Dolenga & Dolenga, PLLC

Consumer Law Reporter

A Newsletter for Dealers and Manufacturers of Consumer Goods

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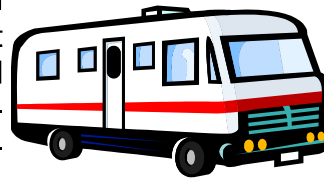
This edition of our newsletter is dedicated to another case study. We received such tremendous feedback from the last newsletter, which discussed a lawsuit that a Plaintiff filed against an RV dealership and RV manufacturer, and our success in defending that case, that we decided to discuss a different case and another case study in this article. To that end, this newsletter addresses how we obtained a No Cause for Action ("zero") verdict in a case that went to trial against an RV dealership and an RV manufacturer. In case you missed our last case study, please see the Fall 2005 edition of our previously newsletter at www.dolengalaw.com.



Plaintiff v RV Dealership – A Case Study II

Plaintiff filed a lawsuit in the Wayne County Circuit Court against an RV dealership and RV manufacturer. Plaintiff filed a multi-count complaint making various allegations against each of the Defendants. The names of the parties will not be used here, but are a matter of public record and can be obtained from our editors.

The lawsuit began with the Defendants' attempts to get much of the case dismissed. Unfortunately, we were not successful with an early dispositive motion because of some poor rulings by the judge presiding over the case. The dealership and manufacturer decided not to file an immediate appeal. Instead, they defended the case in the hopes that we could still be successful in front of a jury, while reserving our rights to file an appeal if we were not.

The motor home involved in this case had a significant repair history. In fact, the repair history was so long that we took a tactic not employed in the defense of many consumer cases. We decided to concentrate our defense of the manufacturer on the many efforts it made to make things right and even suggested to the jury that they might return a small verdict against the manufacturer for the inconvenience caused to the Plaintiffs.

As to the dealership, we concentrated on the paperwork completed at the time of sale, and in particular, the purchase agreement, which disclaimed all warranties and indicated that any warranty on the product came solely from the manufacturer. This allowed us to put forth two significant defenses. First, the dealership did not have liability because the paperwork signed by the consumer indicated that the consumers had no claim against the dealership. In addition, the manufacturer's warranty was either not breached, or because of the significant efforts by the manufacturer and the dealership in performing service work on the product it was only slightly breached. In the end, the plan worked as the jury returned a verdict of No Cause for Action ("zero") for both the manufacturer and the dealership.

Plaintiff v RV Dealership

– A Case Study II

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Defense of the Manufacturer

Because the motor home had such a long repair and warranty history we showed the many efforts that the manufacturer and dealership made during repair visits. This was somewhat dangerous and may have back fired as we had to discuss how multiple repair attempts for the same items were made time and again. We also showed that the RV went back to the factory on a couple of occasions after the dealership could not fix things to the customer's satisfaction. Obviously, the Plaintiff's attorney concentrated on the long repair history, failed attempts and continued non-conformities. We used these same items to show the jury how to look at the lawsuit from a different angle, i.e., that the manufacturer and dealership continued to work with the customer, honored the warranty and did everything in their power to make the customer happy. The manufacturer and dealership even fixed things that were outside the scope of the warranty and provided other good will. We argued that this meant that the manufacturer and dealership did everything they had to do under the warranty, and more importantly, under the law. We concentrated our legal arguments on this aspect of the case. We showed that the manufacturer and dealership complied with the terms of the warranty. Therefore, the warranty was not "breached." We further argued that without a breach of warranty the jury could not assess damages against the manufacturer. As noted above, we even went so far as to concede that the repair history on this motor home was larger than most. Therefore, if the jury wanted to assess a small amount of money against the manufacturer we could see why they might do this. However, we felt that the manufacturer complied with all laws, and that the jury should give them credit for that. We felt this bolstered our credibility, and the jury advised us afterwards that it did. In the end, they said that they felt this was, likely, a bad product, but they agreed with our argument that a bad product does not mean a breach of warranty or violation of law. Because the manufacturer acted in good faith, they felt the manufacturer complied with the warranty and they assessed zero damages against the manufacturer.

> *they agreed with our argument that a bad product does not mean a breach of warranty or violation of law*

Defense of the Dealership

Our argument for the dealership was different. We asked the jury not to analyze the dealership's actions regarding the service history or warranty claims. Although we conceded that the dealership worked through the manufacturer in regards to warranty claims, we argued that jury should only look at the claims against the manufacturer in regards to the warranty, service history and repair work, irrespective of where the repair work was done since all repair work was covered by the manufacturer's warranty, at no cost to the consumers. We argued that the only way the jury could render a verdict against the dealership was if the dealership violated something in the contract between the consumer and the dealership. Since the sales paperwork disclaimed all warranties, express and implied, we argued that the consumer did not have a valid cause of action against the dealership. In many other consumer cases we have been successful in getting the dealership completely dismissed by the Judge before we ever went before the jury. In this instance, because of some adverse rulings

by the judge the case went to trial against the dealership as well. Essentially, we made the same arguments to the jury that we made to the judge earlier, and the jury agreed with us. They found that because the paperwork disclaimed all warranties the dealership did not promise anything to the consumers, other than what was noted in the paperwork, i.e., a motor home that worked at the time of the purchase. As to all the problems that the consumers had with the product after purchase, we argued that this only went to the warranty claims, and since the dealership disclaimed all warranties the jury should not assess damages against the dealership. In the end, the jury agreed with us and awarded zero damages against the dealership as well.

The Jury's Reaction

The jury had a fascinating reaction to this lawsuit. We polled them afterwards and discussed the case with them extensively. They advised that they had no problem with our arguments pertaining to the dealership and not awarding damages against the dealership. Essentially, they indicated that they agreed that the contract between the dealership and the consumers controlled that relationship. Because the dealership was honest in the sales process and because they disclaimed all warranties they agreed that they should not render a verdict against the dealership. They did not believe the consumer's testimony that they were rushed through the sales process, did not have an opportunity to read the paperwork and felt the dealership deceived them. They felt that the Plaintiffs' attorney's arguments played on their emotions in regards to those claims and that "a written contract is a written contract." To that end, they easily found for the dealership.

As to the claims against the manufacturer, they struggled. They indicated that they wanted to render a verdict against the manufacturer, and they felt that this was a bad product. However, they deliberated for a long time and decided to follow our recommendation and the law. In the end, because the manufacturer did everything it needed to do under the terms of its warranty and continued to make repairs, at no cost to the consumers, they felt that the best verdict was zero against the manufacturer. They also said that our arguments regarding the warranty history, and our concession that the consumer had been through a lot, but that the manufacturer had not violated Michigan law, gave us credibility. They thought the consumer showed greed by claiming they should get all their money back and praying on their emotions for a revocation verdict. Although they thought they might give the consumer some money, they indicated that the consumer lost credibility by claiming that they could not use the motor home at all, that they had lost complete confidence in it and that they should get all of their money back. When they weighed that against the option of giving a small amount of money, or no money, they felt that our arguments fit the case best, and they found in favor of the manufacturer.

We have reached many interesting conclusions as a result of this verdict. First, we believe that jurors can be reasonable and assess a case no matter how bad the facts look for the defense. Significantly, the jurors advised that they liked the admissions we made about certain mistakes that the Defendants made during the manufacturing, sales, service and warranty process for the RV. However, they also acknowledged that the Defendants worked to remedy those mistakes, and they felt this was reasonable. To that end, although they thought the Defendants had significant issues with the product, they also felt that the people working for the Defendants did their best to fix the situation.

We also learned that jurors can understand complicated legal arguments that lawyers sometimes believe will be "over their head." In this case, they understood the arguments pertaining to the dealership, the disclaimer of warranties and what the law required, and did not require, of the dealership. To that end, when we asked them to analyze the case in a specific manner as to each defendant and to apply laws that they actually felt were unfair, they understood these arguments and applied the law as instructed to them by the judge. To that end, we learned that when presented in an appropriate fashion, we can educate jurors about the law pertaining to consumer goods, how warranties work and what manufacturers and dealers do to honor their warranties.

New Title, New Look, Same Editors

You may have noticed a new look and new name for our newsletter. Much of the discussion in our previous newsletters pertains to the defense of the RV industry. However, since the law discussed in this newsletter applies to all types of consumer goods and because our practice covers the manufacturing, sale and distribution of those consumer goods in Michigan and the United States we have changed the name of this newsletter and will provide for more global discussions of issues pertaining to the RV industry as well as litigation involving consumer goods throughout the United States. We welcome our clients and readers from the other industries to contact us and/or check out previous editions of this newsletter, formally known as Michigan RV Law.

New Address, New Office Building

We are pleased to report that the law firm behind this newsletter, Dolenga & Dolenga, PLLC, will have a new home in a few months. We will be moving to a brand new building with a new office suite. We are in the process of building that out to incorporate a design that will allow us to better serve our clients. We will continue the production of this newsletter from our new home and will provide you with our new contact information in the next newsletter. In the meantime, you can continue to access information relevant to the defense of lawsuits pertaining to consumer goods at www.dolengalaw.com.

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