

10/16/05 428

BOATES & CRUMP

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Reply to Anthem Office

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+ Of Counsel

December 8, 2005

NHTSA
U.S. Department of Transportation
400 7th Street S.W. (NASS-11)
Washington, D.C. 20590

Dear Sirs:

Pursuant to Federal law, please accept this letter as notice of a motorcycle defect which could cause a crash or could cause injury or death.

Specifically, the attached letter, Exhibit A, details the defect in a 2005 Big Dog Pit Bull Motorcycle, VIN 35J11H [REDACTED]

If you have further questions, or if I may be of further service, please advise.

Very truly yours,

BOATES & CRUMP PLLC


Becky N. MacMillan

BNM/mf
Enclosures

cc: Hacienda Customs U.S.A.
15750 N. Northsight Road
Scottsdale, AZ 85260

Big Dog Motorcycles
1520 E. Douglas Avenue
Wichita, KS 67204-4136

Becky N. MacMillan
12/21/05

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NHTSA

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[REDACTED]
Anthem, AZ [REDACTED]

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November 29, 2005

Hacienda Customs USA
15750 N. Northsight Road
Scottsdale, AZ 85260

Big Dog Motorcycles
1520 E. Douglas Ave.
Wichita, KS 67214-4136

Re: Our Client Name: [REDACTED] ✓
Our Client #: 1749-001
Matter: Purchase of 2005 Big Dog Pit Bull
VIN#: 3 5J11HE [REDACTED]

Dear Sirs:

Fred and Pam Mavroudis have contacted this firm with respect to their purchase of a 2005 Big Dog Pit Bull, VIN 3 5J11HE [REDACTED] from Hacienda Custom Motorcycles ("Hacienda"), Scottsdale, Arizona on April 30, 2005.

Please accept this letter as notice that [REDACTED] are proceeding against Big Dog Motorcycles, L.L.C. ("Big Dog") and Hacienda Harley-Davidson, Inc., d/b/a Hacienda Customs USA, pursuant to Arizona Revised Statutes §§44-1261 to 1267, more commonly known as the Arizona Lemon Law.

In making this claim, [REDACTED] assert that, in selling the Big Dog motorcycle to the Mavroudises, Big Dog, as manufacturer, and Hacienda, as authorized dealer, made various express warranties concerning the motorcycle. The Mavroudises further assert that the motorcycle does not conform to those express warranties, and that the non-conformity substantially impairs the use and value of the motor vehicle to them (or, in fact, to any consumer).

Specifically, the Mavroudises allege that [REDACTED] first experienced a problem with the motorcycle engine unexpectedly "dying," while riding the motorcycle on June 5, 2005. The problem re-occurred on June 6, 2005, at which time [REDACTED] reported it to Hacienda.

EXHIBIT A

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Hacienda Custom Motorcycles, Inc.

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Thereafter, Hacienda and/or Big Dog attempted to repair the problem of the engine "dying" as follows:

<u>Date Motorcycle Taken In</u>	<u>Where Taken</u>	<u>Date Returned</u>	<u>Days in Service</u>
June 7, 2005	Hacienda	June 7, 2005	1
July 1, 2005	Hacienda	July 8, 2005	8
July 14, 2005	Big Dog	September 13, 2005	62
November 25, 2005	Hacienda	Not Yet Returned	4

Notwithstanding Hacienda's and Big Dog's attempts to fix the motorcycle, after repeated attempts and *at least 75 days in service*, the problem persists and the motorcycle does not yet conform to the express warranties.

There should be no dispute that an engine that quits unexpectedly during a ride presents not only a substantial impairment to the use and value of the motorcycle, but a substantial safety risk as well. In fact, when the motorcycle is returned to him, [REDACTED] intends to cancel the insurance, and store it in his garage pending outcome of this dispute. As you can imagine, this is a great disappointment to an avid biker.

Under A.R.S. § 44-1264, "it is presumed that the manufacturer and authorized dealer have had a reasonable number of attempts to conform [a] vehicle to applicable express warranties" if:

1. The same nonconformity has been subject to repair four or more times by the manufacturer or its agents or authorized dealers. . .but the nonconformity continues to exist [or]
2. The motor vehicle is out of service by reason of repair for a cumulative total of thirty or more calendar days. . . .

Hacienda and Big Dog are presumed under Arizona law to have had a reasonable number of attempts to repair the motorcycle, but have failed to do so. As a result, the [REDACTED] are entitled by statute to "refund of the full purchase price, including all collateral charges, less a reasonable allowance for the consumer's use of the vehicle." A.R.S. § 44-1263. At this point, the [REDACTED] do not seek collateral damages; however, the statute allows for the recovery of reasonable costs and attorney fees, which [REDACTED] seek. If this matter can be resolved at this stage, those fees and costs will be minimal; if the [REDACTED] are forced to proceed to alternative dispute resolution or litigation, those fees and costs will be substantial.

Please respond to this letter on or before December 12, 2005, as to your willingness to refund to the [REDACTED] the full purchase price of this motorcycle, less some reasonable allowance

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for the 2000 miles [REDACTED] has put on the bike since purchasing it in April, plus reasonable attorney's fees incurred to date.

If you do not respond by that date, this firm will advise [REDACTED] as to their next step in proceeding under A.R.S. § 44-1261 *et seq.*, and other available statutes, including, *inter alia*, the Magnuson-Moss Warranty Federal Trade Commission Improvement Act, 15 U.S.C. §§2301-2312 (1998) ("Magnuson-Moss Act.")

I look forward to hearing from you.

Sincerely,

BOATES & CRUMP, PLLC

By: _____
Becky N. MacMillan

CC: [REDACTED]