

6.3 Jury Instructions for Magnuson-Moss Warranty Act Claims

MAGNUSON-MOSS WARRANTY ACT

Introduction

The Magnuson-Moss Warranty Act is a federal law covering consumer product warranties. The Act provides for certain rights and remedies of consumers in connection with express warranties, implied warranties arising under state law, and service contracts that are purchased by a consumer at the time of sale of the covered vehicle or within 90 days thereafter.

I will now read to you some definitions of certain terms that are used in the Act:

1. The term "consumer product" means any tangible personal property which is distributed in commerce and which is normally used in for personal, family, or household purposes. **[15 U.S.C. 2301(1)]**

2. The term "consumer" means a buyer of any consumer product, any person to whom such product is transferred during the duration of an implied or written warranty (or service contract) applicable to the product, and any other person who is entitled by the terms of such warranty (or service contract) or under applicable State law to enforce against the warranty (or service contractor) the obligations of the warranty (or service contract). **[15 U.S.C. 2301(3)]**

3. The term "supplier" means any person engaged in the business of making a consumer product directly or indirectly available to consumers. **[15 U.S.C. 2301(4)]**

4. The term "warrantor" means any supplier or other person who gives or offers to give a written warranty or who is or may be obligated under an implied warranty. **[15 U.S.C. 2301(5)]**

5. The term "written warranty" means--

(A) any written affirmation of fact or written promise made in connection with the sale of a consumer product by a supplier to a buyer which relates to the nature of the material or workmanship and affirms or promises that such material or workmanship is defect free or will meet a specified level of performance over a specified period of time; or

(B) any undertaking in writing in connection with the sale by a supplier of a consumer product to refund, repair, replace, or take other remedial action with respect to such product in the event that such product fails to meet the specifications set forth in the undertaking, which written affirmation, promise, or undertaking becomes a basis of the bargain between a supplier and a buyer. **[15 U.S.C. 2301(6)(A) and (B)]**

6. The term "implied warranty" means an implied warranty arising under State law in connection with the sale by a supplier of a consumer product. **[15 U.S.C. 2301(7)]**

7. The term "service contract" means a contract in writing to perform, over a fixed period of time or for a specified duration, services relating to the maintenance or repair (or both) of a consumer product. **[15 U.S.C. 2301(8)]**

8. The term "remedy" means whichever of the following actions the warranty means whichever of the following actions the warrantor elects:

- (A) repair;
- (B) replacement; or
- (C) refund.

[15 U.S.C. 2301(10)]

9. The term "replacement" means furnishing a new consumer product which is identical or reasonably equivalent to the warranted consumer product. **[15 U.S.C. 2301(11)]**

10. The term "refund" means refunding the actual purchase price. **[15 U.S.C. 2301(12)]**

Distinction Between "Warranty" and "Service Contract"

The Act recognizes two types of agreements which may provide for similar coverage of consumer products, the written warranty, and the service contract. A "written warranty" must be part of the basis of the bargain. This means that it must be conveyed at the time of sale of the consumer product and the consumer must not pay extra beyond the purchase price of the consumer product in order to benefit from the agreement. A "service contract" is an agreement to perform repairs for a certain specified period of time and calls for the consumer to pay a sum beyond the purchase price of the product in order to benefit from the agreement. **[16 CFR §700.11(a)-(c)]**

Prohibition on Disclaiming Implied Warranties

The Magnuson-Moss Act prohibits a supplier from disclaiming or modifying any implied warranty to a consumer if the supplier has made a written warranty applicable to the consumer product or, at the time of sale or within 90 days of sale, entered into a service contract with the consumer which applies to the consumer product. Such a disclaimer or modification is ineffective under Magnuson-Moss and is ineffective under state law. **[15 U.S.C. 2308(a), (c)]**

Elements and Burden of Proof

Under the Magnuson-Moss Warranty Act, the Plaintiff has the burden of proving, by a preponderance of the evidence, the following elements:

1. That he is a "consumer;"

2. That he purchased a "consumer product" or that he is a person entitled to enforce the terms of a written warranty, implied warranty or service contract applicable to a "consumer product;"

3. That the Defendant is a "warrantor" or "supplier" who made a written warranty or service contract, or is subject to the provisions of an implied warranty arising under state law;

4. That any **one** or more of the following occurred:

- (a) The Defendant failed to remedy a defect, malfunction or failure to conform to the written warranty within a reasonable time and without charge; or
- (b) The Defendant breached an implied warranty arising under state law; or
- (c) The Defendant failed to repair a defect, malfunction or non-conformity covered by a service contract within a reasonable time and without charge; **[15 U.S.C. 2301; 2310(d)(1)]**
- (d) The Defendant breached a duty imposed under the Uniform Commercial Code. **[Rice v. Mike Ferrell Ford, Inc, 403 S.E.2d 774 (W. Va. 1991); (inaccurate mileage disclosure on purchase order gave rise to liability under implied warranty provision of UCC and under Magnuson-Moss Warranty Act); Welch v. Fitzgerald-Hicks Dodge, Inc, 121 N.H. 358, 430 A.2d 144, 31 UCCRS 1336 (1981) (Magnuson-Moss Act invoked by an action for revocation under UCC § 2-608).]**

If the Plaintiff proves these elements, then the Defendant has violated the Magnuson-Moss Warranty Act, and your verdict will be for the Plaintiff on this claim. If the Plaintiff has failed to prove any of the required elements, then your verdict will be for the Defendant on this claim.

Remedies Under the Magnuson-Moss Warranty Act

If you find that the Plaintiff has proved a violation of the Magnuson-Moss Warranty Act, you may award such relief as you deem appropriate, including the following:

1. Money damages which you believe would fairly compensate Plaintiff for any loss he has suffered as a result of Defendant's violations, including:

- a. Repair costs, past and future;
- b. Rental costs;
- c. Towing costs;
- d. Finance charges;
- e. Diminution in value of the vehicle;

2. A refund of his purchase price;

3. Replacement of the vehicle with a new vehicle which is reasonably equivalent to the Plaintiff's vehicle.