



The Lemon Law Revisited

by Cary Powell Moseley

Fourteen years after the enactment of the Virginia Motor Vehicle Warranty Enforcement Act¹ (the "Act" or "lemon law"), the Virginia Supreme Court issued its first written opinion involving this consumer protection statute in *Subaru of America, Inc. v. Peters*, 256 Va. 43 (1998). While the case is a significant consumer law decision, *Peters* is important for a number of issues resolved by the Court:

- (1) "consumer[s]" of certain "used" vehicles qualify for relief (refund or replacement) under the lemon law;²
- (2) repair orders, that show the consumer plaintiff paid nothing for repairs, constitute evidence of warranty defects;³
- (3) the vehicle need not be used by the consumer solely for personal, family or household purposes; instead the critical concern is that purpose for which the vehicle is *substantially* used, and some business use will not necessarily bar the plaintiff's claim;
- (4) the use for business purposes by a prior owner does not bar a claim by the subsequent consumer plaintiff;

and

- (5) the consumer need not meet the lemon law "presumption" in order to qualify for relief.⁴

"Consumer" is defined in the Act as the (1) purchaser, other than for purposes of resale, or

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the lessee, of a motor vehicle used in substantial part for personal, family, or household purposes; (2) any person to whom such motor vehicle is transferred for the same purposes during the duration of any warranty applicable to such motor vehicle; or (3) any other person entitled by the terms of such warranty to enforce the obligations of the warranty.⁵

What damages are recoverable?

The Act provides for recovery of the purchase price and all incidental expenses and collateral charges, in addition to "[m]ileage, expenses, and reasonable loss of use" necessitated by repair attempts, less a mileage credit to the manufacturer for use by the consumer.⁶ The mileage rate "shall not exceed" one-half (1/2) of the amount allowed by the Internal Revenue Service.⁷

"Collateral charges" include any sales-related or lease-related charges including but not limited to

Lemon Law — cont'd on page 3

Table of Contents

| | |
|---|----|
| The Lemon Law Revisited | 1 |
| <i>by Cary Powell Moseley</i> | |
| Letter from the Chair | 2 |
| The Supreme Court Revisits [and Limits] <i>Bowers v. Sprouse</i> | 7 |
| <i>by Philip W. Parker</i> | |
| The Virginia Medical Malpractice Cap: Can It Still Be Challenged on Constitutional Grounds? | 13 |
| <i>by John W. Drescher and Latane Ware Brown</i> | |
| Stress Relief for Lawyers | 11 |
| <i>by Rick Beale</i> | |
| Recent Law Review Articles | 12 |
| Litigation Section Board of Governors | 18 |
| Young Lawyers Committee | 19 |

