespective of what happened at the dealership regarding service or product quality, we have been able to get the case dismissed solely based on the language in the contract."

That's especially true when selling finance or insurance products. Not only must documentations be pre-

pared properly, the person selling F&I products must properly explain what is being sold and what promises are being made. It is an excellent idea for dealers to get consumers to decline certain options in writing.

"A lot of boiler plate language in F&I documents can override purchase agreements. Dealers need to make sure all their documents are consistent and enforceable"

“It gets a bit sticky when people make arguments about documents produced at the F&I stage that they claim override the purchase agreements,” said Dolenga. “A lot of boiler plate language in F&I documents can override purchase agreements. Dealers need to make sure all their documents are consistent and enforceable.” By way of example, most manufacturers limit warranties to one or two

years. At the end of that period, the consumer may want an extended service contract and go back to the dealer suggesting that he wasn’t offered it, said Dolenga. But if the dealer produces a piece of paper indicating the consumer was offered a service contract and that he elected not to purchase it, the dealership is protected.

PAPERWORK PROBLEMS

Documenting every customer contact goes a long way toward protecting an RV dealership and convincing a judge that everything was done appropriately to help the customer. Documentation is especially important in the service center.

“One of the biggest forces driving RV litigation today is days out of service,” said Dolenga. “In many cases consumers allege an RV has been out of service for a certain number of days, and when we analyze the paper trail, we show otherwise.” For example, a consumer may allege he brought an RV in for service on February 1 and couldn’t pick it up again until February 22, for a total of 23 days out of service. If every contact has been properly documented, the paperwork may show the RV came in February 1 to get five items fixed. Four of the items were completed by February 3, but the dealership needed a part to complete fifth the repair. In that situation, the dealer usually calls the consumer to say the RV can be used and that he can pick up the unit and bring it back when the part comes in.

Many times the customer says he’s in no hurry and that the dealer should just keep the RV and let him know when all the work is completed. In our example, if the part comes in on February 11, the repair is completed the next day, and the consumer is told he can pick it up immediately, the “days out of service” should only be 4, or even if the “waiting for parts time” is counted against the dealer, no more than 14. Then, the customer says he’ll be right in, but he doesn’t show up until 10 days later to pick up his RV. Consumer’s lawyers try to count that as 23 days out of service. With proper documentation, we can convince the judge and jury, it’s only 4.

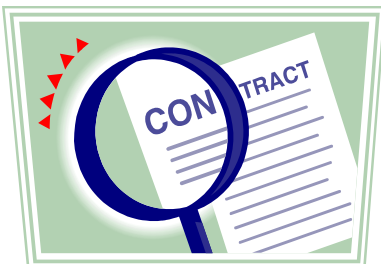
DEALERS ARE ON THE FRONT LINE

By working in partnership with their manufacturers, dealers can help protect themselves and reduce legal costs. The dealership is on the front line in dealing with customers and service concerns. They can identify problems before they escalate and take steps to defuse them.

Should a dealer or manufacturer be sued, it’s important to get proper legal advice as soon as possible from a lawyer who specializes in consumer litigation. “A lawyer assigned to represent a dealer on behalf of an insurance company may not really understand the issues because consumer law is one of the most complicated areas of litigation,” Dolenga added. “That’s why we always recommend consultation with an attorney who specializes in RV litigation, or at the very least, consumer litigation.”

Watch for Hot Topics in Our Next Newsletter

As this newsletter is going to press the hot topics in litigation right now pertain to arbitration and the difference between a Purchase Agreement and a Retail Installment Sales Contract. Unfortunately, some consumers' attorneys have been successful in voiding disclaimer language, or arbitration clauses in sales documentation through some unique and creative arguments. Cases on these



very issues are being decided by our trial and Appellate Courts right now. We will bring you up to date in our next newsletter. In the mean time, if we can assist you in drafting a purchase agreement, defending a case, or just giving you some friendly advise on avoiding litigation, give us a call at 248-988-9922 or check us out on the web at www.dolengalaw.com, (past issues of this newsletter posted on a link page).

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