

13:45A-25.5 Documentation of maintenance of security

Each establishment which has posted a bond as security shall maintain complete and accurate records relating to the bond and premium payments made thereon. Each establishment which has posted a letter of credit or provided other security acceptable to the Director of the Division shall maintain complete and accurate records relating to those items. These records shall be available on the premises of the establishment for review by the Director or his or her designated representative on any operating day.

13:45A-25.6 Violations; sanctions

Without limiting the prosecution of any other practices which may be unlawful under the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., any violation of the provisions of this subchapter shall be subject to the sanctions contained in the Consumer Fraud Act.

**SUBCHAPTER 26. AUTOMOTIVE DISPUTE
RESOLUTION****Cross References**

Special rules regarding disputes arising under the New Jersey Lemon Law, see N.J.A.C. 1:13A.

Law Review and Journal Commentaries

Expert testimony not required in Lemon Law suits, court says. *Matt Ackermann*, 150 N.J.L.J. 609 (1997).

13:45A-26.1 Purpose and scope

(a) The purpose of this subchapter is to implement the Lemon Law, P.L. 1988, c.123, by establishing an automotive dispute resolution system within the Division of Consumer Affairs in conjunction with the Office of Administrative Law. The subchapter also sets forth the method of refund computation, and details the reporting requirements and procedure for publication of compliance records of manufacturers of motor vehicles.

(b) This subchapter is applicable to:

1. All manufacturers of passenger cars and motorcycles registered, sold or leased in the State of New Jersey;
2. All purchasers and lessees of passenger cars and motorcycles registered, sold or leased in the State of New Jersey; and
3. Dealers servicing such vehicles whether their service facilities are located within or outside of the State.

Amended by R.1992 d.236, effective June 1, 1992.
See: 24 N.J.R. 53(a), 24 N.J.R. 2063(a).
Revised (b).

Case Notes

Dismissal of Lemon Law complaint due to failure to establish material defect in commercial vehicle affirmed. *Romano v. Ford*, 97 N.J.A.R.2d (CMA) 138.

Application to vacate completed settlement agreement denied. *Martin v. Hyundai Motor America*, 97 N.J.A.R.2d (CMA) 115.

Lemon law petition dismissed for additional use of vehicle. *Riley v. Volkswagen, U.S., Inc.*, 97 N.J.A.R.2d (CMA) 111.

Failure to substantiate new car defect complaints defeats lemon law claim. *Ghahramni v. Nissan Motor Corporation*, 97 N.J.A.R.2d (CMA) 101.

Lack of objective evidence of transmission defect defeats lemon law claim. *Gennusa v. Mercedes-Benz of North America*, 97 N.J.A.R.2d (CMA) 89.

Failure to comply with statutory requirements bars consumer's lemon law claim. *Heflter v. Chrysler Motor Corporation*, 97 N.J.A.R.2d (CMA) 85.

Lemon law complaints require adequate opportunity to repair and actual nonconformity affecting car's use, value or safety. *Solomon v. Hyundai Motor Corporation, USA*, 97 N.J.A.R.2d (CMA) 80.

Commercial vehicle ineligible for relief under Lemon Law. *Rivera v. Chrysler Motor Corporation*, 97 N.J.A.R.2d (CMA) 55.

Lack of objective evidence defeats consumer's lemon law claim. *Tattersall v. Chrysler Motor Corporation*, 97 N.J.A.R.2d (CMA) 49.

Lack of evidence defeats consumer's lemon law claim. *Olszewski v. Chrysler Motor Corp.*, 97 N.J.A.R.2d (CMA) 46.

New car noise not qualifying nonconforming defect under lemon law. *Nebbia v. Nissan Motor Company*, 97 N.J.A.R.2d (CMA) 44.

Easily repairable nonconformity precludes lemon law relief. *Lee v. Hyundai Motor of America*, 97 N.J.A.R.2d (CMA) 41.

Multiple out-of-service repair attempts without fixing car's serious electrical malfunctions justifies lemon law relief. *Parrish v. Saab-Scania of America*, 97 N.J.A.R.2d (CMA) 38.

New car's vibration noise fails to qualify as lemon law nonconformity. *Marder v. Chrysler Corporation*, 97 N.J.A.R.2d (CMA) 34.

New car's infrequent stalling fails to meet lemon law standard. *Tenido v. Chrysler Motor Corporation*, 97 N.J.A.R.2d (CMA) 33.

Leased car's use and safety substantially impaired by engine's hesitation arising from inherent defect. *Pertain v. Mitsubishi Motor Sales of America*, 97 N.J.A.R.2d (CMA) 23.

Automobile purchaser was not entitled to Lemon Law relief for defect which recurred two years after successful repair. *Fowler-Fernandez v. Volkswagen United States, Inc.*, 96 N.J.A.R.2d (CMA) 190.

Van's commercial design does not preclude Lemon Law complaint so long as van is not used commercially. *Short v. Ford Motor Company*, 96 N.J.A.R.2d (CMA) 185.

Lemon Law does not provide relief for nonconformities which occur above legal speed limit. *Sher v. Buick Motor Division*, 96 N.J.A.R.2d (CMA) 109.

Truck purchased primarily for commercial use not covered under Lemon Law. *Maino v. Ford Motor Company*, 96 N.J.A.R.2d (CMA) 32.

Car suffering from collision damage not subject to Lemon Law remedy. *Lloyd-Brown v. Hyundai Motor Corporation*, 96 N.J.A.R.2d (CMA) 6.

13:45A-26.2 Definitions

As used in this subchapter, the following words shall have the following meanings:

"Days" means calendar days.

"Director" means the Director of the Division of Consumer Affairs.

"Dispute Resolution System" means a procedure established by the Division of Consumer Affairs and the Office of Administrative Law for the resolution of disputes regarding motor vehicle nonconformity(s) through summary administrative hearings.

"Lemon Law" means P.L. 1988, c.123, an Act concerning new motor warranties and repealing P.L. 1983, c.215, as amended by P.L. 1993, c.21.

"Lemon Law Unit" ("LLU") means the administrative unit within the Division of Consumer Affairs that processes Lemon Law matters.

"Motor vehicle" means a passenger automobile or motorcycle as defined in N.J.S.A. 39:1-1, that is registered, sold or leased in the State of New Jersey, whether purchased, leased, or repaired in the State or outside the State.

"Nonconformity" means a defect or condition which substantially impairs the use, value or safety of a motor vehicle.

"OAL" means the Office of Administrative Law.

"Out of service" means the number of days the defective motor vehicle is on the premises of a repair facility for the purpose of repairing one or more nonconformities; delays caused by the consumer, such as a delay in picking up the motor vehicle from the facility after notification that it is ready, shall not be counted as days out of service.

"Term of protection" means within the first 18,000 miles of operation or the two years following the original date of delivery of the motor vehicle to the consumer, whichever is the earlier date.

"Title" means the certificate of ownership of a motor vehicle.

Amended by R.1992 d.236, effective June 1, 1992.
 See: 24 N.J.R. 53(a), 24 N.J.R. 2063(a).
 Revised definition "motor vehicle".
 Amended by R.1994 d.176, effective April 4, 1994.
 See: 25 N.J.R. 3939(a), 26 N.J.R. 1535(a).

Case Notes

No Lemon Law remedy for new car consumer failing to prove alleged defects impair use, safety and value. *Sera v. General Motors Corporation*, 97 N.J.A.R.2d (CMA) 149.

Failure to demonstrate nonconformity leads to dismissal of Lemon Law claim. *Pizzute v. American Suzuki Motor Corporation*, 97 N.J.A.R.2d (CMA) 147.

Lemon Law claim dismissed when burden of proof not met. *Petonak v. Ford Motor Company*, 97 N.J.A.R.2d (CMA) 143.

Irreparable defects substantially impairing use and safety of car entitles lessee to Lemon Law remedies. *Hall v. Chrysler Motor Corporation*, 97 N.J.A.R.2d (CMA) 142.

Vibration impaired the use, value and safety of vehicle. *Randall v. Chevrolet, Division of General Motors Corporation*, 97 N.J.A.R.2d (CMA) 135.

Dismissal of Lemon Law complaint due to failure to demonstrate substantial impairment of vehicle affirmed. *Leonard v. Ford Motor Company*, 97 N.J.A.R.2d (CMA) 132.

Vehicle's use, value or safety not impaired by vibration. *King v. Ford Motor Company*, 97 N.J.A.R.2d (CMA) 129.

Vehicle's use, value or safety not impaired by alleged defects in transmission and brake fluid. *Galanty v. Chrysler Motor Corporation*, 97 N.J.A.R.2d (CMA) 127.

Vehicle's use, value or safety not impaired by noise from power steering system. *Haralambidis v. Chevrolet Motor Division-G.M.*, 97 N.J.A.R.2d (CMA) 125.

Vehicle's use, value or safety not effected by alleged hesitation in transmission. *Wilks v. Mazda Motor of America*, 97 N.J.A.R.2d (CMA) 117.

Repeated stalling constitutes substantial impairment of vehicle's use, value and safety. *Franco v. Chrysler Motor Corporation*, 97 N.J.A.R.2d (CMA) 113.

Alignment defect constitutes substantial impairment of vehicle's use, value and safety. *Albrecht v. Ford Motor Company*, 97 N.J.A.R.2d (CMA) 107.

No lemon law recovery when consumer's gas choice causes new car stalling. *Hamilton v. Mitsubishi Motor Sales of America*, 97 N.J.A.R.2d (CMA) 103.

New car lessor receives lemon law refund when transmission defect substantially affects value and safety. *Archibald v. Ford Motor Company*, 97 N.J.A.R.2d (CMA) 97.

Dashboard reflection on front window not substantial defect. *Doyle v. General Motors*, 97 N.J.A.R.2d (CMA) 95.

Subjective dislike of new car's alleged rotten egg smell insufficient basis for lemon law claim. *Dworkis v. General Motors Corporation*, 97 N.J.A.R.2d (CMA) 93.

Four-wheel drive pulling condition not nonconformity for lemon law purposes. *Hynes v. Chrysler Motor Corporation*, 97 N.J.A.R.2d (CMA) 88.

Nonconforming vehicle defects caused by road accident not remedial under lemon law. *Jones v. Chrysler Motor Company*, 97 N.J.A.R.2d (CMA) 77.

Subjective noise complaint insufficient for lemon law claim. *Choudhury v. Ford Motor Company*, 97 N.J.A.R.2d (CMA) 75.

Car owner's unhappiness with transmission insufficient for lemon law recovery. *Weiss v. Ford Motor Corporation*, 97 N.J.A.R.2d (CMA) 52.

Automobile owner who experienced engine knocking noise, followed by loss of power, was entitled to relief under Lemon Law. *Capps v. Nissan Motor Corporation*, 97 N.J.A.R.2d (CMA) 19.

Automobile's slipping clutch substantially impaired its safety, use, and value, entitling owners to Lemon Law relief. *Totin v. Hyundai Motor Company*, 97 N.J.A.R.2d (CMA) 16.

Grinding noise in automobile's brakes did not impair its safety, use, or value, and thus owner was not entitled to relief under Lemon Law. *Davis v. Toyota Motor Sales*, 97 N.J.A.R.2d (CMA) 14.

Rotten egg smell emanating from automobile's exhaust pipe did not substantially impair its safety, use, or value, and thus owner was not entitled to Lemon Law relief. *Monninger v. Hyundai Motor Company*, 97 N.J.A.R.2d (CMA) 12.

Poor gas mileage is not covered under Lemon Law. *Hassmiller v. Ford Motor Company*, 97 N.J.A.R.2d (CMA) 10.

Owner's unverifiable allegation that automobile's engine raced at idle was insufficient to support Lemon Law relief. *Glombiak v. Nissan Motor Corporation*, 97 N.J.A.R.2d (CMA) 7.

Strong odor of rotten eggs which emanated from automobile, particularly during stops and starts, constituted nonconformity entitling owner to Lemon Law relief. *Conte v. Mitsubishi Motor Sales of America, Inc.*, 97 N.J.A.R.2d (CMA) 4.

Owner failed to show that value of automobile was substantially impacted by transmission whine, wind noise, and rattles and vibrations in passenger door and dashboard. *Martins v. Ford Motor Corporation*, 97 N.J.A.R.2d (CMA) 1.

Squeaking noise in van's wheels was significant enough to constitute substantial defect and to impair van's use, safety and value. *Lloyd v. Chrysler Corporation*, 96 N.J.A.R.2d (CMA) 282.

Steering problem was substantial nonconformity which impaired use, value and safety of automobile. *Toth v. Ford Motor Company*, 96 N.J.A.R.2d (CMA) 281.

Fact that lessor had driven automobile 16,000 miles in 17 months controverted his claim that engine noise, backfiring, loss of power and excessive gasoline consumption had impaired his use of automobile. *Mohamadi v. Mercedes-Benz of N.A.*, 96 N.J.A.R.2d (CMA) 279.

Lessor of new van failed to show that loud creaking noise in front end of vehicle indicated steering or suspension problem. *Shtutman v. Chrysler Motor Corporation*, 96 N.J.A.R.2d (CMA) 277.

Automobile lessor failed to show that automobile's propensity for stalling in damp or rainy weather constituted continuing nonconformity. *Christelles v. Nissan Motor Corporation*, 96 N.J.A.R.2d (CMA) 274.

Brake noise was nonconformity which substantially impaired safety and value of leased automobile. *Orefice v. Chrysler Corporation*, 96 N.J.A.R.2d (CMA) 271.

Noxious smoke venting from engine into passenger compartment of automobile was nonconformity which substantially impaired its use, safety and value. *Noonan v. Ford Motor Company*, 96 N.J.A.R.2d (CMA) 269.

Lemon Law relief was denied where automobile noise did not impair its use, value or safety. *Primiano v. Ford Motor Company*, 96 N.J.A.R.2d (CMA) 265.

Slight transmission noise was found not to constitute substantial defect warranting Lemon Law relief. *Cicccone v. Chrysler Motor Corporation*, 96 N.J.A.R.2d (CMA) 263.

Lemon Law claim was denied where truck's drifting to left and right was easily corrected by driver's steering. *Sreenen v. Ford Motor Company*, 96 N.J.A.R.2d (CMA) 259.

1. Immediately upon receipt of the vehicle, the manufacturer, its agent, or a dealer who accepts the vehicle shall cause the words "R—RETURNED TO MANUFACTURER UNDER LEMON LAW OR OTHER PROCEEDING" to be clearly and conspicuously stamped on the face of the original certificate of title, the manufacturer's statement of origin, or other evidence of ownership.

2. Within 10 days of receipt of the vehicle, the manufacturer, its agent, or a dealer who accepts the vehicle shall submit a copy of the stamped document to the Special Title Section of the Motor Vehicle Commission (MVC) to indicate that title to the vehicle shall be permanently branded.

3. The manufacturer shall provide to the dealer or lessor, and the dealer or lessor shall provide to the consumer prior to the resale or release of the motor vehicle a copy for the consumer's records of the following statement on a separate piece of paper, in 10-point boldface type:

NOTICE OF NONCONFORMITY

"IMPORTANT: THIS VEHICLE WAS RETURNED TO THE MANUFACTURER BECAUSE IT DID NOT CONFORM TO THE MANUFACTURER'S WARRANTY AND THE NONCONFORMITY WAS NOT CORRECTED WITHIN A REASONABLE TIME AS PROVIDED BY LAW."

(This notice is required under the New Jersey "Lemon Law", N.J.S.A. 56:12-29, for vehicles that have been replaced or repurchased by the manufacturer as the result of any one of the following: a court judgment, or a final decision pursuant to a hearing or settlement by the Office of Administrative Law, or an arbitration proceeding between the manufacturer or its agent and a consumer.)

4. Upon delivery to the consumer of the statement in (b)3 above the dealer or lessor shall obtain from the consumer a signed receipt, on a separate sheet of paper, which shall state the following, in underlined 10-point boldface type:

"I ACKNOWLEDGE RECEIPT OF NOTICE OF NONCONFORMITY OF THIS VEHICLE, VIN NO. _____ AS REQUIRED BY N.J.S.A. 56:12-35 (THE 'LEMON LAW')."

Alternatively, the dealer or lessor may fulfill this requirement by making the following notation in underlined boldface type on the front page of the vehicle buyer order form or the lease form:

"NOTICE OF NONCONFORMITY OF THIS VEHICLE, VIN NO. _____, HAS BEEN PROVIDED TO THE PURCHASER OR LESSEE, AS REQUIRED BY N.J.S.A. 56:12-35 (THE 'LEMON LAW')."

5. The manufacturer, dealer or lessor shall notify the Special Title Section of the MVC of the resale or release of the vehicle by requesting transfer of the branded title to the new owner or lessor, in writing.

(c) Each time a consumer's motor vehicle is returned from being examined or repaired during the term of protection, the manufacturer through its dealer shall provide to the consumer an itemized, legible statement of repair which indicates any diagnosis made and all work performed on the vehicle; the statement of repair shall provide at least the following information:

1. A description or identification of the problem reported by the consumer or an identification of the defect or condition;
2. A specific description of the repair work performed.
3. The amount charged for parts and the amount charged for labor, if paid by the consumer;
4. The date and the odometer reading when the vehicle was submitted for repair; and
5. The date and the odometer reading when the vehicle was made available to the consumer.

(d) Failure to comply with the provisions of this section shall be a violation of the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq.

Administrative change.

See: 25 N.J.R. 1516(b).

Amended by R.1994 d.176, effective April 4, 1994.

See: 25 N.J.R. 3939(a), 26 N.J.R. 1535(a).

Amended by R.1995 d.618, effective December 4, 1995.

See: 27 N.J.R. 3566(a), 27 N.J.R. 4899(b).

Administrative Change.

32 N.J.R. 1037(a).

Amended by R.2006 d.141, effective April 17, 2006.

See: 37 N.J.R. 4369(a), 38 N.J.R. 1760(a).

In (b)2, substituted "Motor Vehicle Commission (MVC)" for "Division of Motor Vehicle"; in (b)3, corrected the statutory cite in the "Notice of Nonconformity" statement; in (b)5, substituted "MVC" for "Division of Motor Vehicles".

13:45A-26.4 Lemon Law Unit

(a) There is established within the Division of Consumer Affairs a section processing Lemon Law matters, to be known as the Lemon Law Unit (LLU).

(b) The Lemon Law Unit shall upon request provide consumers with a brochure setting forth:

1. Information regarding a consumer's rights and remedies under the relevant law; and
2. The procedure to be followed in order to participate in the various dispute resolution systems.

(c) All correspondence by consumers or manufacturers to the Division of Consumer Affairs regarding Lemon Law matters shall be directed to the attention of the Lemon Law Unit, as follows:

Division of Consumer Affairs
Lemon Law Unit
Post Office Box 45026
Newark, New Jersey 07101
Telephone (973) 504-6226

Amended by R.1992 d.236, effective June 1, 1992.
See: 24 N.J.R. 53(a), 24 N.J.R. 2063(a).

Revised (c).
Administrative change.
See: 25 N.J.R. 1516(b).
Amended by R.1994 d.176, effective April 4, 1994.
See: 25 N.J.R. 3939(a), 26 N.J.R. 1535(a).
Administrative Change.
32 N.J.R. 1037(a).

13:45A-26.5 Preliminary steps to initiate a Lemon Law action within the Division of Consumer Affairs Lemon Law Unit

(a) To initiate a claim within the Division of Consumer Affairs Lemon Law Unit under the Lemon Law, written notification of the potential claim shall be sent certified mail, return receipt requested, by or on behalf of a consumer, to the manufacturer of a nonconforming motor vehicle if either of the following occurs during the first 18,000 miles of operation or within 24 months after the date of original delivery, whichever is earlier:

1. Substantially the same nonconformity has been subject to repair two or more times by the manufacturer or its dealer and the nonconformity continues to exist; or
2. The motor vehicle has been out of service by reason of repair for one or more nonconformities for a minimum of 20 days since the original delivery of the motor vehicle, and a nonconformity continues to exist.

(b) The manufacturer has one more opportunity to repair or correct the nonconformity within 10 days following receipt of written notification from the consumer of a potential claim. If the nonconformity continues to exist after expiration of the 10-day time period and the manufacturer refuses to replace or refund the price of the vehicle, the consumer may pursue a Lemon Law claim with the Lemon Law Unit.

(c) Nothing contained in this section shall preclude a consumer from alternatively filing an action in Superior Court.

Amended by R.2006 d.141, effective April 17, 2006.
See: 37 N.J.R. 4369(a), 38 N.J.R. 1760(a).

Section heading was "Preliminary steps"; in introductory paragraph (a), added "within the Division of Consumer Affairs Lemon Law Unit" and substituted "shall" for "must"; in (a)2, substituted "a minimum of 20 days" for "a cumulative total of 20 or more days"; rewrote (b); added (c).

Case Notes

Lack of qualifying nonconformity defeats Lemon Law claim. O'Connell v. Chrysler Motor Corporation, 97 N.J.A.R.2d (CMA) 139.

Lemon Law claim dismissed due to failure to present vehicle for three repair attempts for the same nonconformity. Doryk v. General Motors Corporation (Chevrolet Motor Division) (CMA) 122.

Consumer's failure to give statutorily prescribed notice before filing lemon law complaint defeats claim. Goldberg v. Chrysler Motor Corporation, 97 N.J.A.R.2d (CMA) 36.

Purchaser was entitled to Lemon Law presumption that manufacturer was unable to repair nonconformity where automobile was out-of-service for 34 days during first repair attempt. Ramnanan v. Chrysler Motor Corporation, 96 N.J.A.R.2d (CMA) 229.

Lemon Law complaint was dismissed where automobile's problems were repaired by dealer. Hampton v. Chrysler Motor Corporation, 96 N.J.A.R.2d (CMA) 192.

Lemon Law relief granted where automobile dealer failed to avail itself of last chance repair opportunity. Sigman v. Nissan Motor Corporation, U.S.A., 96 N.J.A.R.2d (CMA) 168.

Consumer's failure to comply with Lemon Law's statutory filing requirements precludes claim. Rivera v. Ford Motor Company, 96 N.J.A.R.2d (CMA) 63.

Consumer denied Lemon Law relief for failure to inform manufacturer of problems and offer opportunity for repair before filing Lemon Law complaint. Vitale v. Buick Motor Division-GM, 96 N.J.A.R.2d (CMA) 61.

Lemon Law claim that pickup truck pulled to right while braking was dismissed when defect was corrected by manufacturer at last-chance opportunity. Boothroyd v. Ford Motor Company, 96 N.J.A.R.2d (CMA) 47.

Lemon Law complainant failed to allow dealer sufficient opportunity to repair automobile problems. Conrad-Kessaris v. Mitsubishi Motor Sales of America, Inc., 96 N.J.A.R.2d (CMA) 19.

Consumer failed to meet procedural requirements by submitting allegedly defective vehicle to repair three or more times and affording manufacturer a last chance opportunity. Shepps v. Mitsubishi Motor, 95 N.J.A.R.2d (CMA) 78.

Failure to give manufacturer a final opportunity to repair alleged defect in vehicle was fatal to consumer's claim. Viccaro v. Mitsubishi Motor, 95 N.J.A.R.2d (CMA) 56.

Presumption of inability to correct nonconformity was not available when manufacturer commenced repair but was thereafter prevented by consumer from completing repair. Stassi v. Hyundai Motor, 95 N.J.A.R.2d (CMA) 49.

Remedies under Lemon Law were not available to consumer without affording dealer last chance opportunity to correct alleged defects in vehicle. Benenati v. Mitsubishi Motor Sales, 95 N.J.A.R.2d (CMA) 9.

Failure to tell repairer that malfunction occurred only when the headlights were turned on required the manufacturer be given last chance to repair the nonconformity. Measley v. Volkswagen of America, Inc., 93 N.J.A.R.2d (CMA) 1.

Failure to send correct last chance notice required the complaint under the Lemon Law be dismissed without prejudice. Millar, Patrick J., v. Chrysler Corporation, 92 N.J.A.R.2d (CMA) 180.

Settlement agreement was in full force and effect after the manufacturer honestly and in good faith performed its duties under the agreement. Guarino v. Ford Motor Company, 92 N.J.A.R.2d (CMA) 99.

13:45A-26.6 Eligibility

(a) To be eligible for the Dispute Resolution System, a consumer must provide the following items to the LLU by certified mail, return receipt requested:

Such evidence shall include, but not be limited to, the value of the motor vehicle as listed in the N.A.D.A. Official Used Car Guide.

2. The cost of any options or other modification arranged, installed or made by the manufacturer or its dealer within 30 days after the date of original delivery.

3. Other charges or fees, including, but not limited to:

i. Reimbursement for towing, if any;

ii. Reimbursement for actual expenses incurred by the consumer for the rental of a motor vehicle equivalent to the consumer's motor vehicle for the period during which the consumer's motor vehicle was out of service due to a nonconformity;

iii. Filing fee for participation in the Division's dispute resolution system; and

iv. Reimbursement for reasonable attorney's fees, fees for reports prepared by expert witnesses, and costs.

(b) From the total sum of the items in (a) above, a deduction shall be made, representing an allowance for vehicle use. This deduction shall be calculated as follows:

1. Multiply the mileage at the time the consumer first presented the motor vehicle to the dealer or manufacturer for correction of the nonconformity(s) in question by the total purchase price of the vehicle (or the total lease price, if applicable), then divide by 100,000 miles.

Correction: "manufacturer's" was spelled "manufacturers' ".
Amended by R.1994 d.176, effective April 4, 1994.
See: 25 N.J.R. 3939(a), 26 N.J.R. 1535(a).

Case Notes

Automobile purchaser was entitled to Lemon Law refund plus reasonable attorney fees and costs. *Clyde v. Chrysler Motor Corporation*, 96 N.J.A.R.2d (CMA) 188.

Administrative law judge calculated damages for stipulated judgment in Lemon Law case. *Martir v. Chrysler Motor Corporation*, 96 N.J.A.R.2d (CMA) 154.

Nine bent wheel rims over a period of time, when not due to misuse, were indicative of a nonconformity affecting safety and use requiring manufacturer to provide consumers with reimbursement and a reasonable attorney's fee. *Jurofsky v. Volvo Cars*, 95 N.J.A.R.2d (CMA) 157.

Faulty temperature gauge that erroneously indicated an overheating engine was nonconformity requiring refund with reasonable allowance for vehicle use. *Lamoree v. Chevrolet Motor*, 95 N.J.A.R.2d (CMA) 155.

Classification of vehicle as "lemon" due to abnormal rumbling noises; Lemon Law filing fee as added cost. *Law v. Chrysler Motor Corporation*, 94 N.J.A.R.2d (CMA) 7.

Agreement of parties; total restitution. N.J.S.A. 56:12-29 et seq. *Stine v. Chrysler Motor Corp.*, 93 N.J.A.R.2d (CMA) 74.

Hourly rate of \$150 was reasonable for attorney's fees in Lemon Law action. *Pardo v. Chevrolet Motor Division*, 92 N.J.A.R.2d (CMA) 105.

Expert fees and attorney fees would be determined after submission of a proper Affidavit of Services. *Sager v. Nissan Motor Corporation* in U.S.A., 92 N.J.A.R.2d (CMA) 35.

13:45A-26.12 Final decision

(a) The Director shall review the OAL proposed decision submitted by the administrative law judge who conducts the administrative hearing and shall adopt, reject, or modify the decision no later than 15 days after receipt.

(b) At the conclusion of the 15-day review period, the Director shall mail notification of the rejected, modified or adopted decision to both parties, the lien-holder, if any, the OAL, and, if the vehicle in question is to be returned to the manufacturer, the Special Title Section of the MVC. The mailing to the manufacturer and consumer shall be by certified mail, return receipt requested. Within 45 days of receipt of the final decision, any party may file an appeal in the Appellate Division of the Superior Court.

(c) The manufacturer shall advise the Director as to its compliance with the final decision no later than 10 days following the date stated for completion of all awarded remedies.

(d) If the manufacturer unreasonably fails to comply with the decision within the specified time period, the manufacturer shall be liable for penalties in the amount of \$5000 for each day the manufacturer unreasonably fails to comply, commencing on the day after the specified date for completion of all awarded remedies.

Amended by R.1994 d.176, effective April 4, 1994.
See: 25 N.J.R. 3939(a), 26 N.J.R. 1535(a).
Amended by R.2006 d.141, effective April 17, 2006.
See: 37 N.J.R. 4369(a), 38 N.J.R. 1760(a).
In (b), substituted "MVC" for "DMV".

13:45A-26.13 Appeals

(a) A manufacturer or a consumer may appeal a final decision to the Appellate Division of Superior Court; a notice of appeal must be filed with the Director no later than 45 days after the date of the final decision as defined in N.J.A.C. 13:45A-26.12(b).

(b) An appeal by a manufacturer shall not be heard unless the notice of appeal is accompanied by a bond which shall be:

1. For a principal sum equal to the money award made by the administrative law judge, plus \$2500 for anticipated attorney's fees and other costs;
2. Secured by cash or its equivalent; and
3. Payable to the consumer.

13:45A-26.14 Manufacturer's reporting requirements

(a) The LLU shall compile a roster of American and foreign manufacturers of passenger automobiles and motorcycles registered, sold or leased in New Jersey.

(b) Manufacturers who establish or participate in an informal dispute settlement procedure shall:

1. Advise the LLU of the existence of its informal dispute settlement procedure; and
2. Send the LLU an outline of the steps that a consumer must take in order to participate in the manufacturer's informal dispute resolution procedure; the information shall include all necessary addresses and phone numbers.

(c) On January 15 and July 15 of every year, the LLU shall mail a questionnaire by certified mail, return receipt requested, to every manufacturer on the roster compiled pursuant to (a) above, requesting the following information:

1. Any and all informal dispute settlement procedures utilized by the manufacturer. If the informal dispute settlement procedure is an in-house customer assistance mechanism or private arbitration or private buy-back program instituted by the manufacturer, the information provided shall include the reasons for establishing and maintaining such programs.

2. The number of purchase price and lease price refunds requested, the number awarded by any dispute settlement body or other settlement procedure identified in (c)1 above, the amount of each award and the number of awards satisfied in a timely manner.

3. The number of awards in which additional repairs or a warranty extension was the remedy, the amount or value of each award, and the number of awards satisfied in a timely manner;

4. The number and total dollar amount of awards in which some form of reimbursement for expenses or compensation for losses was the remedy, the amount or value of each award and the number of awards satisfied in a timely manner;

5. The average number of days from the date of a consumer's initial request to use the manufacturer's informal dispute settlement procedure until the date of the decision and the average number of days from the date of the decision to the date on which performance of the award was satisfied; and

6. A list of all motor vehicles and their Vehicle Identification Numbers stamped with "R—RETURNED TO MANUFACTURER UNDER LEMON LAW OR OTHER PROCEEDING," which have been reported to the MVC Special Title Section during the previous six months.

(d) Failure of the manufacturer to return the completed questionnaire to the LLU within 60 days of receipt shall be a violation of this subchapter and the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq.

Correction: Inserted comma after Act and deleted extra period at end of sentence, from the February 21, 1989 update.
Amended by R.1992 d.236, effective June 1, 1992.

See: 24 N.J.R. 53(a), 24 N.J.R. 2063(a).

Revised (a).
Amended by R.1994 d.176, effective April 4, 1994.
See: 25 N.J.R. 3939(a), 26 N.J.R. 1535(a).
Amended by R.1995 d.618, effective December 4, 1995.
See: 27 N.J.R. 3566(a), 27 N.J.R. 4899(b).
Amended by R.2006 d.141, effective April 17, 2006.
See: 37 N.J.R. 4369(a), 38 N.J.R. 1760(a).

In introductory paragraph (b), deleted "within 30 days after the effective date of this subchapter"; in (c)5, substituted "decision" for "design"; in (c)6, substituted "MVC" for "MRS".

13:45A-26.15 Index of disputes

(a) The Division of Consumer Affairs shall maintain an index of all motor vehicle disputes by make and model and shall compile and maintain statistics indicating the record of manufacturer compliance with any settlement procedure decisions.

(b) The index and statistical record of compliance shall be made available to the public.

Amended by R.2006 d.141, effective April 17, 2006.
See: 37 N.J.R. 4369(a), 38 N.J.R. 1760(a).

In (b), deleted "initial" and "on July 1, 1990 and every six months thereafter".

SUBCHAPTER 26A. MOTOR VEHICLE ADVERTISING PRACTICES

13:45A-26A.1 Scope

Without limiting any other practices which may be unlawful under the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., the rules contained in this subchapter set forth motor vehicle advertising practices which are prohibited as unlawful under the Consumer Fraud Act; the rules also include mandatory disclosure in advertisements of certain information relating to advertised motor vehicles as well as on-site disclosures relating to advertised motor vehicles.

Recodified from 13:45A-2.1 by R.1995 d.618, effective December 4, 1995.
See: 27 N.J.R. 3566(a), 27 N.J.R. 4899(b).

Case Notes

Division's adjudication jurisdiction is not limited by a "retail restriction"; Consumer Fraud Act applies to franchising. *Morgan v. Air Brook Limousine, Inc.*, 211 N.J.Super. 84, 510 A.2d 1197 (Law Div.1986).

Purpose of 1976 amendments examined. *Barry v. Arrow Pontiac, Inc.*, 100 N.J. 57, 494 A.2d 804 (1985).

13:45A-26A.2 Application

(a) These rules shall apply to the following advertisements:

1. Any advertisement, including radio and television broadcasts, uttered, issued, printed, disseminated, published, circulated or distributed within this State

concerning motor vehicles offered for sale or lease at locations exclusively within this State; and

2. Any advertisement, including radio and television broadcasts, uttered, issued, printed, disseminated, published, circulated or distributed to any substantial extent within this State concerning motor vehicles offered for sale or lease at locations within this State and outside this State, or at locations exclusively outside the State.

Recodified from 13:45A-2.2 by R.1995 d.618, effective December 4, 1995.

See: 27 N.J.R. 3566(a), 27 N.J.R. 4899(b).

Case Notes

Evidence supported finding that dealership engaged in unconscionable business practices in violation of Consumer Fraud Act; fact that sales contract was unenforceable by virtue of statute of frauds did not prevent Consumer Fraud Act award based on ascertainable loss of monies or property; plaintiff entitled to treble damages plus costs and attorneys fees. *Truex v. Ocean Dodge, Inc.*, 219 N.J. Super. 44, 529 A.2d 1017 (App.Div.1987).

Dealer's advertisement of cars "priced well below dealer invoice" found a violation of N.J.A.C. 13:45A-2.2(a)7iv; regulation upheld against First Amendment constitutional challenge. *Div. of Consumer Affairs v. Arrow Pontiac, Inc.*, 7 N.J.A.R. 48 (1981) affirmed 193 N.J. Super. 613, 475 A.2d 632, affirmed 100 N.J. 57, 494 A.2d 804.

Administrative Correction.
See: 28 N.J.R. 4105(a).

13:45A-26E.12 Final decision

(a) The Director shall review the OAL proposed decision submitted by the administrative law judge who conducts the administrative hearing and shall adopt, reject, or modify the decision no later than 15 days after receipt.

(b) At the conclusion of the 15-day review period, the Director shall mail notification of the rejected, modified or adopted decision to both parties, the lien-holder, if any, and the OAL. The mailing to the manufacturer and consumer shall be by certified mail, return receipt requested. Within 45 days of receipt of the final decision, any party may file an appeal in the Appellate Division of the Superior Court.

(c) The manufacturer shall advise the Director as to its compliance with the final decision or its intent to appeal the final decision no later than 10 days following the date stated for completion of all awarded remedies.

(d) If the manufacturer unreasonably fails to comply with the decision within the specified time period, the manufacturer shall be liable for penalties in the amount of \$5,000 for each day the manufacturer unreasonably fails to comply, commencing on the day after the specified date for completion of all awarded remedies.

13:45A-26E.13 Appeals

(a) A manufacturer or a consumer may appeal a final decision to the Appellate Division of the Superior Court by filing a notice of appeal with the court as well as the Director no later than 45 days after the date of the final decision as defined in N.J.A.C. 45A-26E.12(b).

(b) An appeal by a manufacturer shall not be heard unless the notice of appeal is accompanied by a bond which shall be:

1. For a principal sum equal to the money award made by the administrative law judge, plus \$2,500 for anticipated attorney's fees and other costs;
2. Which sum shall be secured by cash or its equivalent; and
3. Payable to the consumer.

13:45A-26E.14 Manufacturer's informal dispute resolution system

(a) The WLLU shall compile a roster of American and foreign manufacturers of motorized wheelchairs sold or leased in New Jersey.

(b) Manufacturers who establish or participate in an in-house customer assistance mechanism, private arbitration, private buy-back program, or any other type of dispute resolution system shall:

1. Advise the WLLU of the existence of its procedure mentioned in (b) above; and

2. Send the WLLU an outline of the steps that a consumer must take in order to participate in the manufacturer's informal dispute resolution procedure and shall include all necessary addresses and phone numbers.

Amended by R.2006 d.141, effective April 17, 2006.
See: 37 N.J.R. 4369(a), 38 N.J.R. 1760(a).
In (b), deleted the September 18, 1996 deadline.

13:45A-26E.15 Index of disputes

(a) The Division of Consumer Affairs shall maintain an index of motorized wheelchair disputes by make and model and shall compile and maintain statistics indicating the record of manufacturer compliance with any settlement procedure decisions.

(b) The index and statistical record of compliance shall be made available to the public.

Amended by R.2006 d.141, effective April 17, 2006.
See: 37 N.J.R. 4369(a), 38 N.J.R. 1760(a).
In (b), deleted "initial" and "on January 1, 1997 and every 12 months thereafter".

SUBCHAPTER 26F. UNFAIR TRADE PRACTICES—
USED MOTOR VEHICLES—SALE AND
WARRANTY

13:45A-26F.1 Purpose and scope

(a) The purpose of this subchapter is to implement N.J.S.A. 56:8-67 et seq., commonly known as the Used Car Lemon Law. The subchapter specifies which used motor vehicles are subject to the Act; the purchaser's as well as the dealer's obligations under the Act; the warranties which the dealer must provide; the conditions which must be met before a purchaser may waive a warranty; and the dealer's bonding and reporting requirements. In addition, the subchapter establishes a dispute resolution program within the Division of Consumer Affairs in conjunction with the Office of Administrative Law.

(b) This subchapter applies to:

1. Dealers (as defined in N.J.A.C. 13:45A-26F.2), who sell used motor vehicles in the State of New Jersey; and
2. All consumers (as defined in N.J.A.C. 13:45A-26F.2), of used motor vehicles in the State of New Jersey.

13:45A-26F.2 Definitions

As used in this subchapter, the following words shall have the following meanings:

"As is" means a used motor vehicle sold by a dealer to a consumer without any warranty, either express or implied,

and with the consumer being solely responsible for the cost of any repairs to that motor vehicle.

“Consumer” means the purchaser or prospective purchaser, other than for the purpose of resale, of a used motor vehicle normally used for personal, family or household purposes.

“Covered item” means and includes the following components of a used motor vehicle: Engine—all internal lubricated parts, timing chains, gears and cover, timing belt, pulleys and cover, oil pump and gears, water pump, valve covers, oil pan, manifolds, flywheel, harmonic balancer, engine mounts, seals and gaskets, and turbo-charger housing; however, housing, engine block and cylinder heads are covered items only if damaged by the failure of an internal lubricated part. Transmission Automatic/Transfer Case—all internal lubricated parts, torque converter, vacuum modulator, transmission mounts, seals and gaskets. Transmission Manual/Transfer Case—all internal lubricated parts, transmission mounts, seals and gaskets, but excluding a manual clutch, pressure plate, throw-out bearings, clutch master or slave cylinders. Front-Wheel Drive—all internal lubricated parts, axle shafts, constant velocity joints, front hub bearings, seals and gaskets. Rear-Wheel Drive—all internal lubricated parts, propeller shafts, supports and U-joints, axle shafts and bearings, seals and gaskets.

“Dealer” means any person or business which sells, or offers for sale, a used motor vehicle after selling or offering for sale three or more used motor vehicles in the previous 12-month period.

“Deduction for personal use” means the mileage allowance set by the Federal Internal Revenue Service for business usage of a motor vehicle in effect on the date a used motor vehicle is repurchased by a dealer in accordance with N.J.S.A. 56:8-71, multiplied by the total number of miles a used motor vehicle is driven by a consumer from the date of purchase of that vehicle until the time of its repurchase.

“Director” means the Director of Consumer Affairs in the Department of Law and Public Safety.

“Excessive wear and tear” means wear or damage to a used motor vehicle beyond that expected to be incurred in normal circumstances.

“Material defect” means a malfunction of a used motor vehicle, subject to a warranty, which substantially impairs its use, value or safety.

“Model year” means the calendar year beginning January 1 and ending December 31 of the year listed on the motor vehicle’s title or certificate of ownership and vehicle identification number.

“Repair insurance” means a contract in writing to refund, repair, replace, maintain or take other action with respect to a used motor vehicle for any period of time or any specified

mileage and provided at an extra charge beyond the price of the used motor vehicle.

“Sale” means the transfer of title of a used motor vehicle from the owner-seller to the purchaser-consumer and does not include those transactions in which the owner-seller has obtained title to, or is granted the right to sell, a used motor vehicle by operation of law (for example, pursuant to N.J.S.A. 2C:64-7 or 54:49-13a), or in which the seller is a public entity or governmental unit.

“Service contract” means a contract in writing to refund, repair, replace, maintain or take other action with respect to a used motor vehicle for any period of time or any specific mileage or provided at an extra charge beyond the price of the used motor vehicle.

“Used motor vehicle” means a passenger motor vehicle, excluding motorcycles, motor homes and off-road vehicles, title to, or possession of which has been transferred from the person who first acquired it from the manufacturer or dealer, and so used as to become what is commonly known as “secondhand,” within the ordinary meaning thereof but does not mean a passenger motor vehicle, subject to a motor vehicle lease agreement which was in effect for more than 90 days, which is sold by the lessor to the lessee, or to a family member or employee of the lessee upon the termination of the lease agreement.

“Warranty” means any undertaking, in writing and in connection with the sale by a dealer of a used motor vehicle, to refund, repair, replace, maintain or take other action with respect to the used motor vehicle, and which is provided at no extra charge beyond the price of the used motor vehicle.

Petition for Rulemaking.
See: 33 N.J.R. 1478(c).

13:45A-26F.3 Dealer warranty; form; scope; purchaser’s obligations

(a) Upon the sale of a used motor vehicle in the State of New Jersey, the dealer shall furnish the consumer with a written warranty which meets the requirements of (c) below, unless:

1. The purchase price of the used motor vehicle is less than \$3,000;
2. The used motor vehicle is over seven model years old;
3. The used motor vehicle has been declared a total loss by an insurance company and the consumer has been notified in writing of that fact at, or prior to, sale;
4. The used motor vehicle has more than 60,000 miles and the consumer elects to waive the warranty in writing pursuant to N.J.A.C. 13:45A-26F.4; or
5. The used motor vehicle has more than 100,000 miles.