

4.45 MOTOR VEHICLE LEMON LAW (Approved 5/03)

The purpose of the so-called New Jersey “Lemon Law” is to protect buyers or lessees when they buy or lease a motor vehicle and the manufacturer cannot correct defects in the vehicle.

The lemon law does not apply to every defect in an automobile. It is not a guarantee against every defect. It applies to a defect that substantially impairs the use, value or safety of a vehicle.

To establish his/her claim under the Lemon Law, the plaintiff must prove by a preponderance of the credible evidence each of the following five elements of the claim. The elements are:

1. The plaintiff purchased/leased a vehicle manufactured by the defendant, *[insert the defendant’s name]*;
2. The vehicle had nonconformity or nonconformities that is/are, a defect or defects that substantially impaired the use, value or safety of the vehicle.

To substantially impair, the defect or condition must impair the use, value or safety in an important, essential or significant way. When I use the term “substantial,” I do not mean a defect, impairment or condition that is minor, trivial or unimportant.

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In determining whether a defect or condition substantially impairs the use or value of the vehicle, you can consider whether the defects or conditions have shaken the plaintiff's confidence in the vehicle. If the defect has shaken the plaintiff's confidence in the vehicle, this loss of confidence may be the basis for you to find that the defect has impaired the vehicle's use or value. You must consider this from both a subjective and objective point of view.

From a subjective standpoint, the defects must be examined from the point of view of this particular plaintiff. From an objective standpoint, the defects that allegedly have shaken the plaintiff's confidence must be consistent with what a reasonable person in the plaintiff's position would have believed under the same or similar circumstances.

For example, in deciding whether a specific defect or condition substantially impairs the use or value of a vehicle, you may consider whether the specific defect or condition complained of, in fact caused the plaintiff to lose confidence in this vehicle. Even if you find that the plaintiff's confidence in the vehicle was shaken, you must also consider whether or not the specific defect or condition, if any, was such that a reasonable person would have lost confidence in the vehicle.

NOTE TO JUDGE

If the manufacturer raises either or both of the affirmative defenses set forth below, the following language would be appropriate. *N.J.S.A. 56:12-40.*

The manufacturer, in this case, has raised as a defense to the plaintiff's claim that the alleged nonconformity does not substantially impair the use, value or safety of the vehicle and/or that the nonconformity is the result of abuse, neglect or unauthorized modifications or alterations of the vehicle by someone other than the manufacturer or its dealer. If you find the manufacturer has proven, by a preponderance of the evidence, that the alleged nonconformity does not substantially impair the use, value or safety of the vehicle and/or that the nonconformity is the result of abuse, neglect or unauthorized modifications or alterations of the vehicle by someone other than the manufacturer or its dealer, then you must find that there is no nonconformity within the meaning of the "Lemon Law."

[Charge Continues]

3. The non-conformity occurred during the first 18,000 miles of use, or within two years after the date of original delivery to plaintiff, whichever is earlier.

4. The plaintiff reported the non-conformity to the manufacturer or its dealer during the first 18,000 miles of use, or during the period of two years following the date of original delivery to the plaintiff, whichever is earlier.
5. *[insert the defendant's name]*, through its authorized dealers, did not repair the non-conformity or non-conformities within a reasonable time.

NOTE TO JUDGE

The following language should be charged in those cases where it is alleged the conditions for the presumption have been met. Note, the two year term and two year period specified shall be extended by any period of time during which repair services were not available to the consumer because of war, invasion or strike, or a fire, flood, or other natural disaster. *N.J.S.A. 56:12-33.*

It is presumed that a manufacturer or its dealer is unable to repair or correct a non-conformity within a reasonable time if, within the first 18,000 miles of operation, or during the period of 2 years following the date of original delivery of the motor vehicle to a consumer, whichever is the earlier date:

- (a) substantially the same non-conformity has been subject to repair three or more times by the manufacturer, or its dealer, and the nonconformity continued to exist; or
- (b) the motor vehicle was out of service by reason of repair for one or more nonconformities for a cumulative total of 20 or more calendar days.

- (c) since the original delivery of the motor vehicle and nonconformity continues to exist.

This presumption, however, shall only apply against the manufacturer, if the manufacturer has received written notification, by or on behalf of the plaintiff, by certified mail, return receipt requested, of a potential claim pursuant to this law and has had one opportunity to repair or correct the defect or condition within 10 calendar days following receipt of the notification. The notification by the plaintiff shall take place any time after the motor vehicle has had substantially the same nonconformity subject to repair two or more times or has been out of service by reason of repair for a cumulative total of 20 or more calendar days.

[Charge Continues]

If you find by a preponderance of the evidence that the plaintiff has proven all five elements, then you must find for the plaintiff on the Lemon Law claim.

But, if you find that the plaintiff has failed to establish all five elements, then you will find for the defendant.

NOTE TO JUDGE

In the event that there are factual disputes as to any of the damage elements of a “Lemon Law” claim, the court should provide damage instructions. *See, N.J.S.A. 56:12-32 and 56:12-42.*

In the event the parties have stipulated the amount of damages, the language set forth below would outline for the jury the ultimate outcome. *DiVigenze v. Chrysler Corp.*, 345 N.J. Super. 314 (App. Div. 2001).

If then a plaintiff reports a nonconformity in a motor vehicle to the manufacturer or its dealer during the first 18,000 miles of operation, or during the period of two years following the date of the original delivery of the motor vehicle to the plaintiff, whichever is earlier, the manufacturer is required to make, arrangements with its dealer to make, within a reasonable period of time, all repairs necessary to correct the nonconformity.

If the manufacturer is unable to correct nonconformity within a reasonable time, the manufacturer shall accept return of the motor vehicle from the plaintiff. The manufacturer shall also provide the plaintiff with a full refund of the purchase/lease price and any other charges, fees and costs, less a reasonable allowance for the use of the motor vehicle, which shall be calculated by the court.¹

¹ In the event there are claims for breach of expressed warranty on the sale of goods, or breach of implied warranty of fitness for a particular purpose. See Model Civil Charges 4.21 and 4.22, respectively.

LEMON LAW MODEL JURY VERDICT SHEET

1. Did the plaintiff prove that he/she purchased/leased a vehicle manufactured by the defendant?

YES _____ VOTE _____

NO _____ VOTE _____

If your answer is “yes”, proceed to question 2.
If your answer is “no”, stop your deliberations and return your verdict.

2. Did the plaintiff prove that the vehicle had nonconformity or nonconformities, which substantially impaired the use, value or safety of the vehicle?

YES _____ VOTE _____

NO _____ VOTE _____

If your answer is “yes”, proceed to question 3.
If your answer is “no”, stop your deliberations and return your verdict.

3. Did the plaintiff prove the non-conformity occurred during the first 18,000 miles of use or within 2 years after the date of original delivery to plaintiff, whichever is earlier?

YES _____ VOTE _____

NO _____ VOTE _____

If your answer is “yes”, proceed to question 4.
If your answer is “no”, stop your deliberations and return your verdict.

4. Did the plaintiff prove he/she reported the non-conformity to the manufacturer or its dealer during the first 18,000 miles of use or during the period of 2 years following the date of original delivery to the plaintiff, whichever is earlier?

YES _____

VOTE _____

NO _____

VOTE _____

If your answer is “yes”, proceed to question 5.

If your answer is “no”, stop your deliberations and return your verdict.

5. Did the plaintiff prove that the manufacturer, through its authorized dealers, did not repair the non-conformity or non-conformities within a reasonable time?

YES _____

VOTE _____

NO _____

VOTE _____

[Insert specific damage question, if appropriate.]

See N.J.S.A. 56:12-32 and N.J.S.A. 56:12-42.