

DIVISION 2: ANTITRUST, TRADE REGULATION  
AND CONSUMER AFFAIRS



Thomas M. Susman  
Chairperson  
429-1600

Jeffrey Blumenfeld  
724-5778

Ellen Broadman  
447-1893

Barry J. Cutler  
887-1400

Anita Johnson  
724-6153

William B. Schultz  
785-3704

Toby G. Singer  
724-1087

*The District of Columbia Bar*

1426 H STREET, N.W., EIGHTH FLOOR WASHINGTON, D.C. 20005  
(202) 638-1500

Lawyer Referral and Information Service 638-1509

January 10, 1984

The Honorable John Ray  
Committee on Consumer  
and Regulatory Affairs  
Council of the District  
of Columbia  
District Building  
Washington, D.C. 20004

Re: District of Columbia Automobile Consumer Protection  
Act of 1984 -- Bill 5-288

Dear Mr. Ray:

At the Roundtable discussion conducted on May 29, 1984 by the City Council in connection with Bill 5-288, the recently enacted Automobile Consumer Protection Act of 1984, the Council's Committee on Consumer and Regulatory Affairs indicated an interest in affording additional but essential protection to low income consumers who experience major problems with cars they purchase on credit. Some Council members were concerned, and rightly so, that consumers who must finance the purchase of their cars, as a practical matter, will be denied protection of the new "lemon law." The new law, now awaiting the Congressional review period, does not enable consumers to withhold monthly payments, no matter how egregious the problems they experience with their vehicles.

What follows is a brief explanation of why the new lemon law and other existing laws are inadequate to assist those consumers who buy on credit, together with a proposal for remedying these deficiencies. 1/

---

1/ The views expressed herein represent only those of the Consumer Affairs Committee of Division 2 (Antitrust, Trade Regulation and Consumer Affairs) of the District of Columbia Bar and not those of the D.C. Bar or its Board of Governors.

STANDING COMMITTEES  
Consumer Affairs • Federal Antitrust

An institution which loans purchase money to a consumer takes a security interest in the vehicle, enabling it to repossess and sell the vehicle if the consumer should fail to make any regular installment payment, no matter what the reason for nonpayment. In many instances, D.C. residents who purchased vehicles have desired to withhold all or some of their installment payments because of major difficulties experienced with their vehicles -- but under the present state of the law in the District of Columbia, this would only have compounded their problems. The reason is that despite the FTC's well known modification of the "Holder in Due Course Rule" (16 C.F.C. 433), finance companies, banks and other lenders may disregard -- with impunity -- consumers' protestations about defects in their vehicles. Indeed, such institutions routinely repossess consumers' vehicles even when they have been placed on notice of serious, recurring problems with the car. The FTC's modification of the Holder in Due Course rule only helps the consumer defend against the inevitable suit for a deficiency, following sale of the repossessed car. By this time, there is a severe blemish on the consumer's credit record because of the repossession and ironically, the poor credit rating due to loss of the vehicle frequently prevents the consumer from obtaining the substitute transportation he or she may desperately need.

The Committee emphasizes that the new lemon law provides inadequate help to the consumer who, having just given up in despair after a manufacturer's five or six unsuccessful efforts to fix a transmission, must stop making payments to the bank because those funds are needed to obtain another car. Once the consumer stops making payments, a lender surely will repossess the consumer's car, even though it plainly is a lemon under the new law. Thus, a manufacturer may well decline to offer the relief which the lemon law seeks to require--secure in the knowledge that the consumer's lender is going to take the car away from the consumer, will ruin his or her credit and make the consumer's financial plight such that he or she is unlikely to even think about trying to afford a lawyer willing to tackle a large manufacturer or bank. Such problems are faced in disproportionate numbers by low and moderate income residents of the District of Columbia.

The solution to this dilemma is not difficult from a technical, drafting standpoint or as a matter of administrative procedures. Lenders would be prohibited from repossessing those vehicles as to which a consumer has demonstrated, to the satisfaction of an impartial arbiter with the Board of Consumer Claims Arbitration, that the vehicle in question has defects or conditions which substantially impair the value of the vehicle to the consumer. A preliminary hearing can be held quickly after notice to all interested parties. If the arbiter believes the consumer is likely to prevail at

the later, full scale hearing, he or she may permit the consumer to use certain funds which otherwise would go to the lender to be used for repairs, or to withhold one or more payments. On the other hand, as the enclosed proposal reflects, the lender is protected by a requirement that the consumer make all payments in an escrow account maintained by the Board of Consumer Claims Arbitration, and by a right to recoup any losses from the party responsible for the defective goods. If the consumer fails to make payments into the escrow account, or if the decision goes against the consumer either after the preliminary or final hearing before the Board, the lender is free to repossess the vehicle. However, consumers should have reasonable notice so that they can take steps to avoid the repossession and resulting damage to their credit.

In short, the proposed amendments seek to strike a proper balance between the needs of consumers and lenders by protecting the legitimate interests of each.

The Committee's proposal takes the form of amendments to current regulations of the Council governing the Buying, Selling and Financing of Motor Vehicles, Chapter 3 of Title 16 of the D.C. Municipal Regulations. Specifically, 16 D.C.M.R 340 et. seq. would be amended as indicated in the enclosed proposal. The Consumer Affairs Committee's proposal contemplates that the Mayor or the Board of Consumer Claims Arbitration will promulgate rules and regulations governing administrative requirements as already contemplated by the new lemon law. Section 4(q) of the District of Columbia Automobile Consumer Protection Act of 1984 also would be amended to protect creditors from incurring losses under this legislation and to further assure that the burdens of vehicle defects are borne by the appropriate parties.

Should the Council's Committee on Consumer and Regulatory Affairs so request, the Consumer Affairs Committee of the D.C. Bar will make its resources available for further assistance with this proposal.

Sincerely,



David A. Koplou  
Chairperson  
Consumer Affairs Committee  
of Division 2

Primary Drafter: Mark Steinbach

Enclosure

Amendments to the Council's Regulations on Buying,  
Selling and Financing of Motor Vehicles, and the  
Automobile Consumer Protection Act of 1984, proposed  
by the Consumer Affairs Committee of the D.C. Bar

Insert the following language at the beginning of 16DCMR §340.1:

340.1 Unless a buyer acting in good faith has filed a complaint with the Board of Consumer Claims Arbitration alleging that (i) the dealer violated the D.C. Consumer Protection Procedures Act, (ii) the manufacturer violated the Automobile Consumer Protection Act of 1984, or (iii) that the motor vehicle has defects or conditions which significantly impair its value to the consumer and that the dealer or manufacturer has been unwilling or unable to repair such problems. . . [the remainder of §340.1]

Insert the following sections as 16DCMR §340.12 through §340.18:

340.12 When a buyer files a complaint with the Board of Consumer Claims Arbitration on the grounds noted in §340.1, an arbitrator or arbitration panel shall forthwith hold a preliminary hearing, after notice to all interested parties, to determine the likelihood that the buyer will prevail at the final hearing. At the option of the holder, process may be issued to make the dealer or manufacturer a party in these proceedings.

340.14 Pending the decision of the arbitrator or arbitration panel, and except as otherwise provided in §340.15, a buyer who has filed a §340.1 complaint with the Board of Consumer Claims Arbitration shall make all monthly payments into an escrow account maintained by the Board.

340.15 In the event the arbitrator or arbitration panel makes a preliminary finding in favor of the buyer following the §340.12 hearing, the arbitrator or arbitration panel may:

- (a) permit the buyer to utilize the funds paid into escrow for the purpose of making repairs to the vehicle;
- (b) permit the buyer to withhold one or more monthly payments from the escrow account.

340.16 Notwithstanding §340.1 above, the holder may repossess the motor vehicle if:

- (a) the buyer has failed to make all monthly installment payments due into the Board's escrow account or as the arbitrator or arbitration panel otherwise directs; or

(b) the arbitrator or arbitration panel makes  
a preliminary or final finding against the  
buyer,

provided, however, that upon becoming thus entitled to  
repossess, the holder shall give the buyer a written ten day  
notice of its intention to do so. A holder who in good  
faith takes possession of a vehicle upon obtaining from the  
Board in writing information which indicates that it has  
become entitled to possession shall not have any liability  
to the consumer in the event that the written information  
upon which it acts is wrong.

340.17 The Board shall promptly respond in writing to  
requests for information made by any interested party.

340.18 The holder may report the buyer to credit  
reporting agencies or others as delinquent only after the  
buyer has failed to bring his or her account current  
following the holder's ten day notice of intention to  
repossess.

Renumber appropriately the sections now codified as 16 DCMR 340.2  
through 345.2.

Amend §4(q) of the Automobile Consumer Protection Act of 1984 as follows:

~~(q) -- The arbitrator or arbitration panel shall determine whether the defendant is liable to the claimant and/or holder, and, if so, shall award the claimant appropriate relief.~~

~~(1) -- The arbitrator or arbitration panel may award the claimant the relief provided by this act, any relief available under any other law, and reasonable attorneys' fees; The arbitrator or arbitration panel may award against a defendant in favor of the holder any costs, including reasonable attorneys' fees, which the holder incurs as a result of defects in the motor vehicle. -- The defendant may be assessed the costs of arbitration as part of any award rendered by the arbitrator or arbitration panel.~~

(q) If the arbitrator or arbitration panel determines that the defendant is liable to the claimant and/or holder, the following relief and/or costs shall be awarded, unless special circumstances would render such an award inequitable:

(1) the claimant shall be awarded the relief provided by this act, any relief available under any other law, and reasonable attorneys' fees; and

(2) the holder shall be awarded any costs, including reasonable attorneys' fees, which the holder incurs as a result of defects in the motor vehicle; and

(3) the defendant may be assessed the costs of arbitration as part of any award rendered by the arbitrator or arbitration panel.