

3310 MAGNUSON-MOSS WARRANTY CLAIM (Express Warranty)

The Magnuson-Moss Warranty Act is a federal law that provides for certain rights in connection with warranties and service contracts applying to consumer products.

Under the Magnuson-Moss Warranty Act, (plaintiff) has the burden of proving the following elements:

1. that (defendant) supplied (plaintiff) with a (name of consumer product) that was defective or that malfunctioned;
2. that the defect or malfunction was covered by the warranty;
3. that (plaintiff) afforded (defendant) or defendant's representative a reasonable opportunity to repair the defect or malfunction;
4. that (defendant) failed to repair the (name of consumer product) at no charge to (plaintiff) within a reasonable time.

If (plaintiff) proves these elements, then (defendant) violated the Magnuson-Moss Warranty Act.

The act does not allow (defendant) an unlimited time to perform repairs that are required to be performed under a written warranty. Rather, the repairs must be performed within a reasonable time. It is for you to determine what is a reasonable time based on the facts and circumstances as you find them.

[It is not a defense to (plaintiff)'s claim that (defendant) tried to fix the (name of consumer product) within a reasonable time but was unable to do so. Commendable efforts alone do not relieve the defendant of its obligation to repair under the warranty.]

SPECIAL VERDICT

Question 1: Did (defendant) supply (plaintiff) with a (name of consumer product) that was defective or that malfunctioned?

Answer: _____
Yes or No

Question 2: If you answered “yes” to question 1, answer this question:
Was the defect or malfunction covered by the terms of the warranty?

Answer: _____
Yes or No

Question 3: If you answered “yes” to question 2, answer this question:
Did (plaintiff) provide (defendant or defendant’s representative) a reasonable opportunity to repair the defect or malfunction?

Answer: _____
Yes or No

Question 4: If you answered “yes” to question 3, answer this question:
Did (defendant or defendant’s representative) fail to repair the defect or malfunction within a reasonable time?

Answer: _____
Yes or No

Question 5: If you answered “yes,” to question 4, answer questions 5a & b:
a) What is the difference, if any, between the value of the (name of consumer product) if it had been as warranted and the value of the (name of consumer product) with the defect or malfunction?

Answer: _____

COMMENT

This instruction and comment was approved in 2005. The comment was updated in 2008 and 2020. The 2020 revision updated case law citations.

The Magnuson-Moss Warranty Act, 15 USCS § 2301 et seq., allows a “consumer” to bring a lawsuit where he or she claims to be damaged by the failure of a supplier, warrantor, or service contractor to comply with any obligation under the Act or under a written warranty, implied warranty, or service contract. 15 USCS § 2310 (d).

Magnuson-Moss claims usually involve motor vehicles and are usually brought with Lemon Law claims. However, Magnuson-Moss claims can be brought with respect to any consumer product. See 15 USCS § 2301(1).

Because the vast majority of cases involve defects covered by a written warranty, the verdict and the instruction focus on express warranty claims under the Magnuson-Moss Act.

The term “supplier” means “any person engaged in the making of a consumer product directly or indirectly available to consumers.” 15 USCS § 2301 (4). The term “consumer” means a “buyer, transferee, or person entitled to enforce a warranty or service contract” 15 USCS § 2301(3).

The Act provides that a “warrantor must at a minimum remedy such consumer product within a reasonable time and without charge in the case of a defect, malfunction, or failure to conform with such warranty.” 15 USCS § 2304(a)(1). The language “failure to conform with such written warranty” can be the basis of a claim, but how this claim differs from a product with a defect or malfunction is uncertain. Therefore, the committee has no suggested form of verdict or instruction involving this kind of claim under the Act.

Service Contracts. For the coverage of service contracts under the Magnuson-Moss Warranty Act, see Tang v. C.A.R.S. Protection Plus Inc., 2007 WI App 134, 301 Wis.2d 752, 734 N.W.2d 169.

Lessee as a “Consumer.” In 2005, the Wisconsin Supreme Court considered whether the plaintiff, as a lessee, met the definition of “consumer” under the MMWA, such that she could maintain a cause of action under the Magnuson-Moss Warranty Act for breach of written warranty against the manufacturer and warrantor of an allegedly defective vehicle. The court held the plaintiff alleged sufficient facts to qualify as a category two consumer under the Act because the facts alleged in her complaint indicated that the manufacturer’s warranty satisfies the definition of “written warranty” and because she alleged that the vehicle in question was transferred to her during the duration of the warranty. The court said the warranty constituted a “written warranty” under the MMWA because the plaintiff alleged that it was issued by the manufacturer in connection with the sale of the vehicle by an authorized dealer to a lending institution in order to facilitate the lease, the warranty was part of the basis of the bargain between the dealership and the lending institution, and the lending institution purchased the vehicle for purposes other than resale.

Furthermore, the court concluded that the lessee had pled sufficient facts to qualify as a category three consumer because the facts alleged in her complaint indicated that the manufacturer’s warranty satisfied the definition of “written warranty” and because she alleged that she was entitled by the terms of warranty to enforce the warranty against the manufacturer. Peterson v. Volkswagen of America, Inc., 2005 WI 61, 281 Wis.2d 39, 697 N.W.2d 61.