

3300 LEMON LAW CLAIM: SPECIAL VERDICT**Question 1:**

Did (plaintiff)'s vehicle have at least one nonconformity?

Answer: _____
Yes or No

If you answered question 1 "no," stop here. Do not answer any other questions.

If you answered question 1 "yes," answer questions 2 and 3.

Question 2:

Did the same nonconformity(ies) found to exist in question 1 continue to exist after the fourth time the vehicle was made available to (defendant) (or authorized dealers) for repairs?

Answer: _____
Yes or No

Question 3:

Was (plaintiff)'s vehicle out of service for an aggregate of at least 30 calendar days (within the term of the warranty) (within the first year after delivery) because of warranty nonconformity(ies)?

Answer: _____
Yes or No

If you answered either question 2 or 3 "yes," answer questions 4 and 5.

If you answered both question 2 and 3 "no," do not answer questions 4 and 5 and answer question 6.

Question 4:

A. What sum of money did (plaintiff) pay as the purchase price for the vehicle?

\$ _____

B. What amount of money did plaintiff pay for sales tax?

\$ _____

C. What sum was paid by (plaintiff) in finance charges to purchase the vehicle?

\$ _____

D. What sum will compensate (plaintiff) for collateral costs in connection with the repair of any nonconformity?

\$ _____

Question 5:

How many miles were on (plaintiff)'s vehicle when a nonconformity was first reported to (manufacturer or manufacturer's authorized dealer)?

_____ miles

Question 6:

Did (defendant) or its authorized dealers fail to repair any nonconformity in the (plaintiff)'s vehicle before the expiration (of the warranty) (of one year after delivery)?

Answer: _____
Yes or No

If you answered question 6 "yes," answer question 7.

Question 7:

What sum of money, if any, will fairly compensate (plaintiff) for any pecuniary loss?

\$ _____

COMMENT

This instruction and comment were approved by the Committee in 1999. The comment was revised in 2000, 2001, 2005, 2008, 2012, and 2016.

The special verdict covers two separate claims. Questions 1, 2, 3, 4, 5 deal with remedies established under Wis. Stat. § 218.0171(2)(b) – replacement or refund. Questions 1, 6, 7 deal with the remedy established under Wis. Stat. § 218.0171(2)(a). The distinction between the two claims is described in Vultaggio v. General Motors, 145 Wis.2d 874, 891, 429 N.W.2d 93 (1988).

Personal Injury. The Lemon Law does not permit a plaintiff's claim for personal injury damages. Gosse v. Navistar Int'l Transp. Corp., 2000 WI App 8, 232 Wis.2d 163, 605 N.W.2d 896. In Gosse, the court said that to allow recovery for personal injury damages would be contrary to the purpose of Wisconsin's Lemon Law. It said if a vehicle's construction is so defective that it causes injury to the consumer, the consumer can both pursue Lemon Law remedies to get the vehicle repaired, replaced, or to obtain a refund, and bring a separate claim for personal injuries under appropriate law. 2000 WI App 8, ¶ 14.

Manufacturer's Affirmative Defense and Burden. In Marquez v. Mercedes-Benz USA, 2012 WI 57, 341 Wis.2d 119, 815 N.W.2d 314, the Wisconsin Supreme Court held that to avoid the remedies provided by Wis. Stat. § 218.017(7) for not issuing a refund or replacement within the 30-day statutory period, a manufacturer must prove that the consumer intentionally prevented the manufacturer from providing a refund or replacement within the 30-day statutory period. The manufacturer's burden for this question is "clear, satisfactory and convincing evidence to a reasonable certainty." See Wis JI-Civil 205.

Comparable Replacement Vehicle. Where the case involves whether a "comparable vehicle" was provided, see Porter v. Ford Motor Co., 2015 WI App 39, 362 Wis.2d 505, 865 N.W.2d 207.