

breach of warranties remedies. *Esquire Mobile Homes, Inc v Arrendale*, 182 Ga App 528, 356 SE2d 250 (1987); *Blankenship v Northtown Ford*, 95 Ill App 3d 303, 420 NE2d 167 (1981).

Secondly, Michigan has held that when the essential purposes of a limited warranty has failed, as is the case in the instant matter, then the warrantor is not permitted the shield of the limited relief stated in the warranty. In *Kelynack v Yamaha Motor Corp.*, 152 Mich App 105 (1986), at pages 115 and 116, the court held:

We agree with those jurisdictions which have held that the failure of an exclusive remedy provision contained in a warranty renders the limitation of damages provision inoperable. In our view, the repair and replace remedy and the exclusion of consequential damages are integral and interdependent parts of the warranty and once defendant Yamaha is found to have breached its obligation to repair or replace, the provision excluding consequential damages will be deemed to have failed and the buyer may pursue the general remedies provided by the UCC. To hold otherwise would permit the seller to repudiate its limited obligation under the warranty while shielding itself behind another provision of the very warranty it has repudiated. This result is particularly untenable where, as here, the bulk of the buyer's damages are the consequential damages which the seller now seeks to avoid. See *Jones & McKnight Corp v Birdsboro Corp*, 320 F Supp 39 (ND Ill, 1970). In this case, failure to award plaintiff attorney's fees would in effect result in no remedy at all. We find that the court did not abuse its discretion in awarding attorney's fees as consequential damages.

For the reasons set forth above, we believe that plaintiff is also entitled to appellate attorney fees. See *Central Transport, Inc. v Fruehauf Corp*, 139 Mich App 536, 549; 362 NW2d 823 (1984). Accordingly, we remand for a determination of reasonable appellate attorney fees.

Accordingly, the Defendants may not hide behind the exclusive remedy provisions of the limited warranty provisions in the instant matter.

The Michigan Uniform Commercial Code provides that upon revocation, the purchaser is entitled to recover so much of the purchase price as has been paid. Moreover, the Michigan Consumer Protection Act MCL 445.903(1)(u) requires prompt return of the money paid to those entitled to it.

DAMAGES

Plaintiff seeks recovery of her economic damages in connection with the vehicle, which are as follows:

Reimbursement for Down Payment	\$5252.79
Reimbursement of Payments (through 5/13/98—\$446.12/mo × 36 mos)	16,060.32
Payoff Installment Contract (approx.)	20,000.00
Reimbursement for substitute/rental vehicle	50.00
Reimbursement for accessories	543.43
Reimbursement for non-maintenance repairs	609.42
Subtotal:	\$ 42,515.96

Additionally, under the statutes cited above, Plaintiff is entitled to recover actual costs and attorney fees, to be determined by the Court in a post-trial motion. See, 15 USC § 2310(d)(2); MCLA 257.1401; MCLA 445.911; *Kelynack*, 152 Mich App at 115-116; *Mikos v Chrysler Corp*, 158 Mich App 781 (1987). See, *Jordan v Transnational Motors*, 212 Mich App 94; 537 NW2d 471, 473 (1995)(failure to award market rate attorney fees and costs to prevailing consumer was abuse of discretion).

[Attorney for Plaintiff]

M.4 Sample Voir Dire³

STATE OF MICHIGAN IN
THE DISTRICT COURT, ___TH JUDICIAL DISTRICT

_____)
ESTHER BEIER and)
JOHN BEIER,)
Plaintiffs,)
)
v.)
)
FORD MOTOR COMPANY,)
a Michigan Corporation,)
STEINBRENNER FORD, INC.,)
and FORD MOTOR CREDIT)
COMPANY, a Delaware)
Corporation, Jointly and Severally,)
Defendants.)
_____)

PLAINTIFFS' REQUESTED VOIR DIRE

Plaintiffs, by their attorneys, [Attorney for Plaintiff], requests the following voir dire:

Personal/Employment Information

1. Where do you work?
 - a. What do you do there?
 - b. Do you like your job?
 - (1) If not, why?
2. Where does your spouse/significant other work?
 - a. Does he/she like his/her job?
3. Do any of you, your family or close friends work in the automobile industry or a related industry?
 - a. If so, please tell us about your/their work.
4. Do any of you, your family or close friends work for Ford Motor Company, Jorgenson Ford and/or Ford Motor Credit company?
5. Do you, or any of your family or close friends hold or own any stock in Ford Motor Company?

³ This sample pleading is adapted from a recent case by Dani Liblang, Attorney at Law, 165 North Old Woodward Avenue, Birmingham, Michigan 48009-3380. Because the pleadings are from an actual case, they are quite fact specific, and are presented solely for the purposes of demonstration. All sample pleadings must be adapted by practitioners to meet actual needs and practices.

Prior Jury/Litigation Experience

1. Do any of you watch any of the legal shows on TV, for example, “The Practice,” “Ally McBeal,” or “Law and Order”?
 - a. If so, which ones do you watch?
 - b. For those of you who watch “The Practice,” do you know what “Plan B” is?
 2. Has any member of the jury, or a family member or close friend ever been involved in a lawsuit?
 - a. If so, please give details.
 - b. Were you/they satisfied with the outcome?
 - (1) Do you feel that the outcome was fair?
 - (2) Why or why not?
 - c. What do you think of the job that your/their lawyer did?
 3. Has any jury member, or a family member or a close friend ever had to testify in Court or at a deposition?
 - a. What were the circumstances?
 - b. How did you/they feel about testifying?
 4. Do any of you, or your family or close friends work or have experience in the legal field or court system?
 - a. Please tell us about your/their experience?
 5. Have any of you ever sat as a juror before?
 - a. If so, how many times and when?
 - (1) Please give details of each occasion, such as whether it was a civil or criminal trial, etc.
 - b. What did you think about your experience as a juror?
 - (1) What did you like best?
 - (2) What did you like least?
 - c. Is there anything about that experience that you think might influence the way you think about this case?
 - d. Do you think that there was anything that could have been done to improve your experience? (by the court, lawyers, others?)
 6. Has any member of the jury had any unpleasant associations with lawyers, judges or the courts?
 - a. If so, would that experience interfere with your ability to decide this case?
 7. Do any jurors believe that it is wrong, or improper for a person to bring a lawsuit?
 8. This is a civil trial. It is not a criminal trial. The standards of proof in a civil trial such as this one are not as strict as in a criminal case. The person bringing the suit need only produce evidence that preponderates in her favor. If she does, then she can recover. She does not have to prove the claims or her damages beyond a reasonable doubt.
 - a. Does any jury member have any ideas or opinions that would interfere with your ability to apply this lower standard of proof that is required in a civil trial?
 9. At the conclusion of this trial, the judge is going to instruct you on the law as it pertains to this case and, under our system, you *must* follow the law in deciding this case.
 - a. Is there any member of the jury who feels that he or she cannot follow the law for any reason, even if he or she personally may disagree with the law?
- General Background**
10. Do any of you subscribe to a newspaper or magazine—or even if you don’t subscribe, is there a publication you read pretty regularly?
 - a. Which ones?
 - b. What do you enjoy about that publication?

11. How do you prefer to get your news?
 - a. TV, newspaper, radio, or word of mouth?
12. Any of you belong to any clubs or organizations? (Including block clubs, neighborhood watch, sport or racquet clubs, business associations?)
 - a. How active are you?
13. Have any of you seen any articles about Ford or any of Ford’s cars or trucks?
 - a. What was the substance of the article?
 - b. What was your reaction?
 - c. Would this affect how you would look at this case?
 - (1) Do you think you could follow the judge’s instructions and look only at the evidence in this case and follow the law as the judge gives it to you?
 - (2) Do you think you could make a fair decision in this case?
14. Do any of you have any background in mechanics or engineering?
15. Do any of you have any background in fire investigation, fire fighting or arson investigation?
16. Have any of you or members of your family or close friends ever had a vehicle or house fire?
 - a. If so, what happened?
 - b. Did you ever learn what caused the fire?
 - c. If a vehicle fire, was the vehicle repaired?
 - (1) Was the repair covered under warranty?
 - d. Do you believe your experience would influence how you might look at this case?
17. Have any of you ever done any of your own maintenance on a car or truck?
 - a. If so, how did you learn how to do this?
 - b. What kind of car was it?
18. Do any of you read any automotive magazines or papers?
 - a. If so, which ones?
19. How many of you are familiar with what a vehicle shop manual is?
 - a. Ever use one?
 - (1) Which one(s)?
20. Are any of you familiar with Chilton’s Auto Repair manuals?
 - a. Ever use one?
21. Are any of you familiar with what a Technical Service Bulletin is?
 - a. How did you learn about Technical Service Bulletins or TSB’s?

Product Experience

22. Have any of you ever purchased a new car or van?
23. What made you decide to buy new instead of used?
24. Would you go back to the particular dealer that you bought from?
 - a. Why or why not?
25. Has anyone purchased a new car or truck on any kind of manufacturer’s discount program—like an A-Plan/Option I or employee discount?
 - a. Which program?
 - b. How did you qualify for the program?
26. Have any of you ever owned a Ford Contour?
 - a. Buy new or used?
 - b. How long did you keep it?
 - c. What year was it?

- d. What made you choose that van?
 - e. Did you have any problems with it?
 - f. Did you sell it or trade it in?
 - g. What made you decide to get rid of it?
27. Have any of you ever owned any kind of Ford car, truck or van?
- a. What year and model was it?
 - b. Buy new or used?
 - c. How long did you keep it?
 - d. What year was it?
 - e. What made you chose that car?
 - f. Did you have any problems with it?
 - g. Did you sell it or trade it in?
 - h. What made you decide to get rid of it?
28. Have any of you ever dealt with Jorgenson Ford?
- a. When?
 - b. What were the circumstances?
29. What is your opinion of Ford products in general?
- a. Do you think Ford products are better or worse than average?
30. Have any of you ever been dissatisfied with the service you've received at a dealership?
- a. Please tell us what happened.
 - b. Would you be able to set that experience aside and decide this case based only on the evidence and the judge's instructions in this case?
31. Have any of you ever been dissatisfied with a vehicle that you owned or leased?
- a. What was the problem?
 - b. Did you take any action to try to resolve the problem?
(1) Please tell us what you did?
 - c. Were you able to get the problem resolved to your satisfaction?
 - d. Do you think these experiences would unfairly influence your decision in this case in any way?
32. Is there anyone here who has never had to take a vehicle into a dealer for service?
33. Have any of you ever been dissatisfied with any type of product—not necessarily a car or truck—and tried to return it?
- a. What kind of product?
 - b. Why did you want to return it?
 - c. What happened?

Closing Questions

34. Does anyone on the jury know any of the following individuals:
- a. Esther Beier or Robin Beier?
 - b. Any of the Defendants?
 - c. Any of the Attorneys?
 - d. Any of the witnesses (see pretrial order)?
35. Do each of you feel that you are the kind of person that you would want as a juror if you had your own case in court?
- a. If not, why not?
36. Is there any member of the jury who does not wish to sit on this jury for any reason whatsoever?
37. Does anyone have a reason that they would prefer not to sit, but wants to keep the reason private?

Thank you.

M.5 Sample Opening Statement Before Jury⁴

THE COURT: You wish to make an opening statement, Miss Liblang?

MS. LIBLANG: Yes I would, Your Honor, thank you.

Basically what I'm going to do in this opening statement is tell you a little bit about my client, Mr. Beier, a little bit about the car that we're here about today, something about the witnesses that we'll be bringing to testify and who'll tell you about what happened, and some of the Exhibits that you'll be looking at.

I will tell you about the legal claims, I won't spend a lot of time explaining the law because at the end of the case Judge Burtell will be explaining the law and it will probably make a lot more sense to you after you've heard the facts and been through the trial. But I'll give you a bit of an overview.

Now, first let me tell you about my client, Robin Beier. Mr. Beier is a family man, he's lived in Michigan all his life. His wife is a teacher for special education. Mr. Beier himself works for the City of Detroit in vehicle management, and he's worked his way up from being a student at MoTech where some twelve years ago he was a mechanic, he got promoted to a general mechanic and is now the mechanic foreman, supervising the mechanics, and he'll tell you a little bit about the job there.

Now, the car that is involved here is a 1987 RX-7 turbo. Probably most of you have seen an RX-7 before. This car was, I believe, the first production turbo that Mazda put out for customers such as yourself and Mr. Beier to buy, a production steel model.

Now, Mr. Beier paid quite a bit of money for this car, we have the window sticker from the car showing all the nice features that he had on this car. The sticker price of that car was \$20,739.00, and by the time Mr. Beier got done paying finance charges he paid over \$25,000.00 for this car.

Now, Mr. Beier bought this car really as a treat for himself, it wasn't something, fortunately, that he planned on using every single day. He was planning to use it as something to drive when the weather was nice and he was going to try to preserve it and keep it in good condition and put it away for the winter. So he'll tell you that he stored the vehicle during the wintertime and really did only intend to take it out during the good weather.

So, he made it about a year before he had any problems. He bought this car September 15th of 1986. And it was in September, September 10th of 1987, that he first had a serious problem with the car. He had some minor things but nothing that would bring us into court about. And the first problem was with the rear axle seal, and I don't know if you can read the labels on this, and to some of you this is probably redundant, but I've drawn a chart here so that you can see what we're talking about, and you'll see [indicating on chart] the rear axle and the differential connected to the rear axle. And for those of you who are not familiar with mechanics, you'll hear testimony that what happens is, [using chart], the engine, of course, is connected to the transmission, is connected to the drive

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