



Report on Public Policy Position

Name of Section:

Consumer Law Section

Contact Person:

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Other:

Amicus Brief in the case Davis v Forest River

Date position was adopted:

October 11, 2006

Process used to take the ideological position:

Electronic vote

Number of members in the decision-making body:

15

Number who voted in favor and opposed to the position:

14 responded to the e-vote. All 14 voted in support of the section filing an amicus brief.

Position:

The Consumer Law Section has been asked to file an amicus brief in the case of Davis v Forest River seeking an affirmance of the trial court rulings. The case involves liability of the manufacturer of an RV under implied warranty and Magnuson-Moss theories, including use of revocation of acceptance as a Mag-Moss remedy. Council member Dani LiBlang has agreed to write the amicus brief for the section. The brief is due in the next few weeks before our meeting on November 30. So, an electronic vote as to whether the Section should file an amicus brief in this case was taken. Below is a brief summary of the issues:

There are two main issues:

(1) Whether Michigan requires privity in order to bring a UCC implied warranty claim in a consumer case against a remote manufacturer?

Short answer: No. The COA has already ruled in Sullivan v Doubleseal that privity is not required to bring UCC implied warranty claim in the commercial context. Since UCC section on implied warranty does not differentiate between consumer/commercial claims, there is no basis to hold differently in a consumer case. In fact, policies of UCC, as demonstrated by several provisions preserving consumer claims, indicate that consumers are to be afforded more, rather than less protection. Also, recent 6th Circuit case, Pack v Damon, analyzed Michigan law and held that privity no longer required and, even if required, where manufacturer has issued a written warranty, that creates sufficient privity.

(2) Whether consumer may be afforded equitable remedy of rescission under Mag-Moss, even though state law requires privity for a revocation claim?

Short Answer: Yes. Michigan has already held that MMWA remedy provisions preempt state law (LaVene v Winnebago); further, other courts, most notably 7th Cir in Hamdan v Land Rover, have held that state law only governs whether a warranty arises; once the warranty arises, remedies for breach are determined under federal law.

This case gives consumers more rights -- the right to bring a claim for breach of implied warranty under UCC against remote manufacturer, and the right to obtain revocation as a remedy against a remote manufacturer under Mag-Moss. Both issues are of importance to consumers, as dealers typically disclaim all warranties, leaving consumers with no adequate remedies otherwise.