

AUTOMOTIVE LEGAL NEWSLETTER

The newsletter with information helpful to automobile dealers

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RECENT COURT DECISIONS

NEW CAR LEMON LAW

By Chapter 444 of the Laws of 1983 the legislature enacted New York State's Lemon Law effective, September 1, 1983. The Statute provides protection to purchasers of new cars by requiring the manufacturer to replace the vehicle or refund the purchase price if a substantial defect in the automobile cannot be repaired after a reasonable number of attempts.

Subdivision (b) of Section 198-a of the General Business Law provides:

"If a new motor vehicle does not conform to all applicable express warranties during the first eighteen thousand miles of operation or during the period of two years following the date of original delivery of the motor vehicle to such consumer whichever is the earliest date the consumer shall during such period report the nonconformity, defect or condition to the manufacturer, its agent or its authorized dealer. If the notification is received by the manufacturer's agent or authorized dealer, the agent or dealer shall within seven days forward written notice thereof to the manufacturer by certified mail return receipt requested. The manufacturer its agent or authorized dealer shall correct such nonconformity, defect or condition at

no charge to the consumer, notwithstanding the fact that such repairs are made after the expiration of such period of operation or such two year period."

Subdivision (a) of the "Lemon Law" defines a manufacturers express warranty to mean:

"The written warranty so labeled of the manufacturer of a new automobile, including any term or condition precedent to the enforcement of obligations under that warranty."

In the recent case of *People of the State of New York V. Ford Motor Co.*, the Attorney General initiated the proceeding alleging that Ford is engaged in persistent fraudulent conduct in violation of the "New Car Lemon Law" by charging its customers the first \$100.00 of warranty repair work performed under its extended powertrain warranty when the vehicle has more than 12,000 and less than 18,000 miles on its odometer.

Ford contended that the Lemon Law allows the \$100.00 charge because the definition of the manufacturers express warranty allows conditions precedent to be a part thereof and that its \$100.00 charge is a condition precedent.

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DEFECTIVE AUTOMOBILES

DECISION HOLDS THAT BRAKES ON GM'S X-CARS ARE NOT DEFECTIVE

U.S. District Court Judge Thomas Penfield has rejected allegations made by the National Highway Traffic Safety Administration that the brakes on 1980 GM X-cars are defective and that GM deceived the government during its investigation of the alleged defect. If the ruling is not successfully appealed by the NHTSA, GM will not have to recall and repair the X-cars nor pay a substantial fine.

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NEW CAR LEMON LAW

The Court held that the Lemon Law requiring correction of properly reported defects occurring during the first two years following the purchase of the vehicle at no charge to the customer would not be construed to permit the \$100.00 service charge for powertrain repairs performed on the vehicle between 12,000 and 18,000 miles; even if that charge were a condition precedent to enforcement of its obligation under the manufacturer's express extended warranty because it was contrary to the clear legislative intent to afford consumers greater redress for defects in a new car and therefore would not be enforced.

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DECISION HOLDS THAT BRAKES ON GM'S X-CARS ARE NOT DEFECTIVE

Thousands of complaints of brake lock up in the X-car including accidents, personal injuries and fatalities have been filed with the NHTSA.

In his decision Judge Jackson dismissed five of the six counts brought against GM concerning the alleged brake problems. "The government came into court with nothing more, essentially, than a reasonable suspicion, without evidence to prove it," the Judge held. Judge Jackson further held that the analysis of the risk factors involved supports a finding that "the 1980 X-car does not have a generic brake defect that leads to lock up or skidding."

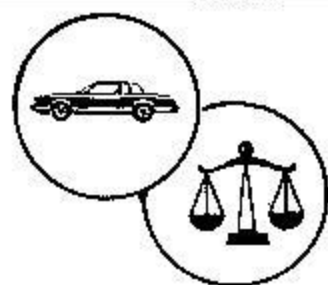
ITEMS OF INTEREST

ESTIMATED MONTHLY RETAIL SALES

(Data in millions of dollars)

Kind of business	1986										
	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov. ^P
Not adjusted for seasonal variations, holiday, or trading-day differences											
Automotive dealers	23,811	23,328	26,241	28,242	30,578	29,740	29,001	29,238	35,101	28,187	24,336
Motor vehicle and misc. automotive dealers	22,052	21,722	24,388	26,172	28,448	27,631	28,810	27,076	32,998	25,994	22,286
Motor vehicle dealers	21,088	20,495	22,509	24,168	26,381	25,579	24,920	25,338	31,405	24,478	20,915
Motor veh. (franchised)	20,370	19,807	21,699	23,367	25,515	24,651	23,895	24,281	30,351	23,442	20,035
Auto & Home supply stores	1,759	1,806	1,853	2,070	2,130	2,109	2,191	2,160	2,106	2,193	2,089
											See
Adjusted for seasonal variations, holiday, and trading-day differences											
Automotive dealers	26,327	26,040	25,026	26,367	27,164	27,101	27,430	28,773	35,318	28,434	27,458
Motor vehicle and misc. automotive dealers	24,286	24,002	23,029	24,389	25,151	25,096	25,436	26,729	33,262	26,390	25,418
Auto & home supply stores	2,041	2,038	1,997	1,988	2,013	2,005	1,994	2,044	2,056	2,044	2,040

This table was compiled by the U.S. Department of Labor Bureau of Labor Statistics



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