

LEMON LAW IN LOUISIANA

A Publication

of

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TABLE OF CONTENTS

| | |
|---------------------------------|----|
| INTRODUCTION..... | 1 |
| THE PARTIES..... | 3 |
| 1. <i>Lemon law</i> | |
| 2. <i>Redhibition</i> | |
| THE ELEMENTS OF A CLAIM..... | 6 |
| 1. <i>Lemon Law</i> | |
| 2. <i>Redhibition</i> | |
| REMEDIES..... | 13 |
| 1. <i>Lemon Law</i> | |
| 1. <i>Repair</i> | |
| 2. <i>Replacement or Refund</i> | |
| 3. <i>Attorney's Fees</i> | |
| 2. <i>Redhibition</i> | |
| DAMAGES | 19 |
| 1. <i>Lemon Law</i> | |
| 1. <i>Equitable Relief</i> | |
| 2. <i>Attorney's Fees</i> | |
| 3. <i>Rental Reimbursement</i> | |
| 2. <i>Redhibition</i> | |
| 1. <i>General Damages</i> | |
| 2. <i>Attorney's Fees</i> | |
| DEFENSES..... | 26 |
| 1. <i>Lemon Law</i> | |
| 2. <i>Redhibition</i> | |
| CONCLUSION..... | 31 |

THE LOUISIANA LEMON LAW

by

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I. INTRODUCTION

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In 1984, the Louisiana legislature enacted the Motor Vehicle Warranties Act, La. R.S. §51:1941 *et seq.*, commonly referred to as the "Lemon Law." If a vehicle qualifies as a "lemon," the consumer may obtain a replacement of the vehicle, a refund of the purchase price, or other remedies, such as rental reimbursement, and attorney's fees if he is successful in pursuing his claim.

The Louisiana Lemon Law is not an exclusive remedy. A consumer in Louisiana has an easier burden to establish a *prima facie* case, and the opportunity for more liberal damages, under the civilian implied warranty of "redhibition." The basic rule of redhibition is set forth by Article 2520 of the Louisiana Civil Code:

The seller warrants the buyer against redhibitory defects, or vices, in the thing sold.

A defect is redhibitory when it renders the thing useless, or its use so inconvenient that it must be presumed that a buyer would not have bought the thing had he known of the defect. The existence of such a defect gives a buyer the right to obtain rescission of the sale.

A defect is redhibitory also when, without rendering the thing totally useless, it diminishes its usefulness or its value so that it must be presumed that a buyer would still have bought it but for a lesser price. The existence of such a defect limits the right of a buyer to a reduction of the price.

Louisiana Civil Code, Article 2520.

An action in redhibition is often combined with a consumer's assertion of his rights under the Lemon Law, and should be considered part of the consumer's remedies against a manufacturer for selling him a "lemon."

This paper discusses the Louisiana Lemon Law, all jurisprudence interpreting the Lemon Law, and how it compares to redhibition.

II. THE PARTIES

A.

LEMON LAW

Under the Lemon Law, there are three principal parties: (a) the vehicle consumer, (b) the dealer from whom the consumer bought the vehicle, and (c) the manufacturer. These parties are defined as follows:

"Consumer" means:

- (1) The purchaser, other than for purposes of or for resale, of a new motor vehicle normally used for personal, family, or household purposes and subject to a manufacturer's express warranty;
- (2) A person, other than for purposes of resale, to whom a motor vehicle is transferred during the duration of an express warranty applicable to the motor vehicle;
- (3) A person to whom a motor vehicle is leased; and
- (4) Any other person entitled to enforce the warranty.

La. R.S. §51:1941(2).

"Dealer" means:

a person authorized by the manufacturer and actively engaged in the business of buying, selling, or exchanging new automobiles at retail and who has an established place of business. La. R.S. §51:1941(3).

"Manufacturer" means:

any person, firm, association, corporation, or trust, resident or nonresident, who manufactures or assembles new and used motor vehicles. La. R.S. §51:1941(4).

COMMENTS

1. The Lemon Law is intended to protect individual consumers, not businesses. No reported cases have interpreted the phrase "normally used for personal, family or household . . ." which arguably covers automobiles and trucks not used the majority of the time for business. A loose definition of the term "normal use" may expand the Lemon Law's protection far beyond its original intent of protecting individuals, and allow coverage for vehicles used for business purposes a substantial amount of the time.

2. The Lemon Law covers "leased" vehicles, without specifying whether the leased vehicle must be a new, or a used vehicle. This omission may lead to Lemon Law coverage for used automobiles leased to a consumer.

COURT DECISIONS

1. In Holloway v. Gulf Motors, Inc., 588 So. 2d 1322 (La. App. 2nd Cir. 1991), the court, in a footnote, stated that the plaintiff had not presented any evidence that the defendant was an "authorized motor vehicle dealer" who was liable to make repairs on the manufacturer's behalf. The court did not interpret the definition of "dealer" or "manufacturer," but simply found the plaintiff had failed to prove the status of the parties as an essential element of his claim.

B.

REDHIBITION

The buyer of a new or used vehicle may bring an action in redhibition against the manufacturer and the seller of the vehicle. La. Civil Code Arts. 2476, 2520.

COMMENTS

1. A buyer may bring an action in redhibition against all sellers in the chain of sales back to the primary manufacturer. Jackson v. Slidell Nissan, 693 So. 2d 1357 (La. App. 1st Cir. 1997).

2. A domestic distributor of foreign automobiles who assumes responsibility for sales, service, and warranty matters occupies the position of a manufacturer. Media Productions Consultants, Inc. v. Mercedes-Benz of North America, 262 So. 2d 377 (La. 1972).

3. One must be a buyer, and thus a lessee does not qualify. However, where the vehicle is sold to a leasing company, which assigns its warranty and sales law rights to the consumer, the consumer may file a redhibition suit on the basis of the assignment. Curtis v. GMAC Leasing Corp., 506 So. 2d 209 (La. App. 5th Cir. 1987).

III. THE ELEMENTS OF A CLAIM

A.

LEMON LAW

The consumer must prove under the Lemon Law:

- (1) The defendant is a "dealer" or "manufacturer". La. R.S. §51:1941; Holloway v. Gulf Motors, Inc., 588 So. 2d 1322 (La. App. 2nd Cir. 1991).

- (2) There must be a "manufacturer's express warranty" which is defined as the written warranty of the manufacturer of a new motor vehicle of its condition and fitness for use, including any terms or conditions precedent to the enforcement of an obligation under that warranty. La. R.S. §51:1941(5); Rhodes v. All Star Ford, Inc., 599 So. 2d 812 (La. App. 1st Cir. 1992).
- (3) The Lemon Law only applies to a "motor vehicle," which is defined as a passenger motor vehicle or a passenger and commercial motor vehicle sold in this state on or after September 1, 1984. The following motor vehicles are excluded:
- (a) Motor vehicles 10,000 GVW or above, and
 - (b) Motor vehicles used exclusively for commercial purposes.
- La. R.S. §51:1941(6).
- (4) There must be a "nonconformity" which is defined as any specific or generic defect or malfunction, or any defect or condition which substantially impairs the use or market value of a motor vehicle. La. R.S. §51:1941(7).
- (5) *The "nonconformity" must be "to the express warranty" to invoke the remedy of repair. La. R.S. §51:1942.*
- (6) *If the "nonconformity" is not repaired in four attempts, or if the vehicle is out of service for thirty days within the manufacturer's warranty period, then replacement or refund will be granted. La. R.S. §51:1944.*

COMMENTS

1. *The Lemon Law is limited to the written warranties of the manufacturer. La. R.S. §51:1942. However, it is unclear whether the statute contemplates only documents specifically identified as a "new car warranty" delivered with the vehicle, or whether it includes any "express warranty" pertaining to the vehicle. Specifically, we note that the term "express warranty" as defined in products liability and sales law can include virtually all representations made about the vehicle.² By reference to these definitions, it appears that a "manufacturers's express warranty" could include, in an appropriate case, written*

² The Louisiana Products Liability Act –

"Express Warranty" means a representation, statement of alleged fact or promise about a product or its nature, material or workmanship that represents, affirms or promises that the product or its nature, material or workmanship possesses specified characteristics or qualities or will meet a specified level of performance. "Express warranty" does not mean a general opinion about or general praise of a product. A sample or model of a product is an express warranty.

La. R.S. §9:2800.53(6).

The common law Uniform Commercial Code --

- (1) *Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis for the bargain creates an express warranty that the goods shall conform to the affirmation or promise.*
- (2) *Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.*
- (3) *Any sample which is made part of the basis of the bargain creates an express warranty that the whole of the goods shall conform to the sample or model.*

Uniform Commercial Code, section 2-313.

sales materials and other information concerning a vehicle's "fitness for use." La. R.S. §51:1941(5). However, we believe that the statute, when read correctly and within in the context of sales law as a whole, limits Lemon Law claims to breaches within the scope of the manufacturer's formal warranty documents.

2. *The law defines a "nonconformity" as a specific or generic "defect" or "malfunction." The dictionary defines "defect" as the lack of something necessary. American Heritage Dictionary of the English Language, (1st ed. 1969) p. 345. A "malfunction" is defined as an abnormal functioning. Ibid, p. 790. Using these definitions, the court or jury will have to decide whether a motorist's problem is a "nonconformity" within the scope of the Lemon Law. As a practical matter, in most cases the definition of "defect" and "malfunction" will be determined by the number of days required under the Act for the vehicle to be out of commission due to the "defect" or "malfunction," and not the common, ordinary meaning of the terms. La. R.S. §51:1943(A).*

3. *The Lemon Law and redhibition both require a plaintiff to prove that the problem with the vehicle "substantially impairs" the use of the vehicle, but the Lemon Law also allows a consumer to prove that substantial impairment of the market value rendered the vehicle a "Lemon," regardless of the effect of the defect on the vehicle's use.*

4. *It is somewhat obscure to us why the drafters chose to define "nonconformity" as broadly as they did, then limit actionable "nonconformity" to a breach of the manufacturer's express warranty. The purpose may have been to*

prevent recovery for technical breaches of warranty that do not relate to a defect or malfunction of the vehicle. However, this purpose is also served by the requirement of four repair attempts or thirty days time out of service.

COURT DECISIONS

1. In Williams v. Chrysler Corporation, 530 So. 2d 1214 (La. App. 2nd Cir.), writ denied, 532 So. 2d 133 (La. 1988), the court held that the definition of "nonconformity" is ambiguous because it could be held to mean any generic defect regardless of the defect's impact upon the vehicle's market value or a defect which impairs the market value of a motor vehicle. The court stated that the statute could be interpreted to merely require proof the vehicle is out of service for the prescribed period of time, without a showing of impairment of use or market value. Nonetheless, the court found that under the facts, the defective paint job on plaintiff's motor vehicle was a "nonconformity" under the Lemon Law.

2. It is presumed under the Lemon Law that a "reasonable number of attempts" have been undertaken to conform a motor vehicle to the applicable express warranties if the vehicle is out of service by reason of repair for a cumulative total of thirty or more calendar days or the same nonconformity has been subject to repair four or more times by the manufacturer, its agent, or its authorized dealer within the warranty term or during a period of one year following the date of the original delivery of the motor vehicle to the consumer, whichever is the earlier date. La. R.S. §51:1943.

Generally, a consumer must return the vehicle only once to the seller to satisfy the requirements for a redhibitory action. However, in Webb v. Polk Chevrolet, Inc., 509 So. 2d 139 (La. App. 1st Cir.), writ denied, 512 So. 2d 1177 (La. 1987), the court applied the "reasonable number of attempts" presumption to a claim in redhibition and held that the defendant was not given a reasonable opportunity to repair plaintiff's vehicle. Thus, in a redhibition action, the defendant may be required to provide the same opportunity to repair and remedy any defects as those provided to a manufacturer under the Lemon Law.

3. The Louisiana Third Circuit Court of Appeals rejected a claim wherein coverage of the defect, a rattle, was specifically excluded by the warranty terms. Johns v. American Isuzu Motors, Inc., 622 So. 2d 1208 (La. App. 2nd Cir. 1993). However, the court did not consider whether the "manufacturers' express warranty" could include materials beyond the manufacturer's written warranty documents, perhaps because the plaintiff failed to refer to any. Thus, we do not believe that Johns resolves the question noted above regarding the proper scope of a manufacturer's express warranty.

B.

REDHIBITION

In an action in redhibition to rescind the sale of a vehicle, a consumer must show:

- (1) There was a sale of an automobile. A lease of an automobile is not a sale. However, there is a sale where the vehicle is first sold to a

leasing company. Curtis v. GMAC Leasing Corp., 506 So. 2d 209 (La. App. 5th Cir. 1987).

- (2) The automobile has a redhibitory defect. The "defect" must be a physical imperfection, deformity or lack of necessary component or quality. Ezell v. G.M., 446 So. 2d 954 (La. App. 3d Cir.), writ denied, 449 So. 2d 1350 (La. 1984). A defect is a "redhibitory defect" if the defect renders the automobile absolutely useless, or so inconvenient or imperfect that it must be supposed that the buyer would not have bought it, had he known of the defect. La. Civil Code Art. 2520; Jackson v. Slidell Nissan, 693 So. 2d 1257 (La. App. 1st Cir. 1997); Johns v. American Isuzu Motors, Inc., 622 So. 2d 1208 (La. App. 2nd Cir. 1993). Multiple defects can collectively form the basis of a redhibitory action, even though many of the defects are minor or have been repaired. Vincent v. Hyundai Corp., 633 So. 2d 240 (La. App. 1st Cir. 1993).
- (3) The redhibitory defect must be hidden, i.e., not discoverable by a simple inspection. The seller owes no warranty with respect to defects that were known to the buyer at the time of the sale, or for defects that should have been discovered by a reasonably prudent buyer. La. Civil Code Art. 2521; Jackson v. Slidell Nissan, 693 So. 2d 1257 (La. App. 1st Cir. 1997). For example, non functioning of an automobile horn, turn signals, windshield wipers and door locks were apparent

defects for which the purchaser could not recover. *Arias v. Sciortino*, 314 So. 2d 556 (La. App. 4th Cir. 1975). Under the Lemon Law, on the other hand, the fact that a defect or malfunction is perfectly obvious is not a defense.

- (4) The redhibitory defect must exist at the time of delivery, La. Civil Code Art. 2530: *Jackson v. Slidell Nissan*, 693 So. 2d 1257 (La. App. 1st Cir. 1997). Proof of defect at time of delivery can be shown, for example, by demonstrating that a parts designed to last a certain number of miles failed long before that mileage without any improper maintenance. *Bendana v. Mossy Motors, Inc.*, 347 So. 2d 946 (La. App. 4th Cir. 1977).
- (5) The buyer must give the seller notice of the defect. The notice must be sufficiently timely to allow the seller the opportunity to make the required repairs. La. Civil Code Art. 2522; *Jackson v. Slidell Nissan*, 693 So. 2d 1257 (La. App. 1st Cir. 1997). However, it is not necessary to give notice and an opportunity to repair to (1) sellers who are in bad faith, i.e., sellers who have actual knowledge of the existence of the defect, and (2) manufacturers, who are presumed to have knowledge of any defects in the things they sell. *Id.*, La. Civil Code Art. 2545.

IV. REMEDIES

A.

LEMON LAW

The Louisiana Lemon Law provides the consumer with a number of different remedies. A consumer may obtain repair, replacement or refund, rental reimbursement, attorney's fees, or other remedies provided by law. La. R.S. §51:1944, et seq.

1.

REPAIR

Under the Lemon Law, the consumer may require the manufacturer to repair the vehicle:

- (1) If a new motor vehicle does not conform to an applicable express warranty;*
- (2) the consumer reports the nonconformity to the manufacturer or any of its authorized motor vehicle dealers; and,*
- (3) the consumer makes the motor vehicle available for repair before the expiration of the warranty or during a period of one year following the date of the original delivery of the motor vehicle to a consumer, whichever is the earlier date.*

La. R.S. §51:1942.

The duty to repair only applies to a "nonconformity" which renders the vehicle a "lemon," and, does not provide damages for the failure to repair (unlike the rental reimbursement remedy under the Act).

This repair remedy appears to be of little value to a consumer who would not likely want to invest the time and expense in an administrative proceeding or court action, to force the manufacturer to simply repair a vehicle, instead of obtaining a refund of the cost of the vehicle or a total replacement of the vehicle.

2.

REPLACEMENT OR REFUND

In order to obtain a replacement of the motor vehicle or refund of the purchase price, the consumer must establish:

- (1) *“Non conformity” as defined above which either:*
 1. *is not cured by four or more repair attempts within the express warranty term or during a period of one year following the date of the original delivery of the motor vehicle to the consumer, whichever is the earlier; or*
 2. *causes the vehicle to be out of service by reason of repair for a cumulative total of thirty or more calendar days during the warranty period.*

La. R.S. §51:1944.

- (2) *Compliance with any informal dispute settlement procedures which substantially complies with the provisions of the federal Magnuson-Moss Warranty Act. La. R.S. section 51:1944 D; 11 C.F.R. part 703.*

If these conditions are satisfied,

(1) *The manufacturer shall provide the consumer with a comparable new motor vehicle or refund within thirty days after an offer to transfer title by the consumer, or within thirty days after a decision by the informal dispute settlement mechanism.*

La. R.S. §51:1945.

(2) *At the time of receiving the comparable new motor vehicle or refund, the consumer must surrender the defective motor vehicle to the manufacturer together with the certificate of title with all endorsements necessary to transfer title. La. R.S. §51:1945.*

COURT DECISIONS

1. *In Smith v. General Motors Acceptance Corp., 542 So. 2d 831 (La. App. 3d Cir. 1989), the court denied plaintiff the remedies available under the Lemon Law, because she no longer owned the vehicle. The court held that plaintiff was unable to comply with the provisions of the Lemon Law after the vehicle was repossessed by GMAC. This decision seems to be a potent weapon for a manufacturer or dealer who can delay the consumer's Lemon Law claim, thereby encouraging the consumer to sell his vehicle, and with it, to abandon his Lemon Law claim.*

2. *In Williams v. Chrysler Corporation, 530 So. 2d 1214 (La. App. 2nd Cir.), writ denied, 532 So. 2d 133 (La. 1988), the court held that a purchaser was entitled to a refund of the purchase price when a defective paint job was not*

remedied after two repair attempts, and the vehicle was out of service for forty (40) days.

3.

ATTORNEY'S FEES

The consumer is entitled to attorney's fees if the motor vehicle does not conform to applicable express warranties after the consumer has complied with the requirements of the Lemon Law. The consumer is entitled to all of his reasonable attorney's fees actually incurred if a judgment is rendered, in part or whole, in his favor. La. R.S. §51:1947.

Attorney's fees are arguably restricted to those incurred in the prosecution of a Lemon Law claim in court. However, the manufacturer and dealer may have exposure for the consumer's attorney's fees incurred during negotiations and the informal dispute resolution process prior to filing suit. La. R.S. §51:1947.

4.

RENTAL REIMBURSEMENT

The consumer may seek a rental reimbursement whenever a motor vehicle, which is covered by a manufacturer's express warranty, is tendered by a consumer to the dealer from whom it was purchased or exchanged for the repair of any defect, malfunction, or nonconformity to which the warranty is applicable and at least one of the following conditions exists:

- (1) *The repair period exceeds ten work days, including the day on which the motor vehicle is tendered to the dealer for repair. La. R.S. §51:1948(A)(1).*
- (2) *The defect, malfunction, or nonconformity is the same for which the motor vehicle has been tendered to the dealer for repair on two previous occasions. La. R.S. §51:1948(A)(2).*

However, this remedy only extends for the length of the manufacturer's express warranty or for two years, whichever period of time occurs first.

COMMENTS

1. *Although no cases have dealt with the rental reimbursement remedy, the Act, if literally interpreted, requires a consumer who purchased a vehicle outside of the state to return the car to the original dealer "from whom the vehicle was purchased" in order to avail himself of this remedy. The term "dealer" should arguably be interpreted as it is in the definitions under the Act to include any "person authorized by the manufacturer" to buy, sell or exchange a vehicle in the state, not simply the dealer where the vehicle was purchased; all authorized dealers, whether in-state or out-of-state, presumably have the same obligations to honor the manufacturer's express warranties and to obtain reimbursement from the manufacturer for warranty work, including rental car expenses.*

2. *The Lemon Law requires the repair period to exceed ten (10) work days, and only provides for a rental reimbursement of twenty (\$20) dollars a day.*

The statutory amount of reimbursement appears to be substantially less than the amounts most rental companies charge for car rentals.

3. *The provisions of La. R.S. §51:1948(A)(1) are unclear as to whether the consumer must assume the cost of the first ten days of repair, or he is entitled to rental reimbursement for the repair period only in excess of ten days, or if the reimbursement is retroactive to the first day of repairs, once the consumer's car is under repair for ten days or more. It is also vague as to whether the "repair period" can be ten cumulative days of repair on a number of occasions, or it must be ten consecutive work days under repair.*

B.

REDHIBITION

The consumer may obtain the following remedies in a redhibitory action:

1. *Repair of the vehicle; or*
2. *Refund of all or part of the purchase price.*

La. Civil Code Art. 2531.

COMMENTS

1. *A buyer is limited to a reduction in the price when the defect does not render the vehicle totally useless, but rather diminishes its usefulness or its value to such an extent that it must be presumed that a buyer would have still bought it but only at a lower price. La. Civil Code Art. 2520.*

2. *A buyer can maintain a redhibition suit where he has disposed of the item, but only for a reduction in price.*

Jackson v. Slidell Nissan, 693 So. 2d 1257 (La. App. 1st Cir. 1997); Gustin v. Shows, 377 So. 2d 1325 (La. App. 1st Cir. 1979).

V. DAMAGES

A.

LEMON LAW

The only compensatory damages provided for under the Lemon Law are rental reimbursement and attorney's fees. All other damages provided by the Act are in the form of equitable relief.

1.

EQUITABLE RELIEF

The Act provides equitable relief by forcing the manufacturer or dealer to:

- A) Repair,*
- B) Replace the vehicle, or*
- C) Refund the purchase price.*

Under the statute, the manufacturer (only) shall:

- (1) Replace the motor vehicle with a comparable new motor vehicle, or, at its option; La. R.S. §51:1944(A)(1).*

- (2) *Accept return of the motor vehicle and refund the full purchase price plus any amounts paid by the consumer at the point of sale, and all collateral costs³ less a reasonable allowance⁴ for use to the consumer, or any holder of a perfected security interest in the motor vehicle, as their interest may appear, if the transaction was a sale. La. R.S. §51:1944(A)(2).*
- (3) *If the transaction is a lease, the manufacturer may, if the lessor is willing, accept return of the motor vehicle and reimburse the lessee for all reasonable expenditures in connection with the lease, and further satisfy all conditions of the lease in connection with early termination and related charges. The lessee shall be liable for a reasonable allowance for use of the vehicle prior to the return thereof. La. R.S. §51:1944(B).*
- (4) *If a manufacturer has established an informal dispute settlement procedure which substantially complies with the Magnuson-Moss Warranty Act, the provisions of the Lemon Law concerning refunds or replacement shall not apply to any*

³ "Collateral Costs" means sales tax, license fees, and registration fees and any similar governmental charges. La. R.S. §51:1941(1).

⁴ A "reasonable allowance for use" under the Lemon Law is that amount directly attributable to use by the consumer prior to his first notice of nonconformity to the manufacturer, agent, or dealer and during any subsequent period when the vehicle is not out of service by reason of repair. La. R.S. §51:1944(C).

consumer who has not first exhausted such procedure. La. R.S. §51:1944(D).

- (5) *The cause of action under this section must be brought within three years from the date of purchase of the vehicle or within one year from the end of the warranty period, whichever is longer. La. R.S. §51:1944(E).*

CASES

1. *In Williams v. Chrysler Corp., 530 So. 2d 1214 (La. App. 2nd Cir.), writ denied, 532 So. 2d 133 (La. 1988), the court held that finance charges are not "collateral costs" within the meaning of the Lemon Law. However, the court still allowed recovery of the finance charges paid by the consumer under the theory that they were "amounts paid at the point of sale."*

2. *In Williams, supra, defendant contended that the trial court erred in only granting an allowance of 10.44¢ per mile for plaintiff's use of the vehicle when the government mileage allowance was 21¢ per mile. In holding that the allowance was reasonable, the court noted that the government allowance included the total cost of operating the vehicle and not just depreciation, and, further, defendant did not establish any other method for calculating a reasonable allowance for plaintiff's use of the motor vehicle.*

3. In *Boudreaux v. Ford Motor Company*, 533 So. 2d 1213 (La. 1988), the court held that the manufacturer's complaint records were not confidential under Louisiana law. The court found that the audit reports and statistical summaries associated with those reports were discoverable. Additionally, owner's names and product identification forms were also discoverable.

4. In *Boudreaux, supra*, the court noted that although the Federal Trade Commission (FTC), warranty regulations were referred to in the Lemon Law, they were not part of the Louisiana Lemon Law. Further, the FTC regulations did not state remedies for violation of automobile warranties under the Louisiana Lemon Law.

2.

ATTORNEY'S FEES

As previously stated, the consumer shall be entitled to reasonable attorney's fees actually incurred if a court judgment is rendered in whole or part in his favor.

La. R.S. §51:1947.

3.

RENTAL REIMBURSEMENT

Under the statute, damages for "rental reimbursement" are, as follows:

- (1) The manufacturer shall provide, directly to the consumer for the duration of the repair period, a rental vehicle reimbursement of up to twenty dollars per day. La. R.S. §51:1948(A).

- (2) *For violations of the above provision, the consumer shall be entitled to recover from the manufacturer for damages incurred and reasonable attorney's fees actually incurred; however, in no event shall the amount of damages awarded be less than two hundred dollars. La. R.S. §51:1948(C).*

The Lemon Law does not define what "damages" are available for failure to provide the rental car reimbursement, but they would arguably include the full price of a rental vehicle, and all other expenses incurred by the consumer as a result of the failure of the dealer to provide rental car reimbursement. Non-pecuniary damages for inconvenience, embarrassment, etc. not excluded from the Act, are technically "damages," but any award for non-pecuniary damages would likely not be significant.

B.

REDHIBITION

1.

GENERAL DAMAGES

Generally, a consumer may recover the following damages in an action for redhibition:

- a. The cost of repair or correction of the defect and all incidental expenses caused by the defect;*
- b. If the defect cannot be corrected, the seller must:*
 - (1) restore the purchase price;*

- (2) *repay all of the expenses occasioned by the sale and preservation of the auto, including*
- i. *repair costs incurred by buyer;*
 - ii. *interest on a loan;*
 - iii. *finance charges;*
 - iv. *actual cost of substitute transportation;*
 - v. *compulsory insurance, registration fees, and sales tax;*
 - vi. *all other incidental expenses. La. Civil Code Art. 2531; Williams v. Toyota of Jefferson, 655 F. Supp. 1081 (E.D. La. 1987) (citing Davidson v. New Roads Motor Co., Inc., 385 So. 2d 319 (La. App. 1st Cir.), writ denied, 391 So. 2d 454 (La. 1980).*
- La. Civil Code Art. 2520, et seq.*

Some courts allow the consumer to also recover the following damages in redhibition:

- a. *loss of profits. Hale Farms v. American Cyanamid, 580 So. 2d 684 (La. App. 2nd Cir.), writ denied, 586 So. 2d 537 (La. 1991); White v. Martin GMC Trucks, Inc., 359 So. 2d 1094 (La. App. 3rd Cir.), writ denied, 362 So. 2d 1117 (La. 1978);*

- b. *the additional cost of completing a contract. H&H Concrete, Inc. v. Civicon, Inc., 533 So. 2d 1294 (La. App. 3d Cir. 1988);*
- c. *non-pecuniary damages, such as mental anguish, and inconvenience, if the principal object of the contract of sale is the gratification of some intellectual or non-pecuniary interest. Hostetler v. W. Gray & Co., 523 So. 2d 1359 (La. App. 2nd Cir.), writ denied, 531 So. 2d 470 (La. 1988).*

In a redhibition action, the court has discretion on whether to award a credit for use of the automobile. Thibodeaux v. Meaux's Auto Sales, 364 So. 2d 1370 (La. App. 3d Cir. 1978). A credit for the buyer's use of a vehicle can be denied altogether. White v. Martin GMC Trucks, 359 So. 2d 1094 (La. App. 3d Cir.), writ denied, 362 So. 2d 1117 (La. 1978).

2.

ATTORNEY'S FEES

Under redhibition law, a manufacturer of an automobile is presumed to know of the defects in his product, La France v. Abraham Lincoln Mercury, 462 So. 2d 1291 (La. App. 5th Cir.), writ denied, 467 So. 2d 531 (La. 1985), and, as such, it is a "bad faith" seller, subject to an award of attorney's fees incurred by the consumer. La. Civil Code Art. 2545.

A seller who has knowledge of a defect may also be liable for attorneys fees. La. Civil Code Art. 2545.

VI. DEFENSES

A.

LEMON LAW

Several defenses are available to a manufacturer and dealer in a Lemon Law dispute:

1. **The claim is time-barred**

The consumer shall have no more than three years from the date he purchased the vehicle, or one year from the end of the warranty period, whichever is longer, in which to file suit against the manufacturer to force replacement or return of the motor vehicle. §51:1944(E).

The Lemon Law is otherwise silent with respect to statutes of limitations - no statute of limitations is specified except for the repair and rental reimbursement remedies. Thus, under Louisiana law, the one year redhibition statute of limitations applies by analogy to those claims.

Manning v. Scott-Hixson-Hopkins, Inc., 605 So. 2d 233 (La. App. 2nd Cir. 1992); Ford Motor Credit v. Bauer, 589 So. 2d 571 (La. App. 1st Cir. 1991).

The one year period begins to run whenever the consumer's cause of action accrues, which varies with the facts of each case. For example, depending on the situation, the statute of limitations could begin to run on: (1) the date the damage is sustained, (2) the date all attempts to correct the defect are abandoned by the seller, or (3) the date of the seller's last promise of

repair. In *Bauer, supra*, the court held that the plaintiff's Lemon Law claim had not prescribed because suit was filed within one year from the last repair attempt.

2. The consumer has not exhausted his administrative remedies.

The exhaustion of the informal dispute resolution process is a prerequisite to a consumer obtaining a refund or replacement only if the manufacturer has a process in place that substantially complies with the Magnuson-Moss Warranty Act. La. R.S. §51:1944(D).

However, the consumer's pursuit of a refund or replacement for the vehicle in an informal proceeding and the pendency of the informal dispute resolution procedure would not necessarily interrupt prescription for the Lemon Law claim. The informal dispute resolution process may not constitute "an attempt to repair" a defect. An unwary consumer may defer filing suit while the informal dispute resolution process is underway, and thereby lose any right to sue under the Lemon Law (or redhibition) while the informal dispute process is pending. While the informal dispute process is pending, the dealer and manufacturer may want to avoid any "promises to repair" or other acts which may extend the prescriptive period beyond that allowed under the Lemon Law.

3. No nonconformity exists

The defendant should assert that under the definition of nonconformity, the defect must substantially impair the use and/or market value of the motor vehicle. While the definition of nonconformity under the

Lemon Law is ambiguous, the court in Smith, supra, held that the definition of nonconformity is closely tied to that of a redhibitory defect.

4. *The consumer did not report the nonconformity, make the vehicle available for repair, or surrender the vehicle.*

If the purchaser no longer has title to the vehicle, he will not be able to avail himself of the Lemon Law. Smith, supra. In Webb v. Polk Chevrolet, Inc., 509 So. 2d 139 (La. App. 1st Cir.), writ denied, 512 So. 2d 1177 (La. 1987), the court, in deciding a redhibition claim, found guidance in the Lemon Law's presumption that a reasonable number of attempts had been made to repair the vehicle. The court stated that the guideline set forth by the Lemon Law was one of many permissible factors to use in a redhibition action as a standard in determining what constitutes whether a good faith seller has been allowed reasonable opportunity to repair. Thus, the manufacturer should assert that it has not been provided an opportunity to repair the vehicle before the consumer filed suit.

5. *Certain requisites for recovery under the Lemon Law, including the status as a dealer or a manufacture have not been proven.*

In Holloway, supra, the court in a footnote noted that the plaintiff must present evidence that the defendant was an "authorized motor vehicle dealer" who was liable to make repairs in the manufacturer's behalf.

6. *A failure to resort to an informal dispute resolution procedure.*

This failure can be fatal to a consumer's Lemon Law claim. La. R.S. §51:1944(D).

B.

REDHIBITION

In redhibition, a seller generally has the following defenses:

1. *Failure to tender* -

A vehicle must be tendered for repair of the defect at least once, unless the tender would have been vain and useless, or the defect destroyed the auto. Under the new law, a buyer must also provide sufficiently timely notice to the seller of the existence of redhibitory defects so that the seller may have the opportunity to make repairs. La. Civil Code Art. 2522.

2. *Waiver of Warranties* -

Every sale of a new or used vehicle carries with it the legal warranty that the thing sold is free from hidden defects or redhibitory vices. However, the buyer may validly waive this legal warranty. In order to be effective, such waiver of warranty must satisfy three requirements: (1) be written in clear and unambiguous terms, (2) be contained in the contract, and (3) either brought to the attention of the buyer or explained to him. Prince v. Paretti Pontiac, Inc., 281 So. 2d 112 (La. 1973); Chaudoir v. Porsche Cars of North America, 667 So. 2d 569 (La. App. 1995). At trial, the seller is obligated to

prove that the waiver satisfies these three elements.

Chaudoir, supra.

3. *Prescription* -

a. *When the seller attempts to remedy a defect, the prescriptive period begins to run only from the time the seller abandons attempts to repair. de la Houssaye v. Star Chrysler, Inc., 284 So. 2d 63 (La. App. 4th Cir.), writ denied, 286 So. 2d 662 (La. 1973).*

b. *The prescriptive period does not begin to run against a seller with knowledge of a defect until the buyer discovers the defect. A manufacturer is presumed to know the vices of his product and, as a result, the prescriptive period against an auto manufacturer does not begin to run until the defect is discovered. First Mortg. Investors v. CMF & Assoc., 393 So. 2d 937 (La. App. 3d Cir. 1981).*

4. *The defect was cured.*

5. *The defect did not render the auto useless, but it does warrant a reduction in the price.*

VII.

CONCLUSION

The Lemon Law is more advantageous to manufacturers and dealers than redhibition. It is more difficult for a consumer to comply with all of the statutory prerequisites to establish a Lemon Law claim. The potential damages available to a consumer under a Lemon Law claim are significantly less than in redhibition, and the costs of informal dispute resolution are much lower than defense of a redhibition claim in court. Manufacturers and dealers would be well-advised to promote resolution of Lemon Law claims informally before they ever reach litigation, and Lemon Law and redhibition claims are brought in court.