



# **AUTOMOTIVE LEGAL NEWSLETTER**

The newsletter with information helpful to automobile dealers

VOLUME 10 Number 6

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## **RECENT COURT DECISIONS**

### **OBLIGATIONS OF USED CAR DEALERS USED CAR LEMON LAW**

Section 417 of the New York Vehicle and Traffic Law, Section 15, 78.13 of NYCRR and Section 198-b of the General Business Law of N.Y. govern the sale by dealers of used cars to the general public.

Pursuant to Section 417 of the VTL, the legislature gave the used car buyer a warranty that the car

“. . . is in a condition, and repair to render, under normal use, satisfactory and adequate service upon the public highway at the time of delivery.”

Furthermore, Section 417 imposes upon the dealer the obligation to inspect the vehicle to insure that it complies with the requirements imposed by the regulations of the Commissioner of Motor Vehicles found in 15NYCRR 78-13(C).

Section 15-78.13 NYCRR directs a dealer who sells second hand cars to deliver to the purchaser a Bill of Sale on which is printed;

“If this motor vehicle is classified as a used motor vehicle, (dealer’s name) certifies that the entire vehicle is in condition and repair to render under normal use, satisfactory and adequate service upon the public highway at the time of delivery.”

*continued on page 2*

## **TORT REFORM**

### **REPORT CONCLUDES THAT RECENT TORT REFORM LEGISLATION WILL NOT DECREASE INSURANCE COSTS**

A recent report by the Insurance Services Organization predicts that the recent rash of tort reform legislation passed by many state legislatures in 1986 will not significantly reduce insurers costs.

Despite the fact that in the past few years and notably in 1986 tort reform legislation proliferated at a dizzying pace the ISO’s report stated that the tort reform legislation that was enacted will have a very small affect on the amount insurers pay out on personal injury claims. The report further stated that for the majority types of claims the impact of the reforms will be minimal.

However, the report said, “considerable indemnity cost savings” could be achieved if various states were to enact a set of “simply stated and comprehensive changes.”

The ISO’s report, called “The Claim Evaluation Project” was conducted by Hamilton, Rabinovitch and Alschuler, Inc. a national consulting firm.

## **PRODUCTS LIABILITY**

### **NEW BILL INTRODUCED IN CONGRESS RECEIVES SUPPORT FROM BOTH PARTIES ADMINISTRATION HINTS IT MAY SUPPORT BILL**

Recently, a comprehensive product liability reform bill was introduced in Congress by Rep. Bill Richardson (D-NM). Richardson’s bill has won widespread support from business groups nationwide.

*continued on page 2*

*continued from page 1*

### RECENT COURT DECISIONS

The courts have clearly held that compliance with 417 was a statutory warranty that could not be waived.

The statute does not provide for any contractual waiver or limitation upon the responsibility for a satisfactory operating condition. Therefore, this warranty of serviceability cannot be waived.

Section 417 of the VTL, then imposed a non-waivable obligation upon a used car dealer to deliver a car that complies with Section 417 of the VTL and Section 15 NYCRR 78.13. Once the car is delivered in such condition the requirements are met. It is for this reason that the legislature enacted Section 198-b of the General Business Law known as the "used car lemon law."

Taken together Section 417 and 198-b provide a before and after protection to the used car buyer. Section 417 gives the used car buyer a warranty of serviceability that the car is in a satisfactory condition and Section 198-b provides specific protection to the used car buyer as a legislated warranty as to certain parts of the car for a period of time after the delivery of the vehicle.

In the recent case of *Armstrong V. Boyce* the defendant complained among other things, that the bumper of his car failed after the 30 day warranty period. The Court held that the presumption of Section 417 is that if such inspection required by the statute is not done then the car is deemed to have been delivered with the problems. The Court said that the fact that the defect did not manifest itself for a period of 30 days will

not bar the plaintiff's recovery for the cost of the bumper. The Court held that the defendant dealer violated the VTL by failing to insert a warranty of serviceability clause in the bill of sale and thus the buyer was entitled to recover the cost of repairs from the dealer, though the defect did not manifest itself until after the warranty period of 30 days.

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### PRODUCTS LIABILITY

Rep. Richardson's bill seeks to establish among other things, a system of fault based liability for defective design and failure to warn cases. However, his bill would not limit damage awards. The bill would further establish standards of proof for punitive damage claims, and limit joint and severable liability. In addition the measure would require deducting worker's compensation benefits from a claimant's award. The bill would recognize among others, a defense based on compliance with federal standards and contracts. Richardson's bill was introduced with strong bipartisan support.

Secretary of Commerce Malcolm Baldrige testified in support of the Reagan administration's product liability policy which would cap non-economic damages at \$200,000.00. Baldrige stated, that the Reagan policy would protect consumers while limiting the excesses in the law. Baldrige stated that while he does not back the Richardson bill 100% there is no reason why the Reagan administration could not work with the bill.



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