

## **7 FATAL MISTAKES CLIENTS MAKE WHEN THEY HAVE A LEMON**

The Alabama Lemon law is a statutory creation which provides specific guidelines for people to follow in order to obtain a refund or replacement on the vehicle they purchased. While the statute can be viewed as straightforward, it is also very technical, and many individuals fail to follow all of the proper steps in order to preserve their Lemon Law claim. Additionally, people sometimes get caught up in the moment without thinking that the problem with their automobile may lead to a Lemon Law claim, and therefore, they do not prepare in advance.

We have prepared the following report in order to assist people with their claims. While this report discusses various legal items, it is not meant as legal advice or as a substitute for employing legal counsel to assist you with your Lemon Law matter. You should always consult an attorney before attempting to handle your own legal matters. You wouldn't perform your own heart surgery, and you shouldn't handle your own legal claims either. However, notwithstanding the above, these are some things we think you should know which may assist you and your attorney when you purchase a lemon.

### **The Mistakes:**

#### **1. Failing to obtain written service reports.**

One of the most important pieces of evidence in a lemon law case is the service report. Typically, the service report includes the mileage of the vehicle, the dates the vehicle was in and out of service, the customer complaint, and the repair attempt. Of course, many times the service technician or representative puts "unable to duplicate customer concern" on the service report, but at least this documents the complaint.

Many times, customers take the car in with a complaint, and the service technician looks at the car while the customer is waiting. If they say they cannot find anything wrong and give the car back within the hour or so service visit, they may not provide the customer with a service report. Never, NEVER, leave the service department without written documentation of the visit and the complaint.

## **2. Failing to make sure that the customer's actual complaint is on the service report.**

Sometimes the service department of a dealership services the car, but the technician or service manager does not put the customer complaint on the service report. This **MUST** be done. A written document carries much more weight than simply telling a judge, arbitrator, or jury that you told the service technician what the complaint was. The service technician can always say, "No she didn't". The service technician cannot deny a written document that says, "The customer told me the passenger window stalls at times." Additionally, jurors like what they see, not what they hear.

If the service department gives you a service report, **READ** it before you leave the service department. If you don't like what you see, make them change it. If they won't, write out a piece of paper that says they will not change it and try to get them to sign it. Make sure you put the date on it and you sign it. Do whatever you may appropriately do in order to get the proper complaint on the report. However, do not argue and fight with the service department employees. This will get you nowhere, and it sounds a lot better in court when the service personnel testify that the customer was very polite as opposed to: "he cussed me out for no reason". When you are calm and polite, you are seen as truthful and respectable. When you are argumentative and belligerent, you are seen as less truthful.

## **3. Specifying the problem (be general).**

If you think you have a noise in the engine, transmission, or front tire, don't specify the location. Tell the service department that you have a noise in the front of the car. If you tell them it's a noise in the engine and later complain about a noise coming from the front tire, it might be the same problem, but you have now made it two separate problems. For the Alabama Lemon Law to apply, it must be serviced three times for the **SAME** problem. Keeping the complaints general will help you in the long run.

Furthermore, unless you have an automotive background or you are a certified mechanic, can you really tell what the problem is? Don't guess! Tell the service department the symptoms, not the problem. You don't go to a doctor and say, "Doctor, I think I have spinal meningitis." You go to the doctor and say, "Doctor, my head hurts, my throat hurts, and I have a fever." Having your car serviced is similar. Tell the service personnel the general symptoms with the car, and don't try to diagnose the problem yourself.

## **4. Waiting to send letter of non-conforming condition.**

The Alabama Lemon Law covers new cars within the first year or 12,000 miles so getting the Letter of Non-conforming condition to the manufacturer within that time period is

imperative. It is also mandatory that it be sent via certified mail. If you wait to send the letter after the first year or 12,000 miles, you risk losing your lemon law claim.

The statute defines the "Lemon Law Rights Period" as the period ending one year after the date of the original delivery of a motor vehicle to a consumer or the first 12,000 miles of operation, whichever first occurs. Additionally, the "Obligations of the Manufacturer" are defined as follows: "If a new motor vehicle does not conform to any applicable express warranty, and the consumer delivers the motor vehicle to the manufacturer, its agent, or its authorized dealer, and **gives notice of the nonconforming condition during the lemon law rights period**, the manufacturer of the motor vehicle shall be obligated to make such repairs to the motor vehicle as shall be necessary to remedy any nonconforming condition thereof." If you read this literally, the "Notice of Nonconforming Condition" must be given during the first year or 12,000 miles; however, based upon other State lemon law statutes and other language in our statute, it could be read that the first problem must occur during the "Lemon Law Rights Period" (See § 8-20A-2(b) which includes the language " which first occurred during the lemon law rights period"). In any event, the safest course is to make sure you get the "Notice of Nonconforming Condition" to the manufacturer during the "Lemon Law Rights Period".

Notwithstanding the above, you may still have a UCC or a Magnuson Moss Warranty claim, but you would always prefer to preserve your lemon law claim as well.

There are very few Alabama cases which actually quote the Alabama Lemon Law. In fact, there are only four (4) cases which refer to the Alabama Lemon Law Statute. Those cases are:

1. Ex Parte Perry, 744 So.2d 859 (Ala. 1999) (this case simply mentions the statute and does not stand for any legal proposition regarding the lemon law);
2. Carter V. Chrysler Corp., 743 So.2d 456 (Ala. Civ. App. 1998) (this case held that the manufacturer must brand the title of the vehicle which has been repurchased under the lemon law with the words "THIS VEHICLE WAS RETURNED TO THE MANUFACTURER BECAUSE IT DID NOT CONFORM TO ITS WARRANTY" pursuant to § 8-20A-4);
3. Tucker v. General Motors Corp., 769 So.2d 895 (Ala. Civ. App. 1998) (§ 8-20A-2(a) is mentioned in a footnote regarding the nonconforming condition and delivering the vehicle to the manufacturer, its agent, or its authorized dealer); and
4. Lipham v. General Motors Corp., 665 So.2d 190 (Ala. 1995) (this case involved the definition of "consumer" with respect to whether the vehicle was used for personal, family or household purposes pursuant to §§ 8-20A-1(1), 2, and 3 because the use of the vehicle for business purposes is not governed by the Lemon Law).

Consequently, a court could rule that constructive notice, i.e.: telling the dealer there was a problem, satisfies the notice requirement. However, you would be foolish to rely on this potential ruling from a judge. You would be much better off showing the judge a copy of your

notice of non-conforming condition along with a return receipt signed by the manufacturer's representative. At that point, there can be no argument about whether notice was given.

## **5. Failing to include the proper information in the letter of non-conforming condition.**

A consumer must give "Notice of a Nonconforming Condition" by certified United States mail to the manufacturer and demand correction or repair of the nonconforming condition. The law defines the "Notice of a Nonconforming Condition" as a written statement which shall be delivered to the manufacturer and which shall describe the subject motor vehicle, the nonconforming condition, and shall describe all previous attempts to correct such nonconforming condition by identifying the person, firm or corporation who or which made such attempt, and the time when such attempt was made.

A "Nonconforming Condition" is defined as any condition of a motor vehicle which shall not be in conformity with the terms of any express warranty issued by the manufacturer to a consumer and which: (i) significantly impairs the use, value or safety of the motor vehicle and (ii) occurs or arises solely in the course of the ordinary use of the motor vehicle, and which does not arise or occur as a result of abuse, neglect, modification, or alteration of the motor vehicle not authorized by the manufacturer, nor from any accident or other damage to the motor vehicle which occurs or arises after such motor vehicle was delivered by an authorized dealer to the consumer.

The best way to handle this is by using the service reports. Typically, the service reports contain all of the information you need to include in the notice. We usually try to include: (1) the make, model, and year of the vehicle; (2) the vehicle identification number; (3) the nonconforming condition, i.e.: the problems with the vehicle; (4) the dates any service attempts were made on the vehicle; and (5) the name of the dealer which attempted said service. If you fail to include all of the information, your notice could be defective and prevent you from successfully prosecuting your lemon law claim.

## **6. Continuing to take the vehicle in after the third attempt at repair.**

If your car has been repaired for the same non-conforming condition three times, you should not let the dealer make another attempt at a repair until you have given the manufacturer Notice of Non-conforming Condition. At that time, the manufacturer will let you know when and where the final repair attempt will be conducted. This will be the FINAL repair attempt. However, giving the dealer four, five, or six attempts at repairing the problem will arguably prolong your agony.

The statute states you must give the manufacturer Notice of Non-conforming Condition, and the statute defines what that means. As mentioned above, the Notice must provide the manufacturer with a final repair attempt, and therefore, even though you have given the "dealer" five or six attempts, the manufacturer will argue that they are entitled to a final repair attempt. Maybe a court will rule that such a final repair attempt was already provided because you took

the car in more than three times. However, such a ruling is very unlikely. And just as above with the non-conforming condition, wouldn't it be better if you could show the Judge your letter, the return receipt, the three repair attempts, and the clearly worded request for a FINAL repair attempt?

When in doubt, ALWAYS follow the letter of the law. Doing this leaves no room for interpretation. When you leave room for interpretation, you are giving the judge a way out. When judges have discretion and there is room for interpretation, you are gambling that the judge will agree with you. However, when you follow the letter of the law, you are protecting yourself, and if a judge rules against you, you have provided yourself with good grounds for an appeal.

## **7. Not allowing a final repair attempt and assuming the dealer is the manufacturer.**

As discussed, the manufacturer is entitled to a final repair attempt. If the dealer is given several attempts at repairing your car, you cannot use that fact against the manufacturer. You still MUST give the manufacturer a final attempt to repair the vehicle. This is true under the Magnuson Moss Warranty Act as well (the Magnuson Moss Warranty Act is a federal law which essentially mirrors state warranty laws under the Uniform Commercial Code (UCC)).

Again, if you don't give the manufacturer that final repair attempt, you are leaving the case open for the judge's discretion. In such a case, a judge could throw your case out on a technicality – the failure to provide the manufacturer with a final opportunity to correct the defect. This is why it is best to consult an attorney early on in the process. Once the same problem has occurred in your vehicle and the dealer has serviced the problem, on three separate occasions, you should consult an attorney to carry you through the rest of the process.

Why? Will it cost me a fortune? You can't afford an attorney? How do you know? Most attorneys will provide you with a free consultation. Furthermore, think about this. Suppose ten people have Ford F-250 trucks with a vibration problem. Suppose nine of the ten write Ford a letter about the problem. And, suppose the tenth one has an attorney write Ford a letter. Which one do you think will get the most serious response? Remember, the longer the manufacturer puts you off, the less time you have to bring a claim (there is a time limit for bringing such a claim). There are benefits to hiring an attorney, and typically, the attorney ends up being paid by the manufacturer.

## **Conclusion**

Clearly, there are many technical procedures which must be followed with respect to the Alabama Lemon Law. The statute must be read and followed very carefully in order to preserve any claims you have. In addition, you must consider these matters carefully as you are going through the process. When you first have a problem with your new car, you need to consider that it may be a defect which cannot be fixed. If you document the problems carefully from the

beginning, you put yourself in a much better position down the line to win a potential Lemon Law claim. You also put your attorney in a better position to advocate on your behalf against the manufacturer.

If you need assistance with such a claim, feel free to contact the attorneys at Lewis, Feldman, Lehane & McAtee, LLC. We have been handling warranty claims, product defect cases, personal injuries, and wrongful death claims for years, and we will be glad to assist you with the legal problems you may have. We hope this report has been informative, and please call us if you have any questions or comments regarding the same.

- **How do I Contact LEWIS, FELDMAN, LEHANE & MCATEE, LLC?**

You can call us at our toll-free number **(888) 295-7409**, or locally in Birmingham at **(205) 254-3927**. You can also contact us by email at **jsm@lewis-attorneys.com** or **jon@lewis-attorneys.com**. OR, you may visit our website online at **www.LFLMlaw.com**.

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- p. lemon law claims.

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