

## THE MAGNUSON-MOSS WARRANTY ACT– AN OVERVIEW

In 1975 Congress adopted a piece of landmark legislation, the Magnuson-Moss Warranty Act. The Act was designed to prevent manufacturers from drafting grossly unfair consumer warranties and to make it economically viable for consumers to bring warranty suits by providing for the award of attorney's fees. States built on the themes of the Magnuson-Moss Act by later passing their own lemon laws.

Although the Magnuson-Moss Act covers consumer products broadly, Congress was particularly concerned with unfair and inequitable automobile warranties. The following is an overview of the Act which outlines the situations in which the Act applies. (Full text of Magnuson-Moss Act.)

### A. Magnuson-Moss Checklist: An Overview

#### 1. Does the Magnuson-Moss Warranty Act Apply?

##### Section of Act

a. The Act is effective July 4, 1975 and applies to goods manufactured after that date.

##### §312

b. The Act applies to all consumer products, defined as tangible personal property normally used for personal, family, or household purposes.

##### § 301(1)

c. The Act applies to written warranties defined as either a written affirmation or promise that the material or workmanship is defect free or will meet a specified level of performance over a specified period of time, or (2) a written undertaking to refund, repair, replace or otherwise remedy a product if it fails to meet specifications set forth. In either case it must be given by a supplier at no extra charge, to a buyer for purposes other than resale of the product. NOTE: Not all express warranties under the UCC are written warranties under the Act.

##### § 301(6) (1)

d. The Act applies to implied warranties defined as an "implied warranty arising under State law in connection with the sale by a supplier of a consumer product".

##### § 301(7), § 310(d)

e. The Act applies to service contracts, defined as a written "contract to perform, over a fixed period of time or for a specified duration, services relating to the maintenance repair of a consumer product".

##### § 301(8)

#### 2. Who Can Sue?

a. A consumer under Magnuson-Moss is anyone -- an individual or a business - who buys a consumer product "for purposes other than resale." This includes a business or corporation buying an automobile for business use, as an automobile is "normally used for personal, family or household purposes".

§ 301(3), § 301(1)

b. The definition of "consumer" includes the buyer of the product and "any person to whom [the] product is transferred during the duration of an implied or written warranty (or service contract) applicable to the product." This definition eliminates the defense of lack of horizontal privity to the extent it exists under the various versions of UCC § 2-318.

§ 301(3)

c. The definition of consumer also includes any person "entitled under applicable state law to enforce" the agreement, This provision extends the federal right to sueto a point equal to the most liberal state law applicable to a case.

§ 301(3)

### 3. What Are the Grounds for a Suit and the Causes of Action?

Personal or economic injury due to:

§ 310(d)

a. Failure to honor a written warranty (breach of contract).

§ 310(d)

b. Failure to honor a service contract agreement (breach of contract).

§ 310(d)

c. Failure to honor any implied warranty created by state; e.g., the warranties of fitness for a particular purpose or of merchantability, of the Uniform Commercial Code, effective in 49 states. Note that implied warranty suits against manufacturers can be brought even where thereis no written warranty

§ 310(d)

d. Violation of a prohibition or failure to comply with a requirement of the Act or rules under it; e.g., disclaimer of implied warranties (§ 308), designation (§ 303), disclosure (16 C.F.R. § 701), pre-sale availability (16 C.F.R. § 702).

§ 310(d)

### 4. Who Can Be Sued?

a. Any "warrantor", defined to include persons obligated under an implied warranty.

§ 301(5)

b. Any "supplier", defined as any person in the chain of distribution who has a duty or obligation under the Act to the consumer.

§ 301(4)

c. Under a written warranty, a business that serves as a "designated representative" for warranty service (authorized service agent) does not automatically become a co-warrantor. Only the warrantor "actually making" the written warranty is subject to suit. These provisions insulate other suppliers from liability for the warrantor's breach of written warranty, but not of the implied warranties.

§ 307, § 310(f)

#### 5. What Remedies Are Available?

a. Consumers can recover damages from the breach. This includes remedies already available under state law, such as recovery of the purchase price, market price of a replacement, loss in value due to the problem, recovery of other costs, and statutory penalties, if any. The Act is silent as to what rules or principles govern.

§ 310(d)(1)

b. "Other legal and equitable relief," which may include injunctive relief or specific performance, even if not available under state law; e.g., replacement of the "lemon," or extension of the warranty duration.

§ 310(d)(1)

c. Costs and expenses reasonably incurred in bringing the suit; e.g., filing fees, witnesses' fees, stenographic costs.

§ 310(d)(2)

d. Attorney's fees reasonably incurred, based on actual time expended.

§ 310(d)(2)

#### CAUSES OF ACTION UNDER THE MAGNUSON-MOSS ACT

The Magnuson-Moss Warranty Act, designed to protect consumers from deceptive warranty practices, expands the consumer's arsenal to resolve warranty complaints. The Act's provisions for private enforcement of rights and remedies must be read in conjunction with the rights, remedies and defenses of the Uniform Commercial Code. Consideration also should be given to lemon laws and other state laws that create special rights and remedies for injured consumers. The Act creates four separate federal causes of action:

##### A. Breach of Written Warranty

The Magnuson-Moss Act defines "limited" and "full" warranties. Under Magnuson-Moss, there is a cause of action for breach of any written warranty, whether "full" or "limited". The cause of action is valid even where written warranty has already expired, as long as the defects appeared during warranty period. No automobile manufacturer offers a full warranty as defined by the Act; rather, the warranties

are "limited". When a warranty is "limited", proving breach of warranty under the Act is similar to proving a breach under the UCC. The consumer must prove that (1) a warranty was made; (2) the warranty was breached; (3) an injury occurred; and (4) the breach of warranty proximately caused the injury.

The Act's "lemon provision" is available in the case of a "full" warranty. A consumer suing under a "full" warranty does not need to prove a breach of the written warranty, but only show the existence of a "defect, malfunction, or failure to conform with such written warranty" which existed after the warrantor had a reasonable number of attempts to remedy the product.

"Written warranty" under the Act (defined in § 301(6)) is not identical to "express warranty" under the UCC. For example, "written warranty" does not include mere product claims, such as "waterproof", made without regard to any time period. Moreover, oral guarantees are not written warranties under the Act, although these are normally express warranties under UCC § 2-313.

Under the Act, "written warranty" includes: (1) promises or affirmations that a product is free of defects in material or workmanship; (2) promises or affirmations that the product will meet a specified level of performance over a specified period of time; and (3) promises to take some remedial action if the product fails to meet the specifications set forth in the undertaking. The promise, affirmation, or undertaking must form part of the basis of the bargain between a supplier of the product and a consumer buyer.

The Seventh Circuit has ruled that a claim for breach of a written warranty as contained in advertising is not cognizable under the Magnuson-Moss Act. In *Skelton v. General Motors Corporation*, 660 F.2d 331 (7th Cir. 1981), rev'g 500 F. Supp. 3181 (N.D. Ill. 1981), the consumers alleged that GM created a written warranty under Magnuson-Moss through brochures, manuals, and consumer advertising, which was then breached by substituting transmissions. The Seventh Circuit held that only those written warranties specifically defined in Section 301(6) are actionable under Magnuson-Moss. The Court of Appeals rejected the district court's conclusion that whenever a manufacturer offers a written warranty to a consumer "[o]ther written promises presented in connection with the same transaction should also be enforceable as part of the 'written warranty.'" 660 F.2d at 320-21, quoting 500 F. Supp. at 1191.

#### B. Breach of Implied Warranty

The Magnuson-Moss Act gives consumers a cause of action for breach of "implied warranty" (§ 310(d)). The implied warranties covered by the Act are those created by state law. Although the Act creates no new implied warranties, it both alters the ability of a seller to exclude them and provides a federal cause of action for their breach. This cause of action appears to be available even where there is no written warranty involved.

Most cases brought to date are based on breaches of both written and implied warranties. However, a few involve breach of implied warranties without alleging breach of a written warranty.

For example, *General Motors Corp. Engine Interchange Litigation*, MDL No. 308 (N.D. Ill.), rev'd, 594 F.2d 1106 (7th Cir.), cert. denied, 444 U.S. 870 (1979), aff'd after remand, 620 F.2d 1190 (1980) was filed in federal court under the Magnuson-Moss Act. The plaintiffs alleged that the undisclosed use of Chevrolet engines in Oldsmobiles breached both written warranties and the implied warranty of merchantability

(UCC § 2-314). On June 27, 1981, the jury returned a general verdict in favor of a sub-class of plaintiffs and awarded each of these plaintiffs \$550. In light of the Seventh Circuit's decision in *Skelton v. General Motors*, supra, invalidating the written warranty theory, upon which at least part of the case was tried, the district court granted GM's motion for a new trial.

### C. Breach of Service Contract

The Magnuson-Moss Act provides a cause of action for breach of a "service contract" as defined in § 301(8). The optional "extended warranty" offered through many dealerships by auto manufacturers and independent insurance companies are "service contracts" as defined by the Act. For example, some auto companies offer extended warranty coverage to 5 years or 50,000 miles for a one-time payment of \$200 to \$500, depending upon the make and model of the automobile.

Moreover, under § 308(a), the sale of a service contract within 90 days of the sale of a new car may have the effect of barring any contractual limitation on implied warranty duration. When a consumer purchases a service contract, and the written warranty expired before any defects appeared, an attorney may want to plead breach of service contract as well as breach of the implied warranty of merchantability.

Very few reported cases involve breach of service contract. However, note the following two cases.

*Britton v. Bill Anselmi Pontiac-Buick-GMC, Inc.*, 786 P.2d 855 (Wyo. 1990). Consumer purchased a "brass hat" special--a car with low mileage which was advertised as having been used solely to transport General Motor's executives to and from the airport. Consumers also purchased extended warranty coverage to a term of 48 months/48,000 miles. Immediately after purchase, the automobile suffered from a defective heater, windows that would not close, a defective alternator, a useless gas gauge, a leaking sun roof, peeling paint, and a defective transmission. After the dealership was unable to repair these problems, the consumer sued General Motors and the dealership. The Supreme Court of Wyoming held that the consumer's claim clearly falls under breach of written warranty or a breach of service contract. The court particularly noted that the consumers had paid an additional \$350 for the extended warranty coverage. The court remanded consumer's Magnuson-Moss claim for reconsideration.

*Illinois v. Hunt International Resources Corp.*, 481 F. Supp. 71 (N.D. Ill. 1979), The district court rejected plaintiff's claim for breach of a service contract under Magnuson-Moss on the ground that plaintiff's cause of action was unrelated to defendants' performance of their obligations under any contract.

### D. Failure To Comply With Obligations

The fourth cause of action under the Magnuson-Moss Act is for damage caused by "the failure of a supplier, warrantor, or service contractor to comply with any obligation under this title." The "title" is Title I of the Magnuson-Moss Warranty Act, which contains all the provisions relating to warranties and service contracts, and which authorizes the Federal Trade Commission to issue rules in specified areas to implement the title. The obligations under the title pertain to disclosure of warranty, ready availability of the warranty prior to sale, and restrictions on the use of disclaimers and limitations. The FTC has issued implementing regulations on "Interpretations of Magnuson-Moss Warranty Act" and "Informal Dispute Settlement Procedures" at 16 C.F.R. Parts 700 and 703 respectively.

The Warranty Act does not provide for minimum or statutory penalties for violation of the Act. A private action based on violation of the Act must allege actual damages from the violation to justify a recovery.

For example, in *Currier v. Spencer*, 772 S.W.2d 309 (Ark. 1989) the consumer charged the supplier with breach of the Magnuson-Moss Act. The consumer purchased a used car from Currier, a used car dealer. Immediately after purchase, the consumer experienced problems with his car and discovered that the car was actually two different cars welded together. The consumer stopped payment on his check and attempted to return the car, but Currier refused. The consumer then sold the car for \$6,750. Currier then brought suit to recover the unpaid balance of the purchase price. The consumer counterclaimed, alleging breach of express and implied warranties, misrepresentation, violation of the odometer law and violation of the Magnuson-Moss Act by not preparing and displaying a buyer's guide on the window of the automobile. The lower court dismissed Currier's complaint and awarded the consumer \$1,500 for the difference between the purchase price of the car and the value of the car. This amount was doubled for failure to provide an odometer statement. Court costs and attorney's fees were awarded for violation of the Magnuson-Moss Act. The appellate court affirmed, noting that the failure to provide a "buyer's guide" was a clear violation of Magnuson-Moss.

For additional examples of cases pleading violation of Magnuson-Moss in addition to other causes of action under the Act, see Miller and Kanter, "Litigation Under Magnuson-Moss: New Opportunities in Private Actions," 13 U.C.C.L.J. 10, 12 nn. 6 and 7.

#### E. The Magnuson-Moss Act and Used Goods

Because the term "goods" as defined under UCC § 2-102 makes no distinction between new and used goods, implied warranties have been found to arise in the sale of used cars, unless expressly excluded or modified in accordance with UCC § 2-316.

See,

*Gast v. Rogers-Dingus Chevrolet*, 585 So.2d 725 (Miss. 1991).

*Moore v. Burt Chevrolet, Inc.*, 39 Colo. App. 11, 563 P.2d 369 (1977).

*Jackson v. H. Frank Olds, Inc.*, 65 Ill. App. 3d 571, 382 N.E.2d 550 (1978).

The Magnuson-Moss Act also applies to used goods. The language of Section 310(d) creates a cause of action for breach of a written warranty, a service contract, or an implied warranty in the sale of used goods.

See,

*Patton v. McHone*, 822 S.W.2d 608 (Tenn. Ct. App. 1991).

*Currier v. Spencer*, 772 S.W.2d 309 (Ark. 1989).

*Vieweg v. Friedman*, 526 N.E.2d 364, 173 Ill. App.3d 471, (Ill. App. Ct. 1988).