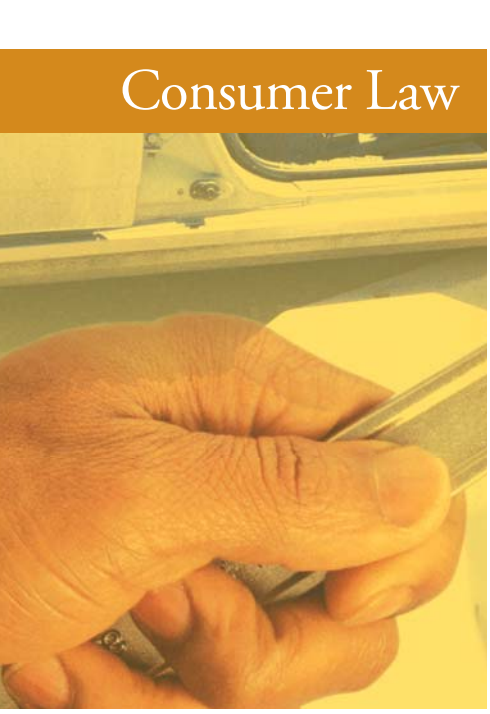
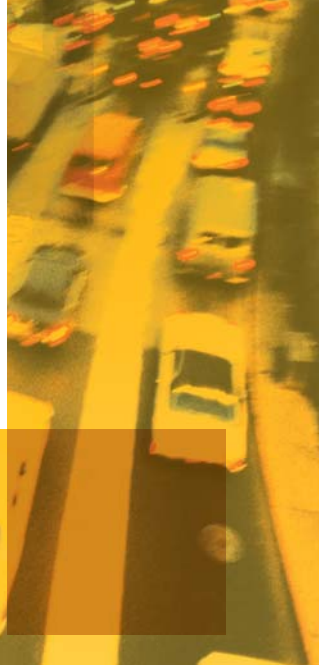




Litigating Rebuilt Wrecks

By Dani K. Liblang

DE-STRESSING THE BUYER OF A DISTRESSED VEHICLE

The problem of "rebuilt wrecks" entering the stream of commerce unbeknownst to innocent consumers has reached epidemic proportions.[1] This article will provide an overview of the statutory remedies available to purchasers of rebuilt wrecks.

The legislative euphemism for rebuilt wreck is "distressed vehicle." A "distressed vehicle" is one so damaged that "the total estimated cost of repairs to rebuild . . . the vehicle, including parts and labor, is equal to or exceeds 75 percent of the actual cash value of the vehicle in its predamaged condition."[2]

The typical rebuilt wreck is a late-model, low-mileage vehicle that is represented to the consumer as a "demo," recent repossession, lease turn-in or, surprisingly, "certified pre-owned." Telltale signs of a rebuilt wreck include water leaks, excessive wind noise, unusual tire wear, electrical problems, warning lights (e.g., airbags, ABS brakes, check engine), or mechanical breakdowns that are unusual for the vehicle's age and mileage. A title history showing an insurance company, body shop, or salvage pool in the chain of title also signals a likely rebuilt wreck.

Transfer of rebuilt wrecks is governed by Michigan's Motor Vehicle Code (MVC). The primary purpose of these statutes is to protect the public from "unscrupulous dealers who would purchase extensively damaged automobiles, repair them, and then sell them without informing the buyer that the vehicle was 'rebuilt.' "[3]

When the cost of repairs is equal to 75–90 percent of the pre-damage value, the insurance carrier, dealer, owner, or other person acquiring title to the vehicle must surrender title to the Secretary of State and obtain a "salvage" title.[4] After a mandatory inspection,[5] the vehicle may be sold under a salvage title and is eligible for highway use.

When the cost of repairs equals 91 percent or more of the pre-damage value, the title must be surrendered and a "scrap" title obtained.[6] A scrap vehicle is not eligible to be rebuilt or titled for highway use and cannot be sold or transferred to a retail purchaser.[7]

Insurance companies and body shops have an incentive to avoid titles branding vehicles as "salvage" or "scrap" because a branded title immediately devalues the vehicle by at least 50 percent, irrespective of the quality of its repair.[8]

State and Federal Odometer Statutes

State and federal laws require that a transferor provide the buyer with an accurate odometer disclosure statement.[9] Federal law requires that the disclosure be made *on the title* in states, such as Michigan, where the title contains a space provided for that purpose.[10]

When it comes to rebuilt wrecks, many dealers deliberately circumvent the odometer disclosure statutes to conceal the vehicle's true history.[11]

Civil remedies are the same under state and federal law, allowing recovery of three times the actual damages or $1,500, whichever is greater, plus costs and reasonable attorney fees.[12] Each owner in the chain of title who fails to make proper disclosure upon transfer of the title may be held liable to the ultimate purchaser, regardless of privity.[13]

Motor Vehicle Code

While proof of intent to defraud is an essential element under the odometer statutes, many MVC provisions create strict liability. Under the MVC, dealers are prohibited from offering to sell a vehicle unless the dealer has "in its immediate possession" a valid certificate of title.[14] The title, including all reassignments, must be presented to the consumer at the time of sale.[15] Copies of all documents signed in connection with the sale must be given to the consumer at the time of sale.[16] When the seller fails to comply with the MVC, the buyer is entitled to void the sale and recover all payments made, irrespective of the fact that the consumer has had use of the vehicle.

Uniform Commercial Code (UCC)

The sale of a rebuilt wreck often gives rise to claims for breach of express warranty,[17] breach of implied warranty of merchantability,[18] and breach of warranty of title.[19] Specific representations, such as the vehicle having one owner or no accident damage, are express warranties, inasmuch as such representations describe the vehicle and become part of the basis of the bargain.[20]

Unless properly disclaimed,[21] a warranty of merchantability is implied with the sale of a vehicle by a dealer.[22] To be merchantable, the vehicle must "pass without objection in the trade under the contract description" and be "fit for the ordinary purposes for which such goods are used."[23] Obviously, a vehicle sold under an unbranded title would not "pass without objection" for that description when, in fact, the vehicle was previously wrecked and should have been branded as "salvage" or "scrap." Further, many vehicles are not reasonably fit for their intended purpose due to serious safety defects, such as missing or fake airbags, bent frames, and compromised seatbelt systems.[24]

Every sale also includes, by operation of law, a warranty of title.[25] Unlike the implied warranty of merchantability, which may be disclaimed by words such as "as is" or "no warranties express or implied," such language is not sufficient to negate the warranty of title.[26]

Remedies under the UCC can include damages, usually measured by the difference in value between the vehicle as represented and the vehicle as delivered,[27] revocation of acceptance,[28] and consequential and incidental damages,[29] including attorney fees and costs.[30]

Magnuson-Moss Warranty Act (MMWA)

The MMWA[31] applies to claims for breach of express and implied warranties arising under state law and to claims for revocation. Additionally, when a dealer makes "*any* written warranty," it is prohibited from disclaiming or modifying "any implied warranty."[32]

While the specific issue of whether a certificate of title is a "written warranty" under the MMWA has not been litigated, several courts have held that other documents relating to the basis of the bargain, such as an odometer statement or an inspection checklist, constitute a "written warranty."[33] Thus, selling a distressed vehicle under an unbranded title may fall under the MMWA. Further, it is well established that breach of an implied warranty is actionable under the MMWA.[34]

In addition to damages, equitable relief available under the MMWA includes revocation, which may be asserted against remote suppliers irrespective of state law privity rules.[35] Finally, the MMWA provides for recovery of costs and attorney fees based on "actual time expended."[36]

Motor Vehicle Service and Repair Act (MVSRA)

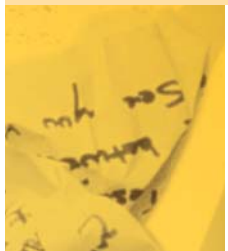
The MVSRA[37] prohibits unfair or deceptive practices by motor vehicle repair facilities. Among the prohibited practices is replacing a part with "one that lacks merchantability

FAST FACTS

The typical "rebuilt wreck" is a late-model, low-mileage vehicle that is represented to the consumer as a "demo," recent repossession, lease turn-in, or "certified pre-owned."

State and federal statutes provide remedies, including revocation, treble damages, and attorney fees, for consumers who purchase rebuilt wrecks that have been sold without proper title and disclosure.

Many of the available remedies can be had against not only the immediate seller, but also other sellers in the chain of title who had a duty to obtain a salvage or scrap title.



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or fitness."[38] Making negligent or substandard repairs is also actionable under the MVSRA.[39]

A rebuilt wreck almost invariably provides an opportunity to pursue the facility that put the vehicle back together. This is because it would be highly unusual for an insurance company to "total" a vehicle that could be economically rebuilt. Thus, a dealer hoping to make a profit is essentially forced to use substandard parts and take other shortcuts to make the resale of the rebuilt wreck economically feasible.

Privity is not required for claims under the MVSRA.[40] A person who is injured or damaged by a violation of the MVSRA may recover damages (double damages in the case of a "willful and flagrant" violation), plus reasonable attorney fees and costs.[41]

Michigan Consumer Protection Act (MCPA)

The MCPA[42] prohibits unfair, conscionable, or deceptive acts as defined in MCL 445.903(1). The wrongdoer need not be in privity with the consumer, nor is the consumer required to show a "transaction" between the parties. Further, insurance carriers who violate the title statutes are not exempt, inasmuch as the so-called "insurance exemption" applies only to acts or practices "made unlawful by chapter 20 of the insurance code."[43] Thus, an MCPA claim can reach the direct seller and all others in the chain of title who committed unfair or deceptive practices.

Damages under the MCPA include the consumer's actual damages or $250, whichever is greater, plus reasonable costs and attorney fees.[44] "Actual damages" may include both economic and noneconomic damages.

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Conclusion

The proliferation of rebuilt wrecks presents serious safety risks to the motoring public, as well as significant economic harm to a broad segment of our society. As consumer attorneys, we have an opportunity to provide relief to those harmed directly and to perform an important public service by deterring future misconduct while, at the same time, obtaining just compensation for our efforts. ◆

Footnotes

1. "Special Report: Wrecks in Disguise," *Consumer Reports,* January 2002, pp 28–35.
2. MCL 257.12a.
3. *Royal Auto Parts v State,* 118 Mich App 284, 291, 324 NW2d 607, 610 (1982).
4. MCL 257.217c(2)(a)(ii); MCL 257.217c(4).
5. MCL 257.217c(12).
6. MCL 257.217c(2)(a)(ii); MCL 257.217c(4).
7. MCL 257.217c(2)(a)(ii).
8. "Special Report," supra, p 31.
9. 49 USC 32705(a); MCL 257.233a.
10. 49 USC 32705(b)(1).
11. See *Yazzie v Amigo Chevrolet,* 189 F Supp 2d 1245 (D NM 2001).
12. 49 USC 31710(b); MCL 257.23a(15).
13. *Rice v Gustavel,* 891 F2d 594, 595 (CA 6, 1989).
14. MCL 257.235(1).
15. MCL 257.233a(3).
16. MCL 257.251a.
17. MCL 440.2313.
18. MCL 440.2314.
19. MCL 440.2312.
20. MCL 440.313(a) and (b).
21. MCL 440.2316; but see 15 USC 2308, prohibiting disclaimers when a vehicle is sold with a written warranty or service contract.
22. See MCL 440.2104(1), defining "merchant" as "a person who deals in goods of the kind . . . involved in the transaction."
23. MCL 2.314(2)(a) and (c).
24. "Special Report," supra, p 33.
25. MCL 440.2312.
26. MCL 440.2312, Official Comment 6.
27. MCL 440.2714(2).
28. MCL 440.2608.
29. MCL 440.2715.
30. MCL 440.2715(2).
31. 15 USC 2301, et seq.
32. 15 USC 2308(a) and (c).
33. See, e.g., *Rice v Mike Ferrell Ford, Inc,* 403 SE2d 774 (W Va 1991).
34. *Computer Network, Inc v AM General Corp,* 265 Mich App 309, 316, 696 NWS2d 49, 55 (2005).
35. 15 USC 2301(d)(1).
36. 15 USC 2310(d)(2).
37. MCL 257.1301, et seq.
38. Mich Admin Code, R 257.132(g).
39. *Hengartner v Chet Sanson Sales, Inc,* 132 Mich App 751, 755, 348 NW2d 15 (1984).
40. Id.
41. MCL 257.1336.
42. MCL 445.901, et seq.
43. MCL 445.904(3).
44. MCL 445.911(2).