Mazda North American Operations

mazda

Ms. Kathleen C. DeMeter, Director
Office of Defects Investigation
National Highway Traffic Safety Administration
400 Seventh Street, SW
Washington, DC 20590

April 4, 2003

Dear Ms. DeMeter:

The enclosed information is provided in response to the inquiry we received in connection with EA02-027 regarding possible engine stalling of the 2001 and 2002 MY Tributes equipped with the 3.0L engine. As requested, the information is provided in duplicate. Some of the records are being provided in electronic format.

This is only a partial response to the information request. We have spoken with Mr. Thomas Cooper to request an extension to provide the complete response to questions 2, 3, 4 and 11. Mr. Cooper granted us an extension until May 7. We intend to provide the final responses to you by that date.

If you or your staff have any questions regarding the information provided please contact me. My telephone number is (313) 594-7778.

Sincerely,

David Robertson, Manager
Environmental and Safety Engineering
Mazda North American Operations

enclosures

Mazda's partial response: NHTSA Inquiry NVS-212am, EA02-027

Request 1

State, by model and model year, the number of subject vehicles Mazda has manufactured for sale or lease in the United States. Separately, for each subject vehicle manufactured to date, state the following:

a. vehicle identification number (VIN);
b. make;
c. model;
d. model Year;;
e. date of manufacture;
f. data warranty coverage commenced; and
g. the State in the United States Where the vehicle was originally sold or leased (or delivered for sale or lease);

Provide the table in Microsoft Access 2000, or a compatible format, entitled "PRODUCTION DATA," See Enclosure 1, Data Collection Disc, for a pre-formatted table that provides further details regarding this submission.

Answer 1

Mazda records indicate that the approximate total number of subject vehicles sold in the United States (the 50 states and the District of Columbia) and its protectorates an d territories (American Samoa, Guam, Marshall Islands, Micronesia, Northern Mariana Islands, Palau, Puerto Rico, US Minor Outlying Islands, and Virgin Islands) is 97,860. The totals by make, model year, model, build month, and location of final vehicle assembly are provided electronically in Appendix A (file: 2003-02-28) on the enclosed CD.

2. State the number of each of the following, received by Mazda, or of which Mazda is otherwise aware, which relate to, or may relate to, the alleged defect in the subject vehicles;

a. consumer complaints, including those from fleet operators;
b. field reports, including dealer field reports;
c. reports involving a crash, injury, or fatality, based on claims against the manufacturer involving a death or injury, notices received by the manufacturer alleging or proving that a death or injury was caused by a possible defect in a subject vehicle, property damage claims, consumer complaints, or field reports;
d. property damage claims;
e. third-party arbitration proceedings where Mazda is or was a party to the arbitration; and,
f. lawsuits, both pending and closed, in which Mazda is or was a defendant or codefendant.

For subparts "a" through "c," state the total number of each item (e.g., consumer complaints, field reports, etc,) separately. Multiple incidents involving the same vehicle are to be counted separately. Multiple reports of the same incident are also to be counted separately (i.e., a consumer complaint and a field report involving the same incident in which a crash occurred are to be counted as a crash report, a field report and a consumer complaint).

In addition, for items "c" through "f," provide a summary description of the alleged problem and causal and contributing factors and Mazda's assessment of the problem, with a summary of the significant underlying facts and evidence. For item "f, identify the parties to the action, as well as the caption, court, docket number, and date on which the complaint or other document initiating the action was filed.

Answer 2

On March 28, 2003 Mazda requested an extension of time to May 7, 2003 in order to provide answers to Request 2. However at this time Mazda is providing a partial response to this request. A search of our records indicates as follows for "d", "e" and "f".

	Number of Reports	Appendix No.
a. consumer complaints, including those from fleet operators;	TBD	TBD
b. field reports, including dealer field reports;	TBD	TBD
c. reports involving a crash, injury, or fatality, based on claims against the manufacturer involving a death or injury, notices received by the manufacturer alleging or proving that a death or injury was caused by a possible defect in a subject vehicle, property damage claims, consumer complaints, or field reports;	TBD	TBD
d. property damage claims	0	NA
e. third-party arbitration proceedings where Mazda is or was a party to the arbitration; and,	0	NA
f. lawsuits, both pending and closed, in which Mazda is or was a defendant or codefendant.	29	Appendix B

Lawsuits: Mazda has reviewed its legal files and has identified 29 lawsuits that may be related to the alleged defect. One of them is a personal injury claim alleging that an occupant was injured as a result of the alleged defect (Gary Lord and Lois Lord v. Mazda Motor of America, Inc.). At this point Mazda has no information regarding the validity of the allegations made in the lawsuit. The remaining lawsuits seek compensation for breach of warranty associated with the alleged defect. Information on each lawsuit is provided in Appendix B in response to Requests 3 and 4.

3. For each item (complaint, report, claim, notice, or matter) within the scope of your response to Request No. 2, state the following information:
a. Mazda's file number or other identifier used;
b. the category of the item, as identified in Request No. 2 (i.e., consumer complaint, field repot, etc.);
c. Vehicle owner or fleet name (and fleet contact person), address, and telephone number;
d. vehicle's VIN;
e. vehicle's make, model and model year;
f. vehicle's mileage at time of incident;
g. incident date;
h. report or claim date;
i. whether a crash is alleged;
j. whether property damage is alleged;
k. number of alleged injuries, if any; and,
l, number of alleged fatalities, if any.

Provide this information in Microsoft Access 2000, or a compatible format, entitled "REQUEST NUMBER TWO DATA." See Enclosure 1, Data Collection Disc, for a pre-formatted table that provides further details regarding this submission.

Answer 3

Detailed information on the lawsuits identified in response to request 2 can be found in Appendix B.

4. Produce copies of all documents related to each item within the scope of Request No. 2. Organize the documents separately by category (i.e., consumer complaints, field reports, etc.) and describe tile method Mazda used for organizing the documents.

Answer 4

Documents related to the lawsuits identified in response to request 2 can be found in Appendix C (file: 2003-03-25) in the enclosed copes.

5. State, by model and model year, a total count for all of the following categories of claims, collectively, that have been paid by Mazda to date that relate to, or may relate to, the alleged defect in the subject vehicles; warranty claims; extended warranty claims; claims for good will services that were provided; field, zone, or similar adjustments and reimbursements; and warranty claims or repairs made in accordance with a procedure specified in a technical service bulletin or customer satisfaction campaign.

Separately, for each such claim, state the following information:
a. Mazda's claim number;
b. vehicle owner or fleet name (and fleet contact person) and telephone number;
c. VIN;
d. repair date;
e. vehicle mileage at time of repair;
f. repairing dealer's or facility's name, telephone number, city and state or ZIP code;
g. labor operation number;
h. problem code;
I. replacement part number(s) and description(s);
j. concern stated by customer; and,
k. comment if any, by dealer/technician relating to claim and or repair.

Answer 5

We have identified a total of 11,122 warranty claims that may relate to this alleged defect. They are coded in our data as Problem Code 04, indicating engine stalls while driving –will not restart and Problem Code 05, engine stalls while driving –will start.

Problem Code 04: 885 reports
Problem Code 05: 10,237 reports

It is difficult to accurately identify the warranty claims that relate to the alleged defect.
Please note that the warranty claims are submitted to Mazda by dealers seeking payment for repairs they have made and often do not contain sufficient information to accurately determine why a repair was made, if the repair was appropriate, or even if the repair was necessary. In our opinion, the information provided in these warranty claims is insufficient to support a determination that relate to the alleged defect in the subject vehicles.

Please see the Appendix D (file: 2003-03-19) on the enclosed CD for a data of warranty claims categorized by "a – I" as above. "J" concerns stated by customer and "k" comments by dealer/technician are not available from Mazda's warranty claim data base.

6. Describe in detail the search criteria used by Mazda to identify the claims identified in response to Request No. 5, including the labor operations, problem codes, part numbers and any other pertinent parameters used. Provide a list of an labor operations, labor operation, descriptions, problem codes, and problem code descriptions applicable to tile alleged defect in the subject vehicles. State, by make and model year, the terms of the new vehicle warranty coverage offered by Mazda on the subject vehicles (i.e., the number of months and mileage for which coverage is provided and the vehicle systems that are covered). Describe any extended warranty coverage option(s) related to the alleged defect that Mazda offered for the subject vehicles and state by option, model, and model year, the number of vehicles that are covered under each such extended warranty.

Answer 6

Appendix D contains a description of the search criteria used to identify those claims that may be considered responsive to Request 5.

7. Produce copies of all service, warranty, and other documents that relate to, or may relate to, the alleged defect in the subject vehicles, that Mazda has issued to any dealers, regional or zone offices, field offices, fleet purchasers, or other entities. This includes, but is not limited to, bulletins; advisories, informational documents, training documents, or other documents or communications, with the exception of standard shop manuals. Also include tile latest draft copy of any communication that Mazda is planning to issue within the next 120 days.

Answer 7

At the request of Ford, Mazda have issued a relevant service bulletin on April 26, 2002. Please see the Appendix E as Mazda response at PE01-043 on May 10, 2002.

8. Describe all assessments, analyses, tests, test results, studies, surveys, simulations, investigations, inquiries and/or evaluations (collectively, "actions") that relate to, or may relate to, the alleged defect in the subject vehicles that have been conducted, are being conducted, are planned, or are being planned by, or for, Mazda. For each such action, provide the following information;

a. action title or identifier;
b. the actual or planned start date;
c. the actual or expected end date;
d. brief summary of the subject and objective of the action;
e. engineering group(s)/supplier(s) responsible for designing and for conducting the action; and,
f. a brief summary of the findings and/or conclusions resulting from the action.

For each action identified, provide copies of all documents related to the action, regardless of whether the documents are in interim, draft, or final form. Organize the documents chronologically by action.

Answer 8

Mazda has not conducted any study, survey, or investigation pertaining to the alleged defect since Mazda has neither design nor manufacturing responsibility for the subject vehicles.
Please see Ford's response to Request 8 for EA02-027.

9. Describe all modifications or changes made by, or on behalf of, Mazda in the design, material composition, manufacture, quality control, supply, or installation of the subject components, from the start of production to date, which relate, or may relate, to the alleged defect in the subject vehicles. For each such modification or change, provide the following information:

a. the date or approximate date on which le modification or change was incorporated into vehicle production;
b. a detailed description of the modification or change;
c. the reason(s) for the modification or change;
d. the part numbers (service and engineering) of the original component;
e. the part number (service and engineering) of the modified component;
f. whether the origina1 unmodified component was withdrawn from production and/or sale, and if so, When;
g. when the modified component was made available as a service component; and,
h. whether the modified component can be interchanged with earlier production components.

Also, provide the above information for any modification or change that Mazda is aware of which may be incorporated into vehicle production within the next 120 days.

Answer 9

Mazda has neither design nor manufacturing responsibility for the subject vehicles.
Please see Ford's response to Request 9 for EA02-027.

10. State the number of each of the following that Mazda has sold that may be used in the subject vehicles by component name, part number (both service and engineering/production), model and model year of the vehicle in which it is used and month/year of sale including the cut-off date for sales, if applicable:

a. subject components; and,
b. any kits that live been released, or developed, by Mazda for use in service repairs to the subject component/assembly.

For each component part number, provide the supplier's name, address, and appropriate point of contact (name, title, and telephone number). Also identify by make, model and model year, any other vehicles of which Mazda is aware that contain the identical component, whether installed in production or in service, and state the applicable dates of production or service usage;

Answer 10

Mazda service parts are sold by Mazda in the United States to authorized Mazda dealers, and we have no means by which to determine how many of the parts were actually installed on vehicles, the vehicle model on which a particular part was installed, or the reason that the installation was made. However, In an attempt to be responsive to your request, Mazda is providing the requested part sales information as follows.

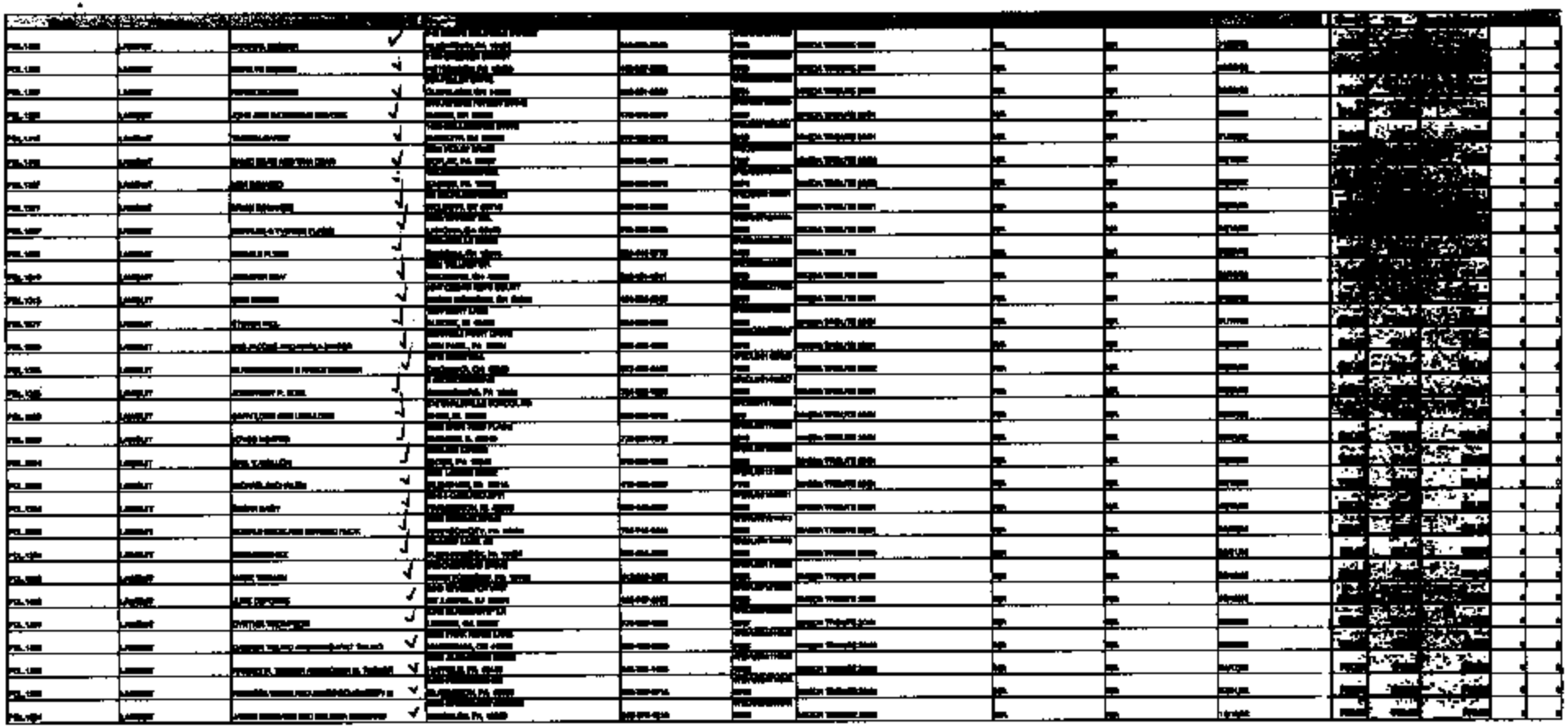
a. Coolant Fan relay (Part No. BTDA-67740): *******
   Coolant Fan relay is used as Coolant Fan relay and as Engine Electronic Control (EEC) relay. Therefore we can not identify the number of the part sales only for EEC.
b. Powertrain Control Module (Part No. AJ08-18881, AJY1-18881): *******
c. Idle Air Control (IAC) valve (Part No. 20660): *******
d. Ignition Switch (Part No.*******): *******

Please see the Appendix F (file: 2003-03-30) for data of Monthly Parts sales volume.

Supplier and Address:

Mazda has no exact information of the suppliers and their addresses, because Mazda is purchasing these parts from Ford as service parts and also Mazda did not develop this engine and the engine control system. Please see Ford's response to Request 10 for EA02-027.

Appendix C



GORBERG, GORBERG AND ZUBER
By: DAVID J. GORBERG Attorney for Plaintiffs
Identification No. 53084
1234 Market Street
Suite 2040
Philadelphia, PA 19107
(215) 563-7210

CRYSTAL BECKER 741 North Halstead Street Allentown, Pa 18109	: COURT OF COMMON PLEAS : : PHILADELPHIA COUNTY
vs.	: TERM, 2002
MAZDA NORTH AMERICA, INC. 7755 Irvine Center Drive Box 19734 Irvine, CA 92713	: : : : NO.

COMPLAINT

1. Plaintiff, Crystal Becker is an adult individual citizen and legal resident of the Commonwealth of Pennsylvania, residing at 741 North Halstead Street, Allentown, Pa 18109.

2. Defendant, Mazda North America, Inc., is a business corporation qualified to do business and regularly conducts business in the Commonwealth of Pennsylvania with it's legal residence and principal place of business at 7755 Irvine Center Drive, Box 19734, Irvine, CA 92713.

BACKGROUND

3. Plaintiff incorporates by reference paragraphs 1 and 2 as fully as if set forth here length.

4. On or about June 11, 2001, Plaintiff leased a new 2001 Mazda Tribute manufactured and warranted by Defendant bearing the Vehicle Identification Number 4F2YU06101KM57758. The vehicle was purchased and registered in the Commonwealth of Pennsylvania.

5. The price of the vehicle, including registration charges, document fees, sales tax, but, excluding other collateral charges not specified, totaled more than $21,109.08.

6. Plaintiff avers that as a result of the ineffective repair attempts made by Defendant through its authorized dealer, the vehicle cannot be utilized for the purposes intended by Plaintiff at the time of acquisition and as such, the vehicle is worthless.

7. In consideration of the purchase of the above vehicle, Defendant, issued to Plaintiff several warranties, fully outlined in the warranty booklet.

8. On or about June 11, 2001 Plaintiff took possession of the above mentioned vehicle and experienced nonconformities, which substantially impaired the use, value and/or safety of the vehicle.

9. Said nonconformities consisted of, but was not limited to, defective brakes. Copies of repair receipts are attached hereto and marked as Exhibit "A".

10. The nonconformities violate the express written warranties issued to Plaintiff by Defendant.

11. Plaintiff avers the vehicle has been subject to repair more than three (3) times for the same nonconformity, and the nonconformity remains uncorrected.

12. Plaintiff has delivered the nonconforming vehicle to an authorized service and repair facility of the defendant on numerous occasions. After a reasonable number of attempts, Defendant was unable to repair the nonconformities.

13. In addition, the above vehicle has or will in the future be out of service by reason of the non-conformities complained of for a cumulative total of thirty (30) days or more.

14. The vehicle continues to exhibit defects and nonconformities which substantially impair it's use, value and/or safety.

15. Plaintiff avers the vehicle has been subject to additional repair attempts for defects and/or nonconformities and/or conditions for which the Defendant and or it's authorized service center, may not have maintained records.

16. Plaintiff has been and will continue to be financially damaged due to Defendant's intentional, reckless, wanton and negligent failure to comply with the provisions of its' warranty.

17. Plaintiff seeks relief for losses due to the nonconformities and defects in the above mentioned vehicle in addition to attorney fees and all court costs.

COUNT I

MAGNUSON-MOSS FEDERAL TRADE COMMISSION IMPROVEMENT ACT

18. Plaintiff hereby incorporates all facts and allegations set forth in this Complaint by reference as if fully set forth at length herein.

19. Plaintiff is a "Consumer" as defined by 15 U.S.C. §2301(3).

20. Defendant is a "Warrantor" as defined by 15 U.S.C. §2301(5).

21. Plaintiff uses the subject product for personal, family and household purposes.

22. By the terms of the express written warranties referred to in this Complaint, Defendant agreed to perform effective warranty repairs at no charge for parts and/or labor.

23. Defendant failed to make effective repairs.

24. As a direct and proximate result of Defendant's failure to comply with the express written warranties, Plaintiff has suffered damages and, in accordance with 15 U.S.C. §2310(d)(1), Plaintiff is entitled to bring suit for such damages and other legal and equitable relief.

25. Section 15 U.S.C. §2310 (d) (1) provides:

> If a consumer finally prevails on an action brought under paragraph (1) of this subsection, he may be allowed by the Court to recover as part of the judgment a sum equal to the amount of aggregate amount of costs and expenses (including attorney fees based upon actual time expended), determined by the Court to have been reasonably incurred by the Plaintiff for, or in connection with the commencement and prosecution of such action, unless the Court, in its discretion shall determine that such an award of attorney's fees would be inappropriate.

26. Plaintiff avers that upon successfully prevailing upon the Magnuson-Moss claim herein, all attorney fees are recoverable and are demanded against the Defendant.

WHEREFORE, Plaintiff respectfully demands judgment in his favor and against the Defendant in an amount equal to three (3) times the purchase price of the subject vehicle, plus all available collateral changes and attorney fees. Amount not in excess of $50,000.00.

COUNT II
UNIFORM COMMERCIAL CODE

27. Plaintiff hereby incorporates all the paragraphs of this Complaint by reference as if fully set forth at length herein.

28. The defects and nonconformities existing within the vehicle constitute a breach of

contractual and statutory obligations of the Defendant, including but not limited to the following;

a. Breach of Express Warranty

b. Breach of Implied Warranty of Merchantability;

c. Breach of Implied Warranty of Fitness For a Particular Purpose;

d. Breach of Duty of Good Faith.

29. The purpose for which Plaintiff purchased the vehicle include but are not limited to his personal, family and household use.

30. At the time of this purchase and at all times subsequent thereto, Plaintiff has justifiably relied upon Defendant's express warranties and implied warranties of fitness for a particular purpose and implied warranty of merchantability.

31. At the time of the purchase and at all times subsequent thereto, Defendant was aware Plaintiff was relying upon Defendant's express and implied warranties, obligations, and representations with regard to the subject vehicle.

32. Plaintiff has incurred damages as a direct and proximate result of the breach and failure of Defendant to honor its express and implied warranties.

33. Such damages include, but are not limited to, the purchase price of the vehicle plus all collateral charges, including attorney fees and costs, as well as other expenses, the full extent of which are not yet known.

WHEREFORE, Plaintiff respectfully demands judgment in his favor and against the Defendant in an amount equal to three (3) times the purchase price of the subject vehicle, plus all available collateral changes and attorney fees. Amount not in excess of $50,000.00.

COUNT III
PENNSYLVANIA UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION CLAIM

34. Plaintiff hereby incorporates all the paragraphs of this Complaint by reference as if set forth at length herein.

35. The Unfair Trade Practices and Consumer Protection Law defines unfair methods of competition to include the following:

> (xiv). Failing to comply with the terms of any written guarantee or warranty given to the buyer at, prior to, or after a contract for the purchase of goods or services is made.

36. Plaintiff, as a Pennsylvania resident, believes, and therefore, avers the reckless, wanton and willful failure of Defendant to comply with the terms of the written warranty constitutes an unfair method of competition.

37. Section 201-9.2(a) of the Unfair Trade Practices and Consumer Protection Law, authorizes the Court, in its discretion, to award up to three (3) times the actual damages sustained for violations of the Act.

WHEREFORE, Plaintiff respectfully demands judgment in his favor and against the Defendant in an amount equal to three (3) times the purchase price of the subject vehicle, plus all available collateral changes and attorney fees. Amount not in excess of $50,000.00.

GORBERG AND ZUBER

BY: _____
DAVID J. GORBERG, ESQUIRE
Attorney for Plaintiff

GORBERG, GORBERG AND ZUBER
By: **DAVID J. GORBERG** Attorney for Plaintiffs
Identification No. 53084
1234 Market Street
Suite 2040
Philadelphia, PA 19107
(215) 563-7210

MARILYN BYKENS 1389 Steuben Street Pittsburgh, Pa 15220	:	COURT OF COMMON PLEAS PHILADELPHIA COUNTY
vs.	:	TERM, 2002
MAZDA NORTH AMERICA, INC. 7755 Irvine Center Drive Box 19734 Irvine, CA 92713	:	NO.

COMPLAINT

1. Plaintiff, Marilyn Bykens is an adult individual citizen and legal resident of the Commonwealth of Pennsylvania, residing at 1389 Steuben Street, Pittsburgh, Pa 15220.

2. Defendant, Mazda North America, Inc., is a business corporation qualified to do business and regularly conducts business in the Commonwealth of Pennsylvania with it's legal residence and principal place of business at 7755 Irvine Center Drive, Box 19734, Irvine, CA 92713.

BACKGROUND

3. Plaintiff incorporates by reference paragraphs 1 and 2 as fully as if set forth here length.

4. On or about May 26, 2001 Plaintiff purchased a new 2001 Mazda Tribute manufactured and warranted by Defendant bearing the Vehicle Identification Number 4F2YU06151KM57609. The vehicle was purchased and registered in the Commonwealth of Pennsylvania.

5. The price of the vehicle, including registration charges, document fees, sales tax, but, excluding other collateral charges not specified, totaled more than $19,741.20.

6. Plaintiff avers that as a result of the ineffective repair attempts made by Defendant through its authorized dealer, the vehicle cannot be utilized for the purposes intended by Plaintiff at the time of acquisition and as such, the vehicle is worthless.

7. In consideration of the purchase of the above vehicle, Defendant, issued to Plaintiff several warranties, fully outlined in the warranty booklet.

8. On or about May 26, 2001 , Plaintiff took possession of the above mentioned vehicle and experienced nonconformities, which substantially impaired the use, value and/or safety of the vehicle.

9. Said nonconformities consisted of, but was not limited to, defective engine. Copies of repair receipts are attached hereto and marked as Exhibit "A".

10. The nonconformities violate the express written warranties issued to Plaintiff by Defendant.

11. Plaintiff avers the vehicle has been subject to repair more than three (3) times for the same nonconformity, and the nonconformity remains uncorrected.

12. Plaintiff has delivered the nonconforming vehicle to an authorized service and repair facility of the defendant on numerous occasions. After a reasonable number of attempts, Defendant was unable to repair the nonconformities.

13. In addition, the above vehicle has or will in the future be out of service by reason of the non-conformities complained of for a cumulative total of thirty (30) days or more.

14. The vehicle continues to exhibit defects and nonconformities which substantially impair it's use, value and/or safety.

15. Plaintiff avers the vehicle has been subject to additional repair attempts for defects and/or nonconformities and/or conditions for which the Defendant and or it's authorized service center, may not have maintained records.

16. Plaintiff has been and will continue to be financially damaged due to Defendant's intentional, reckless, wanton and negligent failure to comply with the provisions of its' warranty.

17. Plaintiff seeks relief for losses due to the nonconformities and defects in the above mentioned vehicle in addition to attorney fees and all court costs.

COUNT I
MAGNUSON-MOSS FEDERAL TRADE COMMISSION IMPROVEMENT ACT

18. Plaintiff hereby incorporates all facts and allegations set forth in this Complaint by reference as if fully set forth at length herein.

19. Plaintiff is a "Consumer" as defined by 15 U.S.C. §2301(3).

20. Defendant is a "Warrantor" as defined by 15 U.S.C. §2301(5).

21. Plaintiff uses the subject product for personal, family and household purposes.

22. By the terms of the express written warranties referred to in this Complaint, Defendant agreed to perform effective warranty repairs at no charge for parts and/or labor.

23. Defendant failed to make effective repairs.

24. As a direct and proximate result of Defendant's failure to comply with the express written warranties, Plaintiff has suffered damages and, in accordance with 15 U.S.C. §2310(d)(1), Plaintiff is entitled to bring suit for such damages and other legal and equitable relief.

25. Section 15 U.S.C. §2310 (d) (1) provides:

> If a consumer finally prevails on an action brought under paragraph (1) of this subsection, he may be allowed by the Court to recover as part of the judgment a sum equal to the amount of aggregate amount of costs and expenses (including attorney fees based upon actual time expended), determined by the Court to have been reasonably incurred by the Plaintiff for, or in connection with the commencement and prosecution of such action, unless the Court, in its discretion shall determine that such an award of attorney's fees would be inappropriate.

26. Plaintiff avers that upon successfully prevailing upon the Magnuson-Moss claim herein, all attorney fees are recoverable and are demanded against the Defendant.

WHEREFORE, Plaintiff respectfully demands judgment in his favor and against the Defendant in an amount equal to three (3) times the purchase price of the subject vehicle, plus all available collateral changes and attorney fees. Amount not in excess of $50,000.00.

COUNT III
UNIFORM COMMERCIAL CODE

27. Plaintiff hereby incorporates all the paragraphs of this Complaint by reference as if fully set forth at length herein.

28. The defects and nonconformities existing within the vehicle constitute a breach of contractual and statutory obligations of the Defendant, including but not limited to the following:

a. Breach of Express Warranty

b. Breach of Implied Warranty of Merchantability;

c. Breach of Implied Warranty of Fitness For a Particular Purpose;

d. Breach of Duty of Good Faith.

29. The purpose for which Plaintiff purchased the vehicle include but are not limited to his personal, family and household use.

30. At the time of this purchase and at all times subsequent thereto, Plaintiff has justifiably relied upon Defendant's express warranties and implied warranties of fitness for a particular purpose and implied warranty of merchantability.

31. At the time of the purchase and at all times subsequent thereto, Defendant was aware Plaintiff was relying upon Defendant's express and implied warranties, obligations, and representations with regard to the subject vehicle.

32. Plaintiff has incurred damages as a direct and proximate result of the breach and failure of Defendant to honor its express and implied warranties.

33. Such damages include, but are not limited to, the purchase price of the vehicle plus all collateral charges, including attorney fees and costs, as well as other expenses, the full extent of which are not yet known.

WHEREFORE, Plaintiff respectfully demands judgment in his favor and against the Defendant in an amount equal to three (3) times the purchase price of the subject vehicle, plus all available collateral changes and attorney fees. Amount not in excess of $50,000.00.

COUNT IV
PENNSYLVANIA UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION CLAIM

34. Plaintiff hereby incorporates all the paragraphs of this Complaint by reference as if set forth at length herein.

35. The Unfair Trade Practices and Consumer Protection Law defines unfair methods of competition to include the following:

> (xiv). Failing to comply with the terms of any written guarantee or warranty given to the buyer at, prior to, or after a contract for the purchase of goods or services is made.

36. Plaintiff, as a Pennsylvania resident, believes, and therefore, avers the reckless, wanton and willful failure of Defendant to comply with the terms of the written warranty constitutes an unfair method of competition.

37. Section 201-9.2(a) of the Unfair Trade Practices and Consumer Protection Law, authorizes the Court, in its discretion, to award up to three (3) times the actual damages sustained for violations of the Act.

WHEREFORE, Plaintiff respectfully demands judgment in his favor and against the Defendant in an amount equal to three (3) times the purchase price of the subject vehicle, plus all available collateral changes and attorney fees. Amount not in excess of $50,000.00.

GORBERG AND ZUBER

BY: _____
DAVID J. GORBERG, ESQUIRE
Attorney for Plaintiff

IN THE COMMON PLEAS COURT OF CUYAHOGA COUNTY, OHIO

FRANK CATANESE
853 Pelley Drive
Cleveland, Ohio 44109

Plaintiff,

v.

MAZDA MOTOR OF AMERICA, INC.,
c/o Takeshi Tanahira
7755 Irvine Center Drive
Irvine, California 92618

Defendant.

460946

No.
JUDGE KATHLEEN A. SUTULA
JURY DEMAND ENDORSED HEREON

COMPLAINT

NOW COMES the Plaintiff, FRANK CATANESE, by and through his attorneys, KROHN & MOSS, LTD., and for his complaint against Defendant, MAZDA MOTOR OF AMERICA, INC., alleges and affirmatively states as follows:

PARTIES

1. Plaintiff, FRANK CATANESE ("Plaintiff"), is an individual who was at all times relevant hereto residing in the State of Ohio.

2. Defendant, MAZDA MOTOR OF AMERICA, INC. ("Manufacturer"), is a foreign corporation authorized to do business in the State of Ohio, and is engaged in the manufacture, sale, and distribution of motor vehicles and related equipment and services. Manufacturer is also in the business of marketing, supplying and selling written warranties to the public at large through a system of authorized dealerships, including Mazda Saab of Bedford ("Seller"). Manufacturer does business in all counties of the State of Ohio including Cuyahoga County.

BACKGROUND

3. On or about December 4, 2000, Plaintiff purchased from Seller a 2001 Mazda Tribute ("Tribute"), manufactured and/or distributed by Manufacturer, Vehicle Identification Number 4F2YU081X1KM38504, as reflected in the document attached hereto as Exhibit A.

4. The price of the Tribute, including certain collateral charges, such as registration charges, document fees, and sales tax, but excluding finance charges, totaled more than $27,261.45.

5. Plaintiff avers that as a result of ineffective repair attempts made by Manufacturer and/or its agent(s), the Tribute cannot be utilized for personal, family and household use as was intended by Plaintiff at the time of its acquisition.

6. In consideration for the purchase of the Tribute, Manufacturer issued and supplied to Plaintiff several written warranties, including a three (3) year or fifty thousand (50,000) mile "bumper-to-bumper" warranty.

7. On or about January 27, 2001, Plaintiff took possession of the Tribute and shortly thereafter experienced the various defects listed below which substantially impair the use, value and/or safety of the Tribute.

8. The nonconformities described below violate the express written warranties issued to Plaintiff by Manufacturer.

9. Plaintiff has delivered the Tribute to Manufacturer's authorized servicing dealerships on numerous occasions.

10. Plaintiff has brought the Tribute to Seller and/or an authorized service dealer of Manufacturer for attempted repairs to various defects and nonconformities, including but not limited to:

a. Defective engine, fuel system and/or PCM as evidenced by the vehicle stalling and a fuel smell emanating into your vehicle;
b. Defective door panels; and
c. Any additional defects and/or non-conformities as contained in the repair records of Manufacturer's authorized dealerships.

11. Plaintiff has provided Manufacturer sufficient opportunity to repair and/or replace the Tribute pursuant to its written warranties.

12. After a reasonable number of attempts to cure the defects in Plaintiff's Tribute, the Manufacturer and its authorized servicing dealerships have been unable and/or have failed to repair the nonconformities or replace the Tribute, as provided in the Manufacturer's written warranties.

13. Plaintiff has justifiably lost confidence in the Tribute's safety and reliability, and said nonconformities have substantially impaired the use, value and/or safety of the Tribute to Plaintiff.

14. Said nonconformities could not reasonably have been discovered by Plaintiff prior to Plaintiff's acceptance of the Tribute.

15. As a result of these defects, Plaintiff revoked his acceptance of the Tribute in writing on December 21, 2001. A copy of the revocation of acceptance letter is attached and labeled as Plaintiff's Exhibit B.

16. At the time of revocation, the Tribute was in substantially the same condition as at delivery except for damage caused by its own nonconformities and ordinary wear and tear.

17. Manufacturer has refused Plaintiff's revocation of acceptance, and has refused to provide Plaintiff with the remedies to which Plaintiff is entitled upon revocation.

18. The Tribute remains in a defective and unmerchantable condition, and continues to exhibit some or all of the above mentioned defects which substantially impair its use, value and/or safety.

19. Plaintiff has been and will continue to be financially damaged due to Manufacturer's failure to comply with the provisions of its warranty.

COUNT I
BREACH OF WRITTEN WARRANTY PURSUANT TO THE MAGNUSON-MOSS WARRANTY ACT
MANUFACTURER

20. Plaintiff re-alleges and incorporates by reference as though fully set forth herein, all paragraphs of this Complaint set forth above.

21. Plaintiff is a purchaser of a consumer product who received the Tribute during the duration of a written warranty period applicable to the Tribute and who is entitled by the terms of the written warranty to enforce against Manufacturer the obligations of said warranty.

22. Manufacturer is a "person" engaged in the business of making a consumer product directly available to Plaintiff.

23. Seller is an authorized dealership and agent of Manufacturer, designated to perform repairs on vehicles pursuant to Manufacturer's automobile warranties.

24. Plaintiff's purchase of the Tribute was accompanied by written factory warranties covering any nonconformities or defects in material or workmanship, an undertaking in writing to refund, repair, replace, or take other remedial action free of charge to Plaintiff with respect to the Tribute in the event that the Tribute failed to meet the specifications set forth in the warranties.

25. Said warranties were the basis of the bargain of the contract between the Plaintiff and Manufacturer for the sale of the Tribute to Plaintiff.

26. Said purchase of Plaintiff's Tribute was induced by, and Plaintiff relied upon, these written warranties.

27. Plaintiff has met all of his obligations and preconditions as provided in the written warranties.

28. As a direct and proximate result of Manufacturer's failure to comply with its express written warranties, Plaintiff has suffered damages and, in accordance with 15 U.S.C. § 2310(d)(1), Plaintiff is entitled to bring suit for such damages and other legal and equitable relief, including attorneys' fees incurred in connection with this action.

WHEREFORE, Plaintiff, FRANK CATANESE, prays for judgment against Manufacturer as follows:

a. Return of all monies paid or diminution in value of the Tribute, and all incidental and consequential damages incurred, including, but not limited to, all finance charges incurred;
b. All reasonable attorneys' fees, witness fees, court costs and other fees incurred by Plaintiff; and
c. Such other and further relief that this Court deems just and appropriate.

COUNT II
BREACH OF IMPLIED WARRANTY PURSUANT TO THE MAGNUSON-MOSS WARRANTY ACT MANUFACTURER

29. Plaintiff re-alleges and incorporates by reference as though fully set forth herein, all paragraphs of this Complaint set forth above.

30. The Tribute purchased by Plaintiff was subject to an implied warranty of merchantability as defined in 15 U.S.C. § 2301(7), running from the Manufacturer to the Plaintiff herein.

31. Manufacturer is a supplier of consumer goods as a "person" engaged in the business of making a consumer product directly available to Plaintiff.

32. Manufacturer is prohibited from disclaiming or modifying any implied warranty when making a written warranty to the consumer.

33. Plaintiff's Tribute was impliedly warranted to be substantially free of defects and nonconformities in both material and workmanship, and thereby fit for the ordinary purpose for which the Tribute was intended.

34. The above-described defects and nonconformities present in the Tribute render the Tribute unmerchantable, unreliable, and/or unsafe, and thereby not fit for the ordinary and essential purpose for which the Tribute was intended, as represented by Manufacturer.

35. As a result of the breaches of implied warranty by Manufacturer, Plaintiff is without the reasonable value of the Tribute and Plaintiff has suffered and continues to suffer various damages, including attorneys' fees incurred in connection with this action.

WHEREFORE, Plaintiff, FRANK CATANESE, prays for judgment against Manufacturer as follows:

a. Return of all monies paid or diminution in value of the Tribute, and all incidental and consequential damages incurred, including, but not limited to, all finance charges incurred;
b. All reasonable attorneys' fees, witness fees, court costs and other fees incurred by Plaintiff; and
c. Such other and further relief that this Court deems just and appropriate.

COUNT III
OHIO MOTOR VEHICLES WITH WARRANTY NONCONFORMITIES ACT MANUFACTURER

36. Plaintiff re-alleges and incorporates by reference as though fully set forth herein, all paragraphs of this Complaint set forth above.

37. Pursuant to O.R.C. §1345.72, Manufacturer has been unable to conform the Tribute to the written warranties issued to Plaintiff by Manufacturer after a reasonable number of repair attempts to said vehicle.

38. Pursuant to O.R.C. §1345.72(B), Plaintiff is entitled to a refund of the full purchase price of the vehicle, including all collateral charges and finance charges, and/or a replacement vehicle, plus all attorney fees and costs.

WHEREFORE, Plaintiff, FRANK CATANESE, prays for judgment against Manufacturer as follows:

a. Return of the Tribute's purchase price and all incidental and consequential damages incurred by Plaintiff;
b. Return of all finance charges incurred by Plaintiff for the Tribute;
c. All reasonable attorneys' fees, witness fees, court costs and other fees incurred by Plaintiff; and
d. Such other and further relief that this Court deems just and appropriate.

JURY DEMAND

Plaintiff demands trial by jury on all issues in this action, except for any issues relating to the amount of attorneys' fees and litigation costs awarded should Plaintiff prevail in this action.

Respectfully Submitted,

By: _____
David B. Levin
One of Plaintiff's Attorneys

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Ohio Registration No. 0059340
Mitchel E. Luxenburg
Ohio Registration No. 0071239

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e-mail: dlevin@consumerlawcenter.net

Copies of service items need only be mailed to Chicago address.

IN THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA

JOHN AND CATHERINE COVODE,	)	
	)	
Plaintiffs,	)	
	)	Civil Action No.
v.	)	
	)	
MAZDA MOTORS OF AMERICA, INC.,	)	**JURY TRIAL DEMAND**
	)	
Defendant.	)	

COMPLAINT

COMES NOW, JOHN AND CATHERINE COVODE, Plaintiffs in the above-styled action, by and through the undersigned attorneys, and files this complaint against Defendants, MAZDA MOTORS OF AMERICA, INC., and shows this honorable Court the following:

PARTIES, JURISDICTION & VENUE

1. Plaintiff, JOHN AND CATHERINE COVODE (hereafter "Plaintiffs"), individuals who at all times relevant hereto resided in the State of Georgia.

2. Defendant, MAZDA MOTORS OF AMERICA, INC. (hereafter "Manufacturer"), is a foreign corporation authorized to do business in the State of Georgia, and is engaged in the manufacture, sale, and distribution of motor vehicles and related equipment and services. Manufacturer is also in the business of marketing, supplying and selling written warranties to the public at large through a system of authorized dealerships. Manufacturer may be served through its registered agent: Takeshi Tanahira, 7755 Irvine Center Drive, Irvine, California 92618.

3. Manufacturer is subject to the jurisdiction of this Court. Venue is proper in FULTON County.

BACKGROUND

4. On or about December 29, 2000, Plaintiffs purchased or leased from Seller a 2001 Mazda Tribute (hereafter "Vehicle"), manufactured and/or distributed by Manufacturer, Vehicle Identification Number 4F2YU07191KM00828, for valuable consideration.

5. On information and belief first, the price of the Vehicle, including registration charges, document fees and sales tax, but excluding other collateral charges, such as bank and finance charges, totaled more than $22,086.06.

6. Plaintiffs aver that as a result of ineffective repair attempts made by Manufacturer and/or its agent(s), the Vehicle cannot be utilized for personal, family and household use as was intended by Plaintiff at the time of its acquisition.

7. In consideration for the purchase of the Vehicle, Manufacturer issued and supplied to Plaintiffs its written warranty which included three year (3) or thirty-six thousand (36,000) mile bumper to bumper coverage, as well as other warranties fully outlined in the Manufacturer's New Car Warranty booklet.

8. On or about December 29, 2000, Plaintiffs took possession of the Vehicle and shortly thereafter experienced the various defects listed below which substantially impair the use, value and/or safety of the Vehicle.

9. The defects described below violate the Manufacturer's warranty issued to Plaintiffs, as well as the implied warranty of merchantability.

10. Plaintiffs delivered the Vehicle to Manufacturer, through its authorized dealership network, on numerous occasions.

11. Plaintiffs aver that the Vehicle has been subject to repair on at least three (3)

occasions for the same defect, and that the defect remains uncorrected.

12. Plaintiffs have brought the Vehicle to Seller and/or an authorized service dealer of Manufacturer for attempted repairs to various defects and nonconformities, including but not limited to:

a. Stalling Defect;

b. Steering Defect; and

c. Brake Defect.

13. Plaintiffs provided Manufacturer, through its authorized dealership network, sufficient opportunities to repair the Vehicle.

14. After a reasonable number of attempts to cure the defects in Plaintiffs' Vehicle, Manufacturer was unable and/or failed to repair the defects, as provided in Manufacturer's warranty.

15. Plaintiffs justifiably lost confidence in the Vehicle's safety and reliability, and said defects have substantially impaired the value of the Vehicle to Plaintiffs.

16. Said defects could not have reasonably been discovered by Plaintiffs prior to Plaintiffs' acceptance of the Vehicle.

17. As a result of these defects, Plaintiffs revoked acceptance of the Vehicle in writing.

18. At the time of revocation, the Vehicle was in substantially the same condition as at delivery except for damage caused by its own defects and ordinary wear and tear.

19. Defendant refused Plaintiffs' demand for revocation and refused to provide Plaintiffs with the remedies to which Plaintiffs are entitled upon revocation.

20. The Vehicle remains in a defective and unmerchantable condition, and continues to exhibit some or all of the above-mentioned defects that substantially impair its use, value and/or safety.

21. Plaintiffs have been and will continue to be financially damaged due to Defendant's intentional, reckless, wanton and negligent failure to comply with the provisions of its express warranty and its failure to provide Plaintiff with a merchantable Vehicle.

COUNT I
BREACH OF WRITTEN WARRANTY
PURSUANT TO THE MAGNUSON-MOSS WARRANTY ACT
MANUFACTURER

22. Plaintiffs re-allege and incorporate by reference as though fully set forth herein, paragraphs 1 through 21 of this complaint.

23. Plaintiffs are purchasers of a consumer product who received the Vehicle during the duration of a written warranty period applicable to the Vehicle and who is entitled by the terms of the written warranty to enforce against Manufacturer the obligations of said warranty.

24. Manufacturer is a person engaged in the business of making a consumer product directly available to Plaintiffs.

25. Seller is an authorized dealership/agent of Manufacturer designated to perform repairs on vehicles under Manufacturer's automobile warranties.

26. The Magnuson-Moss Warranty Act, Chapter 15 U.S.C.A., Section 2301, et. seq. ("Warranty Act") is applicable to Plaintiffs' Complaint in that the Vehicle was manufactured, sold and purchased after July 4, 1975, and costs in excess of ten dollars ($10.00).

27. Plaintiffs' purchase of the Vehicle was accompanied by a written factory warranty for any defects in material or workmanship, comprising an undertaking in writing in connection with the purchase of the Vehicle to repair or replace defective parts, or take other remedial action free of charge to Plaintiff with respect to the Vehicle in the event that the Vehicle failed to meet the specifications set forth in Manufacturer's Warranty.

35. Manufacturer is a supplier of consumer goods as a person engaged in the business of making a consumer product directly available to Plaintiffs.

36. Manufacturer is prohibited from disclaiming or modifying any implied warranty when making a written warranty to the consumer or when Manufacturer has entered into a contract in writing within ninety (90) days of a purchase to perform services relating to the maintenance or repair of a motor vehicle.

37. Pursuant to 15 U.S.C. §2308, Plaintiffs' Vehicle was impliedly warranted to be substantially free of defects in both material and workmanship, and thereby fit for the ordinary purpose for which the Vehicle was intended.

38. The Vehicle was warranted to pass without objection in the trade under the contract description, and was required to conform to the descriptions of the Vehicle contained in the contracts and labels.

39. The above-described defects in the Vehicle render the Vehicle unmerchantable and thereby not fit for the ordinary and essential purpose for which the Vehicle was intended and as represented by Manufacturer.

40. As a result of the breaches of implied warranty by Manufacturer, Plaintiffs are without the reasonable value of the Vehicle.

41. As a result of the breaches of implied warranty by Manufacturer, Plaintiffs have suffered and continues to suffer various damages.

WHEREFORE, Plaintiffs pray for judgment against Manufacturer as follows:

a. Return of all monies paid, diminution in value of the vehicle, and all incidental and consequential damages incurred;
b. All reasonable attorneys' fees, witness fees and all court costs and other fees incurred; and
c. Such other and further relief that the Court deems just and appropriate.

COUNT III
REVOCATION OF ACCEPTANCE PURSUANT TO SECTION 2310(d) OF THE MAGNUSON-MOSS WARRANTY ACT MANUFACTURER

42. Plaintiffs re-allege and incorporate by reference as though fully set forth herein, paragraphs 1 through 41 of this complaint.

43. Manufacturer's tender of the Vehicle was substantially impaired to Plaintiffs.

44. Manufacturer's tender of the Vehicle, which was substantially impaired to Plaintiffs, constitutes a violation of 15 U.S.C. §2310(d).

WHEREFORE, Plaintiffs pray for judgment against Manufacturer as follows:

a. Return of all monies paid, satisfaction of all liens, and all incidental and consequential damages incurred;
d. All reasonable attorneys' fees, witness fees and all court costs and other fees incurred; and
e. Such other and further relief that the Court deems just and appropriate.

COUNT IV
GEORGIA MOTOR VEHICLE WARRANTY RIGHTS PURSUANT TO O.C.G.A § 10-1-782 *et seq*

45. Plaintiff re-alleges and incorporates by reference as though fully set forth herein, paragraphs 1-44 of this Complaint.

46. Plaintiff has presented the Vehicle to Seller and/or other authorized service dealers of Manufacturer for a reasonable amount of time(s) for the same defects and/or non-conformities in the Vehicle's first twelve (12) months or twelve thousand (12,000) miles, which ever came first, and those defects and/or non-conformities continue to exist.

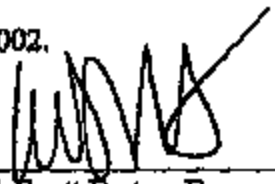
47. Pursuant to the Act, the Vehicle does not conform to the express warranties issued to Plaintiff by Manufacturer.

48. Pursuant to the Act, Plaintiff is entitled to a refund of the full price of the vehicle, including all collateral charges and finance charges, and/or a replacement vehicle, plus all attorneys' fees and costs.

WHEREFORE, Plaintiff prays for judgment against Manufacturer as follows:

a. Return of all monies paid, satisfaction of all liens, and all incidental and consequential damages incurred;
b. All reasonable attorneys' fees, witness fees and all court costs and other fees incurred; and
c. Such other and further relief that the Court deems just and appropriate.

Submitted this 11 day of March 2002.



E. Scott Fortas, Esq.
Georgia Bar No. 269980

Attorney for Plaintiff
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(404) 869-4280

IN THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA

TAMEKA DARBY,	)	
	)	
Plaintiff.	)	
	)	Civil Action No.
vs.	)	
	)	
MAZDA MOTORS OF AMERICA, INC	)	**JURY TRIAL DEMAND**
	)	
Defendant.	)	

COMPLAINT

COMES NOW, TAMEKA DARBY Plaintiff in the above-styled action, by and through the undersigned attorneys, and files this complaint against Defendant, MAZDA MOTORS OF AMERICA, INC and shows this honorable Court the following:

PARTIES, JURISDICTION & VENUE

1. Plaintiff TAMEKA DARBY (hereafter "Plaintiff") an individual who at all times relevant hereto residing in the State of Georgia.

2. Defendant, MAZDA MOTORS OF AMERICA, INC (hereafter "Manufacturer"), is a foreign corporation authorized to do business in the State of Georgia, and is engaged in the manufacture, sale, and distribution of motor vehicles and related equipment and services. Manufacturer is also in the business of marketing, supplying and selling written warranties to the public at large through a system of authorized dealerships. Manufacturer may be served through its registered agent: CT CORPORATION SYSTEM, 1201 Peachtree Street N.E., Atlanta GA 30361.

3. Manufacturer is subject to the jurisdiction of this Court. Venue is proper in Fulton

BACKGROUND

4. On or about January 18, 2001 Plaintiff purchased or leased from Seller a 2001 Mazda Tribute (hereafter "Vehicle") manufactured and/or distributed by Manufacturer, Vehicle Identification Number 4F2YUO7121KM15865 for valuable consideration.

5. On information and belief first, the price of the Vehicle, including registration charges, document fees and sales tax, excluding other collateral charges, such as bank and finance charges, totaled more than $21,617.00.

6. Plaintiff avers that as a result of ineffective repair attempts made by Manufacturer and/or its agent(s), the Vehicle cannot be utilized for personal, family and household use as was intended by the Plaintiff at the time of its acquisition.

7. In consideration for the purchase of the Vehicle, Manufacturer issued and supplied to Plaintiff its written warranty which included three year (3) or thirty-six thousand (36,000) mile bumper to bumper coverage, as well as other warranties fully outlined in the Manufacturer's New Car Warranty booklet.

8. On or about January 18, 2001, Plaintiff took possession of the Vehicle and shortly thereafter experienced the various defects listed below which substantially impair the use, value and/or safety of the Vehicle.

9. The defects described below violate the Manufacturer's warranty issued to Plaintiff, as well as the implied warranty of merchantability.

10. Plaintiff delivered the Vehicle to Manufacturer, through its authorized dealership network, on numerous occasions.

11. Plaintiff aver that the Vehicle has been subject to repair on at least three (3) occasions for the same defect, and that the defect remains uncorrected.

12. Plaintiff brought the Vehicle to Seller and/or an authorized service dealer of Manufacturer for attempted repairs to various defects and nonconformities, including but not limited to:

a. Acceleration Defect;

b. Electrical Defect;

c. Stalling Defect.

13. Plaintiff provided Manufacturer, through its authorized dealership network, sufficient opportunities to repair the Vehicle.

14. After a reasonable number of attempts to cure the defects in Plaintiff Vehicle Manufacturer was unable and/or failed to repair the defects, as provided in Manufacturer's warranty.

15. Plaintiff justifiably lost confidence in the Vehicle's safety and reliability, and said defects have substantially impaired the value of the Vehicle to Plaintiff.

16. Said defects could not have reasonably been discovered by Plaintiff prior to Plaintiff's acceptance of the Vehicle.

17. As a result of these defects, Plaintiff revoked his acceptance of the Vehicle in writing.

18. At the time of revocation, the Vehicle was in substantially the same condition as at delivery except for damage caused by its own defects and ordinary wear and tear.

19. Defendant refused Plaintiff demand for revocation and refused to provide Plaintiff with the remedies to which Plaintiff is entitled upon revocation.

20. The Vehicle remains in a defective and unmerchantable condition, and continues to exhibit some or all of the above-mentioned defects that substantially impairs its use, value and/or safety.

21 Plaintiff have been and will continue to be financially damaged due to Defendant's

intentional, reckless, wanton and negligent failure to comply with the provisions of its express warranty and its failure to provide Plaintiff with a merchantable Vehicle.

COUNT I
BREACH OF WRITTEN WARRANTY
PURSUANT TO THE MAGNUSON-MOSS WARRANTY ACT
MANUFACTURER

22. Plaintiff re-allege and incorporate by reference as though fully set forth herein, paragraphs 1 through 21 of this complaint.

23. Plaintiff is a purchaser of a consumer product who received the Vehicle during the duration of a written warranty period applicable to the Vehicle and who is entitled by the terms of the written warranty to enforce against Manufacturer the obligations of said warranty.

24. Manufacturer is a person engaged in the business of making a consumer product directly available to Plaintiff.

25. Seller is an authorized dealership/agent of Manufacturer designated to perform repairs on vehicles under Manufacturer's automobile warranties.

26. The Magnuson-Moss Warranty Act, Chapter 15 U.S.C.A., Section 2301, et. seq. ("Warranty Act") is applicable to Plaintiff Complaint in that the Vehicle was manufactured, sold and purchased after July 4, 1975, and costs in excess of ten dollars ($10.00).

27. Plaintiff purchase of the Vehicle was accompanied by a written factory warranty for any defects in material or workmanship, comprising an undertaking in writing in connection with the purchase of the Vehicle to repair or replace defective parts, or take other remedial action free of charge to Plaintiff with respect to the Vehicle in the event that the Vehicle failed to meet the specifications set forth in Manufacturer's Warranty.

28. Manufacturer's warranty was the basis of the bargain of the contract between the

Plaintiff and Manufacturer for the sale of the Vehicle to Plaintiff.

29. Said purchase of Plaintiff Vehicle was induced by, and Plaintiff relied upon, Manufacturer's written warranty.

30. Plaintiff met all obligations and preconditions as provided in Manufacturer's written warranty

31. As a direct and proximate result of Manufacturer's failure to comply with its written warranty, Plaintiff suffered damages and, in accordance with 15 U.S.C. §2310(d)(1), Plaintiff is entitled to bring suit for such damages and other legal and equitable relief.

32. Plaintiff avers that upon successfully prevailing upon the Magnuson-Moss Warranty Act claim herein, all attorneys' fees are recoverable and are demanded against Manufacturer.

WHEREFORE, Plaintiff prays for judgment against Manufacturer as follows:

a. Return of all monies paid, diminution in value of the vehicle, and all incidental and consequential damages incurred;
b. All reasonable attorneys' fees, witness fees and all court costs and other fees incurred; and
c. Such other and further relief that the Court deems just and appropriate.

COUNT II
BREACH OF IMPLIED WARRANTY
PURSUANT TO THE MAGNUSON-MOSS WARRANTY ACT
MANUFACTURER

33. Plaintiff re-allege and incorporate by reference as though fully set forth herein, paragraphs 1 through 32 of this complaint.

34. The Vehicle purchased by Plaintiff was subject to an implied warranty of merchantability as defined in 15 U.S.C. §2301(7) running from the Manufacturer to the intended consumer, Plaintiff herein.

35. Manufacturer is a supplier of consumer goods as a person engaged in the business of

making a consumer product directly available to Plaintiff.

36. Manufacturer is prohibited from disclaiming or modifying any implied warranty when making a written warranty to the consumer or when Manufacturer has entered into a contract in writing within ninety (90) days of a purchase to perform services relating to the maintenance or repair of a motor vehicle.

37. Pursuant to 15 U.S.C. §2308, Plaintiff Vehicle was impliedly warranted to be substantially free of defects in both material and workmanship, and thereby fit for the ordinary purpose for which the Vehicle was intended.

38. The Vehicle was warranted to pass without objection in the trade under the contract description, and was required to conform to the descriptions of the Vehicle contained in the contracts and labels.

39. The above-described defects in the Vehicle render the Vehicle unmerchantable and thereby not fit for the ordinary and essential purpose for which the Vehicle was intended and as represented by Manufacturer.

40. As a result of the breaches of implied warranty by Manufacturer, Plaintiff is without the reasonable value of the Vehicle.

41. As a result of the breaches of implied warranty by Manufacturer, Plaintiff has suffered and continues to suffer various damages.

WHEREFORE, Plaintiff prays for judgment against Manufacturer as follows:

a. Return of all monies paid, diminution in value of the vehicle, and all incidental and consequential damages incurred;
b. All reasonable attorneys' fees, witness fees and all court costs and other fees incurred; and
c. Such other and further relief that the Court deems just and appropriate.

COUNT III
REVOCATION OF ACCEPTANCE PURSUANT TO SECTION 2310(d) OF THE MAGNUSON-MOSS WARRANTY ACT
MANUFACTURER

42. Plaintiff re-alleges and incorporates by reference as though fully set forth herein, paragraphs 1 through 41 of this complaint.

43. Manufacturer's tender of the Vehicle was substantially impaired to Plaintiff.

44. Manufacturer's tender of the Vehicle which was substantially impaired to Plaintiff, constitutes a violation of 15 U.S.C. §2310(d).

WHEREFORE, Plaintiff prays for judgment against Manufacturer as follows:

a. Return of all monies paid, satisfaction of all liens, and all incidental and consequential damages incurred;
b. All reasonable attorneys' fees, witness fees and all court costs and other fees incurred; and
c. Such other and further relief that the Court deems just and appropriate.

Pursuant to O.C.G.A. 15-12-122(c)(2), Plaintiff requests that the present case be tried by a jury of twelve.

Submitted this 15 day of November 2001.

E. Scott Fortas, Esq.
Georgia Bar No. 269980

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ATTORNEYS FOR PLAINTIFFS

THIS IS AN ARBITRATION MATTER. ASSESSMENT OF DAMAGES HEARING IS REQUESTED.

DAVID DEAN AND TINA DEAN 2211 Holly Drive Coplay, Pennsylvania 18037 v. MAZDA MOTOR AMERICA 7755 Irvine Center Drive P.O. Box 19734 Irvine, California 92713-9734	COURT OF COMMON PLEAS PHILADELPHIA COUNTY CIVIL ACTION

COMPLAINT
CODE: 1900

1. Plaintiffs, David Dean and Tina Dean, are adult individual citizens and legal residents of the Commonwealth of Pennsylvania, 2211 Holly Drive, Coplay, Pennsylvania 18037.

2. Defendant, Mazda Motor of America, Inc., is a business corporation qualified to do business and regularly conduct business in the Commonwealth of Pennsylvania, and is a corporation of the State of California, with its legal residence and principal place of business located at 7755 Irvine Center Drive, P.O. Box 19734, Irvine, CA, 92713-9734, and can be served at same.

BACKGROUND

3. On or about May 09, 2002, Plaintiffs purchased a new 2002 Mazda Tribute, manufactured and warranted by Defendant, bearing the Vehicle Identification Number 4F2CU08152KM27597.

4. The vehicle was purchased in the Commonwealth of Pennsylvania and is registered in the Commonwealth of Pennsylvania.

5. The contract price of the vehicle, including registration charges, document fees, sales tax, finance and bank charges, but excluding other collateral charges not specified, yet defined by the Lemon Law, totaled more than $25,565.00. A true and correct copy of the contract is attached hereto, made a part hereof, and marked Exhibit "A".

6. In consideration for the purchase of said vehicle, Defendant issued to Plaintiffs several warranties, guarantees, affirmations or undertakings with respect to the material or workmanship of the vehicle and/or remedial action in the event the vehicle fails to meet the promised specifications.

7. The above-referenced warranties, guarantees, affirmations or undertakings are/were part of the basis of the bargain between Defendant and Plaintiffs.

8. The parties' bargain includes an express 3-year / 50,000 mile warranty, as well as other guarantees, affirmations and undertakings as stated in Defendant's warranty materials and owner's manual.

9. However, as a result of the ineffective repair attempts made by Defendant through its authorized dealer(s), the vehicle is rendered substantially impaired, unable to be utilized for its intended purposes, and is worthless to Plaintiffs.

10. Plaintiffs have or may have resorted to Defendant's informal dispute settlement procedure, to the extent said procedure complies with 16 CFR 703.

11. Plaintiffs aver that the Federal Trade Commission (FTC) has determined that no automobile manufacturer complies with 16 CFR 703. See, Fed. Reg. 15636, Vol. 62, No. 63 (Apr. 2, 1997)

COUNT I
PENNSYLVANIA AUTOMOBILE LEMON LAW

12. Plaintiffs hereby incorporate all facts and allegations set forth in this Complaint by reference as if fully set forth at length herein.

13. Plaintiffs are "Purchasers" as defined by 73 P.S. §1952.

14. Defendant is a "Manufacturer" as defined by 73 P.S. §1952.

15. Allentown Mazda is and/or was at the time of sale a Motor Vehicle Dealer in the business of buying, selling, and/or exchanging vehicles as defined by 73 P.S. §1952.

16. On or about May 09, 2002, Plaintiffs took possession of the above mentioned vehicle and experienced nonconformities as defined by 73 P.S §1951 et seq., which substantially impair the use, value and/or safety of the vehicle.

17. The nonconformities described violate the express written warranties issued to Plaintiffs by Defendant.

18. Section 1955 of the Pennsylvania Automobile Lemon Law provides:

> If a manufacturer fails to repair or correct a nonconformity after a reasonable number of attempts, the manufacturer shall, at the option of the purchaser, replace the motor vehicle... or accept return of the vehicle from the purchaser, and refund to the purchaser the full purchase price, including all collateral charges, less a reasonable allowance for the purchasers use of the vehicle, not exceeding $.10 per mile driven or 10% of the purchase price of the vehicle, whichever is less.

19. Section 1956 of the Pennsylvania Automobile Lemon Law provides a presumption of a reasonable number of repair attempts if:

> (1) The same nonconformity has been subject to repair three times by the manufacturer, its agents or authorized dealers and the nonconformity still exists; or
>
> (2) The vehicle is out-of-service by reason of any nonconformity for a cumulative total of thirty or more calendar days.

20. Plaintiffs have satisfied the above definition as the vehicle has been subject to repair more than three (3) times for the same nonconformity, and the nonconformity remained uncorrected.

21. In addition, the above vehicle has or will be out-of-service by reason of the nonconformities complained of for a cumulative total of thirty (30) or more calendar days.

22. Plaintiffs have delivered the nonconforming vehicle to an authorized service and repair facility of the Defendant on numerous occasions as outlined below.

23. After a reasonable number of attempts, Defendant was unable to repair the nonconformities.

24. During the first 12 months and/or 12,000 miles, Plaintiffs complained on at least three (3) occasions about defects and or non-conformities to the following vehicle components: engine . True and correct copies of all invoices in Plaintiffs possession are attached hereto, made a part hereof, and marked Exhibit "B".

25. Plaintiffs aver the vehicle has been subject to additional repair attempts for defects and conditions for which Defendant's warranty dealer did not provide or maintain itemized statements as required by 73 P.S. § 1957.

26. Plaintiffs aver that such itemized statements, which were not provided as required by 73 P.S. § 1957 also include technicians' notes of diagnostic procedures and repairs, and Defendant's Technical Service Bulletins relating to this vehicle.

27. Plaintiffs aver the vehicle has been subject to additional repair attempts for defects and conditions for which Defendant's warranty dealer did not provide the notification required by 73 P.S. § 1957.

28. Plaintiffs have and will continue to suffer damages due to Defendant's failure to comply with the provisions of 73 P.S. §§ 1954 (repair obligations), 1955 (manufacturer's duty for refund or replacement), and 1957 (itemized statements required).

29. Pursuant to 73 P.S. § 1958, Plaintiffs seek relief for losses due to the vehicle's nonconformities, including the award of reasonable attorneys' fees and all court costs.

WHEREFORE, Plaintiffs respectfully demand judgment against Defendant in an amount equal to the price of the subject vehicle, plus all collateral charges, attorneys' fees, and court costs.

COUNT II
MAGNUSON-MOSS (FTC) WARRANTY IMPROVEMENT ACT

30. Plaintiffs hereby incorporate all facts and allegations set forth in this Complaint by reference as if fully set forth at length herein.

31. Plaintiffs are "Consumers" as defined by 15 U.S.C. §2301(3).

32. Defendant is a "supplier", "warrantor", and a "service contractor" as defined by 15 U.S.C. § 2301 (4),(5) and (8).

33. The subject vehicle is a "consumer product" as defined by 15 U.S.C. § 2301(1).

34. By the terms of its written warranties, affirmations, promises, or service contracts, Defendant agreed to perform effective repairs at no charge for parts and/or labor.

35. The Magnuson-Moss Warranty Improvement Act requires Defendant to be bound by all warranties implied by state law. Said warranties are imposed on all transactions in the state in which the vehicle was delivered.

36. Defendant has made attempts on several occasions to comply with the terms of its express warranties; however, such repair attempts have been ineffective.

37. The Magnuson-Moss Warranty Improvement Act, 15 U.S.C. §2310(d)(2) provides:

> If a consumer finally prevails on an action brought under paragraph (1) of this subsection, he may be allowed by the court to recover as part of the judgment a sum equal to the amount of aggregate amount of costs and expenses (including attorney fees based upon actual time expended), determined by the court to have been reasonably incurred by the Plaintiff for, or in connection with the commencement and prosecution of such action, unless the court, in its discretion shall determine that such an award of attorney's fees would be inappropriate.

38. Plaintiffs have afforded Defendant a reasonable number of opportunities to conform the vehicle to the aforementioned express warranties, implied warranties and contracts.

39. As a direct and proximate result of Defendant's failure to comply with the express written warranties, Plaintiffs have suffered damages and, in accordance with 15 U.S.C. §2310(d)(1), Plaintiffs are entitled to bring suit for such damages and other legal and equitable relief.

40. Defendant's failure is a breach of Defendant's contractual and statutory obligations constituting a violation of the Magnuson-Moss Warranty Improvement Act, including but not limited to: breach of express warranties; breach of implied warranty of merchantability; breach of implied warranty of fitness for a particular purpose; breach of contract; and constitutes an Unfair Trade Practice.

41. Plaintiffs aver Defendant's Dispute Resolution Program is not in compliance with 16 CFR 703 by the FTC for the period of time this claim was submitted.

42. Plaintiffs aver that upon successfully prevailing upon the Magnuson-Moss claim herein, all attorney fees are recoverable and are demanded against Defendant.

WHEREFORE, Plaintiffs respectfully demand judgment against Defendant in an amount equal to the price of the subject vehicle, plus all collateral charges, incidental and consequential damages, reasonable attorneys' fees, and all court costs.

COUNT III
PENNSYLVANIA UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION LAW

43. Plaintiffs hereby incorporate all facts and allegations set forth in this Complaint by reference as if fully set forth at length herein.

44. Plaintiffs are "Persons" as defined by 73 P.S. §201-2(2).

45. Defendant is a "Person" as defined by 73 P.S. §201-2(2).

46. Section 201-9.2(a) of the Act authorizes a private cause of action for any person "who purchases or leases goods or services primarily for personal, family or household purposes."

47. Section 1961 of the Pennsylvania Automobile Lemon Law, provides that a violation of its provisions shall automatically constitute a violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Act, 73 P.S. 201-1 et seq.

48. In addition, the Pennsylvania Unfair Trade Practices and Consumer Protection Act, 73 P.S. §201-2(4), defines "unfair or deceptive acts or practices" to include the following conduct:

> (vii). Representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if they are of another;
>
> (xiv). Failing to comply with the terms of any written guarantee or warranty given to the buyer at, prior to, or after a contract for the purchase of goods or services is made;
>
> (xv). Knowingly misrepresenting that services, replacements or repairs are needed if they are not needed;
>
> (xvi). Making repairs, improvements or replacements on tangible, real or personal property of a nature or quality inferior to or below the standard of that agreed to in writing;
>
> (xvii). Engaging in any other fraudulent conduct which creates a likelihood of confusion or of misunderstanding.

49. Plaintiffs aver Defendant has violated these, as well as other provisions, of 73 P.S. §201-2 et seq.

50. Section 201-3.1 of the Act provides that the Automotive Industry Trade Practice rules and regulations adopted by the Attorney General for the enforcement of this Act shall constitute additional violations of the Act.

51. Defendant's conduct surrounding the sale and servicing of the subject vehicle falls within the aforementioned definitions of "unfair or deceptive acts or practices."

52. The Act also authorizes the Court, in its discretion, to award up to three (3) times the actual damages sustained for violations.

WHEREFORE, Plaintiffs respectfully demand judgment against Defendant in an amount not in excess of Fifty Thousand Dollars ($50,000.00), together with all collateral charges, attorneys' fees, all court costs and treble damages.

KIMMEL & SILVERMAN, P.C.

By: _____
CRAIG THOR KIMMEL, ESQUIRE
Attorney for Plaintiffs
30 East Butler Pike
Ambler, Pennsylvania 19002
(215) 540-8888

GORBERG, GORBERG AND ZUBER
By: **DAVID J. GORBERG** Attorney for Plaintiffs
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1234 Market Street
Suite 2040
Philadelphia, PA 19107
(215) 563-7210

LISA DIBIAGIO 426 Browns Drive Easton, PA 18042	:	COURT OF COMMON PLEAS PHILADELPHIA COUNTY
vs.	:	TERM, 2002
MAZDA NORTH AMERICA, INC. 7755 Irvine Center Drive Box 19734 Irvine, CA 92713	:	NO.

COMPLAINT

1. Plaintiff, Lisa DiBiagio is an adult individual citizen and legal resident of the Commonwealth of Pennsylvania, residing at 426 Browns Drive, Easton, PA 18042.

2. Defendant, Mazda North America, Inc., is a business corporation qualified to do business and regularly conducts business in the Commonwealth of Pennsylvania with it's legal residence and principal place of business at 7755 Irvine Center Drive, Box 19734, Irvine, CA 92713.

BACKGROUND

3. Plaintiff incorporates by reference paragraphs 1 and 2 as fully as if set forth here length.

4. On or about October 9, 2000, Plaintiff purchased a new 2001 Mazda Tribute manufactured and warranted by Defendant bearing the Vehicle Identification Number 4F2YU08181KM06974. The vehicle was purchased and registered in the Commonwealth of Pennsylvania.

5. The price of the vehicle, including registration charges, document fees, sales tax, but, excluding other collateral charges not specified, totaled more than $16,550.29.

6. Plaintiff avers that as a result of the ineffective repair attempts made by Defendant through its authorized dealer, the vehicle cannot be utilized for the purposes intended by Plaintiff at the time of acquisition and as such, the vehicle is worthless.

7. In consideration of the purchase of the above vehicle, Defendant, issued to Plaintiff several warranties, fully outlined in the warranty booklet.

8. On or about October 9, 2000, Plaintiff took possession of the above mentioned vehicle and experienced nonconformities, which substantially impaired the use, value and/or safety of the vehicle.

9. Said nonconformities consisted of, but was not limited to, defective engine. Copies of repair receipts are attached hereto and marked as Exhibit "A".

10. The nonconformities violate the express written warranties issued to Plaintiff by Defendant.

11. Plaintiff avers the vehicle has been subject to repair more than three (3) times for the same nonconformity, and the nonconformity remains uncorrected.

12. Plaintiff has delivered the nonconforming vehicle to an authorized service and repair facility of the defendant on numerous occasions. After a reasonable number of attempts, Defendant was unable to repair the nonconformities.

13. In addition, the above vehicle has or will in the future be out of service by reason of the non-conformities complained of for a cumulative total of thirty (30) days or more.

14. The vehicle continues to exhibit defects and nonconformities which substantially impair it's use, value and/or safety.

15. Plaintiff avers the vehicle has been subject to additional repair attempts for defects and/or nonconformities and/or conditions for which the Defendant and or it's authorized service center, may not have maintained records.

16. Plaintiff has been and will continue to be financially damaged due to Defendant's intentional, reckless, wanton and negligent failure to comply with the provisions of its' warranty.

17. Plaintiff seeks relief for losses due to the nonconformities and defects in the above mentioned vehicle in addition to attorney fees and all court costs.

COUNT I
PENNSYLVANIA AUTOMOBILE LEMON LAW CLAIM

18. Plaintiff hereby incorporates all facts and allegations set forth in this Complaint by reference as if fully set forth at length herein.

19. Plaintiff is a "Purchaser" as defined by 73 P.S. §1952.

20. Defendant is a "Manufacturer" as defined by 73 P.S. §1952.

21. Plaintiff's vehicle is a "New Motor Vehicle" as defined by 73 P.S. §1952.

22. Said vehicle experienced non conformities within the first year of purchase, which substantially impairs the use, value and safety of said vehicle.

23. Defendant failed to correct and or repair said nonconformities.

24. The vehicle continues to exhibit defects and nonconformities which substantially impair it's use, value and/or safety.

25. Defendant does not require participation in any informal dispute settlement program prior to filing suit.

26. As a direct and proximate result of Defendant's failure to repair the nonconformities , Plaintiff has suffered damages and, in accordance with 73 P.S. §1958, Plaintiff is entitled to bring suit for such damages and other legal and equitable relief.

27. Plaintiff avers that upon successfully prevailing upon the Lemon Law claim herein, all attorney fees are recoverable and are demanded against the Defendant.

WHEREFORE, Plaintiff respectfully demands judgment in his favor and against the Defendant in an amount equal to three (3) times the purchase price of the subject vehicle, plus all available collateral changes and attorney fees. Amount not in excess of $50,000.00.

COUNT II
MAGNUSON-MOSS FEDERAL TRADE COMMISSION IMPROVEMENT ACT

28. Plaintiff hereby incorporates all facts and allegations set forth in this Complaint by reference as if fully set forth at length herein.

29. Plaintiff is a "Consumer" as defined by 15 U.S.C. §2301(3).

30. Defendant is a "Warrantor" as defined by 15 U.S.C. §2301(5).

31. Plaintiff uses the subject product for personal, family and household purposes.

32. By the terms of the express written warranties referred to in this Complaint, Defendant agreed to perform effective warranty repairs at no charge for parts and/or labor.

33. Defendant failed to make effective repairs.

34. As a direct and proximate result of Defendant's failure to comply with the express written warranties, Plaintiff has suffered damages and, in accordance with 15 U.S.C. §2310(d)(1), Plaintiff is entitled to bring suit for such damages and other legal and equitable relief.

35. Section 15 U.S.C. §2310 (d) (1) provides:

> If a consumer finally prevails on an action brought under paragraph (1) of this subsection, he may be allowed by the Court to recover as part of the judgment a sum equal to the amount of aggregate amount of costs and expenses (including attorney fees based upon actual time expended), determined by the Court to have been reasonably incurred by the Plaintiff for, or in connection with the commencement and prosecution of such action, unless the Court, in its discretion shall determine that such an award of attorney's fees would be inappropriate.

36. Plaintiff avers that upon successfully prevailing upon the Magnuson-Moss claim herein, all attorney fees are recoverable and are demanded against the Defendant.

WHEREFORE, Plaintiff respectfully demands judgment in his favor and against the Defendant in an amount equal to three (3) times the purchase price of the subject vehicle, plus all available collateral changes and attorney fees. Amount not in excess of $50,000.00.

COUNT III
UNIFORM COMMERCIAL CODE

37. Plaintiff hereby incorporates all the paragraphs of this Complaint by reference as if fully set forth at length herein.

38. The defects and nonconformities existing within the vehicle constitute a breach of contractual and statutory obligations of the Defendant, including but not limited to the following;

a. Breach of Express Warranty

b. Breach of Implied Warranty of Merchantability;

c. Breach of Implied Warranty of Fitness For a Particular Purpose;

d. Breach of Duty of Good Faith.

39. The purpose for which Plaintiff purchased the vehicle include but are not limited to his personal, family and household use.

40. At the time of this purchase and at all times subsequent thereto, Plaintiff has justifiably relied upon Defendant's express warranties and implied warranties of fitness for a particular purpose and implied warranty of merchantability.

41. At the time of the purchase and at all times subsequent thereto, Defendant was aware Plaintiff was relying upon Defendant's express and implied warranties, obligations, and representations with regard to the subject vehicle.

42. Plaintiff has incurred damages as a direct and proximate result of the breach and failure of Defendant to honor its express and implied warranties.

43. Such damages include, but are not limited to, the purchase price of the vehicle plus all collateral charges, including attorney fees and costs, as well as other expenses, the full extent of which are not yet known.

WHEREFORE, Plaintiff respectfully demands judgment in his favor and against the Defendant in an amount equal to three (3) times the purchase price of the subject vehicle, plus all available collateral changes and attorney fees. Amount not in excess of $50,000.00.

COUNT IV
PENNSYLVANIA UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION CLAIM

44. Plaintiff hereby incorporates all the paragraphs of this Complaint by reference as if set forth at length herein.

45. The Unfair Trade Practices and Consumer Protection Law defines unfair methods

of competition to include the following:

(xiv). Failing to comply with the terms of any written guarantee or warranty given to the buyer at, prior to, or after a contract for the purchase of goods or services is made.

46. Plaintiff, as a Pennsylvania resident, believes, and therefore, avers the reckless, wanton and willful failure of Defendant to comply with the terms of the written warranty constitutes an unfair method of competition.

47. Section 201-9.2(a) of the Unfair Trade Practices and Consumer Protection Law, authorizes the Court, in its discretion, to award up to three (3) times the actual damages sustained for violations of the Act.

WHEREFORE, Plaintiff respectfully demands judgment in his favor and against the Defendant in an amount equal to three (3) times the purchase price of the subject vehicle, plus all available collateral changes and attorney fees. Amount not in excess of $50,000.00.

GORBERG AND ZUBER

BY: _____
DAVID J. GORBERG, ESQUIRE
Attorney for Plaintiff

Robert M. Silverman, Esquire
Amy D. Cox, Esquire
KIMMEL & SILVERMAN, P.C.
89 Haddon Avenue North
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(856) 429-8334

ATTORNEYS FOR PLAINTIFF

THIS IS AN ARBITRATION MATTER. ASSESSMENT OF DAMAGES HEARING IS REQUESTED.

BRIAN DONAHUE 28 Buckland Street Wolcott, Connecticut 06716 v. MAZDA MOTOR AMERICA 7755 Irvin Center Drive P.O. Box 19734 Irvin, California 92713-9734	SUPERIOR COURT OF NEW JERSEY HUNTERDON COUNTY LAW DIVISION CIVIL ACTION NO.

COMPLAINT

1. Plaintiff, Brian Donahue, is an adult individual citizen and legal resident of the State of Connecticut, 28 Buckland Street, Wolcott, Connecticut 06716.

2. Defendant, Mazda Motor of America, Inc., is a business corporation qualified to do business and regularly conduct business in the State of New Jersey , and is a corporation of the State of California, with its legal residence and principal place of business located at 7755 Irvine Center Drive, P.O. Box 19734, Irvine, CA, 92713-9734, and can be served at same.

BACKGROUND

3. On or about October 1, 2000, Plaintiff purchased a new 2001 Mazda TRX, manufactured and warranted by Defendant, bearing the Vehicle Identification Number 4F2CU08111KM12920.

4. The vehicle was purchased in the State of New Jersey and is registered in the State of Connecticut.

5. The contract price of the vehicle, including registration charges, document fees, sales tax, finance and bank charges, but excluding other collateral charges not specified, yet defined by the

Lemon Law, totaled more than $25,553.34. A true and correct copy of the contract is attached hereto, made a part hereof, and marked Exhibit "A".

6. In consideration for the purchase of said vehicle, Defendant issued to Plaintiff several warranties, guarantees, affirmations or undertakings with respect to the material or workmanship of the vehicle and/or remedial action in the event the vehicle fails to meet the promised specifications.

7. The above-referenced warranties, guarantees, affirmations or undertakings are/were part of the basis of the bargain between Defendant and Plaintiff.

8. The parties' bargain includes an express 3-year / 50,000 mile warranty, as well as other guarantees, affirmations and undertakings as stated in Defendant's warranty materials and owner's manual.

9. However, as a result of the ineffective repair attempts made by Defendant through its authorized dealer(s), the vehicle cannot be utilized for the purposes intended by Plaintiff at the time of acquisition and as such, the vehicle is worthless.

10. Plaintiff has or may have resorted to Defendant's informal dispute settlement procedure, to the extent said procedure complies with 16 CFR 703.

11. Plaintiff avers that the Federal Trade Commission (FTC) has determined that no automobile manufacturer complies with 16 CFR 703. See, Fed. Reg. 15636, Vol. 62, No. 63 (Apr. 2, 1997)

COUNT I
NEW JERSEY MOTOR VEHICLE WARRANTY ACT

12. Plaintiff hereby incorporates all facts and allegations set forth in this Complaint by reference as if fully set forth at length herein.

13. Plaintiff is a "Purchaser" as defined by N.J.S.A. 56:12-30.

14. Defendant is a "Manufacturer" as defined by N.J.S.A. 56:12-30.

15. Flemington Mazda, is and/or was at the time of sale a "Dealer or Motor Vehicle Dealer" in the business of buying, selling, and/or exchanging vehicles as defined by N.J.S.A. 56:12-30.

16. On or about October 1, 2000, Plaintiff took possession of the above mentioned vehicle and experienced nonconformities as defined by N.J.S.A. 56:12-29 et seq., which substantially impair the use, value and/or safety of the vehicle.

17. Defendant through its authorized dealer failed to provide written notification that the vehicle was covered by the New Jersey Motor Vehicle Warranty Act as provided in N.J.S.A. 56:12-34(c). Plaintiff believes and therefore avers said failure is a per se violation of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., as well as a violation of the New Jersey Motor Vehicle Warranty Act.

18. The nonconformities described violate the express written warranties issued to Plaintiff by Defendant.

19. Section 56:12-32 of the New Jersey Motor Vehicle Warranty Act provides:

> a. If, during the period specified in section 3 of this act, the manufacturer or its dealer is unable to repair or correct a nonconformity within a reasonable time, the manufacturer shall accept return of the motor vehicle from the consumer. The manufacturer shall provide the consumer with a full refund of the purchase price of the original motor vehicle including any stated credit or allowance for the consumer's used motor vehicle, the cost of any options or other modifications arranged, installed, or made by the manufacturer or its dealer within 30 days after the date or original delivery, and any other charges or fees including, but not limited to, sales tax, license and registration fees, finance charges, reimbursement for towing and reimbursement for actual expenses incurred by the consumer for the rental of a motor vehicle equivalent to the consumer's motor vehicle and limited to the period during which the consumer's motor vehicle was out of service due to a nonconformity, less a reasonable allowance for vehicle use.

20. Section 56:12-33 of the New Jersey Motor Vehicle Warranty Act provides a presumption of a reasonable number of repair attempts:

> a. It is presumed that a manufacturer or its dealer is unable to repair or correct a nonconformity within a reasonable time if, within the first 18,000 miles of operation or during the period of two years following the date of original delivery of the motor vehicle to a consumer, whichever is the earlier date:
>
> (1) Substantially the same nonconformity has been subject to repair three or more times by the manufacturer or its dealer and the nonconformity continues to exist; or
>
> (2) The motor vehicle is out of service by reason of repair for one or more nonconformities for a cumulative total of 20 or more calendar days since the original delivery of the motor vehicle and a nonconformity continues to exist.
>
> b. The presumption contained in sub-section a. of this section shall apply against a manufacturer only if the manufacturer has received written notification, by or on behalf of the consumer, by certified mail

return receipt requested, of a potential claim pursuant to the provisions of this act and has had one opportunity to repair or correct the defect or condition within 10 calendar days following receipt of the notification. Notification by the consumer shall take place any time after the motor vehicle has had substantially the same nonconformity subject to repair two or more times or has been out of service by reason of repair for a cumulative total of 20 or more calendar days.

21. Plaintiff has satisfied the above definition as the vehicle has been subject to repair more than three (3) times for the same nonconformity, and the nonconformity remained uncorrected.

22. In addition, the above vehicle has or will be out of service by reason of the nonconformities complained of for a cumulative total of twenty (20) or more calendar days.

23. Plaintiff has delivered the nonconforming vehicle to an authorized service and repair facility of the Defendant on numerous occasions as outlined below.

24. After a reasonable number of attempts, Defendant was unable to repair the nonconformities.

25. During the first 18 months and/or 24,000 miles, Plaintiff's complained on at least three (3) occasions about defects and or non-conformities to the following vehicle components: transmission. True and correct copies of all invoices in Plaintiff's possession are attached hereto, made a part hereof, and marked Exhibit "B".

26. Plaintiff has been and will continue to be financially damaged due to Defendant's intentional, reckless, wanton, and negligent failure to comply with the provisions of N.J.S.A. 56:12-29 et seq.

27. Plaintiff has provided Defendant with a final repair opportunity prior to filing the within Complaint.

28. Pursuant to N.J.S.A. 56:12-29 et seq, Plaintiff seeks relief for losses due to the nonconformities and defects in the above-mentioned vehicle in addition to reasonable attorney fees and all court costs.

WHEREFORE, Plaintiff respectfully demands judgment against Defendant in an amount equal to the price of the subject vehicle, plus all collateral charges, attorneys' fees, and court costs.

COUNT II

MAGNUSON-MOSS (FTC) WARRANTY IMPROVEMENT ACT

29. Plaintiff hereby incorporates all facts and allegations set forth in this Complaint by reference as if fully set forth at length herein.

30. Plaintiff is a "Consumer" as defined by 15 U.S.C. §2301(3).

31. Defendant is a "supplier," "warrantor," and a "service contractor" as defined by 15 U.S.C. § 2301 (4),(5) and (8).

32. The subject vehicle is a "consumer product" as defined by 15 U.S.C. § 2301(1).

33. By the terms of its written warranties, affirmations, promises, or service contracts, Defendant agreed to perform effective repairs at no charge for parts and/or labor.

34. The Magnuson-Moss Warranty Improvement Act requires Defendant to be bound by all warranties implied by state law. Said warranties are imposed on all transactions in the state in which the vehicle was delivered.

35. Defendant has made attempts on several occasions to comply with the terms of its express warranties; however, such repair attempts have been ineffective.

36. The Magnuson-Moss Warranty Improvement Act, 15 U.S.C. §2310(d)(2) provides:

> If a consumer finally prevails on an action brought under paragraph (1) of this subsection, he may be allowed by the court to recover as part of the judgment a sum equal to the amount of aggregate amount of costs and expenses (including attorney fees based upon actual time expended), determined by the court to have been reasonably incurred by the Plaintiff for, or in connection with the commencement and prosecution of such action, unless the court, in its discretion shall determine that such an award of attorney's fees would be inappropriate.

37. Plaintiff has afforded Defendant a reasonable number of opportunities to conform the vehicle to the aforementioned express warranties, implied warranties and contracts.

38. As a direct and proximate result of Defendant's failure to comply with the express written warranties, Plaintiff has suffered damages and, in accordance with 15 U.S.C. §2310(d)(1), Plaintiff is entitled to bring suit for such damages and other legal and equitable relief.

39. Defendant's failure is a breach of Defendant's contractual and statutory obligations constituting a violation of the Magnuson-Moss Warranty Improvement Act, including but not

limited to: breach of express warranties; breach of implied warranty of merchantability; breach of implied warranty of fitness for a particular purpose; breach of contract; and constitutes an Unfair Trade Practice.

40. Plaintiff avers Defendant's Dispute Resolution Program is not in compliance with 16 CFR 703 by the FTC for the period of time this claim was submitted.

41. Plaintiff avers that upon successfully prevailing upon the Magnuson-Moss claim herein, all attorney fees are recoverable and are demanded against Defendant.

WHEREFORE, Plaintiff respectfully demands judgment against Defendant in an amount equal to the price of the subject vehicle, plus all collateral charges, incidental and consequential damages, reasonable attorneys' fees, and all court costs.

COUNT III
UNIFORM COMMERCIAL CODE

42. Plaintiff hereby incorporates all facts and allegations set forth in this Complaint by reference as if fully set forth at length herein.

43. The defects and nonconformities existing within the vehicle constitute a breach of contractual and statutory obligations of Defendant, including but not limited to the following:

a. Express Warranty;

b. Implied Warranty Of merchantability; and

c. Implied Warranty Of Fitness For A Particular Purpose.

44. At the time of obtaining possession of the vehicle and at all times subsequent thereto, Plaintiff has justifiably relied upon Defendant's express warranties and implied warranties of fitness for a particular purpose and implied warranties of merchantability.

45. At the time of obtaining possession of the vehicle and at all times subsequent thereto, Defendant was aware Plaintiff was relying upon Defendant's express and implied warranties, obligations, and representations with regard to the subject vehicle.

46. Plaintiff has incurred damages as a direct and proximate result of the breach and failure of Defendant to honor its express and implied warranties.

47. Such damages include, but are not limited to, the contract price of the vehicle plus all collateral charges, including attorney fees and costs, as well as other expenses, the full extent of which are not yet known.

WHEREFORE, Plaintiff respectfully demands judgment against Defendant in an amount equal to the contract price of the vehicle, plus all collateral charges and attorneys' fees.

COUNT IV
NEW JERSEY CONSUMER FRAUD ACT

48. Plaintiff hereby incorporates all facts and allegations set forth in this Complaint by reference as if fully set forth at length herein.

49. Plaintiff is a "Person" as defined by N.J.S.A. 56:8-1(d).

50. Defendant is a "Person" as defined by N.J.S.A. 56:8-1(d).

51. Defendant's actions surrounding the sale and servicing of the subject vehicle were unconscionable. Defendant's agents also acted with a reckless and callous disregard for Plaintiff's rights in negotiating and handling Plaintiff's warranty claims.

52. Defendant's actions surrounding the sale and servicing of said vehicle constitute a unconscionable commercial practice, deception, fraud, false pretense, false promise, and/or misrepresentation. Defendant and its agents acted affirmatively in such a manner as to be an unlawful commercial practice.

53. Defendant acted knowingly with the intent to cause Plaintiff's reliance thereupon.

54. Defendant knowingly concealed, suppressed, or omitted facts material to the transactions at issue, in that Defendant was aware the defect(s)/condition(s) could not be repaired, and that the ineffectual repairs were performed by incompetent or unqualified individuals. Defendant's failure to verify the defect(s) or condition(s) constitutes a refusal to perform the repairs under its statutory or contractual obligations.

55. Defendant through its authorized dealer failed to provide written notification that the vehicle was covered by the New Jersey Motor Vehicle Warranty Act N.J.S.A. 56:12-34(c) and Plaintiff believes and therefore avers said failure is a per se violation of the New Jersey Consumer Fraud Act N.J.S.A. 56:8-1 et seq. as well as a violation of the New Jersey Motor Vehicle Warranty Act.

56. Plaintiff believes and therefore avers that the defect(s) or condition(s) outlined previously is/are an inherent design defect and that as such the Defendant must certify the existence of this defect or condition to the Division of Consumer Affairs. Defendant has failed to file this certification and this failure is a violation of the New Jersey Consumer Fraud Act N.J.S.A. 56:8-1 et seq.

57. Defendant's failure to supply an itemized legible statement of repair is an unlawful practice pursuant to the New Jersey Consumer Fraud Act N.J.S.A. 56:8-2.

58. The Act prohibits the aforementioned action of Defendant in the sale and attempted repair of the subject vehicle.

59. Plaintiff believes and therefore avers the reckless, wanton and willful failure of Defendant to comply with the terms of the written warranties constitutes an unfair method of competition.

60. As a result of Defendant's unlawful conduct, Plaintiff has and will continue to suffer ascertainable financial loss proximately caused by the Defendant's conduct. Said losses are outlined as follows:

a. Plaintiff is entitled to a full refund N.J.S.A. 56:8-2.11-12;

b. Plaintiff's vehicle given the defect/condition is worthless;

c. Plaintiff lost time from work and other money as a result of having to take the vehicle in for the repeated repair attempts;

d. Plaintiff has been relegated to finding alternative means of transportation while the vehicle was in for repairs and while the vehicle has been in its present condition. As a result, Plaintiff has incurred additional transportation costs; and

e. Plaintiff has expended sums to maintain, store, insure, register, and other expenses for transportation.

WHEREFORE, Plaintiff respectfully demands judgment against Defendant for compensatory damages, treble damages, attorney fees, costs of suit, and any further relief as the Court may deem just and proper.

KIMMEL & SILVERMAN, P.C.

By: _____

ROBERT M. SILVERMAN, ESQUIRE
Attorneys for Plaintiff
89 Haddon Avenue North
Haddonfield, NJ 08033
(856) 429-8334

IN THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA

CHARLES & YVONNE FLAGG,	)	
	)	
Plaintiffs,	)	
	)	Civil Action No.
v.	)	
	)	
MAZDA MOTORS OF AMERICA, INC.,	)	**JURY TRIAL DEMAND**
	)	
Defendant.	)	

COMPLAINT

COMES NOW, CHARLES & YVONNE FLAGG, Plaintiffs in the above-styled action, by and through the undersigned attorneys, and files this complaint against Defendants, MAZDA MOTORS OF AMERICA, INC., and shows this honorable Court the following:

PARTIES, JURISDICTION & VENUE

1. Plaintiff, CHARLES & YVONNE FLAGG (hereafter "Plaintiffs"), individuals who at all times relevant hereto resided in the State of Georgia.

2. Defendant, MAZDA MOTORS OF AMERICA, INC. (hereafter "Manufacturer"), is a foreign corporation authorized to do business in the State of Georgia, and is engaged in the manufacture, sale, and distribution of motor vehicles and related equipment and services. Manufacturer is also in the business of marketing, supplying and selling written warranties to the public at large through a system of authorized dealerships. Manufacturer may be served through its registered agent: Takeshi Tanahira, 7755 Irvine Center Drive, Irvine, California 92618.

3. Manufacturer is subject to the jurisdiction of this Court. Venue is proper in FULTON County.

BACKGROUND

4. On or about March 29, 2001, Plaintiffs purchased or leased from Seller a 2001 Mazda Tribute (hereafter "Vehicle"), manufactured and/or distributed by Manufacturer, Vehicle Identification Number 4F2YU07121KM48073, for valuable consideration.

5. On information and belief first, the price of the Vehicle, including registration charges, document fees and sales tax, but excluding other collateral charges, such as bank and finance charges, totaled more than $17,000.00.

6. Plaintiffs aver that as a result of ineffective repair attempts made by Manufacturer and/or its agent(s), the Vehicle cannot be utilized for personal, family and household use as was intended by Plaintiff at the time of its acquisition.

7. In consideration for the purchase of the Vehicle, Manufacturer issued and supplied to Plaintiffs its written warranty which included three year (3) or thirty-six thousand (36,000) mile bumper to bumper coverage, as well as other warranties fully outlined in the Manufacturer's New Car Warranty booklet.

8. On or about March 29, 2001, Plaintiffs took possession of the Vehicle and shortly thereafter experienced the various defects listed below which substantially impair the use, value and/or safety of the Vehicle.

9. The defects described below violate the Manufacturer's warranty issued to Plaintiffs, as well as the implied warranty of merchantability.

10. Plaintiffs delivered the Vehicle to Manufacturer, through its authorized dealership network, on numerous occasions.

11. Plaintiffs aver that the Vehicle has been subject to repair on at least three (3) occasions for the same defect, and that the defect remains uncorrected.

12. Plaintiffs have brought the Vehicle to Seller and/or an authorized service dealer of Manufacturer for attempted repairs to various defects and nonconformities, including but not limited to:

a. Stalling Defect; and

b. Electrical Defect.

13. Plaintiffs provided Manufacturer, through its authorized dealership network, sufficient opportunities to repair the Vehicle.

14. After a reasonable number of attempts to cure the defects in Plaintiffs' Vehicle, Manufacturer was unable and/or failed to repair the defects, as provided in Manufacturer's warranty.

15. Plaintiffs justifiably lost confidence in the Vehicle's safety and reliability, and said defects have substantially impaired the value of the Vehicle to Plaintiffs.

16. Said defects could not have reasonably been discovered by Plaintiffs prior to Plaintiffs' acceptance of the Vehicle.

17. As a result of these defects, Plaintiffs revoked acceptance of the Vehicle in writing.

18. At the time of revocation, the Vehicle was in substantially the same condition as at delivery except for damage caused by its own defects and ordinary wear and tear.

19. Defendant refused Plaintiffs' demand for revocation and refused to provide Plaintiffs with the remedies to which Plaintiffs are entitled upon revocation.

20. The Vehicle remains in a defective and unmerchantable condition, and continues to exhibit some or all of the above-mentioned defects that substantially impair its use, value and/or safety.

21. Plaintiffs have been and will continue to be financially damaged due to Defendant's intentional, reckless, wanton and negligent failure to comply with the provisions of its express

warranty and its failure to provide Plaintiff with a merchantable Vehicle.

COUNT I
BREACH OF WRITTEN WARRANTY
PURSUANT TO THE MAGNUSON-MOSS WARRANTY ACT
MANUFACTURER

22. Plaintiffs re-allege and incorporate by reference as though fully set forth herein, paragraphs 1 through 21 of this complaint.

23. Plaintiffs are purchasers of a consumer product who received the Vehicle during the duration of a written warranty period applicable to the Vehicle and who is entitled by the terms of the written warranty to enforce against Manufacturer the obligations of said warranty.

24. Manufacturer is a person engaged in the business of making a consumer product directly available to Plaintiffs.

25. Seller is an authorized dealership/agent of Manufacturer designated to perform repairs on vehicles under Manufacturer's automobile warranties.

26. The Magnuson-Moss Warranty Act, Chapter 15 U.S.C.A., Section 2301, et. seq. ("Warranty Act") is applicable to Plaintiffs' Complaint in that the Vehicle was manufactured, sold and purchased after July 4, 1975, and costs in excess of ten dollars ($10.00).

27. Plaintiffs' purchase of the Vehicle was accompanied by a written factory warranty for any defects in material or workmanship, comprising an undertaking in writing in connection with the purchase of the Vehicle to repair or replace defective parts, or take other remedial action free of charge to Plaintiff with respect to the Vehicle in the event that the Vehicle failed to meet the specifications set forth in Manufacturer's Warranty.

28. Manufacturer's warranty was the basis of the bargain of the contract between the Plaintiffs and Manufacturer for the sale of the Vehicle to Plaintiffs.

29. Said purchase of Plaintiffs' Vehicle was induced by, and Plaintiffs relied upon, Manufacturer's written warranty.

30. Plaintiffs have met all obligations and preconditions as provided in Manufacturer's written warranty.

31. As a direct and proximate result of Manufacturer's failure to comply with its written warranty, Plaintiffs have suffered damages and, in accordance with 15 U.S.C. §2310(d)(1), Plaintiffs are entitled to bring suit for such damages and other legal and equitable relief.

32. Plaintiffs aver that upon successfully prevailing upon the Magnuson-Moss Warranty Act claim herein, all attorneys' fees are recoverable and are demanded against Manufacturer.

WHEREFORE, Plaintiffs pray for judgment against Manufacturer as follows:

a. Return of all monies paid, diminution in value of the vehicle, and all incidental and consequential damages incurred;
b. All reasonable attorneys' fees, witness fees and all court costs and other fees incurred; and
c. Such other and further relief that the Court deems just and appropriate.

COUNT II
BREACH OF IMPLIED WARRANTY
PURSUANT TO THE MAGNUSON-MOSS WARRANTY ACT
MANUFACTURER

33. Plaintiffs re-allege and incorporate by reference as though fully set forth herein, paragraphs 1 through 32 of this complaint.

34. The Vehicle purchased by Plaintiffs were subject to an implied warranty of merchantability as defined in 15 U.S.C. §2301(7) running from the Manufacturer to the intended consumer, Plaintiffs herein.

35. Manufacturer is a supplier of consumer goods as a person engaged in the business of making a consumer product directly available to Plaintiffs.

36. Manufacturer is prohibited from disclaiming or modifying any implied warranty when making a written warranty to the consumer or when Manufacturer has entered into a contract in writing within ninety (90) days of a purchase to perform services relating to the maintenance or repair of a motor vehicle.

37. Pursuant to 15 U.S.C. §2308, Plaintiffs' Vehicle was impliedly warranted to be substantially free of defects in both material and workmanship, and thereby fit for the ordinary purpose for which the Vehicle was intended.

38. The Vehicle was warranted to pass without objection in the trade under the contract description, and was required to conform to the descriptions of the Vehicle contained in the contracts and labels.

39. The above-described defects in the Vehicle render the Vehicle unmerchantable and thereby not fit for the ordinary and essential purpose for which the Vehicle was intended and as represented by Manufacturer.

40. As a result of the breaches of implied warranty by Manufacturer, Plaintiffs are without the reasonable value of the Vehicle.

41. As a result of the breaches of implied warranty by Manufacturer, Plaintiffs have suffered and continues to suffer various damages.

WHEREFORE, Plaintiffs pray for judgment against Manufacturer as follows:

a. Return of all monies paid, diminution in value of the vehicle, and all incidental and consequential damages incurred;
b. All reasonable attorneys' fees, witness fees and all court costs and other fees incurred; and
c. Such other and further relief that the Court deems just and appropriate.

COUNT III
REVOCATION OF ACCEPTANCE PURSUANT TO SECTION 2310(d) OF THE MAGNUSON-MOSS WARRANTY ACT MANUFACTURER

42. Plaintiffs re-allege and incorporate by reference as though fully set forth herein, paragraphs 1 through 41 of this complaint.

43. Manufacturer's tender of the Vehicle was substantially impaired to Plaintiffs.

44. Manufacturer's tender of the Vehicle, which was substantially impaired to Plaintiffs, constitutes a violation of 15 U.S.C. §2310(d).

WHEREFORE, Plaintiffs pray for judgment against Manufacturer as follows:

a. Return of all monies paid, satisfaction of all liens, and all incidental and consequential damages incurred;
c. All reasonable attorneys' fees, witness fees and all court costs and other fees incurred; and
d. Such other and further relief that the Court deems just and appropriate.

COUNT IV
GEORGIA MOTOR VEHICLE WARRANTY RIGHTS PURSUANT TO O.C.G.A § 10-1-782 *et seq*

45. Plaintiff re-alleges and incorporates by reference as though fully set forth herein, paragraphs 1-44 of this Complaint.

46. Plaintiff has presented the Vehicle to Seller and/or other authorized service dealers of Manufacturer for a reasonable amount of time(s) for the same defects and/or non-conformities in the Vehicle's first twelve (12) months or twelve thousand (12,000) miles, which ever came first, and those defects and/or non-conformities continue to exist.

47. Pursuant to the Act, the Vehicle does not conform to the express warranties issued to Plaintiff by Manufacturer.

48. Pursuant to the Act, Plaintiff is entitled to a refund of the full price of the vehicle,

including all collateral charges and finance charges, and/or a replacement vehicle, plus all attorneys' fees and costs.

WHEREFORE, Plaintiff prays for judgment against Manufacturer as follows:

a. Return of all monies paid, satisfaction of all liens, and all incidental and consequential damages incurred;
b. All reasonable attorneys' fees, witness fees and all court costs and other fees incurred; and
c. Such other and further relief that the Court deems just and appropriate.

Pursuant to O.C.G.A. 15-12-122(c)(2), Plaintiff requests that the present case be tried by a jury of twelve.

Submitted this 1 day of April 2002.

E. Scott Fortas, Esq.
Georgia Bar No. 269980

Attorney for Plaintiff
KROHN & MOSS
455 E. Paces Ferry Road, NE
Suite 218
Atlanta, GA 30305
(404) 869-4280

GORBERG, GORBERG AND ZUBER
By: **DAVID J. GORBERG** Attorney for Plaintiffs
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(215) 563-7210

DONALD FLYNN 5239 Stella Drive Gibsonia, PA 15044	:	COURT OF COMMON PLEAS PHILADELPHIA COUNTY
vs.	:	TERM, 2002
MAZDA NORTH AMERICA, INC. 7755 Irvine Center Drive Box 19734 Irvine, CA 92713	:	NO.

COMPLAINT

1. Plaintiff, Donald Flynn is an adult individual citizen and legal resident of the Commonwealth of Pennsylvania, residing at 5239 Stella Drive, Gibsonia, PA 15044.

2. Defendant, Mazda North America, Inc., is a business corporation qualified to do business and regularly conducts business in the Commonwealth of Pennsylvania with it's legal residence and principal place of business at 7755 Irvine Center Drive, Box 19734, Irvine, CA 92713.

BACKGROUND

3. Plaintiff incorporates by reference paragraphs 1 and 2 as fully as if set forth here length.

4. On or about November 28, 2000, Plaintiff purchased a 2001 Mazda Tribute manufactured and warranted by Defendant bearing the Vehicle Identification Number 4F2CU08131KM01403. The vehicle was purchased and registered in the Commonwealth of Pennsylvania.

5. The price of the vehicle, including registration charges, document fees, sales tax, but, excluding other collateral charges not specified, totaled more than $25,475.00.

6. Plaintiff avers that as a result of the ineffective repair attempts made by Defendant through its authorized dealer, the vehicle cannot be utilized for the purposes intended by Plaintiff at the time of acquisition and as such, the vehicle is worthless.

7. In consideration of the purchase of the above vehicle, Defendant, issued to Plaintiff several warranties, fully outlined in the warranty booklet.

8. On or about November 28, 2000, Plaintiff took possession of the above mentioned vehicle and experienced nonconformities, which substantially impaired the use, value and/or safety of the vehicle.

9. Said nonconformities consisted of, but was not limited to, defective engine and electrical system. Copies of repair receipts are attached hereto and marked as Exhibit "A".

10. The nonconformities violate the express written warranties issued to Plaintiff by Defendant.

11. Plaintiff avers the vehicle has been subject to repair more than three (3) times for the same nonconformity, and the nonconformity remains uncorrected.

12. Plaintiff has delivered the nonconforming vehicle to an authorized service and repair facility of the defendant on numerous occasions. After a reasonable number of attempts, Defendant was unable to repair the nonconformities.

13. In addition, the above vehicle has or will in the future be out of service by reason of the non-conformities complained of for a cumulative total of thirty (30) days or more.

14. The vehicle continues to exhibit defects and nonconformities which substantially impair it's use, value and/or safety.

15. Plaintiff avers the vehicle has been subject to additional repair attempts for defects and/or nonconformities and/or conditions for which the Defendant and or it's authorized service center, may not have maintained records.

16. Plaintiff has been and will continue to be financially damaged due to Defendant's intentional, reckless, wanton and negligent failure to comply with the provisions of its' warranty.

17. Plaintiff seeks relief for losses due to the nonconformities and defects in the above mentioned vehicle in addition to attorney fees and all court costs.

COUNT I
PENNSYLVANIA AUTOMOBILE LEMON LAW CLAIM

18. Plaintiff hereby incorporates all facts and allegations set forth in this Complaint by reference as if fully set forth at length herein.

19. Plaintiff is a "Purchaser" as defined by 73 P.S. §1952.

20. Defendant is a "Manufacturer" as defined by 73 P.S. §1952.

21. Plaintiff's vehicle is a "New Motor Vehicle" as defined by 73 P.S. §1952.

22. Said vehicle experienced non conformities within the first year of purchase, which substantially impairs the use, value and safety of said vehicle.

23. Defendant failed to correct and or repair said nonconformities.

24. The vehicle continues to exhibit defects and nonconformities which substantially impair it's use, value and/or safety.

25. Defendant does not require participation in any informal dispute settlement program prior to filing suit.

26. As a direct and proximate result of Defendant's failure to repair the nonconformities , Plaintiff has suffered damages and, in accordance with 73 P.S. §1958, Plaintiff is entitled to bring suit for such damages and other legal and equitable relief.

27. Plaintiff avers that upon successfully prevailing upon the Lemon Law claim herein, all attorney fees are recoverable and are demanded against the Defendant.

WHEREFORE, Plaintiff respectfully demands judgment in his favor and against the Defendant in an amount equal to three (3) times the purchase price of the subject vehicle, plus all available collateral changes and attorney fees. Amount not in excess of $50,000.00.

COUNT II
MAGNUSON-MOSS FEDERAL TRADE COMMISSION IMPROVEMENT ACT

28. Plaintiff hereby incorporates all facts and allegations set forth in this Complaint by reference as if fully set forth at length herein.

29. Plaintiff is a "Consumer" as defined by 15 U.S.C. §2301(3).

30. Defendant is a "Warrantor" as defined by 15 U.S.C. §2301(5).

31. Plaintiff uses the subject product for personal, family and household purposes.

32. By the terms of the express written warranties referred to in this Complaint, Defendant agreed to perform effective warranty repairs at no charge for parts and/or labor.

33. Defendant failed to make effective repairs.

34. As a direct and proximate result of Defendant's failure to comply with the express written warranties, Plaintiff has suffered damages and, in accordance with 15 U.S.C. §2310(d)(1), Plaintiff is entitled to bring suit for such damages and other legal and equitable relief.

35. Section 15 U.S.C. §2310 (d) (1) provides:

> If a consumer finally prevails on an action brought under paragraph (1) of this subsection, he may be allowed by the Court to recover as part of the judgment a sum equal to the amount of aggregate amount of costs and expenses (including attorney fees based upon actual time expended), determined by the Court to have been reasonably incurred by the Plaintiff for, or in connection with the commencement and prosecution of such action, unless the Court, in its discretion shall determine that such an award of attorney's fees would be inappropriate.

36. Plaintiff avers that upon successfully prevailing upon the Magnuson-Moss claim herein, all attorney fees are recoverable and are demanded against the Defendant.

WHEREFORE, Plaintiff respectfully demands judgment in his favor and against the Defendant in an amount equal to three (3) times the purchase price of the subject vehicle, plus all available collateral changes and attorney fees. Amount not in excess of $50,000.00.

COUNT III
UNIFORM COMMERCIAL CODE

37. Plaintiff hereby incorporates all the paragraphs of this Complaint by reference as if fully set forth at length herein.

38. The defects and nonconformities existing within the vehicle constitute a breach of contractual and statutory obligations of the Defendant, including but not limited to the following:

a. Breach of Express Warranty

b. Breach of Implied Warranty of Merchantability;

c. Breach of Implied Warranty of Fitness For a Particular Purpose;

d. Breach of Duty of Good Faith.

39. The purpose for which Plaintiff purchased the vehicle include but are not limited to his personal, family and household use.

40. At the time of this purchase and at all times subsequent thereto, Plaintiff has justifiably relied upon Defendant's express warranties and implied warranties of fitness for a particular purpose and implied warranty of merchantability.

41. At the time of the purchase and at all times subsequent thereto, Defendant was aware Plaintiff was relying upon Defendant's express and implied warranties, obligations, and representations with regard to the subject vehicle.

42. Plaintiff has incurred damages as a direct and proximate result of the breach and failure of Defendant to honor its express and implied warranties.

43. Such damages include, but are not limited to, the purchase price of the vehicle plus all collateral charges, including attorney fees and costs, as well as other expenses, the full extent of which are not yet known.

WHEREFORE, Plaintiff respectfully demands judgment in his favor and against the Defendant in an amount equal to three (3) times the purchase price of the subject vehicle, plus all available collateral changes and attorney fees. Amount not in excess of $50,000.00.

COUNT IV
PENNSYLVANIA UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION CLAIM

44. Plaintiff hereby incorporates all the paragraphs of this Complaint by reference as if set forth at length herein.

45. The Unfair Trade Practices and Consumer Protection Law defines unfair methods

of competition to include the following:

(xiv). Failing to comply with the terms of any written guarantee or warranty given to the buyer at, prior to, or after a contract for the purchase of goods or services is made.

46. Plaintiff, as a Pennsylvania resident, believes, and therefore, avers the reckless, wanton and willful failure of Defendant to comply with the terms of the written warranty constitutes an unfair method of competition.

47. Section 201-9.2(a) of the Unfair Trade Practices and Consumer Protection Law, authorizes the Court, in its discretion, to award up to three (3) times the actual damages sustained for violations of the Act.

WHEREFORE, Plaintiff respectfully demands judgment in his favor and against the Defendant in an amount equal to three (3) times the purchase price of the subject vehicle, plus all available collateral changes and attorney fees. Amount not in excess of $50,000.00.

GORBERG AND ZUBER

BY: _____
DAVID J. GORBERG, ESQUIRE
Attorney for Plaintiff

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

JENNIFER GAY
5221 Willnet Dr.
Cincinnati, Ohio 45238

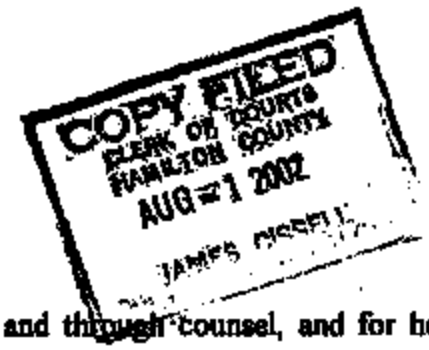
Plaintiff

vs.

Case No. 0205847

COMPLAINT AND JURY DEMAND

MAZDA MOTOR AMERICA, INC.
c/o CT Corporate Systems
1800 E. Ninth St.
Cleveland, Ohio 44114



Defendant

Now comes the Plaintiff, by and through counsel, and for her complaint in the above captioned matter states as follows:

FIRST CAUSE OF ACTION

1. On information and belief, defendant is a California Corporation licensed to do business in the State of Ohio and doing business by importing and/or distributing new automobiles to the general public.

2. At all times complained of herein defendant was a manufacturer as that term is defined in Ohio Revised Code §1345.71.

3. At all times complained of herein plaintiff was a consumer as that term is defined in Ohio Revised Code §1345.71.

4. At all times complained of herein Kerry Mazda of Florence, Inc. and Kings Mazda Suzuki were dealers of defendant authorized to sell new Mazda motor vehicles and to perform warranty repairs on Mazda motor vehicles.

5. On or about January 26, 2002 Plaintiff purchased from defendant's authorized dealer, a 2002 Mazda Tribute motor vehicle, Serial No.: 4F2YU08122KM30558.

6. Within the first twelve (12) months of ownership and/or 18,000 miles of operation plaintiff has discovered that certain non-conformities exist within the vehicle and has presented the vehicle to defendant's authorized dealer requesting that said non-conformities be repaired.

7. Plaintiff has presented the vehicle to defendant's authorized dealer, on three (3) occasions requesting that it repair a non-conformity, which substantially impairs the use, value and/or safety of the vehicle, and said non-conformity continues to exist.

8. Plaintiff's vehicle has been out of service by reason of said non-conformities for a cumulative total of 30 days.

9. Plaintiff's vehicle has been presented to defendant's authorized dealer on 8 occasions to repair non-conformities which impair the use or value of the vehicle and said non-conformities still exist.

10. There has been at least one attempt to repair a non-conformity that results in a condition that is likely to cause death or serious bodily injury if the vehicle is driven and the non-conformity continues to exist.

11. Pursuant to Ohio Revised Code §1345.72 plaintiff is entitled to rescind the transaction and recover from the defendant the full purchase price, all collateral charges, all finance charges, and all incidental damages plus reasonable attorney's fees.

SECOND CAUSE OF ACTION

12. Plaintiff realleges the allegations contained in paragraphs 1 through 11 as if fully rewritten here.

13. At all times complained of herein plaintiff was a consumer as that term is defined in 15 U.S.C. Section 2301.

14. At all times complained of herein defendant was a warrantor as that term is defined in 15 U.S.C. Section 2301.

15. As part of the purchase of the motor vehicle previously alleged, plaintiff received written express warranties from the defendant covering the vehicle.

16. Plaintiff has within the applicable express warranty period presented the vehicle to defendant's authorized dealers requesting that the dealers make repairs under the warranties between plaintiff and defendant.

17. Defendant has breached its express warranties with plaintiff by failing to repair plaintiff's vehicle within a reasonable number of repair attempts and pursuant to 15 U.S.C. Section 2304, plaintiff is entitled to rescind the transaction and recover all purchase monies paid plus reasonable attorney's fees.

THIRD CAUSE OF ACTION

18. Plaintiff realleges the allegations contained in paragraphs 1 through 17 as if fully rewritten here.

19. Defendant warranted that the vehicle purchased by the plaintiff would be free of defects for a period of three years or thirty-six thousand miles.

20. Within the express warranty period plaintiff has requested that defendant's authorized dealers repair her vehicle to conform the vehicle to defendant's express warranties.

21. Defendant has breached its warranty by failing to conform the vehicle to the express warranties covering the vehicle.

22. The warranties covering plaintiff's vehicle have failed of their essential purpose and plaintiff is entitled to rescind the purchase of her vehicle and recover all monies paid plus reasonable attorney's fees.

WHEREFORE, plaintiff demands judgment against defendant rescinding the transaction, a complete refund of all monies paid, plus reasonable attorney's fees and costs.

DEREK W. GUSTAFSON 0005144
Attorney for Plaintiff
1919 Kroger Building
1014 Vine St.
Cincinnati, OH 45202
(513) 241-7880

JURY DEMAND

Plaintiff hereby demands a trial by jury on all issues so triable.

DEREK W. GUSTAFSON 0005144
Attorney for Plaintiff

IN THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA

ERIC HARRIS, *Plaintiff.*	)	Civil Action No. _____
v.	)	
MAZDA MOTORS OF AMERICA,INC., *Defendant.*	)	**JURY TRIAL DEMAND**

COMPLAINT

COMES NOW, ERIC HARRIS, Plaintiff in the above-styled action, by and through their undersigned attorneys, and herby file this, her Complaint against Defendant, MAZDA MOTORS OF AMERICA,INC.., and show this honorable Court as follows:

STATEMENT OF JURISDICTION AND VENUE

1. Plaintiff, ERIC HARRIS (hereafter "Plaintiff is an individual, who at all times relevant hereto have resided in the State of Georgia.

2. Defendant, MAZDA MOTORS OF AMERICA,INC. (hereafter "Manufacturer"), is a Georgia Corporation/foreign Corporation authorized to do business in the State of Georgia, and is engaged in the manufacture, sale, and distribution of motor vehicles and related equipment and services. Manufacturer is also in the business of marketing, supplying and selling written warranties to the public through a system of authorized dealerships. Manufacturer may be served through its registered agent: Takeshi Tanahira, 7755 Irvine Center Drive, Irvine, California 92618 Manufacturer is therefore subject to the jurisdiction of this Court.

3. Defendant, MAZDA MOTORS OF AMERICA,INC. (hereafter "Dealer"), is a Georgia Corporation engaged in the sale and distribution of motor vehicles and related equipment and services. Dealer is also in the business of marketing, supplying and selling written warranties to the public. Dealer may be served through its registered agent. Takeshi Tanahira, 7755 Irvine Center

Drive, Irvine, California 92618. Dealer is there fore subject to the jurisdiction of this Court.

4. Venue is proper in Fulton County, As their statutory agent is properly registered there.

STATEMENT OF FACTS

5. On or about June 12, 2001, Plaintiff purchased a 2001 Mazda Tribute from Five Star Mazda (hereafter "vehicle") for valuable consideration.

6. Plaintiff's vehicle is manufactured and distributed by Manufacturer, for valuable consideration.

7. The price of the vehicle, including registration charges, document fees and sales tax, but excluding other collateral charges, such as bank and finance charges, totaled $28,194.00

8. In consideration for the purchase of the Vehicle, Manufacturer issued and provided Plaintiff a written warranty, including three year (3) or thirty-six thousand (36,000) mile bumper-to-bumper coverage, as well as other warranties fully outlined in the Manufacturer's New Car Warranty booklet.

9. Plaintiff took possession of the vehicle on June 12, 2001.

10. Shortly after taking possession of the vehicle, Plaintiff experienced various defects, including, but not limited to, the following: (a) Stalling; (b) Odor; (c) Transmission.

11. Those defects violate the Manufacturer's warranty and the implied warranty of merchantability.

12. Plaintiff afforded the Dealer a reasonable number of attempts to cure the defects.

13. The defects in Plaintiff's remain uncorrected.

14. As a result of the numerous repair attempts and Defendant's inability to repair the vehicle, Plaintiff justifiably lost confidence in the vehicle's safety and reliability.

15. The value of the vehicle has been substantially impaired to Plaintiff.

16. The defects were not and could not have been reasonably discovered by Plaintiff prior to her

purchase of the vehicle.

17. As a result of the defects and Defendant's inability to cure, Plaintiff revoked acceptance of the vehicle pursuant to The Magnuson Moss Warranty Act and Georgia Statutory law.

18. At the time of revocation, the vehicle was in substantially the same condition as it was at the time of delivery except for damage caused by its own defects and ordinary wear and tear.

19. Defendant refused Plaintiff's demand for revocation and the corresponding remedies to which Plaintiff is entitled under the law.

20. Plaintiff have been and will continue to be financially damaged due to Defendants' failure (a) to comply with the provisions of the written warranty and (b) to provide Plaintiff with a merchantable vehicle.

COUNT I
BREACH OF WRITTEN WARRANTY

(Pursuant to the Uniform Commercial Code, the Magnuson-Moss Warranty Act, and Georgia Law)

21. Paragraphs 1 through 20, above, are re-alleged and hereby incorporated by reference as if fully set forth herein, verbatim.

22. Plaintiff is a consumer, as contemplated by the Uniform Commercial Code, the Magnuson Moss Warranty Act.

23. Defendant is a warrantor, as contemplated by the UCC and the Magnuson-Moss Warranty Act.

24. Plaintiff is entitled by the terms of the written warranty provided to him/her/them by Manufacturer/Dealer to enforce the obligations of said warranty.

25. Plaintiff's was manufactured, sold and purchased after July 4, 1975, and costs in excess of ten dollars ($10.00).

26. The warranty provided that Defendant would repair or replace defective parts, or take other

remedial action free of charge to Plaintiff in the event that the Vehicle failed to meet the specifications set forth in written warranty.

27. The written warranty was the basis of the bargain with respect to the contract for sale executed and entered into between Plaintiff and Defendant.

28. The purchase of Plaintiff's Vehicle was induced by the written warranty, upon which Plaintiff relied.

29. Plaintiff have honored their obligations under the warranty.

30. Defendant breached their obligations under the written warranty, by failing to seasonably repair the vehicle's defects after being afforded a reasonable number of attempts to cure.

31. Plaintiff notified Defendant of its breach within a reasonable period of time after discovering it.

32. As a direct and proximate result of Manufacturer's failure to comply with its written warranty, Plaintiff have suffered damages, including, but not limited to, (a) loss of use; (b) diminished value; (c) lost wages; (d) aggravation; and (e) incidental and consequential damages (such as the cost of inspecting the vehicle, returning the goods for repair, insurance, tax and registration fees, etc.) In accordance with 15 U.S.C. §2310(d)(1) and the UCC, are entitled to bring suit for damages and other relief.

33. Plaintiff requests attorney's fees and shows that she is entitled to fees and costs pursuant to the fee-shifting provision of the Magnuson Moss Warranty Act.

WHEREFORE, Plaintiff prays that:

a. The Complaint be filed and service be perfected as provided by law;

b. Plaintiff be awarded damages to which she is entitled under the Magnuson Moss Warranty Act, the Uniform Commercial Code, and Georgia Law, including, but not limited to, (i) the difference at the time and place of acceptance between the value of

the goods accepted and the value they would have had if they had been as warranted, unless the jury finds that special circumstances show proximate damages of a different amount; (ii) loss of use; (iii) lost wages; (iv) aggravation; and (v) any other incidental and consequential damages (such as the cost of inspecting the vehicle, returning the goods for repair, insurance, tax and registration fees, etc.)

c. Plaintiff be awarded reasonable attorneys' fees and costs; and

d. Plaintiff be awarded such other and further relief as the Court deems right and appropriate.

COUNT II
BREACH OF IMPLIED WARRANTY

(Pursuant to the Uniform Commercial Code, the Magnuson-Moss Warranty Act, and Georgia Statutory Law)

34. Paragraphs 1 through 33, above, are re-alleged and hereby incorporated by reference as if fully set forth herein, verbatim.

35. The vehicle purchased by Plaintiff is subject to an implied warranty of merchantability as defined in 15 U.S.C. §2301(7), UCC Section 2-103(1)(d) and OCGA Section 11-2-314(2)(c).

36. Defendant is a person who contracts to sell goods. Defendant sell vehicles to purchasers, order component parts, and/or assemble them into final products. They are merchants with respect to the goods of the kind sold to Plaintiff.

37. The parties' contract for sale as a matter of law implies that the vehicle is merchantable, because Defendant is a merchant with respect to such goods.

38. The implied warranty was breached by Defendant(s), because they sold Plaintiff a vehicle of insufficient quality. The vehicle is not fit for the ordinary purpose for which such goods are used.

39. The vehicle has failed to meet Plaintiff's reasonable expectations.

40. The vehicle has failed to perform with reasonable safety, efficiency, and comfort.

41. The vehicle has not provided dependable transportation, and it has not been trouble-free.

42. The vehicle would not pass without objection in the trade under the contract description and does not conform to the promises or affirmations of fact made by Defendant.

43. Manufacturer has attempted, in contravention to the law, to disclaim the implied warranty of merchantability.

44. As a result of the breach of implied warranty by Defendant, Plaintiff are without the reasonable value of the Vehicle.

45. As a result of the breach of implied warranty by Defendant, Plaintiff have suffered and continue to suffer damages, including those specifically identified in the foregoing paragraphs.

WHEREFORE, Plaintiff prays that:

a. The Complaint be filed and service be perfected as provided by law;

b. Plaintiff be awarded damages to which she is entitled under the Magnuson Moss Warranty Act, the Uniform Commercial Code, and Georgia Law, including, but not limited to, (i) the difference at the time and place of acceptance between the value of the goods accepted and the value they would have had if they had been as warranted, unless the jury finds that special circumstances[1] show proximate damages of a different amount; (ii) loss of use; (iii) lost wages; (iv) aggravation; and (e) any other incidental and consequential damages (such as the cost of inspecting the vehicle, returning the goods for repair, insurance, tax and registration fees, etc.)

c. Plaintiff be awarded reasonable attorneys' fees and costs; and

d. Plaintiff be awarded such other and further relief as the Court deems right and appropriate.

COUNT III
REVOCATION OF ACCEPTANCE

(Pursuant to the Uniform Commercial Code, the Magnuson Moss Warranty Act, and

Georgia Statutory Law)

46. Paragraphs 1 through 45, above, are re-alleged and hereby incorporated by reference as if fully set forth herein, verbatim.

47. Plaintiff is a consumer who have been damaged by Defendant's failure to comply with the terms of its written and implied warranties, as contemplated by 15 U.S.C. Section 2310(d).

48. Defendant was obligated to repair the manufacturer's defects in Plaintiff's vehicle, and defaulted on that obligation.

49. Plaintiff's faith in the vehicle's integrity and reliability has been shaken irreparably.

50. Any defects cured by Defendant were not done seasonably.

51. Plaintiff is entitled to elect either a refund for, or replacement without charge pursuant to Section 2304(A)(4) of the Magnuson-Moss Warranty Act.

52. Plaintiff is also entitled to revoke acceptance of the vehicle pursuant to OCGA § 11-2-608 and OCGA §11-2-719(2).

WHEREFORE, Plaintiff prays that:

a. The Complaint be filed and service be perfected as provided by law;

b. Plaintiff be awarded damages to which he is entitled under the Magnuson Moss Warranty Act, the UCC and OCGA OCGA § 11-2-608 and OCGA §11-2-719(2);

c. Plaintiff be awarded reasonable attorneys' fees and costs; and

d. Plaintiff be awarded such other and further relief as the Court deems right and appropriate.

Submitted this 25 day of June, 2002.

E. Scott Fortas, Esq.
Georgia Bar No. 269980

Attorney for Plaintiff
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Suite 218
Atlanta, Georgia 30305
(404) 869-4280

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

STEVEN HILL,

Plaintiff,

v CP

MAZDA MOTOR OF AMERICA, INC., a California Corporation, and RALPH THAYER VOLKSWAGEN, INC., a Michigan Corporation, Jointly and Severally,

Defendants.

_____/

CONSUMER LEGAL SERVICES, P.C.
MARK ROMANO P-44014
STEVEN S. TOTH P-44487
Attorneys for Plaintiff
30928 Ford Road
Garden City, MI 48135
(734) 261-4700

_____/

There is no other civil action between these parties arising out of the same transaction or occurrence as alleged in this Complaint in this Court, nor has any such action been previously filed and dismissed or transferred after having been assigned to a judge, nor do I know of any other civil action not between these parties, arising out of the same transaction or occurrence as alleged in this Complaint that is either pending or was previously filed and dismissed, transferred or otherwise disposed of after having been assigned to a judge in this Court.

COMPLAINT AND JURY DEMAND

NOW COMES the Plaintiff, by and through Plaintiff's attorneys, CONSUMER LEGAL SERVICES, P.C., who complains against the above named Defendants as follows:

1. Plaintiff is a resident of the City of Dundee, Monroe County, Michigan.

2. Defendant, Mazda Motor of America, Inc. (hereinafter referred to as "Manufacturer"), is a California Corporation authorized to do business in the State of Michigan and, at all times relevant hereto, was engaged in the manufacture, sale distribution and/or importing of Mazda vehicles and related equipment, with its registered office in the City of Bingham Farms, Oakland County, Michigan.

3. Defendant, Ralph Thayer Volkswagen, Inc. (hereinafter referred to as "Lessor"), is a Michigan Corporation authorized to do business in the State of Michigan and, at all times relevant hereto, was an authorized agent for the Manufacturer, and was engaged in the business of selling and servicing Manufacturer's cars in the City of Monroe, Monroe County, Michigan.

4. On or about September 25, 2000, Plaintiff leased a new 2001 Mazda Tribute, VIN 4F2YU06171KM15605 (hereinafter referred to as "2001 Tribute"), from the Lessor which was manufactured by the Manufacturer (see copy of Vehicle Lease Agreement attached as Exhibit A).

5. Along with the lease of the 2001 Tribute Plaintiff received written warranties and other express and implied warranties including, by way of example and not by way of limitation, warranties from Manufacturer and Lessor (a copy of the written warranty is in the possession of the Defendants).

6. Plaintiff has taken the 2001 Tribute to the Manufacturer's authorized agent/dealer, Lessor, on at least six (6) separate occasions (see copy of repair orders, attached as Exhibit B). By way of example, and not by way of limitation, the defects with Plaintiff's 2001 Tribute include the following:

Date	Mileage	Invoice #	Complaint
08/01/01	15,409	17031	DRIVEABILITY DEFECT: coolant light on; engine light on; rust on left rear window
08/20/01	16,016	17291	DRIVEABILITY DEFECT: MIL lamp on; coolant lamp on
11/30/01	22,334	18624	DRIVEABILITY DEFECT: MIL lamp on and engine stalls
03/19/02	25,687	20098	DRIVEABILITY DEFECT: vehicle will not move when putting in reverse and revs up by itself when driving
03/26/02	25,880	20209	DRIVEABILITY DEFECT: MIL light on
04/26/02	29,024	20612	DRIVEABILITY DEFECT: MIL light on

7. This cause of action arises out of Defendants' misrepresentations, various breaches of warranties, violations of statutes and breaches of covenants of good faith and fair dealing as hereinafter alleged.

8. The amount in controversy exceeds TWENTY FIVE THOUSAND DOLLARS ($25,000.00), exclusive of interest and costs, for which Plaintiff seeks judgment against Defendants, together with equitable relief. In addition, Plaintiff seeks damages from Defendants for incidental, consequential, exemplary and actual damages including interest, costs, and actual attorneys' fees.

COUNT I
BREACH OF EXPRESS WARRANTY

9. Plaintiff incorporates herein by reference each and every allegation contained in Paragraphs 1 through 8 as though herein fully restated and realleged.

10. Plaintiff is a "buyer" under the Michigan Uniform Commercial Code, MCLA 440.2103; MSA 19.2103.

11. Manufacturer and Lessor are "Lessors" under the Michigan Uniform Commercial Code, MCLA 440.2103; MSA 19.2103.

12. The 2001 Tribute constitutes "goods" under the Michigan Uniform Commercial Code, MCLA 440.2105; MSA 2105.

13. This is a "transaction in goods", to which MCLA 440.2102; MSA 19.2105 is applicable.

14. Plaintiff's purchase of the 2001 Tribute was accompanied by an express warranty, written and otherwise offered by the Manufacturer and Lessor. Whereby said warranty was part of the basis of the bargain of the contract, upon which Plaintiff relied, between Plaintiff and Manufacturer/Lessor for its sale of the vehicle.

15. In this express warranty, the Manufacturer warranted if any defects were discovered within certain periods of time, the Manufacturer and/or Lessor would provide repair of the 2001 Tribute free of charge to Plaintiff under specific terms as stated in the express warranty.

16. In fact, Plaintiff discovered the 2001 Tribute had defects and problems after Plaintiff purchased the vehicle as discussed above.

17. Plaintiff notified Manufacturer and Lessor of the aforementioned defects.

18. Plaintiff has provided the Lessor and the Manufacturer with sufficient opportunities to repair or replace the 2001 Tribute.

19. Plaintiff has reasonably met all obligations and pre-conditions as provided in the express warranty.

20. The Manufacturer and Lessor have failed to adequately repair the 2001 Tribute and/or have not repaired the 2001 Tribute in a timely fashion, and the 2001 Tribute remains in a defective condition.

21. Even though the express warranty provided to Plaintiff limited Plaintiff's remedy to repair and/or adjust defective parts, the 2001 Tribute's defects have rendered the limited warranty ineffective to the extent that the limited remedy of repair and/or adjustment of defective parts failed of its essential purpose pursuant to MCLA 440.2719(2); MSA 19.2719(2); and/or the above remedy is not the exclusive remedy under MCLA 440.2719(1)(b); MSA 19.2719(1)(b).

22. The 2001 Tribute continues to contain defects which substantially impair the value of the automobile to the Plaintiff.

23. These defects could not reasonably have been discovered by the Plaintiff prior to Plaintiff's acceptance of the 2001 Tribute.

24. The Manufacturer and Lessor induced Plaintiff's acceptance of the 2001 Tribute by agreeing, by means of the express warranty, to remedy, within a reasonable time, those defects which had not been or could not have been discovered prior to acceptance.

25. As a result of its many defects, the Plaintiff has lost faith and confidence in the 2001 Tribute and the Plaintiff cannot reasonably rely upon the vehicle for the ordinary purpose of safe, efficient transportation.

26. If the finder of fact finds revocation and/or rejection was improper, then, in the alternative, Plaintiff alleges that as of the date of revocation, the 2001 Tribute was in substantially the same condition as at delivery except for damage caused by its own defects and ordinary wear and tear. Therefore, Plaintiff is entitled to damages for breach of warranty calculated by the difference at the time and place of acceptance between the value of the goods accepted and the value they would have had if they had been as warranted.

27. The Manufacturer and Lessor have refused Plaintiff's demands and have refused to provide Plaintiff with the remedies to which Plaintiff is entitled pursuant to MCLA 440.2313; MSA 19.2313 and MCLA 440.2711, 440.2714 and 440.2715; MSA 19.2711, 19.2714 and 19.2715.

WHEREFORE, Plaintiff prays for judgment against Manufacturer and Lessor:

A. Declaring acceptance has been properly revoked by Plaintiff and for damages incurred in revoking acceptance;

B. For a refund of the lease payments (rent) and security deposit paid by Plaintiff for the 2001 Tribute;

C. To cancel the lease contract and pay off the balance on the contract;

D. For incidental, consequential and actual damages;

E. For costs, interest and actual attorneys' fees; and

F. For such other relief this Court deems appropriate.

COUNT II
BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

28. Plaintiff incorporates herein by reference each and every allegation contained in Paragraphs 1 through 27 as though herein fully restated and realleged.

29. The Manufacturer and Lessor are "merchants" with respect to automobiles under the Michigan Uniform Commercial Code, MCLA 440.2104; MSA 19.2104.

30. The 2001 Tribute was subject to implied warranties of merchantability under MCLA 440.2314; MSA 19.2314, running from the Manufacturer and the Lessor to the benefit of Plaintiff.

31. The 2001 Tribute was not fit for the ordinary purpose for which such goods are used.

32. The defects and problems hereinbefore described rendered the 2001 Tribute unmerchantable.

33. The manufacturer and Lessor failed to adequately remedy the defects in the 2001 Tribute; and the 2001 Tribute continues to be in an unmerchantable condition at the time of revocation.

WHEREFORE, Plaintiff prays for judgment against Manufacturer and Lessor:

A. Declaring acceptance has been properly revoked and for damages incurred in revoking acceptance;

B. For damages occasioned by the breach of the implied warranty;

C. For a refund of the lease payments (rent) and security deposit paid by Plaintiff for the 2001 Tribute;

D. To cancel the lease contract covering the 2001 Tribute and pay off the balance on the contract;

E. For consequential, incidental and actual damages;

F. Costs, interest and actual attorneys' fees; and

G. Such other relief this Court deems appropriate.

COUNT III
REVOCATION OF ACCEPTANCE

34. Plaintiff incorporates herein by reference each and every allegation contained in Paragraphs 1 through 33 as though herein fully restated and realleged.

35. Plaintiff accepted the 2001 Tribute without discovering the above defects due to the fact Plaintiff was reasonably induced to accept the vehicle by the difficulty of discovery of the above defects.

36. In the alternative, Plaintiff reasonably assumed, and Manufacturer and Lessor represented, that all of the aforesaid defects and/or nonconformities would be cured within a reasonable time.

37. After numerous attempts by Defendants to cure, it has become apparent the nonconformities could not be seasonably cured.

38. The nonconformities substantially impaired the value of the 2001 Tribute to the Plaintiff.

39. Plaintiff had previously notified Manufacturer and Lessor of the nonconformities and Plaintiff's intent to revoke acceptance pursuant to MCLA 440.2608; MSA 19.2608 and demanded the refund of his purchase price for the 2001 Tribute and out-of-pocket expenses (see copy of Plaintiff's revocation of acceptance letter attached as Exhibit C).

40. Manufacturer and Lessor have nevertheless refused to accept return of the 2001 Tribute and have refused to refund any part of the sum equal to the purchase price and out-of-pocket expenses incurred by Plaintiff.

WHEREFORE, Plaintiff prays for judgment against Manufacturer and Lessor:

A. Declaring acceptance has been properly revoked by Plaintiff and for damages incurred in revoking acceptance;

B. For a refund of the lease payments (rent) and security deposit paid by Plaintiff for the 2001 Tribute;

C. To cancel the lease contract covering the 2001 Tribute and pay off the balance on the contract;

D. For consequential, incidental and actual damages;

E. Costs, interest and actual attorneys' fees; and

F. Such other relief this Court deems appropriate.

COUNT IV
BREACH OF EXPRESS WARRANTY

41. Plaintiff incorporates herein by reference each and every allegation contained in Paragraphs 1 through 40 as though herein fully restated and realleged.

42. Plaintiff is a "lessee" under the Michigan Uniform Commercial Code, MCLA 440.2803 (n).

43. Manufacturer is a "supplier" under the Michigan Uniform Commercial Code, MCLA 440.2803 (x).

44. Lessor is a "lessor" under the Michigan Uniform Commercial Code, MCLA 440.2803 (p).

45. The 2001 Tribute constitutes "goods" under the Michigan Uniform Commercial Code, MCLA 440.2803 (h).

46. The Michigan Net Lease attached as Exhibit A is a "consumer lease" under the Michigan Uniform Commercial Code, MCLA 440.2803 (e).

47. Plaintiff 's lease of the 2001 Tribute was accompanied by an express warranty, written and otherwise offered by the Manufacturer and Lessor. Whereby said warranty was part of the basis of the bargain of the lease contract, upon which Plaintiff relied, between Plaintiff and Manufacturer/Lessor for its lease of the 2001 Tribute.

48. The benefit of the Manufacturer's express warranty extends to Plaintiff under the Uniform Commercial Code, MCLA 440.2859 (1).

49. In this express warranty, the Manufacturer warranted if any defects were discovered within certain periods of time, the Manufacturer and/or Lessor would provide repair of the 2001 Tribute free of charge to Plaintiff under specific terms as stated in the express warranty.

50. In fact, Plaintiff discovered the 2001 Tribute had defects and problems after Plaintiff purchased said vehicle as discussed above.

51. Plaintiff notified Manufacturer and Lessor of the aforementioned defects.

52. Plaintiff has provided the Lessor and the Manufacturer with sufficient opportunities to repair or replace the 2001 Tribute.

53. Plaintiff has reasonably met all obligations and pre-conditions as provided in the express warranty.

54. The Manufacturer and Lessor have failed to adequately repair the 2001 Tribute and/or have not repaired the 2001 Tribute in a timely fashion, and the 2001 Tribute remains in a defective condition.

55. Even though the express warranty provided to Plaintiff limited Plaintiff's remedy to repair and/or adjust defective parts, the 2001 Tribute's defects have rendered the limited warranty ineffective to the extent that the limited remedy of repair and/or adjustment of defective parts failed of its essential purpose.

56. The 2001 Tribute continues to contain defects which substantially impair the value of the automobile to the Plaintiff.

57. These defects could not reasonably have been discovered by the Plaintiff prior to Plaintiff's acceptance of the 2001 Tribute.

58. The Manufacturer and Lessor induced Plaintiff's acceptance of the 2001 Tribute by agreeing, by means of the express warranty, to remedy, within a reasonable time, those defects which had not been or could not have been discovered prior to acceptance.

59. As a result of its many defects, the Plaintiff has lost faith and confidence in the 2001 Tribute and the Plaintiff cannot reasonably rely upon the vehicle for the ordinary purpose of safe, efficient transportation.

60. If the finder of fact finds revocation and/or rejection was improper, then, in the alternative, Plaintiff alleges that as of the date of revocation, the 2001 Tribute was in substantially the same condition as at delivery except for damage caused by its own defects and ordinary wear and tear. Therefore, pursuant to M.C.L.A. 440.2969 (4), Plaintiff is entitled to damages for breach of warranty calculated by the difference at the time and place of acceptance between the value of the use of the good accepted and the value it would have had if it had been as warranted for the lease term.

61. The Manufacturer and Lessor have refused Plaintiff's demands and have refused to provide Plaintiff with the remedies to which Plaintiff is entitled pursuant to M.C.L.A. 440.2958; and M.C.L.A. 440.2969; and 440.2967; and 440.2970.

WHEREFORE, Plaintiff prays for judgment against Manufacturer and Lessor:

A. Declaring acceptance has been properly revoked by Plaintiff and for damages incurred in revoking acceptance;

B. For a refund of the lease payments (rent) and security deposit paid by Plaintiff for the 2001 Tribute;

C. To cancel the lease contract covering the 2001 Tribute and payoff the balance on the same;

D. For incidental and consequential damages, and actual damages for breach of warranty;

E. For costs, interest and actual attorneys; fees; and

F. For such other equitable relief this Court deems appropriate.

COUNT V
BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

62. Plaintiff incorporates herein by reference each and every allegation contained in Paragraphs 1 through 61 as though herein fully restated and realleged.

63. The Manufacturer and Lessor are "merchants" with respect to automobiles under the Michigan Uniform Commercial Code, MCLA 440.2104; MSA 19.2104.

64. The 2001 Tribute was subject to implied warranties of merchantability under MCLA 440.2862, running from the Manufacturer and the Lessor to the benefit of Plaintiff.

65. The 2001 Tribute was not fit for the ordinary purpose for which such goods are used.

66. The defects and problems hereinbefore described rendered the 2001 Tribute unmerchantable.

67. The Manufacturer and Lessor failed to adequately remedy the defects in the 2001 Tribute and the 2001 Tribute continued to be in an unmerchantable condition at the time of revocation.

WHEREFORE, Plaintiff prays for judgment against Manufacturer and Lessor:

A. Declaring acceptance has been properly revoked and for damages incurred in revoking acceptance;

B. For damages occasioned by the breach of the implied warranty;

C. For a refund of the lease payments (rent) and security deposit paid by Plaintiff for the 2001 Tribute;

D. To cancel the lease contract covering the 2001 Tribute and pay off the balance on the same;

E. For incidental and consequential damages, and actual damages for breach of warranty;

F. For costs, interest and actual attorneys' fees; and

G. For such other equitable relief this Court deems appropriate.

COUNT VI
REVOCATION OF ACCEPTANCE

68. Plaintiff incorporates herein by reference each and every allegation contained in Paragraphs 1 through 67 as though herein fully restated and realleged.

69. Plaintiff accepted the 2001 Tribute without discovering the above defects due to the fact Plaintiff was reasonably induced to accept the vehicle by the difficulty of discovery of the above defects.

70. In the alternative, Plaintiff reasonably assumed , and Manufacturer and Lessor represented, that all of the aforesaid defects and/or nonconformities would be cured within a reasonable time.

71. After numerous attempts by Defendants to cure, it has become apparent the nonconformities could not be seasonably cured.

72. The nonconformities substantially impair the value of the 2001 Tribute to the Plaintiff.

73. Plaintiff has previously notified Manufacturer and Lessor of the nonconformities and Plaintiff's intent to revoke acceptance pursuant to MCLA 440.2967 and demanded the refund of Plaintiff's lease payments (rent) and security interest for the 2001 Tribute and out-of-pocket expenses (see copy of Plaintiff's revocation of acceptance letter attached as Exhibit C).

74. Manufacturer and Lessor have nevertheless refused to accept return of the 2001 Tribute and have refused to refund any part of the sum equal to the lease payments (rent) and security interest and out-of-pocket expenses incurred by Plaintiff.

WHEREFORE, Plaintiff prays for judgment against Manufacturer and Lessor:

A. Declaring acceptance has been properly revoked by Plaintiff and for damages incurred in revoking acceptance;

B. For a refund of the lease payments (rent) and security deposit paid by Plaintiff for the 2001 Tribute;

C. To cancel the lease contract covering the 2001 Tribute and pay off the balance on the same;

D. For incidental and consequential damages, and actual damages for breach of warranty;

E. For costs, interest and actual attorneys' fees; and

F. For such other equitable relief this Court deems appropriate.

COUNT VII
BREACH OF WRITTEN WARRANTY UNDER MAGNUSON-MOSS WARRANTY ACT

75. Plaintiff incorporates herein by reference each and every allegation contained in Paragraphs 1 through 74 as though herein fully restated and realleged.

76. Plaintiff is a "consumer" as defined in the Magnuson-Moss Warranty Act (hereinafter referred to as the "Warranty Act") 15 USC 2301(3).

77. The Lessor is a "supplier" and "warrantor" as defined by the Warranty Act, 15 USC 2301(4) and (5).

78. The Manufacturer is a "supplier" and "warrantor" as defined by the Warranty Act, 15 USC 2301(4) and (5).

79. The 2001 Tribute is a "consumer product" as defined in the Warranty Act, 15 USC 2301(1).

80. The 2001 Tribute was manufactured, sold and purchased after July 4, 1975.

81. The express warranty given by the Manufacturer pertaining to the 2001 Tribute is a "written warranty" as defined in the Warranty Act, 15 USC 2301(6).

82. The Lessor is an authorized dealership/agent of the manufacturer designated to perform repairs on vehicles under Manufacturer's automobile warranties.

83. The above-described actions (failure to repair and/or properly repair the above-mentioned defects, etc.), including failure to honor the written warranty, constitute a breach of the written warranty by the Manufacturer and Lessor actionable under the Warranty Act, 15 USC 2310(d)(1) and (2).

WHEREFORE, Plaintiff prays for judgment against Manufacturer and Lessor:

A. Declaring acceptance has been properly revoked by Plaintiff and for damages incurred in revoking acceptance;

B. For a refund of the lease payments (rent) and security deposit paid by Plaintiff for the 2001 Tribute;

C. To cancel the lease contract covering the 2001 Tribute and pay off the balance on the contract;

D. For consequential, incidental and actual damages;

E. For costs, interest and actual attorneys' fees; and

F. Such other relief this Court deems appropriate.

COUNT VIII
BREACH OF IMPLIED WARRANTY UNDER
MAGNUSON-MOSS WARRANTY ACT

84. Plaintiff incorporates herein by reference each and every allegation contained in Paragraphs 1 through 83 as though herein fully stated and realleged.

85. The above-described actions on the part of the Lessor and Manufacturer constitute a breach of the implied warranties of merchantability actionable under the Warranty Act, 15 USC 2301(7), 2308, 2310(d)(1) and (2).

WHEREFORE, Plaintiff prays for judgment against Manufacturer and Lessor:

A. Declaring acceptance has been properly revoked by Plaintiff and for damages incurred in revoking acceptance;

B. For a refund of the lease payments (rent) and security deposit paid by Plaintiff for the 2001 Tribute;

C. To cancel Plaintiff's retail installment contract and pay off the balance on the contract;

D. For consequential, incidental and actual damages;

E. For costs, interest and actual attorneys' fees; and

F. Such other relief this Court deems appropriate.

COUNT IX
VIOLATION OF THE MICHIGAN CONSUMER PROTECTION ACT
MCLA 445.901 ET SEQ; MSA 19.418(1) ET SEQ.

86. Plaintiff incorporates herein by reference each and every allegation contained in Paragraphs 1 through 85 as though herein fully restated and realleged.

87. Plaintiff is a "person" within the meaning of MCLA 445.902(c); MSA 19.418(2)(c).

88. Manufacturer and Lessor are engaged in "trade or commerce" as defined in MCLA 445.902(d).

89. The Manufacturer and Lessor have engaged in unlawful, unfair, unconscionable, or deceptive methods, acts or practices, including but not limited to:

(a) The Manufacturer and Lessor represented to Plaintiff the 2001 Tribute and the warranty thereof had characteristics, uses, benefits, qualities, and standards which they did not actually have.

(b) The Manufacturer and Lessor represented to Plaintiff the 2001 Tribute and the warranty thereof were of a particular quality and standard and they were not.

(c) If Plaintiff allegedly waived a right, benefit, or immunity provided by law in purchasing the 2001 Tribute, the Manufacturer and Lessor have failed to clearly state the terms of such waiver and Plaintiff has not specifically consented to such waiver.

(d) The Manufacturer and Lessor have failed to restore an amount equal to Plaintiff's down payment and other payments made by Plaintiff on the 2001 Tribute.

(e) The Manufacturer and Lessor have made gross discrepancies between the oral representations to Plaintiff and written agreements covering the same transaction relative to the 2001 Tribute and the Manufacturer failed to provide the promised benefits to Plaintiff with regard thereto.

(f) The Manufacturer and Lessor have made representations of fact and/or statements of fact material to said transaction such that the Plaintiff reasonably believed that the represented or suggested standard, quality, characteristics, and uses of the 2001 Tribute to be other than they actually were.

(g) The Manufacturer and Lessor have made representations of fact and/or statements of fact material to such transaction such that the Plaintiff reasonably believed that the represented or suggested service to the 2001 Tribute to be other than it actually was.

(h) The Manufacturer and Lessor have failed to provide the promised benefits to Plaintiff with regard to the sale of the 2001 Tribute to Plaintiff.

90. The Plaintiff has suffered loss and damages as a result of the aforesaid violations of the Consumer Protection Act.

WHEREFORE, Plaintiff prays this Court enter a declaratory judgment as to the violations of the Michigan Consumer Protection Act and for judgment against Manufacturer and Lessor for all damages Plaintiff has incurred, including reasonable attorneys' fees as provided by statute, together with interest, costs and expenses of this suit, and such other relief as this Court deems appropriate and equitable.

COUNT X
BREACH OF CONTRACT

91. Plaintiff incorporates herein by reference each and every allegation contained in Paragraphs 1 through 90 as though herein fully restated and realleged.

92. An express limited warranty covering 36 months or 36,000 miles of use, whichever occurred first, accompanied the delivery of the 2001 Tribute to Plaintiff. The limited warranty provided the Lessor would repair or adjust all parts (except tires) found to be defective in factory-supplied materials or workmanship.

93. The limited warranty, given by the Manufacturer and adopted by the Lessor when the Lessor serviced and repaired the 2001 Tribute created a contractual relationship between the Manufacturer/Lessor and Plaintiff.

94. The Manufacturer and Lessor have breached the express limited warranty contract in that they have failed to repair or adjust defective parts covered under the limited warranty, have failed to do the same within the limited warranty coverage period, and within a reasonable time.

WHEREFORE, Plaintiff prays for judgment against all Defendants:

A. Damages incurred by Plaintiff created by Defendants' breach of contract, including all monies paid for the lease of the 2001 Tribute;

B. For incidental, consequential, exemplary and actual damages;

C. For costs and expenses, interest, and actual attorneys' fees; and

D. Such other relief this Court deems appropriate.

COUNT XI
RESCISSION OF CONTRACT

95. Plaintiff incorporates herein by reference each and every allegation contained in Paragraphs 1 through 94 as though herein fully restated and realleged.

96. An express limited warranty covering 36 months or 36,000 miles of use, whichever occurred first, accompanied the delivery of the 2001 Tribute to Plaintiff. The limited warranty provided the Lessor would repair or adjust all parts (except tires) found to be defective in factory-supplied materials or workmanship.

97. The limited warranty, given by the Manufacturer and adopted by the Lessor when the Lessor serviced and repaired the 2001 Tribute created a contractual relationship between the Manufacturer/Lessor and Plaintiff.

98. The Manufacturer and Lessor have breached the express limited warranty contract in that they have failed to repair or adjust defective parts covered under the limited warranty, have failed to do the same within the limited warranty coverage period, and within a reasonable time.

99. The actions of the Manufacturer and Lessor have resulted in a failure of consideration justifying the rescission of the contract.

100. Without a judicial declaration that the contract has been rescinded, Plaintiff will suffer irreparable and substantial harm if the consideration paid by Plaintiff and damages sustained by Plaintiff, together with interest, are not restored.

WHEREFORE, Plaintiff prays for judgment and the following relief against all Defendants:

A. That this Court order a rescission of the lease contract covering the 2001 Tribute by ordering Defendants to refund all monies paid by Plaintiff and ordering Plaintiff to return the 2001 Tribute to the Defendants;

B. Damages incurred by Plaintiff created by Defendants' breach of contract, including all monies paid for the lease of the 2001 Tribute;

C. For incidental, consequential, exemplary and actual damages;

D. For costs and expenses, interest, and actual attorneys' fees; and

E. Such other relief this Court deems appropriate.

COUNT XII
VIOLATION OF NEW MOTOR VEHICLE WARRANTIES ACT;
MCL 257.1401 ET SEQ; MSA 9.2705

101. Plaintiff incorporates herein by reference each and every allegation contained in Paragraphs 1 through 100 as though herein fully restated and realleged.

102. Plaintiff is a "consumer" under the Michigan New Motor Vehicle Warranties Act (hereinafter referred to as "Lemon Law"), MCL 257.1401(a).

103. Manufacturer, is a "manufacturer" under the Lemon Law, MCL 257.1401(d).

104. The 2001 Tribute is a "motor vehicle" under the Lemon Law, MCL 257.1401(f).

105. The 2001 Tribute is a "new motor vehicle" under the Lemon Law, MCL 257.1401(g).

106. The express warranty given by Manufacturer, covering the 2001 Tribute is a "manufacturer's express warranty" under the Lemon Law, MCLA 257.1401(e).

107. The Lessor is a "new motor vehicle dealer" under the Lemon Law, MCLA 257.1401(h).

108. Plaintiff's 2001 Tribute has been subject to a reasonable number of repair attempts for the aforementioned defects:

(a) Said motor vehicle has been subject to at least four repair attempts by Defendant Manufacturer, through its new motor vehicle dealers, within 2 years of the date of the first attempt to repair the defect or condition; and/or

(b) Said vehicle was out of service for 30 or more days within the time limit of the Manufacturer's express warranty and within one year from the date of delivery to Plaintiff.

109. After notifying Manufacturer of the aforementioned defects following the third repair attempt and/or 25 days in a repair facility, the Manufacturer was allowed a final repair attempt.

110. Manufacturer's attempted repair was unsuccessful as the 2001 Tribute continues to manifest the aforementioned defects.

111. The aforementioned defects substantially impair the use or value of the 2001 Tribute to the Plaintiff and/or prevent the 2001 Tribute from conforming to the Manufacturer's express warranty.

WHEREFORE, Plaintiff prays for the following relief:

A. Replacement of the 2001 Tribute with a comparable replacement motor vehicle currently in production and acceptable to Plaintiff; or

B. Manufacturer must accept return of the vehicle and refund to Plaintiff the lease price including options or other modifications installed or made by or for manufacturer, the amount of all charges made by or for Manufacturer, towing charges and rental costs less a reasonable allowance for Plaintiff's use of the vehicle. In addition, pursuant to MCL 257.1403(4), the Manufacturer must pay off the balance on the retail installment contract unless consumer accepts a vehicle of comparable value.

C. Pursuant to MCL 257.1407, Plaintiff is entitled to a sum equal to the aggregate amount of costs and expenses, including attorneys' fees based on actual time expended by Plaintiff's attorney in commencement and prosecution of this action.

D. Incidental and consequential damages.

E. For prejudgment interest.

F. For such other and further relief as may be justified in this action.

COUNT XIII
VIOLATION OF THE MOTOR VEHICLE SERVICE AND REPAIR ACT
MCLA 257.1301, ET SEQ.

112. Plaintiff incorporates herein by reference each and every allegation contained in Paragraphs 1 through 111 as though fully restated and realleged.

113. The Lessor is a "motor vehicle repair facility" as defined by MCLA 257.1302(g)

114. The Lessor is subject to the Motor Vehicle Service And Repair Act, MCLA 257.1301, et seq.

115. The Lessor has engaged or attempted to engage in methods, acts, or practices which were unfair or deceptive under said Act and/or the rules in effect during the relevant time period herein pursuant to MCLA 257.1307, 257.1334, 157,1335, 257.1336, and 257.1337; and Michigan Administrative Rules 257.131 through 257.137 including, but not limited to:

(a) Failing to reveal material facts, the omission of which tends to mislead or deceive the Plaintiff and which facts could not reasonably be known by Plaintiff;

(b) Allowing Plaintiff to sign an acknowledgement, certificate or other writing which affirms acceptance, delivery, compliance with a requirement of law, or other performance, when the Lessor, knows or had reason to know that the statement is not true;

(c) Failing to promptly restore to the Plaintiff entitled thereto any deposit, down payment, or other payment when a contract is rescinded, canceled, or otherwise terminated in accordance with the terms of the contract or the Act;

(d) Failing upon return of the vehicle to the Plaintiff to give a written statement of repairs to the Plaintiff which discloses:

(i) Repairs or services performed, including a detailed identification of all parts that were replaced and a specification as to which are new, used, rebuilt, or reconditioned; and

(ii) A certification that authorized repairs were completely proper or a detailed explanation of an inability to complete repairs properly, to be signed by the owner of the facility or by a person designated by the owner to represent the facility and showing the name of the mechanic who performed the diagnosis and the repair.

116. As a result of the Lessor's actions Plaintiff has suffered damages as set forth in the preceding Counts and is also entitled to statutory damages and attorneys' fees as provided in the Motor Vehicle Service and Repair Act, specifically MCLA 257.1336.

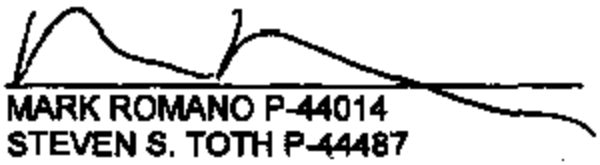
WHEREFORE, Plaintiff prays for a judgment against the Lessor in an amount to be determined by the trier of fact, but to exceed TWENTY FIVE THOUSAND DOLLARS ($25,000.00), plus double damages and costs and reasonable attorneys' fees, and for such other and further relief as the Court deems appropriate.

JURY DEMAND

Plaintiff demands trial by jury on all issues triable as such.

Respectfully submitted,

CONSUMER LEGAL SERVICES, P.C.

By: 

MARK ROMANO P-44014
STEVEN S. TOTH P-44487
Attorneys for Plaintiff
30928 Ford Road
Garden City, MI 48135
(734) 261-4700

Dated: December 24, 2002

Craig Thor Kimmel, Esquire
Identification No. 57100
KIMMEL & SILVERMAN, P.C.
30 East Butler Pike
Ambler, PA 19002
(215) 540-8888

ATTORNEY FOR PLAINTIFFS
THIS IS AN ARBITRATION MATTER. ASSESSMENT OF DAMAGES HEARING IS REQUESTED.

IRIS JACOBS AND MARLA BINDER 600 Paoli Point Drive New Paoil, Pennsylvania 19301 v. MAZDA MOTOR AMERICA 7755 Irvine Center Drive P.O. Box 19734 Irvine, California 92713-9734	COURT OF COMMON PLEAS PHILADELPHIA COUNTY CIVIL ACTION

COMPLAINT
CODE: 1900

1. Plaintiffs, Iris Jacobs and Marla Binder, are adult individual citizens and legal residents of the Commonwealth of Pennsylvania, 600 Paoli Point Drive, New Paoil, Pennsylvania 19301.

2. Defendant, Mazda Motor of America, Inc., is a business corporation qualified to do business and regularly conduct business in the Commonwealth of Pennsylvania, and is a corporation of the State of California, with its legal residence and principal place of business located at 7755 Irvine Center Drive, P.O. Box 19734, Irvine, CA, 92713-9734, and can be served at same.

BACKGROUND

3. On or about August 27, 2001, Plaintiffs purchased a new 2001 Mazda tRIBUTE, manufactured and warranted by Defendant, bearing the Vehicle Identification Number 4F2YU08121KM70248.

4. The vehicle was purchased in the Commonwealth of Pennsylvania and is registered in the Commonwealth of Pennsylvania.

5. The contract price of the vehicle, including registration charges, document fees, sales tax, finance and bank charges, but excluding other collateral charges not specified, yet defined by the Lemon Law, totaled more than $18,707.88. A true and correct copy of the contract is attached hereto, made a part hereof, and marked Exhibit "A".

6. In consideration for the purchase of said vehicle, Defendant issued to Plaintiffs several warranties, guarantees, affirmations or undertakings with respect to the material or workmanship of the vehicle and/or remedial action in the event the vehicle fails to meet the promised specifications.

7. The above-referenced warranties, guarantees, affirmations or undertakings are/were part of the basis of the bargain between Defendant and Plaintiffs.

8. The parties' bargain includes an express 3-year / 50,000 mile warranty, as well as other guarantees, affirmations and undertakings as stated in Defendant's warranty materials and owner's manual.

9. However, as a result of the ineffective repair attempts made by Defendant through its authorized dealer(s), the vehicle is rendered substantially impaired, unable to be utilized for its intended purposes, and is worthless to Plaintiffs.

10. Plaintiffs have or may have resorted to Defendant's informal dispute settlement procedure, to the extent said procedure complies with 16 CFR 703.

11. Plaintiffs aver that the Federal Trade Commission (FTC) has determined that no automobile manufacturer complies with 16 CFR 703. See, Fed. Reg. 15636, Vol. 62, No. 63 (Apr. 2, 1997)

COUNT I
PENNSYLVANIA AUTOMOBILE LEMON LAW

12. Plaintiffs hereby incorporate all facts and allegations set forth in this Complaint by reference as if fully set forth at length herein.

13. Plaintiffs are "Purchasers" as defined by 73 P.S. §1952.

14. Defendant is a "Manufacturer" as defined by 73 P.S. §1952.

15. Pacifico Mazda is and/or was at the time of sale a Motor Vehicle Dealer in the business of buying, selling, and/or exchanging vehicles as defined by 73 P.S. §1952.

16. On or about August 27, 2001, Plaintiffs took possession of the above mentioned vehicle and experienced nonconformities as defined by 73 P.S §1951 et seq., which substantially impair the use, value and/or safety of the vehicle.

17. The nonconformities described violate the express written warranties issued to Plaintiffs by Defendant.

18. Section 1955 of the Pennsylvania Automobile Lemon Law provides:

> If a manufacturer fails to repair or correct a nonconformity after a reasonable number of attempts, the manufacturer shall, at the option of the purchaser, replace the motor vehicle... or accept return of the vehicle from the purchaser, and refund to the purchaser the full purchase price, including all collateral charges, less a reasonable allowance for the purchasers use of the vehicle, not exceeding $.10 per mile driven or 10% of the purchase price of the vehicle, whichever is less.

19. Section 1956 of the Pennsylvania Automobile Lemon Law provides a presumption of a reasonable number of repair attempts if:

> (1) The same nonconformity has been subject to repair three times by the manufacturer, its agents or authorized dealers and the nonconformity still exists; or
>
> (2) The vehicle is out-of-service by reason of any nonconformity for a cumulative total of thirty or more calendar days.

20. Plaintiffs have satisfied the above definition as the vehicle has been subject to repair more than three (3) times for the same nonconformity, and the nonconformity remained uncorrected.

21. In addition, the above vehicle has or will be out-of-service by reason of the nonconformities complained of for a cumulative total of thirty (30) or more calendar days.

22. Plaintiffs have delivered the nonconforming vehicle to an authorized service and repair facility of the Defendant on numerous occasions as outlined below.

23. After a reasonable number of attempts, Defendant was unable to repair the nonconformities.

24. During the first 12 months and/or 12,000 miles, Plaintiffs complained on at least three (3) occasions about defects and or non-conformities to the following vehicle components: engine and stalling condition. True and correct copies of all invoices in Plaintiffs possession are attached hereto, made a part hereof, and marked Exhibit "B".

25. Plaintiffs aver the vehicle has been subject to additional repair attempts for defects and conditions for which Defendant's warranty dealer did not provide or maintain itemized statements as required by 73 P.S. § 1957.

26. Plaintiffs aver that such itemized statements, which were not provided as required by 73 P.S. § 1957 also include technicians' notes of diagnostic procedures and repairs, and Defendant's Technical Service Bulletins relating to this vehicle.

27. Plaintiffs aver the vehicle has been subject to additional repair attempts for defects and conditions for which Defendant's warranty dealer did not provide the notification required by 73 P.S. § 1957.

28. Plaintiffs have and will continue to suffer damages due to Defendant's failure to comply with the provisions of 73 P.S. §§ 1954 (repair obligations), 1955 (manufacturer's duty for refund or replacement), and 1957 (itemized statements required).

29. Pursuant to 73 P.S. § 1958, Plaintiffs seek relief for losses due to the vehicle's nonconformities, including the award of reasonable attorneys' fees and all court costs.

WHEREFORE, Plaintiffs respectfully demand judgment against Defendant in an amount equal to the price of the subject vehicle, plus all collateral charges, attorneys' fees, and court costs.

COUNT II
MAGNUSON-MOSS (FTC) WARRANTY IMPROVEMENT ACT

30. Plaintiffs hereby incorporate all facts and allegations set forth in this Complaint by reference as if fully set forth at length herein.

31. Plaintiffs are "Consumers" as defined by 15 U.S.C. §2301(3).

32. Defendant is a "supplier", "warrantor", and a "service contractor" as defined by 15 U.S.C. § 2301 (4),(5) and (8).

33. The subject vehicle is a "consumer product" as defined by 15 U.S.C. § 2301(1).

34. By the terms of its written warranties, affirmations, promises, or service contracts, Defendant agreed to perform effective repairs at no charge for parts and/or labor.

35. The Magnuson-Moss Warranty Improvement Act requires Defendant to be bound by all warranties implied by state law. Said warranties are imposed on all transactions in the state in which the vehicle was delivered.

36. Defendant has made attempts on several occasions to comply with the terms of its express warranties; however, such repair attempts have been ineffective.

37. The Magnuson-Moss Warranty Improvement Act, 15 U.S.C. §2310(d)(2) provides:

> If a consumer finally prevails on an action brought under paragraph (1) of this subsection, he may be allowed by the court to recover as part of the judgment a sum equal to the amount of aggregate amount of costs and expenses (including attorney fees based upon actual time expended), determined by the court to have been reasonably incurred by the Plaintiff for, or in connection with the commencement and prosecution of such action, unless the court, in its discretion shall determine that such an award of attorney's fees would be inappropriate.

38. Plaintiffs have afforded Defendant a reasonable number of opportunities to conform the vehicle to the aforementioned express warranties, implied warranties and contracts.

39. As a direct and proximate result of Defendant's failure to comply with the express written warranties, Plaintiffs have suffered damages and, in accordance with 15 U.S.C. §2310(d)(1), Plaintiffs are entitled to bring suit for such damages and other legal and equitable relief.

40. Defendant's failure is a breach of Defendant's contractual and statutory obligations constituting a violation of the Magnuson-Moss Warranty Improvement Act, including but not limited to: breach of express warranties; breach of implied warranty of merchantability; breach of implied warranty of fitness for a particular purpose; breach of contract; and constitutes an Unfair Trade Practice.

41. Plaintiffs aver Defendant's Dispute Resolution Program is not in compliance with 16 CFR 703 by the FTC for the period of time this claim was submitted.

42. Plaintiffs aver that upon successfully prevailing upon the Magnuson-Moss claim herein, all attorney fees are recoverable and are demanded against Defendant.

WHEREFORE, Plaintiffs respectfully demand judgment against Defendant in an amount equal to the price of the subject vehicle, plus all collateral charges, incidental and consequential damages, reasonable attorneys' fees, and all court costs.

COUNT III
PENNSYLVANIA UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION LAW

43. Plaintiffs hereby incorporate all facts and allegations set forth in this Complaint by reference as if fully set forth at length herein.

44. Plaintiffs are "Persons" as defined by 73 P.S. §201-2(2).

45. Defendant is a "Person" as defined by 73 P.S. §201-2(2).

46. Section 201-9.2(a) of the Act authorizes a private cause of action for any person "who purchases or leases goods or services primarily for personal, family or household purposes."

47. Section 1961 of the Pennsylvania Automobile Lemon Law, provides that a violation of its provisions shall automatically constitute a violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Act, 73 P.S. 201-1 et seq.

48. In addition, the Pennsylvania Unfair Trade Practices and Consumer Protection Act, 73 P.S. §201-2(4), defines "unfair or deceptive acts or practices" to include the following conduct:

> (vii). Representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if they are of another;
>
> (xiv). Failing to comply with the terms of any written guarantee or warranty given to the buyer at, prior to, or after a contract for the purchase of goods or services is made;
>
> (xv). Knowingly misrepresenting that services, replacements or repairs are needed if they are not needed;
>
> (xvi). Making repairs, improvements or replacements on tangible, real or personal property of a nature or quality inferior to or below the standard of that agreed to in writing;
>
> (xvii). Engaging in any other fraudulent conduct which creates a likelihood of confusion or of misunderstanding.

49. Plaintiffs aver Defendant has violated these, as well as other provisions, of 73 P.S. §201-2 et seq.

50. Section 201-3.1 of the Act provides that the Automotive Industry Trade Practice rules and regulations adopted by the Attorney General for the enforcement of this Act shall constitute additional violations of the Act.

51. Defendant's conduct surrounding the sale and servicing of the subject vehicle falls within the aforementioned definitions of "unfair or deceptive acts or practices."

52. The Act also authorizes the Court, in its discretion, to award up to three (3) times the actual damages sustained for violations.

WHEREFORE, Plaintiffs respectfully demand judgment against Defendant in an amount not in excess of Fifty Thousand Dollars ($50,000.00), together with all collateral charges, attorneys' fees, all court costs and treble damages.

KIMMEL & SILVERMAN, P.C.

By: _____

CRAIG THOR KIMMEL, ESQUIRE
Attorney for Plaintiffs
30 East Butler Pike
Ambler, Pennsylvania 19002
(215) 540-8888

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

A0207372

BLAINE KIENKER
8616 Manitoba
Cincinnati, Ohio 45255

Case No.

and

NANCY KIENKER
8616 Manitoba
Cincinnati, Ohio 45255

Plaintiffs

vs.

COMPLAINT AND JURY DEMAND

MAZDA MOTOR AMERICA, INC.
c/o CT Corporate Systems
1300 E. Ninth St.
Suite 1010
Cleveland, Ohio 44114

Defendant

Now comes the Plaintiffs, by and through counsel, and for their complaint in the above captioned matter state as follows:

FIRST CAUSE OF ACTION

1. On information and belief, defendant is a California Corporation licensed to do business in the State of Ohio and doing business by importing and/or distributing new automobiles to the general public.

2. At all times complained of herein defendant was a manufacturer as that term is defined in Ohio Revised Code §1345.71.

3. At all times complained of herein plaintiffs were consumers as that term is defined in Ohio Revised Code §1345.71.

4. At all times complained of herein Jeff Wyler Mazda Inc. was a dealer of defendant authorized to sell new Mazda motor vehicles and to perform warranty repairs on Mazda motor vehicles.

5. On or about July 20, 2002 Plaintiff purchased from defendant's authorized dealer, a 2002 Mazda Tribute motor vehicle, Serial No.: 4F2CU08122KM57213.

6. Within the first twelve (12) months of ownership and/or 18,000 miles of operation plaintiffs have discovered that certain non-conformities exist within the vehicle and have presented the vehicle to defendant's authorized dealer requesting that said non-conformities be repaired.

7. Plaintiffs have presented the vehicle to defendant's authorized dealer, on three (3) occasions requesting that it repair a non-conformity, which substantially impairs the use, value and/or safety of the vehicle, and said non-conformity continues to exist.

8. Plaintiffs' vehicle has been out of service by reason of said non-conformities for a cumulative total of 30 days.

9. Plaintiffs' vehicle has been presented to defendant's authorized dealer on 8 occasions to repair non-conformities which impair the use or value of the vehicle and said non-conformities still exist.

10. There has been at least one attempt to repair a non-conformity that results in a condition that is likely to cause death or serious bodily injury if the vehicle is driven and the non-conformity continues to exist.

11. Pursuant to Ohio Revised Code §1345.72 plaintiffs are entitled to rescind the transaction and recover from the defendant the full purchase price, all collateral charges, all finance charges, and all incidental damages plus reasonable attorney's fees.

SECOND CAUSE OF ACTION

12. Plaintiffs reallege the allegations contained in paragraphs 1 through 11 as if fully rewritten here.

13. At all times complained of herein plaintiffs were consumers as that term is defined in 15 U.S.C. Section 2301.

14. At all times complained of herein defendant was a warrantor as that term is defined in 15 U.S.C. Section 2301.

15. As part of the purchase of the motor vehicle previously alleged, plaintiffs received written express warranties from the defendant covering the vehicle.

16. Plaintiffs have within the applicable express warranty period presented the vehicle to defendant's authorized dealers requesting that the dealers make repairs under the warranties between plaintiffs and defendant.

17. Defendant has breached its express warranties with plaintiffs by failing to repair plaintiffs' vehicle within a reasonable number of repair attempts and pursuant to 15 U.S.C. Section 2304, plaintiffs are entitled to rescind the transaction and recover all purchase monies paid plus reasonable attorney's fees.

THIRD CAUSE OF ACTION

18. Plaintiffs reallege the allegations contained in paragraphs 1 through 17 as if fully rewritten here.

19. Defendant warranted that the vehicle purchased by the plaintiffs would be free of defects for a period of three years or thirty-six thousand miles.

20. Within the express warranty period plaintiffs have requested that defendant's authorized dealers repair their vehicle to conform the vehicle to defendant's express warranties.

21. Defendant has breached its warranty by failing to conform the vehicle to the express warranties covering the vehicle.

22. The warranties covering plaintiffs' vehicle have failed of their essential purpose and plaintiffs are entitled to rescind the purchase of their vehicle and recover all monies paid plus reasonable attorney's fees.

WHEREFORE, plaintiffs demands judgment against defendant rescinding the transaction, a complete refund of all monies paid, plus reasonable attorney's fees and costs.

DEREK W. GUSTAFSON 0005144
Attorney for Plaintiffs
1919 Kroger Building
1014 Vine St.
Cincinnati, OH 45202
(513) 241-7880

JURY DEMAND

Plaintiffs hereby demand a trial by jury on all issues so triable.

DEREK W. GUSTAFSON 0005144
Attorney for Plaintiffs

Craig Thor Kimmel, Esquire
Identification No. 57100
Amy D. Cox, Esquire
Identification No. 85682
KIMMEL & SILVERMAN, P.C.
30 East Butler Pike
Ambler, PA 19002
(215) 540-8888

ATTORNEYS FOR PLAINTIFF

THIS IS AN ARBITRATION MATTER. ASSESSMENT OF DAMAGES HEARING IS REQUESTED.

JEFFERY P. KOHL
4 Stowden Drive
Greensburg, Pennsylvania 15601

v.

MAZDA MOTOR AMERICA
7755 Irvine Center Drive
P.O. Box 19734
Irvine, California 92713-9734

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

CIVIL ACTION

COMPLAINT
CODE: 1900

1. Plaintiff, Jeffery P. Kohl, is an adult individual citizen and legal resident of the Commonwealth of Pennsylvania, 4 Stowden Drive, Greensburg, Pennsylvania 15601.

2. Defendant, Mazda Motor of America, Inc., is a business corporation qualified to do business and regularly conduct business in the Commonwealth of Pennsylvania, and is a corporation of the State of California, with its legal residence and principal place of business located at 7755 Irvine Center Drive, P.O. Box 19734, Irvine, CA, 92713-9734, and can be served at same.

BACKGROUND

3. On or about August 28, 2001, Plaintiff purchased a new 2001 Mazda Tribute, manufactured and warranted by Defendant, bearing the Vehicle Identification Number 4F2CU08141KM70598.

4. The vehicle was purchased in the Commonwealth of Pennsylvania and is registered in the Commonwealth of Pennsylvania.

5. The contract price of the vehicle, including registration charges, document fees, sales tax, finance and bank charges, but excluding other collateral charges not specified, yet defined by the Lemon Law, totaled more than $24,558.51. A true and correct copy of the contract is attached hereto, made a part hereof, and marked Exhibit "A".

6. In consideration for the purchase of said vehicle, Defendant issued to Plaintiff several warranties, guarantees, affirmations or undertakings with respect to the material or workmanship of the vehicle and/or remedial action in the event the vehicle fails to meet the promised specifications.

7. The above-referenced warranties, guarantees, affirmations or undertakings are/were part of the basis of the bargain between Defendant and Plaintiff.

8. The parties' bargain includes an express 3-year / 50,000 mile warranty, as well as other guarantees, affirmations and undertakings as stated in Defendant's warranty materials and owner's manual.

9. However, as a result of the ineffective repair attempts made by Defendant through its authorized dealer(s), the vehicle is rendered substantially impaired, unable to be utilized for its intended purposes, and is worthless to Plaintiff.

10. Plaintiff has or may have resorted to Defendant's informal dispute settlement procedure, to the extent said procedure complies with 16 CFR 703.

11. Plaintiff avers that the Federal Trade Commission (FTC) has determined that no automobile manufacturer complies with 16 CFR 703. See, Fed. Reg. 15636, Vol. 62, No. 63 (Apr. 2, 1997)

COUNT I
PENNSYLVANIA AUTOMOBILE LEMON LAW

12. Plaintiff hereby incorporates all facts and allegations set forth in this Complaint by reference as if fully set forth at length herein.

13. Plaintiff is a "Purchaser" as defined by 73 P.S. §1952.

14. Defendant is a "Manufacturer" as defined by 73 P.S. §1952.

15. Smail Automotive is and/or was at the time of sale a Motor Vehicle Dealer in the business of buying, selling, and/or exchanging vehicles as defined by 73 P.S. §1952.

16. On or about August 28, 2001, Plaintiff took possession of the above mentioned vehicle and experienced nonconformities as defined by 73 P.S §1951 et seq., which substantially impair the use, value and/or safety of the vehicle.

17. The nonconformities described violate the express written warranties issued to Plaintiff by Defendant.

18. Section 1955 of the Pennsylvania Automobile Lemon Law provides:

> If a manufacturer fails to repair or correct a nonconformity after a reasonable number of attempts, the manufacturer shall, at the option of the purchaser, replace the motor vehicle... or accept return of the vehicle from the purchaser, and refund to the purchaser the full purchase price, including all collateral charges, less a reasonable allowance for the purchasers use of the vehicle, not exceeding $.10 per mile driven or 10% of the purchase price of the vehicle, whichever is less.

19. Section 1956 of the Pennsylvania Automobile Lemon Law provides a presumption of a reasonable number of repair attempts if:

> (1) The same nonconformity has been subject to repair three times by the manufacturer, its agents or authorized dealers and the nonconformity still exists; or
>
> (2) The vehicle is out-of-service by reason of any nonconformity for a cumulative total of thirty or more calendar days.

20. Plaintiff has satisfied the above definition as the vehicle has been subject to repair more than three (3) times for the same nonconformity, and the nonconformity remained uncorrected.

21. In addition, the above vehicle has or will be out-of-service by reason of the nonconformities complained of for a cumulative total of thirty (30) or more calendar days.

22. Plaintiff has delivered the nonconforming vehicle to an authorized service and repair facility of the Defendant on numerous occasions as outlined below.

23. After a reasonable number of attempts, Defendant was unable to repair the nonconformities.

24. During the first 12 months and/or 12,000 miles, Plaintiff complained on at least three (3) occasions about defects and or non-conformities to the following vehicle components:

inoperable heating system; radio; engine and stalling condition. True and correct copies of all invoices in Plaintiff possession are attached hereto, made a part hereof, and marked Exhibit "B".

25. Plaintiff avers the vehicle has been subject to additional repair attempts for defects and conditions for which Defendant's warranty dealer did not provide or maintain itemized statements as required by 73 P.S. § 1957.

26. Plaintiff avers that such itemized statements, which were not provided as required by 73 P.S. § 1957 also include technicians' notes of diagnostic procedures and repairs, and Defendant's Technical Service Bulletins relating to this vehicle.

27. Plaintiff avers the vehicle has been subject to additional repair attempts for defects and conditions for which Defendant's warranty dealer did not provide the notification required by 73 P.S. § 1957.

28. Plaintiff has and will continue to suffer damages due to Defendant's failure to comply with the provisions of 73 P.S. §§ 1954 (repair obligations), 1955 (manufacturer's duty for refund or replacement), and 1957 (itemized statements required).

29. Pursuant to 73 P.S. § 1958, Plaintiff seeks relief for losses due to the vehicle's nonconformities, including the award of reasonable attorneys' fees and all court costs.

WHEREFORE, Plaintiff respectfully demands judgment against Defendant in an amount equal to the price of the subject vehicle, plus all collateral charges, attorneys' fees, and court costs.

COUNT II
MAGNUSON-MOSS (FTC) WARRANTY IMPROVEMENT ACT

30. Plaintiff hereby incorporates all facts and allegations set forth in this Complaint by reference as if fully set forth at length herein.

31. Plaintiff is a "Consumer" as defined by 15 U.S.C. §2301(3).

32. Defendant is a "supplier", "warrantor", and a "service contractor" as defined by 15 U.S.C. § 2301 (4),(5) and (8).

33. The subject vehicle is a "consumer product" as defined by 15 U.S.C. § 2301(1).

34. By the terms of its written warranties, affirmations, promises, or service contracts, Defendant agreed to perform effective repairs at no charge for parts and/or labor.

35. The Magnuson-Moss Warranty Improvement Act requires Defendant to be bound by all warranties implied by state law. Said warranties are imposed on all transactions in the state in which the vehicle was delivered.

36. Defendant has made attempts on several occasions to comply with the terms of its express warranties; however, such repair attempts have been ineffective.

37. The Magnuson-Moss Warranty Improvement Act, 15 U.S.C. §2310(d)(2) provides:

> If a consumer finally prevails on an action brought under paragraph (1) of this subsection, he may be allowed by the court to recover as part of the judgment a sum equal to the amount of aggregate amount of costs and expenses (including attorney fees based upon actual time expended), determined by the court to have been reasonably incurred by the Plaintiff for, or in connection with the commencement and prosecution of such action, unless the court, in its discretion shall determine that such an award of attorney's fees would be inappropriate.

38. Plaintiff has afforded Defendant a reasonable number of opportunities to conform the vehicle to the aforementioned express warranties, implied warranties and contracts.

39. As a direct and proximate result of Defendant's failure to comply with the express written warranties, Plaintiff has suffered damages and, in accordance with 15 U.S.C. §2310(d)(1), Plaintiff is entitled to bring suit for such damages and other legal and equitable relief.

40. Defendant's failure is a breach of Defendant's contractual and statutory obligations constituting a violation of the Magnuson-Moss Warranty Improvement Act, including but not limited to: breach of express warranties; breach of implied warranty of merchantability; breach of implied warranty of fitness for a particular purpose; breach of contract; and constitutes an Unfair Trade Practice.

41. Plaintiff avers Defendant's Dispute Resolution Program is not in compliance with 16 CFR 703 by the FTC for the period of time this claim was submitted.

42. Plaintiff avers that upon successfully prevailing upon the Magnuson-Moss claim herein, all attorney fees are recoverable and are demanded against Defendant.

WHEREFORE, Plaintiff respectfully demands judgment against Defendant in an amount equal to the price of the subject vehicle, plus all collateral charges, incidental and consequential damages, reasonable attorneys' fees, and all court costs.

COUNT III
PENNSYLVANIA UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION LAW

43. Plaintiff hereby incorporates all facts and allegations set forth in this Complaint by reference as if fully set forth at length herein.

44. Plaintiff is a "Person" as defined by 73 P.S. §201-2(2).

45. Defendant is a "Person" as defined by 73 P.S. §201-2(2).

46. Section 201-9.2(a) of the Act authorizes a private cause of action for any person "who purchases or leases goods or services primarily for personal, family or household purposes."

47. Section 1961 of the Pennsylvania Automobile Lemon Law, provides that a violation of its provisions shall automatically constitute a violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Act, 73 P.S. 201-1 et seq.

48. In addition, the Pennsylvania Unfair Trade Practices and Consumer Protection Act, 73 P.S. §201-2(4), defines "unfair or deceptive acts or practices" to include the following conduct:

> (vii). Representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if they are of another;
>
> (xiv). Failing to comply with the terms of any written guarantee or warranty given to the buyer at, prior to, or after a contract for the purchase of goods or services is made;
>
> (xv). Knowingly misrepresenting that services, replacements or repairs are needed if they are not needed;
>
> (xvi). Making repairs, improvements or replacements on tangible, real or personal property of a nature or quality inferior to or below the standard of that agreed to in writing;
>
> (xvii). Engaging in any other fraudulent conduct which creates a likelihood of confusion or of misunderstanding.

49. Plaintiff avers Defendant has violated these, as well as other provisions, of 73 P.S. §201-2 et seq.

50. Section 201-3.1 of the Act provides that the Automotive Industry Trade Practice rules and regulations adopted by the Attorney General for the enforcement of this Act shall constitute additional violations of the Act.

51. Defendant's conduct surrounding the sale and servicing of the subject vehicle falls within the aforementioned definitions of "unfair or deceptive acts or practices."

52. The Act also authorizes the Court, in its discretion, to award up to three (3) times the actual damages sustained for violations.

WHEREFORE, Plaintiff respectfully demands judgment against Defendant in an amount not in excess of Fifty Thousand Dollars ($50,000.00), together with all collateral charges, attorneys' fees, all court costs and treble damages.

KIMMEL & SILVERMAN, P.C.

By:_____
CRAIG THOR KIMMEL, ESQUIRE
Attorney for Plaintiff
30 East Butler Pike
Ambler, Pennsylvania 19002
(215) 540-8888

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

GARY LORD and LOIS LORD,	§	
Plaintiffs,	§	
v.	§	Civil Action No. CV02 5569
MAZDA MOTOR OF AMERICA, INC.,	§	
Defendant.	§	
	§	

FILED IN OFFICE
SEP 16 2002
ANNE-MARIE ADAMS
Clerk

COMPLAINT

1. The Plaintiffs, Gary and Lois Lord ("the Lords") are adult residents of Jefferson County, Alabama.

2. The Defendant, Mazda Motor of America, Inc. ("Mazda") is a foreign corporation with its principal place of business located outside the state of Alabama.

3. On or about October 18, 2000, the Lords purchased a new 2001 Mazda Tribute DX (VIN # 4F2YUO717KM16218) from John Crump Motors in Jasper, Alabama.

4. Within ten (10) days of purchasing the vehicle, the Mazda Tribute DX experienced a complete electrical failure, including the loss of steering and brakes, causing the vehicle to stall.

5. After an authorized Mazda dealership was unable to determine the cause of the complete electrical failure and stalling, the Lords continued to drive the vehicle. The vehicle experienced identical electrical failures and stalling on several more

occasions over the ensuing months. On each occasion that the vehicle suffered the electrical failure, the Lords were confronted with significant risks of injury or even death as they lost the ability to steer or stop the vehicle. On at least one occasion, Mrs. Lord received personal injuries as a result of the vehicle's electrical failure and stalling.

6. Following numerous complaints and inquiries to Mazda, Mazda informed the Lords that no cause for the electrical failures could be determined. Mazda assured the Lords that the problems that they were experiencing were unique to their vehicle and that Mazda had no information regarding other similar incidents.

7. In April, 2001, in exchange for a release, Mazda agreed to replace the original vehicle with a new Mazda Tribute (VIN # 4F2YI07171KM40485). Mazda represented to the Lords that their old Mazda Tribute would not be re-sold, but would instead be dismantled and analyzed in order to determine the cause of the vehicle's electrical failure and stalling.

8. Shortly after they began driving the replacement Mazda Tribute, the Lords began to experience the same electrical failures and shutdowns that they had experienced with the original vehicle.

9. Following complaints to Mazda regarding the electrical failures and stalling of this second vehicle, Mazda informed the Lords that the vehicle's failures were apparently due to some "outside influence in [their] driving area, such as an unknown electrical interference."

10. Despite Mazda's original assurances that the problems experienced by the Lords were unique to their vehicle, it now appears that the electrical failures and

stalling are the result of a design defect in the Mazda Tribute that causes it to shutdown when in close proximity to high intensity transmission towers.

11. Mazda has been aware of the design defects in their vehicles for some time, but has failed to inform consumers such as the Lords, of the danger and risk involved. Mazda, despite being aware of this design defect, has made the conscious decision to conceal the problem and withhold this information from consumers and government agencies.

Count One: Negligence

12. The Plaintiffs adopt and incorporate by reference the allegations and averments contained in the preceding paragraphs of this Complaint, as well as the material allegations of all subsequent paragraphs.

13. Mazda had a duty to remedy the design defect in the Mazda Tribute provided to the Plaintiffs and/or to notify and warn the Plaintiffs as to the risks and dangers caused by the design defect.

14. Mazda breached its duty of care to the Plaintiffs.

15. The Plaintiffs were injured and damaged as a proximate result of Mazda's negligence.

Count Two: Fraud

16. The Plaintiffs adopt and incorporate by reference the allegations and averments contained in the preceding paragraphs of this Complaint, as well as the material allegations of all subsequent paragraphs.

17. Mazda fraudulently concealed, suppressed, and/or misrepresented the nature and degree of the problems with the Mazda Tribute provided to the Plaintiffs.

18. The Plaintiffs were injured and/or damaged as a proximate result of Mazda's fraudulent conduct.

WHEREFORE, the Plaintiffs ask this Court to award them the following relief:

a). Seventy-thousand dollars ($70,000.00) in damages, including both compensatory and punitive damages;

b). Such other, further and different relief as this Court finds should be awarded.

PLAINTIFFS DEMAND A TRIAL BY JURY.

BARRY A. RAGSDALE

OF COUNSEL:

Ivey & Ragsdale
1615 Financial Center
505 North 20th Street
Birmingham, AL 35203
(205) 327-5223

Serve Defendant Mazda Motor of America, Inc. by Certified Mail, as follows:
P. O. Box 19734
Irvine, CA 92623

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
MUNICIPAL DEPARTMENT, FIRST DISTRICT

JOYCE MCAFEE,	)	02M1-150429
Plaintiff,	)	
vs.	)	No. 9-12-02
MAZDA MOTOR OF AMERICA, INC.,	)	$5,000 - $15,000
Defendant.	)	

COMPLAINT

NOW COMES the Plaintiff, JOYCE MCAFEE, by and through her attorneys, KROHN & MOSS, LTD., and for her complaint against Defendant, MAZDA MOTOR OF AMERICA, INC., alleges and affirmatively states as follows:

PARTIES

1. Plaintiff, JOYCE MCAFEE ("Plaintiff"), is an individual who was at all times relevant hereto residing in the State of Illinois.

2. Defendant, MAZDA MOTOR OF AMERICA, INC. ("Manufacturer"), is a foreign corporation authorized to do business in the State of Illinois, County of Cook, and is engaged in the manufacture, sale, and distribution of the Plaintiff's motor vehicle and related equipment and services. Manufacturer is also in the business of marketing, supplying and selling written warranties to the public at large through a system of authorized dealerships, including JACOBS TWIN MAZDA ("Seller"). Manufacturer does business in all counties of the State of Illinois including Cook County, and maintains offices in the County of Cook, State of Illinois.

BACKGROUND

3. On or about April 25, 2001, Plaintiff purchased from Seller a 2001 Mazda Tribute ("Tribute"), manufactured by Manufacturer, Vehicle Identification No. 4F2YU08171KM50545, for valuable consideration (See copy of Plaintiff's Bill of Sale, attached hereto as Plaintiff's Exhibit "A").

4. The price of the Tribute, including registration charges, document fees, sales tax and bank and finance charges, but excluding other collateral charges, not specified, totaled more than $31,070.40.

5. Plaintiff avers that as a result of the ineffective repair attempts made by Manufacturer, through its authorized dealership network, the Tribute cannot be utilized for personal, family and household use as intended by Plaintiff at the time of acquisition.

6. In consideration for the purchase of the Tribute, Manufacturer issued and supplied to Plaintiff its written warranty, which included three (3) year or fifty thousand (50,000) mile bumper to bumper coverage, as well as other warranties fully outlined in the Manufacturer's New Car Warranty booklet (Plaintiff is attempting to locate her warranty information booklet and will produce same when found. In the alternative, Plaintiff will subpoena same from Defendant during discovery and will produce same upon receipt).

7. On or about April 25, 2001, Plaintiff took possession of the Tribute and shortly thereafter experienced the various defect listed below which substantially impairs the use, value and/or safety of the Protégé.

8. The nonconformities described below violate the Manufacturer's warranty, issued to Plaintiff, as well as the implied warranty of merchantability.

9. Plaintiff delivered the Tribute to Manufacturer, through its authorized dealer on numerous occasions.

10. Plaintiff avers that the Tribute has been subject to repair at least seven (7) times for the same defect, and the defect remains uncorrected.

11. Plaintiff has brought the Tribute to Seller and/or an authorized service dealer of Manufacturer for various defects and nonconformities, including but not limited to:

a. Defective electrical system as evidenced by fuses blowing and the car failing to start; and
b. Any additional defects as contained on repair orders of Defendant's authorized dealerships.

12. Plaintiff has provided Manufacturer, through its authorized dealership network, sufficient opportunity to repair the Tribute.

13. After a reasonable number of attempts to cure the defect in Plaintiff's Tribute, the Manufacturer was unable and/or has failed to repair the defect, as provided in Manufacturer's warranty.

14. Plaintiff has justifiably lost confidence in the Tribute's safety and reliability, and said nonconformities have substantially impaired the value of the Tribute to Plaintiff.

15. Said nonconformities could not reasonably have been discovered by Plaintiff prior to Plaintiff's acceptance of the Tribute.

16. As a result of this defect, Plaintiff revoked her acceptance of the Tribute in writing.

17. At the time of revocation, the Tribute was in substantially the same condition as at delivery except for damage caused by its own non-conformities and ordinary wear and tear.

18. Manufacturer has refused Plaintiff's demand for revocation and has refused to provide Plaintiff with the remedies to which Plaintiff is entitled upon revocation.

19. The Tribute remains in a defective and unmerchantable condition, and continues to exhibit the above mentioned defect which substantially impairs its use, value and/or safety.

20. Plaintiff has been and will continue to be financially damaged due to Manufacturer's intentional, reckless, wanton and negligent failure to comply with its express and its failure to provide Plaintiff with a merchantable Tribute.

COUNT I
BREACH OF WRITTEN WARRANTY
PURSUANT TO THE MAGNUSON-MOSS WARRANTY ACT
MANUFACTURER

21. Plaintiff re-alleges and incorporates by reference as though fully set forth herein, Paragraphs 1-20 of t her complaint.

22. Plaintiff is a purchaser of a consumer product who received the Tribute during the duration of a written warranty period applicable to the Tribute and who is entitled by the terms of the written warranty to enforce against Manufacturer the obligations of said warranty.

23. Manufacturer is a person engaged in the business of making a consumer product directly available to Plaintiff.

24. Seller is an authorized dealership/agent of Manufacturer designated to perform repairs on vehicles under Manufacturer's automobile warranties.

25. The Magnuson-Moss Warranty Act, Chapter 15 U.S.C.A., Section 2301, et. seq. ("Warranty Act") is applicable to Plaintiff's Complaint in that the Tribute was manufactured, sold and purchased after July 4, 1975, and costs in excess of ten dollars ($10.00).

26. Plaintiff's purchase of the Tribute was accompanied by a written factory warranty for any nonconformities or defects in material or workmanship, an undertaking in writing in connection with the purchase of the Tribute to repair or replace defective parts, or take other remedial action free of charge to Plaintiff with respect to the Tribute in the event that the Tribute failed to meet the specifications set forth in Manufacturer's warranty.

27. Manufacturer's warranty was the basis of the bargain of the contract between the Plaintiff and Manufacturer for the sale of the Tribute to Plaintiff.

28. Said purchase of Plaintiff's Tribute was induced by, and Plaintiff relied upon, Manufacturer's written warranty.

29. Plaintiff has met all of her obligations and preconditions as provided in Manufacturer's written warranty.

30. As a direct and proximate result of Manufacturer's failure to comply with its written warranty, Plaintiff has suffered damages and, in accordance with 15 U.S.C. §2310(d)(1), Plaintiff is entitled to bring suit for such damages and other legal and equitable relief.

31. Plaintiff avers that upon successfully prevailing upon the Magnuson-Moss Warranty Act claim herein, all attorneys' fees are recoverable and are demanded against Manufacturer.

WHEREFORE, Plaintiff, prays for judgment against Manufacturer as follows:

a. Return of all monies paid, diminution in value of the vehicle, and all incidental and consequential damages incurred;
b. All reasonable attorneys' fees, witness fees and all court costs and other fees incurred; and
c. Such other and further relief that the Court deems just and appropriate.

COUNT II
BREACH OF IMPLIED WARRANTY
PURSUANT TO THE MAGNUSON-MOSS WARRANTY ACT
MANUFACTURER

32. Plaintiff re-alleges and incorporates by reference as though fully set forth herein, paragraphs 1-20 of t her Complaint.

33. The Tribute purchased by Plaintiff was subject to an implied warranty of merchantability as defined in 15 U.S.C. §2301(7) running from the Manufacturer to the intended consumer, Plaintiff herein.

34. Manufacturer is a supplier of consumer goods as a person engaged in the business of making a consumer product directly available to Plaintiff.

35. Manufacturer is prohibited from disclaiming or modifying any implied warranty when making a written warranty to the consumer or when Manufacturer has entered into a contract in writing to perform services relating to the maintenance or repair of a motor vehicle within ninety (90) days of a purchase.

36. Pursuant to 15 U.S.C. §2308, Plaintiff's Tribute was impliedly warranted to be substantially free of defects and non-conformities in both material and workmanship, and thereby fit for the ordinary purpose for which the Tribute was intended.

37. The Tribute was warranted to pass without objection in the trade under the contract description, and was required to conform to the descriptions of the Tribute contained in the contracts and labels.

38. The above described defects and non-conformities present in the Tribute render the Tribute unmerchantable and thereby not fit for the ordinary and essential purpose for which the Tribute was intended and as represented by Manufacturer.

39. As a result of the breaches of implied warranty by Manufacturer, Plaintiff is without the reasonable value of the Tribute.

40. As a result of the breaches of implied warranty by Manufacturer, Plaintiff has suffered and continues to suffer various damages.

WHEREFORE, Plaintiff, prays for judgment against Manufacturer as follows:

a. Return of all monies paid, diminution in value of the vehicle, and all incidental and consequential damages incurred;
b. All reasonable attorneys' fees, witness fees and all court costs and other fees incurred; and
c. Such other and further relief that the Court deems just and appropriate.

COUNT III
REVOCATION OF ACCEPTANCE PURSUANT TO SECTION 2310(d) OF THE MAGNUSON-MOSS WARRANTY ACT
MANUFACTURER

41. Plaintiff re-alleges and incorporates by reference as though fully set forth herein, paragraphs 1-20 of t her Complaint.

42. Manufacturer's tender of the Tribute was substantially impaired to Plaintiff.

43. Manufacturer's tender of the Tribute which was substantially impaired to Plaintiff constitutes a violation of 15 U.S.C. §2310(d).

WHEREFORE, Plaintiff, prays for judgment against Manufacturer as follows:

a. Return of all monies paid, diminution in value of the vehicle, and all incidental and consequential damages incurred;
b. All reasonable attorneys' fees, witness fees and all court costs and other fees incurred; and
c. Such other and further relief that the Court deems just and appropriate.

COUNT IV
VIOLATION OF ILLINOIS NEW VEHICLE BUYER PROTECTION ACT MANUFACTURER

44. Plaintiff re-alleges and incorporates by reference as though fully set forth herein, paragraphs 1-20 of this Complaint.

45. Plaintiff is a "Consumer" as defined by 815 ILCS 380/2(a).

46. Manufacturer is a "Seller" as defined by 815 ILCS 380/2(e).

47. The Tribute is a "new vehicle" as defined by 815 ILCS 380/2(e).

48. The Illinois New Vehicle Buyer Protection Act, 815 ILCS 380 ("Illinois Lemon Law") is applicable to Plaintiff's Complaint in that the Tribute was manufactured, sold and purchased after January 1, 1984.

49. Plaintiff took delivery of the Tribute on April 25, 2001.

50. On information and belief, the defective Tribute had been subject to repair by Manufacturer four in the first year/12,000 miles since delivery, and such nonconformity continues to exist.

51. On information and belief, Tribute was out of service in excess of thirty business days.

52. Manufacturer has been given a reasonable number of attempts to conform the Tribute to its express warranties.

53. Manufacturer received prior direct written notification of the above-mentioned defects on behalf of Plaintiff on August 8, 2002, and has had an opportunity to correct the alleged defects. (See Exhibit "B").

54. Manufacturer is unable to conform the Tribute to any of its applicable express warranties.

55. As a result of said nonconformities, Plaintiff is without the reasonable value of the Tribute.

56. As a result of said nonconformities, Plaintiff has suffered and continues to suffer various damages.

WHEREFORE, Plaintiff respectfully demands this Court to order Manufacturer to either provide Plaintiff with a new vehicle of like model line, or otherwise a comparable motor vehicle as a replacement, or to accept the return of the Tribute from Plaintiff and refund to Plaintiff the full price of the Tribute, including all collateral charges and attorneys' fees incurred by Plaintiff.

Respectfully Submitted,
JOYCE MCAFEE

By: _____
Attorney for Plaintiff

KROHN & MOSS, LTD.
Attorneys for Plaintiff
120 West Madison Street, 10th Floor
Chicago, Illinois 60602
(312) 578-9428
I.D. No. 33599

Craig Thor Kimmel, Esquire
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30 East Butler Pike
Ambler, PA 19002
(215) 540-8888

ATTORNEYS FOR PLAINTIFF

THIS IS AN ARBITRATION MATTER. ASSESSMENT OF DAMAGES HEARING IS REQUESTED.

GAIL V. MELLON
120 Lori Circle
Exton, Pennsylvania 19341

v.

MAZDA MOTOR AMERICA
7755 Irvine Center Drive
P.O. Box 19734
Irvine, California 92713-9734

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

CIVIL ACTION

COMPLAINT
CODE: 1900

1. Plaintiff, Gail V. Mellon, is an adult individual citizen and legal resident of the Commonwealth of Pennsylvania, 120 Lori Circle, Exton, Pennsylvania 19341.

2. Defendant, Mazda Motor of America, Inc., is a business corporation qualified to do business and regularly conduct business in the Commonwealth of Pennsylvania, and is a corporation of the State of California, with its legal residence and principal place of business located at 7755 Irvine Center Drive, P.O. Box 19734, Irvine, CA, 92713-9734, and can be served at same.

BACKGROUND

3. On or about December 8, 2000, Plaintiff purchased a new 2001 Mazda Tribute ES, manufactured and warranted by Defendant, bearing the Vehicle Identification Number 4F2YU08131KM25562.

4. The vehicle was purchased in the Commonwealth of Pennsylvania and is registered in the Commonwealth of Pennsylvania.

5. The contract price of the vehicle, including registration charges, document fees, sales tax, finance and bank charges, but excluding other collateral charges not specified, yet defined by the Lemon Law, totaled more than $22,771.50. A true and correct copy of the contract is attached hereto, made a part hereof, and marked Exhibit "A".

6. In consideration for the purchase of said vehicle, Defendant issued to Plaintiff several warranties, guarantees, affirmations or undertakings with respect to the material or workmanship of the vehicle and/or remedial action in the event the vehicle fails to meet the promised specifications.

7. The above-referenced warranties, guarantees, affirmations or undertakings are/were part of the basis of the bargain between Defendant and Plaintiff.

8. The parties' bargain includes an express 3-year / 36,000 mile warranty, as well as other guarantees, affirmations and undertakings as stated in Defendant's warranty materials and owner's manual.

9. However, as a result of the ineffective repair attempts made by Defendant through its authorized dealer(s), the vehicle is rendered substantially impaired, unable to be utilized for its intended purposes, and is worthless to Plaintiff.

10. Plaintiff has or may have resorted to Defendant's informal dispute settlement procedure, to the extent said procedure complies with 16 CFR 703.

11. Plaintiff avers that the Federal Trade Commission (FTC) has determined that no automobile manufacturer complies with 16 CFR 703. See, Fed. Reg. 15636, Vol. 62, No. 63 (Apr. 2, 1997)

COUNT I
PENNSYLVANIA AUTOMOBILE LEMON LAW

12. Plaintiff hereby incorporates all facts and allegations set forth in this Complaint by reference as if fully set forth at length herein.

13. Plaintiff is a "Purchaser" as defined by 73 P.S. §1952.

14. Defendant is a "Manufacturer" as defined by 73 P.S. §1952.

15. Brandywine Mazda is and/or was at the time of sale a Motor Vehicle Dealer in the business of buying, selling, and/or exchanging vehicles as defined by 73 P.S. §1952.

16. On or about December 8, 2000, Plaintiff took possession of the above mentioned vehicle and experienced nonconformities as defined by 73 P.S §1951 et seq., which substantially impair the use, value and/or safety of the vehicle.

17. The nonconformities described violate the express written warranties issued to Plaintiff by Defendant.

18. Section 1955 of the Pennsylvania Automobile Lemon Law provides:

> If a manufacturer fails to repair or correct a nonconformity after a reasonable number of attempts, the manufacturer shall, at the option of the purchaser, replace the motor vehicle... or accept return of the vehicle from the purchaser, and refund to the purchaser the full purchase price, including all collateral charges, less a reasonable allowance for the purchasers use of the vehicle, not exceeding $.10 per mile driven or 10% of the purchase price of the vehicle, whichever is less.

19. Section 1956 of the Pennsylvania Automobile Lemon Law provides a presumption of a reasonable number of repair attempts if:

> (1) The same nonconformity has been subject to repair three times by the manufacturer, its agents or authorized dealers and the nonconformity still exists; or
>
> (2) The vehicle is out-of-service by reason of any nonconformity for a cumulative total of thirty or more calendar days.

20. Plaintiff has satisfied the above definition as the vehicle has been subject to repair more than three (3) times for the same nonconformity, and the nonconformity remained uncorrected.

21. In addition, the above vehicle has or will be out-of-service by reason of the nonconformities complained of for a cumulative total of thirty (30) or more calendar days.

22. Plaintiff has delivered the nonconforming vehicle to an authorized service and repair facility of the Defendant on numerous occasions as outlined below.

23. After a reasonable number of attempts, Defendant was unable to repair the nonconformities.

24. During the first 12 months and/or 12,000 miles, Plaintiff complained on at least three (3) occasions about defects and or non-conformities to the following vehicle components: stalling

condition; coolant system and wheels. True and correct copies of all invoices in Plaintiff possession are attached hereto, made a part hereof, and marked Exhibit "B".

25. Plaintiff avers the vehicle has been subject to additional repair attempts for defects and conditions for which Defendant's warranty dealer did not provide or maintain itemized statements as required by 73 P.S. § 1957.

26. Plaintiff avers that such itemized statements, which were not provided as required by 73 P.S. § 1957 also include technicians' notes of diagnostic procedures and repairs, and Defendant's Technical Service Bulletins relating to this vehicle.

27. Plaintiff avers the vehicle has been subject to additional repair attempts for defects and conditions for which Defendant's warranty dealer did not provide the notification required by 73 P.S. § 1957.

28. Plaintiff has and will continue to suffer damages due to Defendant's failure to comply with the provisions of 73 P.S. §§ 1954 (repair obligations), 1955 (manufacturer's duty for refund or replacement), and 1957 (itemized statements required).

29. Pursuant to 73 P.S. § 1958, Plaintiff seeks relief for losses due to the vehicle's nonconformities, including the award of reasonable attorneys' fees and all court costs.

WHEREFORE, Plaintiff respectfully demands judgment against Defendant in an amount equal to the price of the subject vehicle, plus all collateral charges, attorneys' fees, and court costs.

COUNT II
MAGNUSON-MOSS (FTC) WARRANTY IMPROVEMENT ACT

30. Plaintiff hereby incorporates all facts and allegations set forth in this Complaint by reference as if fully set forth at length herein.

31. Plaintiff is a "Consumer" as defined by 15 U.S.C. §2301(3).

32. Defendant is a "supplier", "warrantor", and a "service contractor" as defined by 15 U.S.C. § 2301 (4),(5) and (8).

33. The subject vehicle is a "consumer product" as defined by 15 U.S.C. § 2301(1).

34. By the terms of its written warranties, affirmations, promises, or service contracts, Defendant agreed to perform effective repairs at no charge for parts and/or labor.

35. The Magnuson-Moss Warranty Improvement Act requires Defendant to be bound by all warranties implied by state law. Said warranties are imposed on all transactions in the state in which the vehicle was delivered.

36. Defendant has made attempts on several occasions to comply with the terms of its express warranties; however, such repair attempts have been ineffective.

37. The Magnuson-Moss Warranty Improvement Act, 15 U.S.C. §2310(d)(2) provides:

> If a consumer finally prevails on an action brought under paragraph (1) of this subsection, he may be allowed by the court to recover as part of the judgment a sum equal to the amount of aggregate amount of costs and expenses (including attorney fees based upon actual time expended), determined by the court to have been reasonably incurred by the Plaintiff for, or in connection with the commencement and prosecution of such action, unless the court, in its discretion shall determine that such an award of attorney's fees would be inappropriate.

38. Plaintiff has afforded Defendant a reasonable number of opportunities to conform the vehicle to the aforementioned express warranties, implied warranties and contracts.

39. As a direct and proximate result of Defendant's failure to comply with the express written warranties, Plaintiff has suffered damages and, in accordance with 15 U.S.C. §2310(d)(1), Plaintiff is entitled to bring suit for such damages and other legal and equitable relief.

40. Defendant's failure is a breach of Defendant's contractual and statutory obligations constituting a violation of the Magnuson-Moss Warranty Improvement Act, including but not limited to: breach of express warranties; breach of implied warranty of merchantability; breach of implied warranty of fitness for a particular purpose; breach of contract; and constitutes an Unfair Trade Practice.

41. Plaintiff avers Defendant's Dispute Resolution Program is not in compliance with 16 CFR 703 by the FTC for the period of time this claim was submitted.

42. Plaintiff avers that upon successfully prevailing upon the Magnuson-Moss claim herein, all attorney fees are recoverable and are demanded against Defendant.

WHEREFORE, Plaintiff respectfully demands judgment against Defendant in an amount equal to the price of the subject vehicle, plus all collateral charges, incidental and consequential damages, reasonable attorneys' fees, and all court costs.

COUNT III
PENNSYLVANIA UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION LAW

43. Plaintiff hereby incorporates all facts and allegations set forth in this Complaint by reference as if fully set forth at length herein.

44. Plaintiff is a "Person" as defined by 73 P.S. §201-2(2).

45. Defendant is a "Person" as defined by 73 P.S. §201-2(2).

46. Section 201-9.2(a) of the Act authorizes a private cause of action for any person "who purchases or leases goods or services primarily for personal, family or household purposes."

47. Section 1961 of the Pennsylvania Automobile Lemon Law, provides that a violation of its provisions shall automatically constitute a violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Act, 73 P.S. 201-1 et seq.

48. In addition, the Pennsylvania Unfair Trade Practices and Consumer Protection Act, 73 P.S. §201-2(4), defines "unfair or deceptive acts or practices" to include the following conduct:

> (vii). Representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if they are of another;
>
> (xiv). Failing to comply with the terms of any written guarantee or warranty given to the buyer at, prior to, or after a contract for the purchase of goods or services is made;
>
> (xv). Knowingly misrepresenting that services, replacements or repairs are needed if they are not needed;
>
> (xvi). Making repairs, improvements or replacements on tangible, real or personal property of a nature or quality inferior to or below the standard of that agreed to in writing;
>
> (xvii). Engaging in any other fraudulent conduct which creates a likelihood of confusion or of misunderstanding.

49. Plaintiff avers Defendant has violated these, as well as other provisions, of 73 P.S. §201-2 et seq.

50. Section 201-3.1 of the Act provides that the Automotive Industry Trade Practice rules and regulations adopted by the Attorney General for the enforcement of this Act shall constitute additional violations of the Act.

51. Defendant's conduct surrounding the sale and servicing of the subject vehicle falls within the aforementioned definitions of "unfair or deceptive acts or practices."

52. The Act also authorizes the Court, in its discretion, to award up to three (3) times the actual damages sustained for violations.

WHEREFORE, Plaintiff respectfully demands judgment against Defendant in an amount not in excess of Fifty Thousand Dollars ($50,000.00), together with all collateral charges, attorneys' fees, all court costs and treble damages.

KIMMEL & SILVERMAN, P.C.

By: _____
CRAIG THOR KIMMEL, ESQUIRE
Attorney for Plaintiff
30 East Butler Pike
Ambler, Pennsylvania 19002
(215) 540-8888

GORBERG, GORBERG AND ZUBER
By: DAVID J. GORBERG Attorney for Plaintiffs
Identification No. 53084
1234 Market Street
Suite 2040
Philadelphia, PA 19107
(215) 563-7210

MICHAEL MICHALSKI 2001 Louise Drive Glenshaw, PA 15116	:	COURT OF COMMON PLEAS PHILADELPHIA COUNTY
vs.	:	TERM, 2002
MAZDA NORTH AMERICA, INC. 7755 Irvine Center Drive Box 19734 Irvine, CA 92713	:	NO.

COMPLAINT

1. Plaintiff, Michael Michalski is an adult individual citizen and legal resident of the Commonwealth of Pennsylvania, residing at 2001 Louise Drive, Glenshaw, PA 15116.

2. Defendant, Mazda North America, Inc., is a business corporation qualified to do business and regularly conducts business in the Commonwealth of Pennsylvania with it's legal residence and principal place of business at 7755 Irvine Center Drive, Box 19734, Irvine, CA 92713.

BACKGROUND

3. Plaintiff incorporates by reference paragraphs 1 and 2 as fully as if set forth here length.

4. On or about September 30, 2001, Plaintiff purchased a 2001 Mazda Tribute manufactured and warranted by Defendant bearing the Vehicle Identification Number 4F2YU08131KM07143. The vehicle was purchased and registered in the Commonwealth of Pennsylvania.

5. The price of the vehicle, including registration charges, document fees, sales tax, but, excluding other collateral charges not specified, totaled more than $29,224.93.

6. Plaintiff avers that as a result of the ineffective repair attempts made by Defendant through its authorized dealer, the vehicle cannot be utilized for the purposes intended by Plaintiff at the time of acquisition and as such, the vehicle is worthless.

7. In consideration of the purchase of the above vehicle, Defendant, issued to Plaintiff several warranties, fully outlined in the warranty booklet.

8. On or about September 30, 2001, Plaintiff took possession of the above mentioned vehicle and experienced nonconformities, which substantially impaired the use, value and/or safety of the vehicle.

9. Said nonconformities consisted of, but was not limited to, defective electrical system and defective engine with stalling condition. Copies of repair receipts are attached hereto and marked as Exhibit "A".

10. The nonconformities violate the express written warranties issued to Plaintiff by Defendant.

11. Plaintiff avers the vehicle has been subject to repair more than three (3) times for

the same nonconformity, and the nonconformity remains uncorrected.

12. Plaintiff has delivered the nonconforming vehicle to an authorized service and repair facility of the defendant on numerous occasions. After a reasonable number of attempts, Defendant was unable to repair the nonconformities.

13. In addition, the above vehicle has or will in the future be out of service by reason of the non-conformities complained of for a cumulative total of thirty (30) days or more.

14. The vehicle continues to exhibit defects and nonconformities which substantially impair it's use, value and/or safety.

15. Plaintiff avers the vehicle has been subject to additional repair attempts for defects and/or nonconformities and/or conditions for which the Defendant and or it's authorized service center, may not have maintained records.

16. Plaintiff has been and will continue to be financially damaged due to Defendant's intentional, reckless, wanton and negligent failure to comply with the provisions of its' warranty.

17. Plaintiff seeks relief for losses due to the nonconformities and defects in the above mentioned vehicle in addition to attorney fees and all court costs.

COUNT I
PENNSYLVANIA AUTOMOBILE LEMON LAW CLAIM

18. Plaintiff hereby incorporates all facts and allegations set forth in this Complaint by reference as if fully set forth at length herein.

19. Plaintiff is a "Purchaser" as defined by 73 P.S. §1952.

20. Defendant is a "Manufacturer" as defined by 73 P.S. §1952.

21. Plaintiff's vehicle is a "New Motor Vehicle" as defined by 73 P.S. §1952.

22. Said vehicle experienced non conformities within the first year of purchase, which

substantially impairs the use, value and safety of said vehicle.

23. Defendant failed to correct and or repair said nonconformities.

24. The vehicle continues to exhibit defects and nonconformities which substantially impair it's use, value and/or safety.

25. Defendant does not require participation in any informal dispute settlement program prior to filing suit.

26. As a direct and proximate result of Defendant's failure to repair the nonconformities , Plaintiff has suffered damages and, in accordance with 73 P.S. §1958, Plaintiff is entitled to bring suit for such damages and other legal and equitable relief. .

27. Plaintiff avers that upon successfully prevailing upon the Lemon Law claim herein, all attorney fees are recoverable and are demanded against the Defendant.

WHEREFORE, Plaintiff respectfully demands judgment in his favor and against the Defendant in an amount equal to three (3) times the purchase price of the subject vehicle, plus all available collateral changes and attorney fees. Amount not in excess of $50,000.00.

COUNT II
MAGNUSON-MOSS FEDERAL TRADE COMMISSION IMPROVEMENT ACT

28. Plaintiff hereby incorporates all facts and allegations set forth in this Complaint by reference as if fully set forth at length herein.

29. Plaintiff is a "Consumer" as defined by 15 U.S.C. §2301(3).

30. Defendant is a "Warrantor" as defined by 15 U.S.C. §2301(5).

31. Plaintiff uses the subject product for personal, family and household purposes.

32. By the terms of the express written warranties referred to in this Complaint,

Defendant agreed to perform effective warranty repairs at no charge for parts and/or labor.

33. Defendant failed to make effective repairs.

34. As a direct and proximate result of Defendant's failure to comply with the express written warranties, Plaintiff has suffered damages and, in accordance with 15 U.S.C. §2310(d)(1), Plaintiff is entitled to bring suit for such damages and other legal and equitable relief.

35. Section 15 U.S.C. §2310 (d) (1) provides:

> If a consumer finally prevails on an action brought under paragraph (1) of this subsection, he may be allowed by the Court to recover as part of the judgment a sum equal to the amount of aggregate amount of costs and expenses (including attorney fees based upon actual time expended), determined by the Court to have been reasonably incurred by the Plaintiff for, or in connection with the commencement and prosecution of such action, unless the Court, in its discretion shall determine that such an award of attorney's fees would be inappropriate.

36. Plaintiff avers that upon successfully prevailing upon the Magnuson-Moss claim herein, all attorney fees are recoverable and are demanded against the Defendant.

WHEREFORE, Plaintiff respectfully demands judgment in his favor and against the Defendant in an amount equal to three (3) times the purchase price of the subject vehicle, plus all available collateral changes and attorney fees. Amount not in excess of $50,000.00.

COUNT III
UNIFORM COMMERCIAL CODE

37. Plaintiff hereby incorporates all the paragraphs of this Complaint by reference as if fully set forth at length herein.

38. The defects and nonconformities existing within the vehicle constitute a breach of contractual and statutory obligations of the Defendant, including but not limited to the following;

a. Breach of Express Warranty

b. Breach of Implied Warranty of Merchantability;

c. Breach of Implied Warranty of Fitness For a Particular Purpose;

d. Breach of Duty of Good Faith.

39. The purpose for which Plaintiff purchased the vehicle include but are not limited to his personal, family and household use.

40. At the time of this purchase and at all times subsequent thereto, Plaintiff has justifiably relied upon Defendant's express warranties and implied warranties of fitness for a particular purpose and implied warranty of merchantability.

41. At the time of the purchase and at all times subsequent thereto, Defendant was aware Plaintiff was relying upon Defendant's express and implied warranties, obligations, and representations with regard to the subject vehicle.

42. Plaintiff has incurred damages as a direct and proximate result of the breach and failure of Defendant to honor its express and implied warranties.

43. Such damages include, but are not limited to, the purchase price of the vehicle plus all collateral charges, including attorney fees and costs, as well as other expenses, the full extent of which are not yet known.

WHEREFORE, Plaintiff respectfully demands judgment in his favor and against the Defendant in an amount equal to three (3) times the purchase price of the subject vehicle, plus all available collateral changes and attorney fees. Amount not in excess of $50,000.00.

COUNT IV
PENNSYLVANIA UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION CLAIM

44. Plaintiff hereby incorporates all the paragraphs of this Complaint by reference as if set forth at length herein.

45. The Unfair Trade Practices and Consumer Protection Law defines unfair methods of competition to include the following:

(xiv). Failing to comply with the terms of any written guarantee or warranty given to the buyer at, prior to, or after a contract for the purchase of goods or services is made.

46. Plaintiff, as a Pennsylvania resident, believes, and therefore, avers the reckless, wanton and willful failure of Defendant to comply with the terms of the written warranty constitutes an unfair method of competition.

47. Section 201-9.2(a) of the Unfair Trade Practices and Consumer Protection Law, authorizes the Court, in its discretion, to award up to three (3) times the actual damages sustained for violations of the Act.

WHEREFORE, Plaintiff respectfully demands judgment in his favor and against the Defendant in an amount equal to three (3) times the purchase price of the subject vehicle, plus all available collateral changes and attorney fees. Amount not in excess of $50,000.00.

GORBERG AND ZUBER

BY: _____
DAVID J. GORBERG, ESQUIRE
Attorney for Plaintiff

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

SUSAN NAGY,

Plaintiff,

v CP

MAZDA MOTOR OF AMERICA, INC., a California Corporation and BILL COOK IMPORTED CARS, INC. d/b/a COOK MAZDA, a Michigan Corporation, Jointly and Severally,

Defendants.

/

CONSUMER LEGAL SERVICES, P.C.
MARK ROMANO P-44014
STEVEN S. TOTH P-44487
Attorneys for Plaintiff
30928 Ford Road
Garden City, MI 48135
(734) 261-4700

/

There is no other civil action between these parties arising out of the same transaction or occurrence as alleged in this Complaint in this Court, nor has any such action been previously filed and dismissed or transferred after having been assigned to a judge, nor do I know of any other civil action not between these parties, arising out of the same transaction or occurrence as alleged in this Complaint that is either pending or was previously filed and dismissed, transferred or otherwise disposed of after having been assigned to a judge in this Court.

COMPLAINT AND JURY DEMAND

NOW COMES the Plaintiff, by and through Plaintiff's attorneys, CONSUMER LEGAL SERVICES, P.C., who complains against the above named Defendants as follows:

1. Plaintiff is a resident of the City of Farmington, Oakland County, Michigan.

2. Defendant, Mazda Motor of America, Inc. (hereinafter referred to as "Manufacturer"), is a California Corporation authorized to do business in the State of Michigan and, at all times relevant hereto, was engaged in the manufacture, sale distribution and/or importing of Mazda vehicles and related equipment, with its registered office in the City of Bingham Farms, Oakland County, Michigan.

3. Defendant, Bill Cook Imported Cars, Inc. d/b/a Cook Mazda (hereinafter referred to as "Lessor"), is a Michigan Corporation authorized to do business in the State of Michigan and, at all times relevant hereto, was an authorized agent for the Manufacturer, and was engaged in the business of selling and servicing Manufacturer's cars in the City of Farmington Hills, Oakland County, Michigan.

4. On or about October 2, 2000, Plaintiff leased a new 2001 Mazda Tribute, VIN 4F2YU06181KM15631 (hereinafter referred to as "2001 Tribute"), from the Lessor which was manufactured by the Manufacturer (see copy of Vehicle Lease Agreement attached as Exhibit A).

5. Along with the lease of the 2001 Tribute Plaintiff received written warranties and other express and implied warranties including, by way of example and not by way of limitation, warranties from Manufacturer and Lessor (a copy of the written warranty is in the possession of the Defendants).

6. Plaintiff has taken the 2001 Tribute to the Manufacturer's authorized agent/dealer, Lessor, on at least seven (7) separate occasions (see copy of repair orders, attached as Exhibit B). By way of example, and not by way of limitation, the defects with Plaintiff's 2001 Tribute include the following:

Date	Mileage	Invoice #	Complaint
01/12/01	3,231	134535	ENGINE DEFECT: overdrive off light comes on by itself while driving; recall fuel line
03/05/01	5,163	137781	ENGINE DEFECT: check engine light on
06/07/01	11,124	148505	ENGINE DEFECT: coolant light on and off
10/05/01	13,817	152599	ENGINE DEFECT: stalled on expressway; excessive rotating noise from front end
11/15/01	14,341	155532	ENGINE DEFECT: stalled while stopped; no start for two days and security flashed
01/24/02	17,719	160214	ENGINE DEFECT: vehicle stalling out
02/18/02	18,501	161824	ENGINE DEFECT: vehicle still stalling

7. This cause of action arises out of Defendants' misrepresentations, various breaches of warranties, violations of statutes and breaches of covenants of good faith and fair dealing as hereinafter alleged.

8. The amount in controversy exceeds TWENTY FIVE THOUSAND DOLLARS ($25,000.00), exclusive of interest and costs, for which Plaintiff seeks judgment against Defendants, together with equitable relief. In addition, Plaintiff seeks damages from Defendants for incidental, consequential, exemplary and actual damages including interest, costs, and actual attorneys' fees.

COUNT I
BREACH OF EXPRESS WARRANTY

9. Plaintiff incorporates herein by reference each and every allegation contained in Paragraphs 1 through 8 as though herein fully restated and realleged.

10. Plaintiff is a "buyer" under the Michigan Uniform Commercial Code, MCLA 440.2103; MSA 19.2103.

11. Manufacturer and Lessor are "Lessors" under the Michigan Uniform Commercial Code, MCLA 440.2103; MSA 19.2103.

12. The 2001 Tribute constitutes "goods" under the Michigan Uniform Commercial Code, MCLA 440.2105; MSA 2105.

13. This is a "transaction in goods", to which MCLA 440.2102; MSA 19.2105 is applicable.

14. Plaintiff's purchase of the 2001 Tribute was accompanied by an express warranty, written and otherwise offered by the Manufacturer and Lessor. Whereby said warranty was part of the basis of the bargain of the contract, upon which Plaintiff relied, between Plaintiff and Manufacturer/Lessor for its sale of the vehicle.

15. In this express warranty, the Manufacturer warranted if any defects were discovered within certain periods of time, the Manufacturer and/or Lessor would provide repair of the 2001 Tribute free of charge to Plaintiff under specific terms as stated in the express warranty.

16. In fact, Plaintiff discovered the 2001 Tribute had defects and problems after Plaintiff purchased the vehicle as discussed above.

17. Plaintiff notified Manufacturer and Lessor of the aforementioned defects.

18. Plaintiff has provided the Lessor and the Manufacturer with sufficient opportunities to repair or replace the 2001 Tribute.

19. Plaintiff has reasonably met all obligations and pre-conditions as provided in the express warranty.

20. The Manufacturer and Lessor have failed to adequately repair the 2001 Tribute and/or have not repaired the 2001 Tribute in a timely fashion, and the 2001 Tribute remains in a defective condition.

21. Even though the express warranty provided to Plaintiff limited Plaintiff's remedy to repair and/or adjust defective parts, the 2001 Tribute's defects have rendered the limited warranty ineffective to the extent that the limited remedy of repair and/or adjustment of defective parts failed of its essential purpose pursuant to MCLA 440.2719(2); MSA 19.2719(2); and/or the above remedy is not the exclusive remedy under MCLA 440.2719(1)(b); MSA 19.2719(1)(b).

22. The 2001 Tribute continues to contain defects which substantially impair the value of the automobile to the Plaintiff.

23. These defects could not reasonably have been discovered by the Plaintiff prior to Plaintiff's acceptance of the 2001 Tribute.

24. The Manufacturer and Lessor induced Plaintiff's acceptance of the 2001 Tribute by agreeing, by means of the express warranty, to remedy, within a reasonable time, those defects which had not been or could not have been discovered prior to acceptance.

25. As a result of its many defects, the Plaintiff has lost faith and confidence in the 2001 Tribute and the Plaintiff cannot reasonably rely upon the vehicle for the ordinary purpose of safe, efficient transportation.

26. If the finder of fact finds revocation and/or rejection was improper, then, in the alternative, Plaintiff alleges that as of the date of revocation, the 2001 Tribute was in substantially the same condition as at delivery except for damage caused by its own defects and ordinary wear and tear. Therefore, Plaintiff is entitled to damages for breach of warranty calculated by the difference at the time and place of acceptance between the value of the goods accepted and the value they would have had if they had been as warranted.

27. The Manufacturer and Lessor have refused Plaintiff's demands and have refused to provide Plaintiff with the remedies to which Plaintiff is entitled pursuant to MCLA 440.2313; MSA 19.2313 and MCLA 440.2711, 440.2714 and 440.2715; MSA 19.2711, 19.2714 and 19.2715.

WHEREFORE, Plaintiff prays for judgment against Manufacturer and Lessor:

A. Declaring acceptance has been properly revoked by Plaintiff and for damages incurred in revoking acceptance;

B. For a refund of the lease payments (rent) and security deposit paid by Plaintiff for the 2001 Tribute;

C. To cancel the lease contract and pay off the balance on the contract;

D. For incidental, consequential and actual damages;

E. For costs, interest and actual attorneys' fees; and

F. For such other relief this Court deems appropriate.

COUNT II
BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

28. Plaintiff incorporates herein by reference each and every allegation contained in Paragraphs 1 through 27 as though herein fully restated and realleged.

29. The Manufacturer and Lessor are "merchants" with respect to automobiles under the Michigan Uniform Commercial Code, MCLA 440.2104; MSA 19.2104.

30. The 2001 Tribute was subject to implied warranties of merchantability under MCLA 440.2314; MSA 19.2314, running from the Manufacturer and the Lessor to the benefit of Plaintiff.

31. The 2001 Tribute was not fit for the ordinary purpose for which such goods are used.

32. The defects and problems hereinbefore described rendered the 2001 Tribute unmerchantable.

33. The manufacturer and Lessor failed to adequately remedy the defects in the 2001 Tribute; and the 2001 Tribute continues to be in an unmerchantable condition at the time of revocation.

WHEREFORE, Plaintiff prays for judgment against Manufacturer and Lessor:

A. Declaring acceptance has been properly revoked and for damages incurred in revoking acceptance;

B. For damages occasioned by the breach of the implied warranty;

C. For a refund of the lease payments (rent) and security deposit paid by Plaintiff for the 2001 Tribute;

D. To cancel the lease contract covering the 2001 Tribute and pay off the balance on the contract;

E. For consequential, incidental and actual damages;

F. Costs, interest and actual attorneys' fees; and

G. Such other relief this Court deems appropriate.

COUNT III
REVOCATION OF ACCEPTANCE

34. Plaintiff incorporates herein by reference each and every allegation contained in Paragraphs 1 through 33 as though herein fully restated and realleged.

35. Plaintiff accepted the 2001 Tribute without discovering the above defects due to the fact Plaintiff was reasonably induced to accept the vehicle by the difficulty of discovery of the above defects.

36. In the alternative, Plaintiff reasonably assumed, and Manufacturer and Lessor represented, that all of the aforesaid defects and/or nonconformities would be cured within a reasonable time.

37. After numerous attempts by Defendants to cure, it has become apparent the nonconformities could not be seasonably cured.

38. The nonconformities substantially impaired the value of the 2001 Tribute to the Plaintiff.

39. Plaintiff had previously notified Manufacturer and Lessor of the nonconformities and Plaintiff's intent to revoke acceptance pursuant to MCLA 440.2608; MSA 19.2608 and demanded the refund of his purchase price for the 2001 Tribute and out-of-pocket expenses (see copy of Plaintiff's revocation of acceptance letter attached as Exhibit C).

40. Manufacturer and Lessor have nevertheless refused to accept return of the 2001 Tribute and have refused to refund any part of the sum equal to the purchase price and out-of-pocket expenses incurred by Plaintiff.

WHEREFORE, Plaintiff prays for judgment against Manufacturer and Lessor:

A. Declaring acceptance has been properly revoked by Plaintiff and for damages incurred in revoking acceptance;

B. For a refund of the lease payments (rent) and security deposit paid by Plaintiff for the 2001 Tribute;

C. To cancel the lease contract covering the 2001 Tribute and pay off the balance on the contract;

D. For consequential, incidental and actual damages;

E. Costs, interest and actual attorneys' fees; and

F. Such other relief this Court deems appropriate.

COUNT IV
BREACH OF EXPRESS WARRANTY

41. Plaintiff incorporates herein by reference each and every allegation contained in Paragraphs 1 through 40 as though herein fully restated and realleged.

42. Plaintiff is a "lessee" under the Michigan Uniform Commercial Code, MCLA 440.2803 (n).

43. Manufacturer is a "supplier" under the Michigan Uniform Commercial Code, MCLA 440.2803 (x).

44. Lessor is a "lessor" under the Michigan Uniform Commercial Code, MCLA 440.2803 (p).

45. The 2001 Tribute constitutes "goods" under the Michigan Uniform Commercial Code, MCLA 440.2803 (h).

46. The Michigan Net Lease attached as Exhibit A is a "consumer lease" under the Michigan Uniform Commercial Code, MCLA 440.2803 (e).

47. Plaintiff 's lease of the 2001 Tribute was accompanied by an express warranty, written and otherwise offered by the Manufacturer and Lessor. Whereby said warranty was part of the basis of the bargain of the lease contract, upon which Plaintiff relied, between Plaintiff and Manufacturer/Lessor for its lease of the 2001 Tribute.

48. The benefit of the Manufacturer's express warranty extends to Plaintiff under the Uniform Commercial Code, MCLA 440.2859 (1).

49. In this express warranty, the Manufacturer warranted if any defects were discovered within certain periods of time, the Manufacturer and/or Lessor would provide repair of the 2001 Tribute free of charge to Plaintiff under specific terms as stated in the express warranty.

50. In fact, Plaintiff discovered the 2001 Tribute had defects and problems after Plaintiff purchased said vehicle as discussed above.

51. Plaintiff notified Manufacturer and Lessor of the aforementioned defects.

52. Plaintiff has provided the Lessor and the Manufacturer with sufficient opportunities to repair or replace the 2001 Tribute.

53. Plaintiff has reasonably met all obligations and pre-conditions as provided in the express warranty.

54. The Manufacturer and Lessor have failed to adequately repair the 2001 Tribute and/or have not repaired the 2001 Tribute in a timely fashion, and the 2001 Tribute remains in a defective condition.

55. Even though the express warranty provided to Plaintiff limited Plaintiff's remedy to repair and/or adjust defective parts, the 2001 Tribute's defects have rendered the limited warranty ineffective to the extent that the limited remedy of repair and/or adjustment of defective parts failed of its essential purpose.

56. The 2001 Tribute continues to contain defects which substantially impair the value of the automobile to the Plaintiff.

57. These defects could not reasonably have been discovered by the Plaintiff prior to Plaintiff's acceptance of the 2001 Tribute.

58. The Manufacturer and Lessor induced Plaintiff's acceptance of the 2001 Tribute by agreeing, by means of the express warranty, to remedy, within a reasonable time, those defects which had not been or could not have been discovered prior to acceptance.

59. As a result of its many defects, the Plaintiff has lost faith and confidence in the 2001 Tribute and the Plaintiff cannot reasonably rely upon the vehicle for the ordinary purpose of safe, efficient transportation.

60. If the finder of fact finds revocation and/or rejection was improper, then, in the alternative, Plaintiff alleges that as of the date of revocation, the 2001 Tribute was in substantially the same condition as at delivery except for damage caused by its own defects and ordinary wear and tear. Therefore, pursuant to M.C.L.A. 440.2969 (4), Plaintiff is entitled to damages for breach of warranty calculated by the difference at the time and place of acceptance between the value of the use of the good accepted and the value it would have had if it had been as warranted for the lease term.

61. The Manufacturer and Lessor have refused Plaintiff's demands and have refused to provide Plaintiff with the remedies to which Plaintiff is entitled pursuant to M.C.L.A. 440.2858; and M.C.L.A. 440.2969; and 440.2967; and 440.2970.

WHEREFORE, Plaintiff prays for judgment against Manufacturer and Lessor:

A. Declaring acceptance has been properly revoked by Plaintiff and for damages incurred in revoking acceptance;

B. For a refund of the lease payments (rent) and security deposit paid by Plaintiff for the 2001 Tribute;

C. To cancel the lease contract covering the 2001 Tribute and payoff the balance on the same;

D. For incidental and consequential damages, and actual damages for breach of warranty;

E. For costs, interest and actual attorneys; fees; and

F. For such other equitable relief this Court deems appropriate.

COUNT V
BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

62. Plaintiff incorporates herein by reference each and every allegation contained in Paragraphs 1 through 61 as though herein fully restated and realleged.

63. The Manufacturer and Lessor are "merchants" with respect to automobiles under the Michigan Uniform Commercial Code, MCLA 440.2104; MSA 19.2104.

64. The 2001 Tribute was subject to implied warranties of merchantability under MCLA 440.2862, running from the Manufacturer and the Lessor to the benefit of Plaintiff.

65. The 2001 Tribute was not fit for the ordinary purpose for which such goods are used.

66. The defects and problems hereinbefore described rendered the 2001 Tribute unmerchantable.

67. The Manufacturer and Lessor failed to adequately remedy the defects in the 2001 Tribute and the 2001 Tribute continued to be in an unmerchantable condition at the time of revocation.

WHEREFORE, Plaintiff prays for judgment against Manufacturer and Lessor:

A. Declaring acceptance has been properly revoked and for damages incurred in revoking acceptance;

B. For damages occasioned by the breach of the implied warranty;

C. For a refund of the lease payments (rent) and security deposit paid by Plaintiff for the 2001 Tribute;

D. To cancel the lease contract covering the 2001 Tribute and pay off the balance on the same;

E. For incidental and consequential damages, and actual damages for breach of warranty;

F. For costs, interest and actual attorneys' fees; and

G. For such other equitable relief this Court deems appropriate.

COUNT VI
REVOCATION OF ACCEPTANCE

68. Plaintiff incorporates herein by reference each and every allegation contained in Paragraphs 1 through 67 as though herein fully restated and realleged.

69. Plaintiff accepted the 2001 Tribute without discovering the above defects due to the fact Plaintiff was reasonably induced to accept the vehicle by the difficulty of discovery of the above defects.

70. In the alternative, Plaintiff reasonably assumed , and Manufacturer and Lessor represented, that all of the aforesaid defects and/or nonconformities would be cured within a reasonable time.

71. After numerous attempts by Defendants to cure, it has become apparent the nonconformities could not be seasonably cured.

72. The nonconformities substantially impair the value of the 2001 Tribute to the Plaintiff.

73. Plaintiff has previously notified Manufacturer and Lessor of the nonconformities and Plaintiff's intent to revoke acceptance pursuant to MCLA 440.2967 and demanded the refund of Plaintiff's lease payments (rent) and security interest for the 2001 Tribute and out-of-pocket expenses (see copy of Plaintiff's revocation of acceptance letter attached as Exhibit C).

74. Manufacturer and Lessor have nevertheless refused to accept return of the 2001 Tribute and have refused to refund any part of the sum equal to the lease payments (rent) and security interest and out-of-pocket expenses incurred by Plaintiff.

WHEREFORE, Plaintiff prays for judgment against Manufacturer and Lessor:

A. Declaring acceptance has been properly revoked by Plaintiff and for damages incurred in revoking acceptance;

B. For a refund of the lease payments (rent) and security deposit paid by Plaintiff for the 2001 Tribute;

C. To cancel the lease contract covering the 2001 Tribute and pay off the balance on the same;

D. For incidental and consequential damages, and actual damages for breach of warranty;

E. For costs, interest and actual attorneys' fees; and

F. For such other equitable relief this Court deems appropriate.

COUNT VII
BREACH OF WRITTEN WARRANTY UNDER MAGNUSON-MOSS WARRANTY ACT

75. Plaintiff incorporates herein by reference each and every allegation contained in Paragraphs 1 through 74 as though herein fully restated and realleged.

76. Plaintiff is a "consumer" as defined in the Magnuson-Moss Warranty Act (hereinafter referred to as the "Warranty Act") 15 USC 2301(3).

77. The Lessor is a "supplier" and "warrantor" as defined by the Warranty Act, 15 USC 2301(4) and (5).

78. The Manufacturer is a "supplier" and "warrantor" as defined by the Warranty Act, 15 USC 2301(4) and (5).

79. The 2001 Tribute is a "consumer product" as defined in the Warranty Act, 15 USC 2301(1).

80. The 2001 Tribute was manufactured, sold and purchased after July 4, 1975.

81. The express warranty given by the Manufacturer pertaining to the 2001 Tribute is a "written warranty" as defined in the Warranty Act, 15 USC 2301(6).

82. The Lessor is an authorized dealership/agent of the manufacturer designated to perform repairs on vehicles under Manufacturer's automobile warranties.

83. The above-described actions (failure to repair and/or properly repair the above-mentioned defects, etc.), including failure to honor the written warranty, constitute a breach of the written warranty by the Manufacturer and Lessor actionable under the Warranty Act, 15 USC 2310(d)(1) and (2).

WHEREFORE, Plaintiff prays for judgment against Manufacturer and Lessor:

A. Declaring acceptance has been properly revoked by Plaintiff and for damages incurred in revoking acceptance;

B. For a refund of the lease payments (rent) and security deposit paid by Plaintiff for the 2001 Tribute;

C. To cancel the lease contract covering the 2001 Tribute and pay off the balance on the contract;

D. For consequential, incidental and actual damages;

E. For costs, interest and actual attorneys' fees; and

F. Such other relief this Court deems appropriate.

COUNT VIII
BREACH OF IMPLIED WARRANTY UNDER
MAGNUSON-MOSS WARRANTY ACT

84. Plaintiff incorporates herein by reference each and every allegation contained in Paragraphs 1 through 83 as though herein fully stated and realleged.

85. The above-described actions on the part of the Lessor and Manufacturer constitute a breach of the implied warranties of merchantability actionable under the Warranty Act, 15 USC 2301(7), 2308, 2310(d)(1) and (2).

WHEREFORE, Plaintiff prays for judgment against Manufacturer and Lessor:

A. Declaring acceptance has been properly revoked by Plaintiff and for damages incurred in revoking acceptance;

B. For a refund of the lease payments (rent) and security deposit paid by Plaintiff for the 2001 Tribute;

C. To cancel Plaintiff's retail installment contract and pay off the balance on the contract;

D. For consequential, incidental and actual damages;

E. For costs, interest and actual attorneys' fees; and

F. Such other relief this Court deems appropriate.

COUNT IX
VIOLATION OF THE MICHIGAN CONSUMER PROTECTION ACT
MCLA 445.901 ET SEQ; MSA 19.418(1) ET SEQ.

86. Plaintiff incorporates herein by reference each and every allegation contained in Paragraphs 1 through 85 as though herein fully restated and realleged.

87. Plaintiff is a "person" within the meaning of MCLA 445.902(c); MSA 19.418(2)(c).

88. Manufacturer and Lessor are engaged in "trade or commerce" as defined in MCLA 445.902(d).

89. The Manufacturer and Lessor have engaged in unlawful, unfair, unconscionable, or deceptive methods, acts or practices, including but not limited to:

(a) The Manufacturer and Lessor represented to Plaintiff the 2001 Tribute and the warranty thereof had characteristics, uses, benefits, qualities, and standards which they did not actually have.

(b) The Manufacturer and Lessor represented to Plaintiff the 2001 Tribute and the warranty thereof were of a particular quality and standard and they were not.

(c) If Plaintiff allegedly waived a right, benefit, or immunity provided by law in purchasing the 2001 Tribute, the Manufacturer and Lessor have failed to clearly state the terms of such waiver and Plaintiff has not specifically consented to such waiver.

(d) The Manufacturer and Lessor have failed to restore an amount equal to Plaintiff's down payment and other payments made by Plaintiff on the 2001 Tribute.

(e) The Manufacturer and Lessor have made gross discrepancies between the oral representations to Plaintiff and written agreements covering the same transaction relative to the 2001 Tribute and the Manufacturer failed to provide the promised benefits to Plaintiff with regard thereto.

(f) The Manufacturer and Lessor have made representations of fact and/or statements of fact material to said transaction such that the Plaintiff reasonably believed that the represented or suggested standard, quality, characteristics, and uses of the 2001 Tribute to be other than they actually were.

(g) The Manufacturer and Lessor have made representations of fact and/or statements of fact material to such transaction such that the Plaintiff reasonably believed that the represented or suggested service to the 2001 Tribute to be other than it actually was.

(h) The Manufacturer and Lessor have failed to provide the promised benefits to Plaintiff with regard to the sale of the 2001 Tribute to Plaintiff.

90. The Plaintiff has suffered loss and damages as a result of the aforesaid violations of the Consumer Protection Act.

WHEREFORE, Plaintiff prays this Court enter a declaratory judgment as to the violations of the Michigan Consumer Protection Act and for judgment against Manufacturer and Lessor for all damages Plaintiff has incurred, including reasonable attorneys' fees as provided by statute, together with interest, costs and expenses of this suit, and such other relief as this Court deems appropriate and equitable.

COUNT X
BREACH OF CONTRACT

91. Plaintiff incorporates herein by reference each and every allegation contained in Paragraphs 1 through 90 as though herein fully restated and realleged.

92. An express limited warranty covering 36 months or 36,000 miles of use, whichever occurred first, accompanied the delivery of the 2001 Tribute to Plaintiff. The limited warranty provided the Lessor would repair or adjust all parts (except tires) found to be defective in factory-supplied materials or workmanship.

93. The limited warranty, given by the Manufacturer and adopted by the Lessor when the Lessor serviced and repaired the 2001 Tribute created a contractual relationship between the Manufacturer/Lessor and Plaintiff.

94. The Manufacturer and Lessor have breached the express limited warranty contract in that they have failed to repair or adjust defective parts covered under the limited warranty, have failed to do the same within the limited warranty coverage period, and within a reasonable time.

WHEREFORE, Plaintiff prays for judgment against all Defendants:

A. Damages incurred by Plaintiff created by Defendants' breach of contract, including all monies paid for the lease of the 2001 Tribute;

B. For incidental, consequential, exemplary and actual damages;

C. For costs and expenses, interest, and actual attorneys' fees; and

D. Such other relief this Court deems appropriate.

COUNT XI
RESCISSION OF CONTRACT

95. Plaintiff incorporates herein by reference each and every allegation contained in Paragraphs 1 through 94 as though herein fully restated and realleged.

96. An express limited warranty covering 36 months or 36,000 miles of use, whichever occurred first, accompanied the delivery of the 2001 Tribute to Plaintiff. The limited warranty provided the Lessor would repair or adjust all parts (except tires) found to be defective in factory-supplied materials or workmanship.

97. The limited warranty, given by the Manufacturer and adopted by the Lessor when the Lessor serviced and repaired the 2001 Tribute created a contractual relationship between the Manufacturer/Lessor and Plaintiff.

98. The Manufacturer and Lessor have breached the express limited warranty contract in that they have failed to repair or adjust defective parts covered under the limited warranty, have failed to do the same within the limited warranty coverage period, and within a reasonable time.

99. The actions of the Manufacturer and Lessor have resulted in a failure of consideration justifying the rescission of the contract.

100. Without a judicial declaration that the contract has been rescinded, Plaintiff will suffer irreparable and substantial harm if the consideration paid by Plaintiff and damages sustained by Plaintiff, together with interest, are not restored.

WHEREFORE, Plaintiff prays for judgment and the following relief against all Defendants:

A. That this Court order a rescission of the lease contract covering the 2001 Tribute by ordering Defendants to refund all monies paid by Plaintiff and ordering Plaintiff to return the 2001 Tribute to the Defendants;

B. Damages incurred by Plaintiff created by Defendants' breach of contract, including all monies paid for the lease of the 2001 Tribute;

C. For incidental, consequential, exemplary and actual damages;

D. For costs and expenses, interest, and actual attorneys' fees; and

E. Such other relief this Court deems appropriate.

COUNT XII
VIOLATION OF NEW MOTOR VEHICLE WARRANTIES ACT;
MCL 257.1401 ET SEQ; MSA 9.2705

101. Plaintiff incorporates herein by reference each and every allegation contained in Paragraphs 1 through 100 as though herein fully restated and realleged.

102. Plaintiff is a "consumer" under the Michigan New Motor Vehicle Warranties Act (hereinafter referred to as "Lemon Law"), MCL 257.1401(a).

103. Manufacturer, is a "manufacturer" under the Lemon Law, MCL 257.1401(d).

104. The 2001 Tribute is a "motor vehicle" under the Lemon Law, MCL 257.1401(f).

105. The 2001 Tribute is a "new motor vehicle" under the Lemon Law, MCL 257.1401(g).

106. The express warranty given by Manufacturer, covering the 2001 Tribute is a "manufacturer's express warranty" under the Lemon Law, MCLA 257.1401(e).

107. The Lessor is a "new motor vehicle dealer" under the Lemon Law, MCLA 257.1401(h).

108. Plaintiff's 2001 Tribute has been subject to a reasonable number of repair attempts for the aforementioned defects:

(a) Said motor vehicle has been subject to at least four repair attempts by Defendant Manufacturer, through its new motor vehicle dealers, within 2 years of the date of the first attempt to repair the defect or condition; and/or

(b) Said vehicle was out of service for 30 or more days within the time limit of the Manufacturer's express warranty and within one year from the date of delivery to Plaintiff.

109. After notifying Manufacturer of the aforementioned defects following the third repair attempt and/or 25 days in a repair facility, the Manufacturer was allowed a final repair attempt.

110. Manufacturer's attempted repair was unsuccessful as the 2001 Tribute continues to manifest the aforementioned defects.

111. The aforementioned defects substantially impair the use or value of the 2001 Tribute to the Plaintiff and/or prevent the 2001 Tribute from conforming to the Manufacturer's express warranty.

WHEREFORE, Plaintiff prays for the following relief:

A. Replacement of the 2001 Tribute with a comparable replacement motor vehicle currently in production and acceptable to Plaintiff; or

B. Manufacturer must accept return of the vehicle and refund to Plaintiff the lease price including options or other modifications installed or made by or for manufacturer, the amount of all charges made by or for Manufacturer, towing charges and rental costs less a reasonable allowance for Plaintiff's use of the vehicle. In addition, pursuant to MCL 257.1403(4), the Manufacturer must pay off the balance on the retail installment contract unless consumer accepts a vehicle of comparable value.

C. Pursuant to MCL 257.1407, Plaintiff is entitled to a sum equal to the aggregate amount of costs and expenses, including attorneys' fees based on actual time expended by Plaintiff's attorney in commencement and prosecution of this action.

D. Incidental and consequential damages.

E. For prejudgment interest.

F. For such other and further relief as may be justified in this action.

COUNT XIII
VIOLATION OF THE MOTOR VEHICLE SERVICE AND REPAIR ACT
MCLA 257.1301, ET SEQ.

112. Plaintiff incorporates herein by reference each and every allegation contained in Paragraphs 1 through 111 as though fully restated and realleged.

113. The Lessor is a "motor vehicle repair facility" as defined by MCLA 257.1302(g)

114. The Lessor is subject to the Motor Vehicle Service And Repair Act, MCLA 257.1301, et seq.

115. The Lessor has engaged or attempted to engage in methods, acts, or practices which were unfair or deceptive under said Act and/or the rules in effect during the relevant time period herein pursuant to MCLA 257.1307, 257.1334, 157,1335, 257.1336, and 257.1337; and Michigan Administrative Rules 257.131 through 257.137 including, but not limited to:

(a) Failing to reveal material facts, the omission of which tends to mislead or deceive the Plaintiff and which facts could not reasonably be known by Plaintiff;

(b) Allowing Plaintiff to sign an acknowledgement, certificate or other writing which affirms acceptance, delivery, compliance with a requirement of law, or other performance, when the Lessor, knows or had reason to know that the statement is not true;

(c) Failing to promptly restore to the Plaintiff entitled thereto any deposit, down payment, or other payment when a contract is rescinded, canceled, or otherwise terminated in accordance with the terms of the contract or the Act;

(d) Failing upon return of the vehicle to the Plaintiff to give a written statement of repairs to the Plaintiff which discloses:

(i) Repairs or services performed, including a detailed identification of all parts that were replaced and a specification as to which are new, used, rebuilt, or reconditioned; and

(ii) A certification that authorized repairs were completely proper or a detailed explanation of an inability to complete repairs properly, to be signed by the owner of the facility or by a person designated by the owner to represent the facility and showing the name of the mechanic who performed the diagnosis and the repair.

116. As a result of the Lessor's actions Plaintiff has suffered damages as set forth in the preceding Counts and is also entitled to statutory damages and attorneys' fees as provided in the Motor Vehicle Service and Repair Act, specifically MCLA 257.1338.

WHEREFORE, Plaintiff prays for a judgment against the Lessor in an amount to be determined by the trier of fact, but to exceed TWENTY FIVE THOUSAND DOLLARS ($25,000.00), plus double damages and costs and reasonable attorneys' fees, and for such other and further relief as the Court deems appropriate.

JURY DEMAND

Plaintiff demands trial by jury on all issues triable as such.

Respectfully submitted,

CONSUMER LEGAL SERVICES, P.C.

By: 

MARK ROMANO P-44014
STEVEN S. TOTH P-44487
Attorneys for Plaintiff
30928 Ford Road
Garden City, MI 48135
(734) 261-4700

Dated: October 2, 2002

Craig Thor Kimmel, Esquire
Identification No. 57100
KIMMEL & SILVERMAN, P.C.
30 East Butler Pike
Ambler, PA 19002
(215) 540-8888

ATTORNEY FOR PLAINTIFFS

THIS IS AN ARBITRATION MATTER. ASSESSMENT OF DAMAGES HEARING IS REQUESTED.

DONALD RUCK AND EDWARD RUCK 1064 Redoak Drive Harrison City, Pennsylvania 15636	COURT OF COMMON PLEAS PHILADELPHIA COUNTY
v.	CIVIL ACTION
MAZDA MOTOR AMERICA 7755 Irvin Center Drive P.O. Box 19734 Irvin, California 92713-9734	

COMPLAINT
CODE: 1900

1. Plaintiffs, Donald Ruck and Edward Ruck, are adult individual citizens and legal residents of the Commonwealth of Pennsylvania , 1064 Redoak Drive, Harrison City, Pennsylvania 15636.

2. Defendant, Mazda Motor of America, Inc., is a business corporation qualified to do business and regularly conduct business in the Commonwealth of Pennsylvania, and is a corporation of the State of California, with its legal residence and principal place of business located at 7755 Irvine Center Drive, P.O. Box 19734, Irvine, CA, 92713-9734, and can be served at same.

BACKGROUND

3. On or about January 30, 2001, Plaintiffs purchased a new 2001 Mazda Tribute, manufactured and warranted by Defendant, bearing the Vehicle Identification Number 4F2YU08161KM38354.

4. The vehicle was purchased in the Commonwealth of Pennsylvania and is registered in the Commonwealth of Pennsylvania .

5. The contract price of the vehicle, including registration charges, document fees, sales tax, finance and bank charges, but excluding other collateral charges not specified, yet defined by the Lemon Law, totaled more than $18,000.00. A true and correct copy of the contract is attached hereto, made a part hereof, and marked Exhibit "A".

6. In consideration for the purchase of said vehicle, Defendant issued to Plaintiffs several warranties, guarantees, affirmations or undertakings with respect to the material or workmanship of the vehicle and/or remedial action in the event the vehicle fails to meet the promised specifications.

7. The above-referenced warranties, guarantees, affirmations or undertakings are/were part of the basis of the bargain between Defendant and Plaintiffs.

8. The parties' bargain includes an express 3-year / 50,000 mile warranty, as well as other guarantees, affirmations and undertakings as stated in Defendant's warranty materials and owner's manual.

9. However, as a result of the ineffective repair attempts made by Defendant through its authorized dealer(s), the vehicle is rendered substantially impaired, unable to be utilized for its intended purposes, and is worthless to Plaintiffs.

10. Plaintiffs have or may have resorted to Defendant's informal dispute settlement procedure, to the extent said procedure complies with 16 CFR 703.

11. Plaintiffs aver that the Federal Trade Commission (FTC) has determined that no automobile manufacturer complies with 16 CFR 703. See, Fed. Reg. 15636, Vol. 62, No. 63 (Apr. 2, 1997)

COUNT I
PENNSYLVANIA AUTOMOBILE LEMON LAW

12. Plaintiffs hereby incorporate all facts and allegations set forth in this Complaint by reference as if fully set forth at length herein.

13. Plaintiffs are "Purchasers" as defined by 73 P.S. §1952.

14. Defendant is a "Manufacturer" as defined by 73 P.S. §1952.

15. Smail Automotive, is and/or was at the time of sale a Motor Vehicle Dealer in the business of buying, selling, and/or exchanging vehicles as defined by 73 P.S. §1952.

16. On or about January 30, 2001, Plaintiffs took possession of the above mentioned vehicle and experienced nonconformities as defined by 73 P.S §1951 et seq., which substantially impair the use, value and/or safety of the vehicle.

17. The nonconformities described violate the express written warranties issued to Plaintiffs by Defendant.

18. Section 1955 of the Pennsylvania Automobile Lemon Law provides:

> If a manufacturer fails to repair or correct a nonconformity after a reasonable number of attempts, the manufacturer shall, at the option of the purchaser, replace the motor vehicle... or accept return of the vehicle from the purchaser, and refund to the purchaser the full purchase price, including all collateral charges, less a reasonable allowance for the purchasers use of the vehicle, not exceeding $.10 per mile driven or 10% of the purchase price of the vehicle, whichever is less.

19. Section 1956 of the Pennsylvania Automobile Lemon Law provides a presumption of a reasonable number of repair attempts if:

> (1) The same nonconformity has been subject to repair three times by the manufacturer, its agents or authorized dealers and the nonconformity still exists; or
>
> (2) The vehicle is out-of-service by reason of any nonconformity for a cumulative total of thirty or more calendar days.

20. Plaintiffs have satisfied the above definition as the vehicle has been subject to repair more than three (3) times for the same nonconformity, and the nonconformity remained uncorrected.

21. In addition, the above vehicle has or will be out-of-service by reason of the nonconformities complained of for a cumulative total of thirty (30) or more calendar days.

22. Plaintiffs have delivered the nonconforming vehicle to an authorized service and repair facility of the Defendant on numerous occasions as outlined below.

23. After a reasonable number of attempts, Defendant was unable to repair the nonconformities.

24. During the first 12 months and/or 12,000 miles, Plaintiffs complained on at least three (3) occasions about defects and or non-conformities to the following vehicle components: stalling condition. True and correct copies of all invoices in Plaintiff's possession are attached hereto, made a part hereof, and marked Exhibit "B".

25. Plaintiffs aver the vehicle has been subject to additional repair attempts for defects and conditions for which Defendant's warranty dealer did not provide or maintain itemized statements as required by 73 P.S. § 1957.

26. Plaintiffs aver that such itemized statements, which were not provided as required by 73 P.S. § 1957 also include technicians' notes of diagnostic procedures and repairs, and Defendant's Technical Service Bulletins relating to this vehicle.

27. Plaintiffs aver the vehicle has been subject to additional repair attempts for defects and conditions for which Defendant's warranty dealer did not provide the notification required by 73 P.S. § 1957.

28. Plaintiffs have and will continue to suffer damages due to Defendant's failure to comply with the provisions of 73 P.S. §§ 1954 (repair obligations), 1955 (manufacturer's duty for refund or replacement), and 1957 (itemized statements required).

29. Pursuant to 73 P.S. § 1958, Plaintiffs seek relief for losses due to the vehicle's nonconformities, including the award of reasonable attorneys' fees and all court costs.

WHEREFORE, Plaintiffs respectfully demand judgment against Defendant in an amount equal to the price of the subject vehicle, plus all collateral charges, attorneys' fees, and court costs.

COUNT II
MAGNUSON-MOSS (FTC) WARRANTY IMPROVEMENT ACT

30. Plaintiffs hereby incorporate all facts and allegations set forth in this Complaint by reference as if fully set forth at length herein.

31. Plaintiffs are "Consumers" as defined by 15 U.S.C. §2301(3).

32. Defendant is a "supplier," "warrantor," and a "service contractor" as defined by 15 U.S.C. § 2301 (4),(5) and (8).

33. The subject vehicle is a "consumer product" as defined by 15 U.S.C. § 2301(1).

34. By the terms of its written warranties, affirmations, promises, or service contracts, Defendant agreed to perform effective repairs at no charge for parts and/or labor.

35. The Magnuson-Moss Warranty Improvement Act requires Defendant to be bound by all warranties implied by state law. Said warranties are imposed on all transactions in the state in which the vehicle was delivered.

36. Defendant has made attempts on several occasions to comply with the terms of its express warranties; however, such repair attempts have been ineffective.

37. The Magnuson-Moss Warranty Improvement Act, 15 U.S.C. §2310(d)(2) provides:

> If a consumer finally prevails on an action brought under paragraph (1) of this subsection, he may be allowed by the court to recover as part of the judgment a sum equal to the amount of aggregate amount of costs and expenses (including attorney fees based upon actual time expended), determined by the court to have been reasonably incurred by the Plaintiff for, or in connection with the commencement and prosecution of such action, unless the court, in its discretion shall determine that such an award of attorney's fees would be inappropriate.

38. Plaintiffs have afforded Defendant a reasonable number of opportunities to conform the vehicle to the aforementioned express warranties, implied warranties and contracts.

39. As a direct and proximate result of Defendant's failure to comply with the express written warranties, Plaintiffs have suffered damages and, in accordance with 15 U.S.C. §2310(d)(1), Plaintiffs is entitled to bring suit for such damages and other legal and equitable relief.

40. Defendant's failure is a breach of Defendant's contractual and statutory obligations constituting a violation of the Magnuson-Moss Warranty Improvement Act, including but not limited to: breach of express warranties; breach of implied warranty of merchantability; breach of implied warranty of fitness for a particular purpose; breach of contract; and constitutes an Unfair Trade Practice.

41. Plaintiffs aver Defendant's Dispute Resolution Program is not in compliance with 16 CFR 703 by the FTC for the period of time this claim was submitted.

42. Plaintiffs aver that upon successfully prevailing upon the Magnuson-Moss claim herein, all attorney fees are recoverable and are demanded against Defendant.

WHEREFORE, Plaintiffs respectfully demand judgment against Defendant in an amount equal to the price of the subject vehicle, plus all collateral charges, incidental and consequential damages, reasonable attorneys' fees, and all court costs.

COUNT III
PENNSYLVANIA UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION LAW

43. Plaintiffs hereby incorporate all facts and allegations set forth in this Complaint by reference as if fully set forth at length herein.

44. Plaintiffs are "Persons" as defined by 73 P.S. §201-2(2).

45. Defendant is a "Person" as defined by 73 P.S. §201-2(2).

46. Section 201-9.2(a) of the Act authorizes a private cause of action for any person "who purchases or leases goods or services primarily for personal, family or household purposes."

47. Section 1961 of the Pennsylvania Automobile Lemon Law, provides that a violation of its provisions shall automatically constitute a violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Act, 73 P.S. 201-1 et seq.

48. In addition, the Pennsylvania Unfair Trade Practices and Consumer Protection Act, 73 P.S. §201-2(4), defines "unfair or deceptive acts or practices" to include the following conduct:

> (vii). Representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if they are of another;
>
> (xiv). Failing to comply with the terms of any written guarantee or warranty given to the buyer at, prior to, or after a contract for the purchase of goods or services is made;
>
> (xv). Knowingly misrepresenting that services, replacements or repairs are needed if they are not needed;
>
> (xvi). Making repairs, improvements or replacements on tangible, real or personal property of a nature or quality inferior to or below the standard of that agreed to in writing;
>
> (xvii). Engaging in any other fraudulent conduct which creates a likelihood of confusion or of misunderstanding.

49. Plaintiffs aver Defendant has violated these, as well as other provisions, of 73 P.S. §201-2 et seq.

50. Section 201-3.1 of the Act provides that the Automotive Industry Trade Practice rules and regulations adopted by the Attorney General for the enforcement of this Act shall constitute additional violations of the Act.

51. Defendant's conduct surrounding the sale and servicing of the subject vehicle falls within the aforementioned definitions of "unfair or deceptive acts or practices."

52. The Act also authorizes the Court, in its discretion, to award up to three (3) times the actual damages sustained for violations.

WHEREFORE, Plaintiffs respectfully demand judgment against Defendant in an amount not in excess of Fifty Thousand Dollars ($50,000.00), together with all collateral charges, attorneys' fees, all court costs and treble damages.

KIMMEL & SILVERMAN, P.C.

By: _____
CRAIG THOR KIMMEL, ESQUIRE
Attorney for Plaintiffs
30 East Butler Pike
Ambler, Pennsylvania 19002
(215) 540-8888

Craig Thor Kimmel, Esquire
Identification No. 57100
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(215) 540-8888

ATTORNEY FOR PLAINTIFF

THIS IS AN ARBITRATION MATTER. ASSESSMENT OF DAMAGES HEARING IS REQUESTED.

ERIN SANCHEZ
13 Gary Lane, #2
Tunkhannock, Pennsylvania 18657

v.

MAZDA MOTOR AMERICA
7755 Irvin Center Drive
P.O. Box 19734
Irvin, California 92713-9734

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

CIVIL ACTION

COMPLAINT
CODE: 1900

1. Plaintiff, Erin Sanchez, is an adult individual citizen and legal resident of the Commonwealth of Pennsylvania , 13 Gary Lane, #2, Tunkhannock, Pennsylvania 18657.

2. Defendant, Mazda Motor of America, Inc., is a business corporation qualified to do business and regularly conduct business in the Commonwealth of Pennsylvania, and is a corporation of the State of California, with its legal residence and principal place of business located at 7755 Irvine Center Drive, P.O. Box 19734, Irvine, CA, 92713-9734, and can be served at same.

BACKGROUND

3. On or about February 1, 2001, Plaintiff purchased a new 2001 Mazda Tribute, manufactured and warranted by Defendant, bearing the Vehicle Identification Number 4F2YU06171KM32680.

4. The vehicle was purchased in the Commonwealth of Pennsylvania and is registered in the Commonwealth of Pennsylvania .

5. The contract price of the vehicle, including registration charges, document fees, sales tax, finance and bank charges, but excluding other collateral charges not specified, yet defined by the Lemon Law, totaled more than $25,000.00. A true and correct copy of the agreement is not in Plaintiff's possession, however it can be obtained from Defendant's authorized facility.

6. In consideration for the purchase of said vehicle, Defendant issued to Plaintiff several warranties, guarantees, affirmations or undertakings with respect to the material or workmanship of the vehicle and/or remedial action in the event the vehicle fails to meet the promised specifications.

7. The above-referenced warranties, guarantees, affirmations or undertakings are/were part of the basis of the bargain between Defendant and Plaintiff.

8. The parties' bargain includes an express 3-year / 50,000 mile warranty, as well as other guarantees, affirmations and undertakings as stated in Defendant's warranty materials and owner's manual.

9. However, as a result of the ineffective repair attempts made by Defendant through its authorized dealer(s), the vehicle is rendered substantially impaired, unable to be utilized for its intended purposes, and is worthless to Plaintiff.

10. Plaintiff has or may have resorted to Defendant's informal dispute settlement procedure, to the extent said procedure complies with 16 CFR 703.

11. Plaintiff avers that the Federal Trade Commission (FTC) has determined that no automobile manufacturer complies with 16 CFR 703. See, Fed. Reg. 15636, Vol. 62, No. 63 (Apr. 2, 1997)

COUNT I
PENNSYLVANIA AUTOMOBILE LEMON LAW

12. Plaintiff hereby incorporates all facts and allegations set forth in this Complaint by reference as if fully set forth at length herein.

13. Plaintiff is a "Purchaser" as defined by 73 P.S. §1952.

14. Defendant is a "Manufacturer" as defined by 73 P.S. §1952.

15. Bour Mazda, is and/or was at the time of sale a Motor Vehicle Dealer in the business of buying, selling, and/or exchanging vehicles as defined by 73 P.S. §1952.

16. On or about February 1, 2001, Plaintiff took possession of the above mentioned vehicle and experienced nonconformities as defined by 73 P.S §1951 et seq., which substantially impair the use, value and/or safety of the vehicle.

17. The nonconformities described violate the express written warranties issued to Plaintiff by Defendant.

18. Section 1955 of the Pennsylvania Automobile Lemon Law provides:

> If a manufacturer fails to repair or correct a nonconformity after a reasonable number of attempts, the manufacturer shall, at the option of the purchaser, replace the motor vehicle... or accept return of the vehicle from the purchaser, and refund to the purchaser the full purchase price, including all collateral charges, less a reasonable allowance for the purchasers use of the vehicle, not exceeding $.10 per mile driven or 10% of the purchase price of the vehicle, whichever is less.

19. Section 1956 of the Pennsylvania Automobile Lemon Law provides a presumption of a reasonable number of repair attempts if:

> (1) The same nonconformity has been subject to repair three times by the manufacturer, its agents or authorized dealers and the nonconformity still exists; or
>
> (2) The vehicle is out-of-service by reason of any nonconformity for a cumulative total of thirty or more calenda. days.

20. Plaintiff has satisfied the above definition as the vehicle has been subject to repair more than three (3) times for the same nonconformity, and the nonconformity remained uncorrected.

21. In addition, the above vehicle has or will be out-of-service by reason of the nonconformities complained of for a cumulative total of thirty (30) or more calendar days.

22. Plaintiff has delivered the nonconforming vehicle to an authorized service and repair facility of the Defendant on numerous occasions as outlined below.

23. After a reasonable number of attempts, Defendant was unable to repair the nonconformities.

24. During the first 12 months and/or 12,000 miles, Plaintiff complained on at least three (3) occasions about defects and or non-conformities to the following vehicle components:

transmission; rear differential; tires; coolant leak; stalling and abnormal odor . True and correct copies of all invoices in Plaintiff's possession are attached hereto, made a part hereof, and marked Exhibit "A".

25. Plaintiff avers the vehicle has been subject to additional repair attempts for defects and conditions for which Defendant's warranty dealer did not provide or maintain itemized statements as required by 73 P.S. § 1957.

26. Plaintiff avers that such itemized statements, which were not provided as required by 73 P.S. § 1957 also include technicians' notes of diagnostic procedures and repairs, and Defendant's Technical Service Bulletins relating to this vehicle.

27. Plaintiff avers the vehicle has been subject to additional repair attempts for defects and conditions for which Defendant's warranty dealer did not provide the notification required by 73 P.S. § 1957.

28. Plaintiff has and will continue to suffer damages due to Defendant's failure to comply with the provisions of 73 P.S. §§ 1954 (repair obligations), 1955 (manufacturer's duty for refund or replacement), and 1957 (itemized statements required).

29. Pursuant to 73 P.S. § 1958, Plaintiff seeks relief for losses due to the vehicle's nonconformities, including the award of reasonable attorneys' fees and all court costs.

WHEREFORE, Plaintiff respectfully demands judgment against Defendant in an amount equal to the price of the subject vehicle, plus all collateral charges, attorneys' fees, and court costs.

COUNT II
MAGNUSON-MOSS (FTC) WARRANTY IMPROVEMENT ACT

30. Plaintiff hereby incorporates all facts and allegations set forth in this Complaint by reference as if fully set forth at length herein.

31. Plaintiff is a "Consumer" as defined by 15 U.S.C. §2301(3).

32. Defendant is a "supplier," "warrantor," and a "service contractor" as defined by 15 U.S.C. § 2301 (4),(5) and (8).

33. The subject vehicle is a "consumer product" as defined by 15 U.S.C. § 2301(1).

34. By the terms of its written warranties, affirmations, promises, or service contracts, Defendant agreed to perform effective repairs at no charge for parts and/or labor.

35. The Magnuson-Moss Warranty Improvement Act requires Defendant to be bound by all warranties implied by state law. Said warranties are imposed on all transactions in the state in which the vehicle was delivered.

36. Defendant has made attempts on several occasions to comply with the terms of its express warranties; however, such repair attempts have been ineffective.

37. The Magnuson-Moss Warranty Improvement Act, 15 U.S.C. §2310(d)(2) provides:

> If a consumer finally prevails on an action brought under paragraph (1) of this subsection, he may be allowed by the court to recover as part of the judgment a sum equal to the amount of aggregate amount of costs and expenses (including attorney fees based upon actual time expended), determined by the court to have been reasonably incurred by the Plaintiff for, or in connection with the commencement and prosecution of such action, unless the court, in its discretion shall determine that such an award of attorney's fees would be inappropriate.

38. Plaintiff has afforded Defendant a reasonable number of opportunities to conform the vehicle to the aforementioned express warranties, implied warranties and contracts.

39. As a direct and proximate result of Defendant's failure to comply with the express written warranties, Plaintiff has suffered damages and, in accordance with 15 U.S.C. §2310(d)(1), Plaintiff is entitled to bring suit for such damages and other legal and equitable relief.

40. Defendant's failure is a breach of Defendant's contractual and statutory obligations constituting a violation of the Magnuson-Moss Warranty Improvement Act, including but not limited to: breach of express warranties; breach of implied warranty of merchantability; breach of implied warranty of fitness for a particular purpose; breach of contract; and constitutes an Unfair Trade Practice.

41. Plaintiff avers Defendant's Dispute Resolution Program is not in compliance with 16 CFR 703 by the FTC for the period of time this claim was submitted.

42. Plaintiff avers that upon successfully prevailing upon the Magnuson-Moss claim herein, all attorney fees are recoverable and are demanded against Defendant.

WHEREFORE, Plaintiff respectfully demands judgment against Defendant in an amount equal to the price of the subject vehicle, plus all collateral charges, incidental and consequential damages, reasonable attorneys' fees, and all court costs.

COUNT III
PENNSYLVANIA UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION LAW

43. Plaintiff hereby incorporates all facts and allegations set forth in this Complaint by reference as if fully set forth at length herein.

44. Plaintiff is a "Person" as defined by 73 P.S. §201-2(2).

45. Defendant is a "Person" as defined by 73 P.S. §201-2(2).

46. Section 201-9.2(a) of the Act authorizes a private cause of action for any person "who purchases or leases goods or services primarily for personal, family or household purposes."

47. Section 1961 of the Pennsylvania Automobile Lemon Law, provides that a violation of its provisions shall automatically constitute a violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Act, 73 P.S. 201-1 et seq.

48. In addition, the Pennsylvania Unfair Trade Practices and Consumer Protection Act, 73 P.S. §201-2(4), defines "unfair or deceptive acts or practices" to include the following conduct:

> (vii). Representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if they are of another;
>
> (xiv). Failing to comply with the terms of any written guarantee or warranty given to the buyer at, prior to, or after a contract for the purchase of goods or services is made;
>
> (xv). Knowingly misrepresenting that services, replacements or repairs are needed if they are not needed;
>
> (xvi). Making repairs, improvements or replacements on tangible, real or personal property of a nature or quality inferior to or below the standard of that agreed to in writing;
>
> (xvii). Engaging in any other fraudulent conduct which creates a likelihood of confusion or of misunderstanding.

49. Plaintiff avers Defendant has violated these, as well as other provisions, of 73 P.S. §201-2 et seq.

50. Section 201-3.1 of the Act provides that the Automotive Industry Trade Practice rules and regulations adopted by the Attorney General for the enforcement of this Act shall constitute additional violations of the Act.

51. Defendant's conduct surrounding the sale and servicing of the subject vehicle falls within the aforementioned definitions of "unfair or deceptive acts or practices."

52. The Act also authorizes the Court, in its discretion, to award up to three (3) times the actual damages sustained for violations.

WHEREFORE, Plaintiff respectfully demands judgment against Defendant in an amount not in excess of Fifty Thousand Dollars ($50,000.00), together with all collateral charges, attorneys' fees, all court costs and treble damages.

KIMMEL & SILVERMAN, P.C.

By: _____
CRAIG THOR KIMMEL, ESQUIRE
Attorney for Plaintiff
30 East Butler Pike
Ambler, Pennsylvania 19002
(215) 540-8888

Craig Thor Kimmel, Esquire
Identification No. 57100
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ATTORNEY FOR PLAINTIFF

THIS IS AN ARBITRATION MATTER. ASSESSMENT OF DAMAGES HEARING IS REQUESTED.

MARK TAYMAN
519 Overhead Drive
Moon Township, Pennsylvania 15108

v.

MAZDA MOTOR AMERICA
7755 Irvin Center Drive
P.O. Box 19734
Irvin, California 92713-9734

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

CIVIL ACTION FEBRUARY 2002

000803

COMPLAINT
CODE: 1900

1. Plaintiff, Mark Tayman, is an adult individual citizen and legal resident of the Commonwealth of Pennsylvania , 519 Overhead Drive, Moon Township, Pennsylvania 15108.

2. Defendant, Mazda Motor of America, Inc., is a business corporation qualified to do business and regularly conduct business in the Commonwealth of Pennsylvania, and is a corporation of the State of California, with its legal residence and principal place of business located at 7755 Irvine Center Drive, P.O. Box 19734, Irvine, CA, 92713-9734, and can be served at same.

BACKGROUND

3. On or about March 24, 2001, Plaintiff purchased a new 2001 Mazda Tribute. manufactured and warranted by Defendant, bearing the Vehicle Identification Number 4F2YU06111KM46364.

4. The vehicle was purchased in the Commonwealth of Pennsylvania and is registered in the Commonwealth of Pennsylvania .

5. The contract price of the vehicle, including registration charges, document fees, sales tax, finance and bank charges, but excluding other collateral charges not specified, yet defined by the Lemon Law, totaled more than $28,640.20. A true and correct copy of the contract is attached hereto, made a part hereof, and marked Exhibit "A".

6. In consideration for the purchase of said vehicle, Defendant issued to Plaintiff several warranties, guarantees, affirmations or undertakings with respect to the material or workmanship of the vehicle and/or remedial action in the event the vehicle fails to meet the promised specifications.

7. The above-referenced warranties, guarantees, affirmations or undertakings are/were part of the basis of the bargain between Defendant and Plaintiff.

8. The parties' bargain includes an express 3-year / 50,000 mile warranty, as well as other guarantees, affirmations and undertakings as stated in Defendant's warranty materials and owner's manual.

9. However, as a result of the ineffective repair attempts made by Defendant through its authorized dealer(s), the vehicle is rendered substantially impaired, unable to be utilized for its intended purposes, and is worthless to Plaintiff.

10. Plaintiff has or may have resorted to Defendant's informal dispute settlement procedure, to the extent said procedure complies with 16 CFR 703.

11. Plaintiff avers that the Federal Trade Commission (FTC) has determined that no automobile manufacturer complies with 16 CFR 703. See, Fed. Reg. 15636, Vol. 62, No. 63 (Apr. 2, 1997)

COUNT I
PENNSYLVANIA AUTOMOBILE LEMON LAW

12. Plaintiff hereby incorporates all facts and allegations set forth in this Complaint by reference as if fully set forth at length herein.

13. Plaintiff is a "Purchaser" as defined by 73 P.S. §1952.

14. Defendant is a "Manufacturer" as defined by 73 P.S. §1952.

15. Rohrich Mazda, is and/or was at the time of sale a Motor Vehicle Dealer in the business of buying, selling, and/or exchanging vehicles as defined by 73 P.S. §1952.

16. On or about March 24, 2001, Plaintiff took possession of the above mentioned vehicle and experienced nonconformities as defined by 73 P.S §1951 et seq., which substantially impair the use, value and/or safety of the vehicle.

17. The nonconformities described violate the express written warranties issued to Plaintiff by Defendant.

18. Section 1955 of the Pennsylvania Automobile Lemon Law provides:

> If a manufacturer fails to repair or correct a nonconformity after a reasonable number of attempts, the manufacturer shall, at the option of the purchaser, replace the motor vehicle... or accept return of the vehicle from the purchaser, and refund to the purchaser the full purchase price, including all collateral charges, less a reasonable allowance for the purchasers use of the vehicle, not exceeding $.10 per mile driven or 10% of the purchase price of the vehicle, whichever is less.

19. Section 1956 of the Pennsylvania Automobile Lemon Law provides a presumption of a reasonable number of repair attempts if:

> (1) The same nonconformity has been subject to repair three times by the manufacturer, its agents or authorized dealers and the nonconformity still exists; or
>
> (2) The vehicle is out-of-service by reason of any nonconformity for a cumulative total of thirty or more calendar days.

20. Plaintiff has satisfied the above definition as the vehicle has been subject to repair more than three (3) times for the same nonconformity, and the nonconformity remained uncorrected.

21. In addition, the above vehicle has or will be out-of-service by reason of the nonconformities complained of for a cumulative total of thirty (30) or more calendar days.

22. Plaintiff has delivered the nonconforming vehicle to an authorized service and repair facility of the Defendant on numerous occasions as outlined below.

23. After a reasonable number of attempts, Defendant was unable to repair the nonconformities.

24. During the first 12 months and/or 12,000 miles, Plaintiff complained on at least three (3) occasions about defects and or non-conformities to the following vehicle components: stalling

condition . True and correct copies of all invoices in Plaintiff's possession are attached hereto, made a part hereof, and marked Exhibit "B".

25. Plaintiff avers the vehicle has been subject to additional repair attempts for defects and conditions for which Defendant's warranty dealer did not provide or maintain itemized statements as required by 73 P.S. § 1957.

26. Plaintiff avers that such itemized statements, which were not provided as required by 73 P.S. § 1957 also include technicians' notes of diagnostic procedures and repairs, and Defendant's Technical Service Bulletins relating to this vehicle.

27. Plaintiff avers the vehicle has been subject to additional repair attempts for defects and conditions for which Defendant's warranty dealer did not provide the notification required by 73 P.S. § 1957.

28. Plaintiff has and will continue to suffer damages due to Defendant's failure to comply with the provisions of 73 P.S. §§ 1954 (repair obligations), 1955 (manufacturer's duty for refund or replacement), and 1957 (itemized statements required).

29. Pursuant to 73 P.S. § 1958, Plaintiff seeks relief for losses due to the vehicle's nonconformities, including the award of reasonable attorneys' fees and all court costs.

WHEREFORE, Plaintiff respectfully demands judgment against Defendant in an amount equal to the price of the subject vehicle, plus all collateral charges, attorneys' fees, and court costs.

COUNT II
MAGNUSON-MOSS (FTC) WARRANTY IMPROVEMENT ACT

30. Plaintiff hereby incorporates all facts and allegations set forth in this Complaint by reference as if fully set forth at length herein.

31. Plaintiff is a "Consumer" as defined by 15 U.S.C. §2301(3).

32. Defendant is a "supplier," "warrantor," and a "service contractor" as defined by 15 U.S.C. § 2301 (4),(5) and (8).

33. The subject vehicle is a "consumer product" as defined by 15 U.S.C. § 2301(1).

34. By the terms of its written warranties, affirmations, promises, or service contracts, Defendant agreed to perform effective repairs at no charge for parts and/or labor.

35. The Magnuson-Moss Warranty Improvement Act requires Defendant to be bound by all warranties implied by state law. Said warranties are imposed on all transactions in the state in which the vehicle was delivered.

36. Defendant has made attempts on several occasions to comply with the terms of its express warranties; however, such repair attempts have been ineffective.

37. The Magnuson-Moss Warranty Improvement Act, 15 U.S.C. §2310(d)(2) provides:

> If a consumer finally prevails on an action brought under paragraph (1) of this subsection, he may be allowed by the court to recover as part of the judgment a sum equal to the amount of aggregate amount of costs and expenses (including attorney fees based upon actual time expended), determined by the court to have been reasonably incurred by the Plaintiff for, or in connection with the commencement and prosecution of such action, unless the court, in its discretion shall determine that such an award of attorney's fees would be inappropriate.

38. Plaintiff has afforded Defendant a reasonable number of opportunities to conform the vehicle to the aforementioned express warranties, implied warranties and contracts.

39. As a direct and proximate result of Defendant's failure to comply with the express written warranties, Plaintiff has suffered damages and, in accordance with 15 U.S.C. §2310(d)(1), Plaintiff is entitled to bring suit for such damages and other legal and equitable relief.

40. Defendant's failure is a breach of Defendant's contractual and statutory obligations constituting a violation of the Magnuson-Moss Warranty Improvement Act, including but not limited to: breach of express warranties; breach of implied warranty of merchantability; breach of implied warranty of fitness for a particular purpose; breach of contract; and constitutes an Unfair Trade Practice.

41. Plaintiff avers Defendant's Dispute Resolution Program is not in compliance with 16 CFR 703 by the FTC for the period of time this claim was submitted.

42. Plaintiff avers that upon successfully prevailing upon the Magnuson-Moss claim herein, all attorney fees are recoverable and are demanded against Defendant.

WHEREFORE, Plaintiff respectfully demands judgment against Defendant in an amount equal to the price of the subject vehicle, plus all collateral charges, incidental and consequential damages, reasonable attorneys' fees, and all court costs.

COUNT III
PENNSYLVANIA UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION LAW

43. Plaintiff hereby incorporates all facts and allegations set forth in this Complaint by reference as if fully set forth at length herein.

44. Plaintiff is a "Person" as defined by 73 P.S. §201-2(2).

45. Defendant is a "Person" as defined by 73 P.S. §201-2(2).

46. Section 201-9.2(a) of the Act authorizes a private cause of action for any person "who purchases or leases goods or services primarily for personal, family or household purposes."

47. Section 1961 of the Pennsylvania Automobile Lemon Law, provides that a violation of its provisions shall automatically constitute a violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Act, 73 P.S. 201-1 et seq.

48. In addition, the Pennsylvania Unfair Trade Practices and Consumer Protection Act, 73 P.S. §201-2(4), defines "unfair or deceptive acts or practices" to include the following conduct:

> (vii). Representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if they are of another;
>
> (xiv). Failing to comply with the terms of any written guarantee or warranty given to the buyer at, prior to, or after a contract for the purchase of goods or services is made;
>
> (xv). Knowingly misrepresenting that services, replacements or repairs are needed if they are not needed;
>
> (xvi). Making repairs, improvements or replacements on tangible, real or personal property of a nature or quality inferior to or below the standard of that agreed to in writing;
>
> (xvii). Engaging in any other fraudulent conduct which creates a likelihood of confusion or of misunderstanding.

49. Plaintiff avers Defendant has violated these, as well as other provisions, of 73 P.S. §201-2 et seq.

50. Section 201-3.1 of the Act provides that the Automotive Industry Trade Practice rules and regulations adopted by the Attorney General for the enforcement of this Act shall constitute additional violations of the Act.

51. Defendant's conduct surrounding the sale and servicing of the subject vehicle falls within the aforementioned definitions of "unfair or deceptive acts or practices."

52. The Act also authorizes the Court, in its discretion, to award up to three (3) times the actual damages sustained for violations.

WHEREFORE, Plaintiff respectfully demands judgment against Defendant in an amount not in excess of Fifty Thousand Dollars ($50,000.00), together with all collateral charges, attorneys' fees, all court costs and treble damages.

KIMMEL & SILVERMAN, P.C.

By: _____
CRAIG THOR KIMMEL, ESQUIRE
Attorney for Plaintiff
30 East Butler Pike
Ambler, Pennsylvania 19002
(215) 540-8888

Robert M. Silverman, Esquire
Amy D. Cox, Esquire
KIMMEL & SILVERMAN, P.C.
99 Hadden Avenue North
Haddonfield, NJ 08033
(856)429-4334

ATTORNEYS FOR PLAINTIFF

DEPUTY CLERK
SUPERIOR COURT
BURLINGTON COUNTY

THIS IS AN ARBITRATION MATTER. ASSESSMENT OF DAMAGES HEARING IS REQUESTED.

2003 FEB 20

FILED & RECEIVED

JUNE DEPONTE
2001 Gramercy Way
Mt. Laurel, New Jersey 08054

v.

MAZDA MOTOR AMERICA
7755 Irvine Center Drive
P.O. Box 19734
Irvine, California 92713-9734

SUPERIOR COURT OF NEW JERSEY
BURLINGTON COUNTY

CIVIL ACTION

NO. 000536-03

COMPLAINT

1. Plaintiff, June Deponte, is an adult individual citizen and legal resident of the State of New Jersey, 2001 Gramercy Way, Mt. Laurel, New Jersey 08054.

2. Defendant, Mazda Motor of America, Inc., is a business corporation qualified to do business and regularly conduct business in the State of New Jersey, and is a corporation of the State of California, with its legal residence and principal place of business located at 7755 Irvine Center Drive, P.O. Box 19734, Irvine, CA, 92713-9734, and can be served at same.

BACKGROUND

3. On or about February 20, 2001, Plaintiff purchased a new 2001 Mazda Tribute, manufactured and warranted by Defendant, bearing the Vehicle Identification Number 4F2YU07111KM10589.

4. The vehicle was purchased in the State of New Jersey and is registered in the State of New Jersey.

5. The contract price of the vehicle, including registration charges, document fees, sales tax, finance and bank charges, but excluding other collateral charges not specified, yet defined by the

Lemon Law, totaled more than $31,778.40. A true and correct copy of the contract is attached hereto, made a part hereof, and marked Exhibit "A".

6. In consideration for the purchase of said vehicle, Defendant issued to Plaintiff several warranties, guarantees, affirmations or undertakings with respect to the material or workmanship of the vehicle and/or remedial action in the event the vehicle fails to meet the promised specifications.

7. The above-referenced warranties, guarantees, affirmations or undertakings are/were part of the basis of the bargain between Defendant and Plaintiff.

8. The parties' bargain includes an express 3-year / 50,000 mile warranty, as well as other guarantees, affirmations and undertakings as stated in Defendant's warranty materials and owner's manual.

9. However, as a result of the ineffective repair attempts made by Defendant through its authorized dealer(s), the vehicle is rendered substantially impaired, unable to be utilized for its intended purposes, and is worthless to Plaintiff.

10. Plaintiff has or may have resorted to Defendant's informal dispute settlement procedure, to the extent said procedure complies with 16 CFR 703.

11. Plaintiff avers that the Federal Trade Commission (FTC) has determined that no automobile manufacturer complies with 16 CFR 703. See, Fed. Reg. 15636, Vol. 62, No. 63 (Apr. 2, 1997)

COUNT I
NEW JERSEY MOTOR VEHICLE WARRANTY ACT

12. Plaintiff hereby incorporates all facts and allegations set forth in this Complaint by reference as if fully set forth at length herein.

13. Plaintiff is a "Consumer" as defined by N.J.S.A. 56:12-30.

14. Defendant is a "Manufacturer" as defined by N.J.S.A. 56:12-30.

15. Maple Shade Mazda, is and/or was at the time of sale a "Dealer or Motor Vehicle Dealer" in the business of buying, selling, and/or exchanging vehicles as defined by N.J.S.A. 56:12-30.

16. On or about February 20, 2001, Plaintiff took possession of the above mentioned vehicle and experienced nonconformities as defined by N.J.S.A. 56:12-29 et seq., which substantially impair the use, value and/or safety of the vehicle.

17. Defendant through its authorized dealer failed to provide written notification that the vehicle was covered by the New Jersey Motor Vehicle Warranty Act as provided in N.J.S.A. 56:12-34(c). Plaintiff believes and therefore avers said failure is a per se violation of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., as well as a violation of the New Jersey Motor Vehicle Warranty Act.

18. The nonconformities described violate the express written warranties issued to Plaintiff by Defendant.

19. Section 56:12-32 of the New Jersey Motor Vehicle Warranty Act provides:

> a. If, during the period specified in section 3 of this act, the manufacturer or its dealer is unable to repair or correct a nonconformity within a reasonable time, the manufacturer shall accept return of the motor vehicle from the consumer. The manufacturer shall provide the consumer with a full refund of the purchase price of the original motor vehicle including any stated credit or allowance for the consumer's used motor vehicle, the cost of any options or other modifications arranged, installed, or made by the manufacturer or its dealer within 30 days after the date or original delivery, and any other charges or fees including, but not limited to, sales tax, license and registration fees, finance charges, reimbursement for towing and reimbursement for actual expenses incurred by the consumer for the rental of a motor vehicle equivalent to the consumer's motor vehicle and limited to the period during which the consumer's motor vehicle was out of service due to a nonconformity, less a reasonable allowance for vehicle use.

20. Section 56:12-33 of the New Jersey Motor Vehicle Warranty Act provides a presumption of a reasonable number of repair attempts:

> a. It is presumed that a manufacturer or its dealer is unable to repair or correct a nonconformity within a reasonable time if, within the first 18,000 miles of operation or during the period of two years following the date of original delivery of the motor vehicle to a consumer, whichever is the earlier date:
>
> (1) Substantially the same nonconformity has been subject to repair three or more times by the manufacturer or its dealer and the nonconformity continues to exist; or
>
> (2) The motor vehicle is out of service by reason of repair for one or more nonconformities for a cumulative total of 20 or more calendar days since the original delivery of the motor vehicle and a nonconformity continues to exist.
>
> b. The presumption contained in sub-section a. of this section shall apply against a manufacturer only if the manufacturer has received written notification, by or on behalf of the consumer, by certified mail

return receipt requested, of a potential claim pursuant to the provisions of this act and has had one opportunity to repair or correct the defect or condition within 10 calendar days following receipt of the notification. Notification by the consumer shall take place any time after the motor vehicle has had substantially the same nonconformity subject to repair two or more times or has been out of service by reason of repair for a cumulative total of 20 or more calendar days.

21. Plaintiff has satisfied the above definition as the vehicle has been subject to repair more than three (3) times for the same nonconformity, and the nonconformity remained uncorrected.

22. In addition, the above vehicle has or will be out of service by reason of the nonconformities complained of for a cumulative total of twenty (20) or more calendar days.

23. Plaintiff has delivered the nonconforming vehicle to an authorized service and repair facility of the Defendant on numerous occasions as outlined below.

24. After a reasonable number of attempts, Defendant was unable to repair the nonconformities.

25. During the first 18 months and/or 24,000 miles, Plaintiff complained on at least three (3) occasions about defects and or non-conformities to the following vehicle components: stalling condition; braking system and alignment. True and correct copies of all invoices in Plaintiff possession are attached hereto, made a part hereof, and marked Exhibit "B".

26. Plaintiff has been and will continue to be financially damaged due to Defendant's intentional, reckless, wanton, and negligent failure to comply with the provisions of N.J.S.A. 56:12-29 et seq.

27. Plaintiff has provided Defendant with a final repair opportunity prior to filing the within Complaint.

28. Pursuant to N.J.S.A. 56:12-29 et seq, Plaintiff seeks relief for losses due to the nonconformities and defects in the above-mentioned vehicle in addition to reasonable attorney fees and all court costs.

WHEREFORE, Plaintiff respectfully demands judgment against Defendant in an amount equal to the price of the subject vehicle, plus all collateral charges, attorneys' fees, and court costs.

COUNT II
MAGNUSON-MOSS (FTC) WARRANTY IMPROVEMENT ACT

29. Plaintiff hereby incorporates all facts and allegations set forth in this Complaint by reference as if fully set forth at length herein.

30. Plaintiff is a "Consumer" as defined by 15 U.S.C. §2301(3).

31. Defendant is a "supplier", "warrantor", and a "service contractor" as defined by 15 U.S.C. § 2301 (4),(5) and (8).

32. The subject vehicle is a "consumer product" as defined by 15 U.S.C. § 2301(1).

33. By the terms of its written warranties, affirmations, promises, or service contracts, Defendant agreed to perform effective repairs at no charge for parts and/or labor.

34. The Magnuson-Moss Warranty Improvement Act requires Defendant to be bound by all warranties implied by state law. Said warranties are imposed on all transactions in the state in which the vehicle was delivered.

35. Defendant has made attempts on several occasions to comply with the terms of its express warranties; however, such repair attempts have been ineffective.

36. The Magnuson-Moss Warranty Improvement Act, 15 U.S.C. §2310(d)(2) provides:

> If a consumer finally prevails on an action brought under paragraph (1) of this subsection, he may be allowed by the court to recover as part of the judgment a sum equal to the amount of aggregate amount of costs and expenses (including attorney fees based upon actual time expended), determined by the court to have been reasonably incurred by the Plaintiff for, or in connection with the commencement and prosecution of such action, unless the court, in its discretion shall determine that such an award of attorney's fees would be inappropriate.

37. Plaintiff has afforded Defendant a reasonable number of opportunities to conform the vehicle to the aforementioned express warranties, implied warranties and contracts.

38. As a direct and proximate result of Defendant's failure to comply with the express written warranties, Plaintiff has suffered damages and, in accordance with 15 U.S.C. §2310(d)(1), Plaintiff is entitled to bring suit for such damages and other legal and equitable relief.

39. Defendant's failure is a breach of Defendant's contractual and statutory obligations constituting a violation of the Magnuson-Moss Warranty Improvement Act, including but not

limited to: breach of express warranties; breach of implied warranty of merchantability; breach of implied warranty of fitness for a particular purpose; breach of contract; and constitutes an Unfair Trade Practice.

40. Plaintiff avers Defendant's Dispute Resolution Program is not in compliance with 16 CFR 703 by the FTC for the period of time this claim was submitted.

41. Plaintiff avers that upon successfully prevailing upon the Magnuson-Moss claim herein, all attorney fees are recoverable and are demanded against Defendant.

WHEREFORE, Plaintiff respectfully demands judgment against Defendant in an amount equal to the price of the subject vehicle, plus all collateral charges, incidental and consequential damages, reasonable attorneys' fees, and all court costs.

COUNT III
UNIFORM COMMERCIAL CODE

42. Plaintiff hereby incorporates all facts and allegations set forth in this Complaint by reference as if fully set forth at length herein.

43. The defects and nonconformities existing within the vehicle constitute a breach of contractual and statutory obligations of Defendant, including but not limited to the following:

a. Express Warranty;

b. Implied Warranty Of merchantability; and

c. Implied Warranty Of Fitness For A Particular Purpose.

44. At the time of obtaining possession of the vehicle and at all times subsequent thereto, Plaintiff has justifiably relied upon Defendant's express warranties and implied warranties of fitness for a particular purpose and implied warranties of merchantability.

45. At the time of obtaining possession of the vehicle and at all times subsequent thereto, Defendant was aware Plaintiff was relying upon Defendant's express and implied warranties, obligations, and representations with regard to the subject vehicle.

46. Plaintiff has incurred damages as a direct and proximate result of the breach and failure of Defendant to honor its express and implied warranties.

47. Such damages include, but are not limited to, the contract price of the vehicle plus all collateral charges, including attorney fees and costs, as well as other expenses, the full extent of which are not yet known.

WHEREFORE, Plaintiff respectfully demands judgment against Defendant in an amount equal to the contract price of the vehicle, plus all collateral charges and attorneys' fees.

COUNT IV
NEW JERSEY CONSUMER FRAUD ACT

48. Plaintiff hereby incorporates all facts and allegations set forth in this Complaint by reference as if fully set forth at length herein.

49. Plaintiff is a "Person" as defined by N.J.S.A. 56:8-1(d).

50. Defendant is a "Person" as defined by N.J.S.A. 56:8-1(d).

51. Defendant's actions surrounding the sale and servicing of the subject vehicle were unconscionable. Defendant's agents also acted with a reckless and callous disregard for Plaintiff's rights in negotiating and handling Plaintiff's warranty claims.

52. Defendant's actions surrounding the sale and servicing of said vehicle constitute a unconscionable commercial practice, deception, fraud, false pretense, false promise, and/or misrepresentation. Defendant and its agents acted affirmatively in such a manner as to be an unlawful commercial practice.

53. Defendant acted knowingly with the intent to cause Plaintiff's reliance thereupon.

54. Defendant knowingly concealed, suppressed, or omitted facts material to the transactions at issue, in that Defendant was aware the defect(s)/condition(s) could not be repaired, and that the ineffectual repairs were performed by incompetent or unqualified individuals. Defendant's failure to verify the defect(s) or condition(s) constitutes a refusal to perform the repairs under its statutory or contractual obligations.

55. Defendant through its authorized dealer failed to provide written notification that the vehicle was covered by the New Jersey Motor Vehicle Warranty Act N.J.S.A. 56:12-34(c) and Plaintiff believes and therefore avers said failure is a per se violation of the New Jersey Consumer Fraud Act N.J.S.A. 56:8-1 et seq. as well as a violation of the New Jersey Motor Vehicle Warranty Act.

56. Plaintiff believes and therefore avers that the defect(s) or condition(s) outlined previously is/are an inherent design defect and that as such the Defendant must certify the existence of this defect or condition to the Division of Consumer Affairs. Defendant has failed to file this certification and this failure is a violation of the New Jersey Consumer Fraud Act N.J.S.A. 56:8-1 et seq.

57. Defendant's failure to supply an itemized legible statement of repair is an unlawful practice pursuant to the New Jersey Consumer Fraud Act N.J.S.A. 56:8-2.

58. The Act prohibits the aforementioned action of Defendant in the sale and attempted repair of the subject vehicle.

59. Plaintiff believes and therefore avers the reckless, wanton and willful failure of Defendant to comply with the terms of the written warranties constitutes an unfair method of competition.

60. As a result of Defendant's unlawful conduct, Plaintiff has and will continue to suffer ascertainable financial loss proximately caused by the Defendant's conduct. Said losses are outlined as follows:

a. Plaintiff is entitled to a full refund N.J.S.A. 56:8-2.11-12;

b. Plaintiff's vehicle, given the defect/condition, is worthless;

c. Plaintiff lost time from work and other money as a result of having to take the vehicle in for the repeated repair attempts;

d. Plaintiff has been relegated to finding alternative means of transportation while the vehicle was in for repairs and while the vehicle has been in its present condition. As a result, Plaintiff has incurred additional transportation costs; and

e. Plaintiff has expended sums to maintain, store, insure, register, and other expenses for transportation.

WHEREFORE, Plaintiff respectfully demands judgment against Defendant for compensatory damages, treble damages, attorney fees, costs of suit, and any further relief as the Court may deem just and proper.

KIMMEL & SILVERMAN, P.C.

By: _____

ROBERT M. SILVERMAN, ESQUIRE
Attorney for Plaintiff
89 Haddon Avenue North
Haddonfield, NJ 08033
(856) 429-8334

JURY DEMAND

Plaintiff hereby demands a trial by jury as to all the issues

KIMMEL & SILVERMAN, P.C.

By: _____
ROBERT M. SILVERMAN, ESQUIRE
Attorney for Plaintiff

CERTIFICATION PURSUANT TO R4:15-1

Upon knowledge and belief I hereby certify that there are no other actions or arbitrations related to this suit pending or presently contemplated.

KIMMEL & SILVERMAN, P.C.

By: _____
ROBERT M. SILVERMAN, ESQUIRE
Attorney for Plaintiff

CERTIFICATION OF NOTICE

Pursuant to N.J.S.A. 56:8-20 Plaintiff is mailing a copy of this Complaint to the Office of the Attorney General, Richard J. Hughes Justice Complex, 25 West Market Street in the City of Trenton, County of Mercer, in the state of New Jersey on Feb 11 2003

KIMMEL & SILVERMAN, P.C.

By:_____
ROBERT M. SILVERMAN, ESQUIRE
Attorney for Plaintiff

IN THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA

CYNTHIA THOMPSON,	)	
	)	
Plaintiff,	)	
	)	Civil Action No.
v.	)	
	)	
MAZDA MOTORS OF AMERICA, INC.	)	
And RICK CASE CARS, INC.,	)	**JURY TRIAL DEMAND**
	)	
Defendants.	)	

COMPLAINT

COMES NOW, CYNTHIA THOMPSON, Plaintiff in the above-styled action, by and through the undersigned attorneys, and files this complaint against Defendants, MAZDA MOTORS OF AMERICA, INC. and RICK CASE CARS, INC., and shows this honorable Court the following:

PARTIES, JURISDICTION & VENUE

1. Plaintiff, CYNTHIA THOMPSON (hereafter "Plaintiff"), is an individual who at all times relevant hereto residing in the State of Georgia.

2. Defendant, MAZDA MOTORS OF AMERICA, INC. (hereafter "Manufacturer") and RICK CASE CARS, INC. (hereinafter "Seller"), is a foreign corporation authorized to do business in the State of Georgia, and is engaged in the manufacture, sale, and distribution of motor vehicles and related equipment and services. Manufacturer is also in the business of marketing, supplying and selling written warranties to the public at large through a system of authorized dealerships. Manufacturer may be served through its registered agent: Takeshi Tanahira, 7755 Irvine Center Drive, Irvine, California 92618. Seller may be served through its registered agent: Keith A. Meador, 9275 Stoney Ridge Lane, Alpharetta, GA 30202.

Manufacturer and Seller are subject to the jurisdiction of this Court. Venue is proper in

FULTON County.

BACKGROUND

4. On or about October 14, 2000, Plaintiff purchased or leased from Seller a 2001 Mazda Tribute (hereafter "Vehicle"), manufactured and/or distributed by Manufacturer, Vehicle Identification Number 4F2CU09181KM12847.

5. The price of the Vehicle, including certain collateral charges, but excluding registration charges, document fees, sales tax, and finance charges, totaled in excess of $17,000.00.

6. Plaintiff aver that as a result of ineffective repair attempts made by Manufacturer and/or its agent(s), the Vehicle cannot be utilized for personal, family and household use as was intended by Plaintiff at the time of its acquisition.

7. In consideration for the purchase of the Vehicle, Manufacturer issued and supplied to Plaintiff several written warranties as well as a Sixty (60) month/One Hundred Thousand Mile extended warranty purchased from Seller.

8. On or about October 14, 2000 Plaintiff took possession of the Vehicle and shortly thereafter experienced the various defects listed below which substantially impair the use, value and/or safety of the Vehicle.

9. The nonconformities described below violate the express written warranties issued to Plaintiff by Manufacturer, adopted by Seller, and supplied to Plaintiff by Seller.

10. Plaintiff has delivered the Vehicle to Manufacturer's authorized servicing dealership(s) on numerous occasions.

11. Plaintiff have brought the Vehicle to Seller and/or an authorized service dealer of Manufacturer for attempted repairs to various defects and nonconformities, including but not limited

to:

a. Stalling Defect.

12. Plaintiff have provided Manufacturer and Seller sufficient opportunity to repair and/or replace the Vehicle pursuant to the written warranties.

13. After a reasonable number of attempts to cure the defects in Plaintiff' Vehicle, the Manufacturer and its authorized servicing dealerships have been unable and/or have failed to repair the nonconformities or replace the Vehicle, as provided in the Manufacturer's written warranties.

14. Plaintiff has justifiably lost confidence in the Vehicle's safety and reliability, and said nonconformities have substantially impaired the use, value and/or safety of the Vehicle to Plaintiff.

15. Said nonconformities could not reasonably have been discovered by Plaintiff prior to Plaintiff' acceptance of the Vehicle.

16. As a result of these defects, Plaintiff revoked acceptance of the Vehicle.

17. At the time of revocation, the Vehicle was in substantially the same condition as at delivery except for damage caused by its own nonconformities and ordinary wear and tear.

18. Seller has refused Plaintiff' revocation of acceptance, and has refused to provide Plaintiff with the remedies to which Plaintiff is entitled upon revocation.

19. The Vehicle remains in a defective and unmerchantable condition, and continues to exhibit some or all of the above-mentioned defects that substantially impair its use, value and/or safety.

20. Plaintiff has been and will continue to be financially damaged due to Manufacturer's and Seller's failure to comply with the provisions of the warranties.

COUNT I
MANUFACTURER'S BREACH OF WRITTEN WARRANTY PURSUANT TO THE MAGNUSON-MOSS WARRANTY ACT

21. Plaintiff re-alleges and incorporates by reference as though fully set forth herein, paragraphs 1 through 20 of this complaint.

22. Plaintiff are purchasers of a consumer product who received the Vehicle during the duration of a written warranty period applicable to the Vehicle and who is entitled by the terms of the written warranty to enforce the obligations of said warranty against Manufacturer.

23. Manufacturer is a "person" engaged in the business of making consumer products directly available to the public, including Plaintiff.

24. Seller is an authorized dealership and an agent of Manufacturer, designated to perform repairs on vehicles pursuant to Manufacturer's automobile warranties.

25. Plaintiff' purchase of the Vehicle was accompanied by written factory warranties, also an extended warranty covering nonconformities or defects in material or workmanship. Manufacturer undertook in writing to refund, repair, replace, or take other remedial action, free of charge to Plaintiff, with respect to the Vehicle in the event that the Vehicle failed to meet the specifications set forth in the warranties.

26. Said warranties were the basis of the bargain of the contract between the Plaintiff and Manufacturer and Seller for the sale or lease of the Vehicle to Plaintiff.

27. Said purchase of Plaintiff' Vehicle was induced by, and Plaintiff relied upon, the written warranties.

28. Plaintiff has met all obligations and preconditions as provided in the written

warranties.

29. As a direct and proximate result of Manufacturer's and Seller's failure to comply with express written warranties, Plaintiff have suffered damages and, in accordance with 15 U.S.C. § 2310(d)(1), Plaintiff are entitled to bring suit for such damages and all other legal and equitable relief, including attorneys' fees incurred in connection with this action.

COUNT II
MANUFACTURER'S BREACH OF IMPLIED WARRANTY PURSUANT TO THE MAGNUSON-MOSS WARRANTY ACT

30. Plaintiff re-alleges and incorporates by reference as though fully set forth herein, paragraphs 1 through 29 of this complaint.

31. The Vehicle purchased by Plaintiff was subject to an implied warranty of merchantability as defined in O.C.G.A. § 11-2-314 running from the Manufacturer to the Plaintiff herein.

32. Manufacturer is a "person" engaged in the business of making a consumer product directly available to the pubic, including Plaintiff.

33. Manufacturer is prohibited by law from disclaiming or modifying any implied warranty when making a written warranty to the consumer.

34. Plaintiff's Vehicle was impliedly warranted to be substantially free of defects and nonconformities in both material and workmanship, and thereby fit for the ordinary purpose for which the Vehicle was intended.

35. The above-described defects and nonconformities present in the Vehicle render the Vehicle unmerchantable, unsafe, and thereby not fit for the ordinary and essential purpose for which the Vehicle was intended, as represented by Manufacturer.

36. As a result of the breaches of implied warranty by Manufacturer, Plaintiff are without the reasonable value of the Vehicle and Plaintiff have suffered and continues to suffer various damages, including attorneys' fees incurred in connection with this action.

COUNT III
SELLER'S BREACH OF IMPLIED WARRANTY
PURSUANT TO THE MAGNUSON-MOSS WARRANTY ACT

37. Plaintiff re-alleges and incorporates by reference as though fully set forth herein, paragraphs 1 through 36 of this Complaint.

38. The Vehicle purchased by Plaintiff was subject to an implied warranty of merchantability as defined in O.C.G.A. § 11-2-314 running from the Seller to Plaintiff herein.

39. Seller is a "person" engaged in the business of making a consumer product directly available to the public, including Plaintiff.

40. Seller is prohibited from disclaiming or modifying any implied warranty when making a written warranty to the consumer or when Seller has entered into a contract in writing relating to the maintenance or repair of a motor vehicle within ninety (90) days of a lease or purchase.

41. Plaintiff's Vehicle was impliedly warranted to be substantially free of defects and nonconformities in both material and workmanship, and thereby fit for the ordinary purpose for which the Vehicle was intended.

42. The above-described defects and nonconformities present in the Vehicle render the Vehicle unmerchantable, unsafe, and thereby not fit for the ordinary and essential purpose for which the Vehicle was intended, as represented by Seller.

43. As a result of the breaches of implied warranty by Seller, Plaintiff are without the

reasonable value of the Vehicle and Plaintiff have suffered and continues to suffer various damages, including attorneys' fees incurred in connection with this action.

COUNT IV
REVOCATION OF ACCEPTANCE WITH SELLER PURSUANT TO SECTION 2310(d) OF THE MAGNUSON-MOSS WARRANTY ACT

44. Plaintiff re-alleges and incorporates by reference as though fully set forth herein, paragraphs 1 through 43 of this Complaint.

45. Seller's tender of the Vehicle was substantially impaired to Plaintiff, thereby constituting a violation of 15 U.S.C. § 2310(d).

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

a. An order sustaining Plaintiff's revocation of acceptance;
b. Return of the Vehicle's purchase price and all incidental and consequential damages incurred by Plaintiff;
c. Return of all finance charges, and any and all other related charges, incurred by Plaintiff for the Vehicle;
d. All reasonable attorneys' fees, witness fees, court costs and other fees incurred by Plaintiff; and
e. Such other and further relief that this Court deems just and appropriate.

Pursuant to O.C.G.A. 15-12-122(c)(2), Plaintiff requests that the present case be tried by a jury of twelve.

Submitted this 7 day of March 2002.

E. Scott Fortas

KROHN & MOSS
Georgia Bar No. 269980
Attorney for Plaintiff
455 E. Paces Ferry Road, NE
Suite 218
Atlanta, GA 30305
(404) 869-4280

IN THE COURT OF COMMON PLEAS OF SUMMIT COUNTY, OHIO

DIANA ZALESKI
2003 FEB 26 PM 3:19
SUMMIT COUNTY
CLERK OF COURTS

CARMEN TULINO and MARGARET TULINO 8590 Park Ridge Lane Macedonia, Ohio 44056	)	
Plaintiffs,	)	2003-02-1284
vs.	)	No. ASSIGNED TO JUDGE ADAMS
MAZDA MOTOR OF AMERICA, INC. c/o CT Corporation Systems 1300 East Ninth Street Cleveland, Ohio 44114	)	JURY DEMAND ENDORSED HEREON
Defendant.	)	

COMPLAINT

NOW COME the Plaintiffs, CARMEN TULINO and MARGARET TULINO, by and through their attorneys, KROHN & MOSS, LTD., and for their complaint against Defendant, MAZDA MOTOR OF AMERICA, INC., allege and affirmatively state as follows:

PARTIES

1. Plaintiffs, CARMEN TULINO and MARGARET TULINO ("Plaintiffs"), are individuals who were at all times relevant hereto residing in the State of Ohio.

2. Defendant, MAZDA MOTOR OF AMERICA, INC. ("Manufacturer"), is a foreign corporation authorized to do business in the State of Ohio, and is engaged in the manufacture, sale, and distribution of motor vehicles and related equipment and services. Manufacturer is also in the business of marketing, supplying and selling written warranties to the public at large through a system of authorized dealerships, including Mazda Saab Daewoo of Bedford. ("Seller"). Manufacturer does business in all counties of the State of Ohio including Summit County.

BACKGROUND

3. On or about December 18, 2000, Plaintiffs purchased from Seller a 2001 Mazda Tribute ("Tribute"), manufactured and/or distributed by Manufacturer, Vehicle Identification Number 4F2YU08151KM23635, as reflected in the document attached hereto as Exhibit 1.

4. The price of the Tribute, including certain collateral charges, such as registration charges, document fees, and sales tax, but excluding finance charges, totaled more than $26,488.48.

5. Plaintiffs aver that as a result of ineffective repair attempts made by Manufacturer and/or its agent(s), the Tribute cannot be utilized for personal, family and household use as was intended by Plaintiffs at the time of its acquisition.

6. In consideration for the purchase of the Tribute, Manufacturer issued and supplied to Plaintiffs several written warranties, including a three (3) year or thirty-six thousand (36,000) mile "bumper-to-bumper" warranty.

7. On or about December 18, 2000, Plaintiffs took possession of the Tribute and shortly thereafter experienced the various defects listed below which substantially impair the use, value and/or safety of the Tribute.

8. The nonconformities described below violate the express written warranties issued to Plaintiffs by Manufacturer.

9. Plaintiffs have delivered the Tribute to Manufacturer's authorized servicing dealerships on numerous occasions.

10. Plaintiffs have brought the Tribute to Seller and/or an authorized service dealer of Manufacturer for attempted repairs to various defects and nonconformities, including but not limited to:

a. Defective electrical system as evidenced by an inoperable heater;
b. Defective engine as evidenced by the illumination of the check engine light and the coolant light, the vehicle stalling, and the smell of fuel on start-up;
c. Defective trim as evidenced by a rattle from the rear window and the rear hatch sticking;
d. Defective brakes as evidenced by squeaking;
e. Defective tires as evidenced by the left front tire losing air;
f. Defective suspension as evidenced by a thumping noise; and
g. Any additional defects and/or non-conformities as contained in the repair records of Manufacturer's authorized dealerships.

11. Plaintiffs have provided Manufacturer sufficient opportunity to repair and/or replace the Tribute pursuant to its written warranties.

12. After a reasonable number of attempts to cure the defects in Plaintiffs' Tribute, the Manufacturer and its authorized servicing dealerships have been unable and/or have failed to repair the nonconformities or replace the Tribute, as provided in the Manufacturer's written warranties.

13. Plaintiffs have justifiably lost confidence in the Tribute's safety and reliability, and said nonconformities have substantially impaired the use, value and/or safety of the Tribute to Plaintiffs.

14. Said nonconformities could not reasonably have been discovered by Plaintiffs prior to Plaintiffs' acceptance of the Tribute.

15. As a result of these defects, Plaintiffs revoked their acceptance of the Tribute in writing on January 31, 2003. A copy of the revocation of acceptance letter is attached and labeled as Plaintiffs' Exhibit 2.

16. At the time of revocation, the Tribute was in substantially the same condition as at delivery except for damage caused by its own nonconformities and ordinary wear and tear.

17. Manufacturer has refused Plaintiffs' revocation of acceptance, and has refused to provide Plaintiffs with the remedies to which Plaintiffs are entitled upon revocation.

18. The Tribute remains in a defective and unmerchantable condition, and continues to exhibit some or all of the above mentioned defects which substantially impair its use, value and/or safety.

19. Plaintiffs have been and will continue to be financially damaged due to Manufacturer's failure to comply with the provisions of its warranty.

COUNT I
BREACH OF WRITTEN WARRANTY PURSUANT TO THE MAGNUSON-MOSS WARRANTY ACT
MANUFACTURER

20. Plaintiffs re-allege and incorporate by reference as though fully set forth herein, all paragraphs of this Complaint set forth above.

21. Plaintiffs are purchasers of a consumer product who received the Tribute during the duration of a written warranty period applicable to the Tribute and who are entitled by the terms of the written warranty to enforce against Manufacturer the obligations of said warranty.

22. Manufacturer is a "person" engaged in the business of making a consumer product directly available to Plaintiffs.

23. Seller is an authorized dealership and agent of Manufacturer, designated to perform repairs on vehicles pursuant to Manufacturer's automobile warranties.

24. Plaintiffs' purchase of the Tribute was accompanied by written factory warranties covering any nonconformities or defects in material or workmanship, an undertaking in writing to refund, repair, replace, or take other remedial action free of charge to Plaintiffs with respect to

the Tribute in the event that the Tribute failed to meet the specifications set forth in the warranties.

25. Said warranties were the basis of the bargain of the contract between the Plaintiffs and Manufacturer for the sale of the Tribute to Plaintiffs.

26. Said purchase of Plaintiffs' Tribute was induced by, and Plaintiffs relied upon, these written warranties.

27. Plaintiffs have met all of their obligations and preconditions as provided in the written warranties.

28. As a direct and proximate result of Manufacturer's failure to comply with its express written warranties, Plaintiffs have suffered damages and, in accordance with 15 U.S.C. § 2310(d)(1), Plaintiffs are entitled to bring suit for such damages and other legal and equitable relief, including attorneys' fees incurred in connection with this action.

WHEREFORE, Plaintiffs, CARMEN TULINO and MARGARET TULINO, pray for judgment against Manufacturer as follows:

a. Return of all monies paid or diminution in value of the Tribute, and all incidental and consequential damages incurred, including, but not limited to, all finance charges incurred;
b. All reasonable attorneys' fees, witness fees, court costs and other fees incurred by Plaintiffs; and
c. Such other and further relief that this Court deems just and appropriate.

COUNT II
BREACH OF IMPLIED WARRANTY PURSUANT TO THE MAGNUSON-MOSS WARRANTY ACT MANUFACTURER

29. Plaintiffs re-allege and incorporate by reference as though fully set forth herein, all paragraphs of this Complaint set forth above.

30. The Tribute purchased by Plaintiffs was subject to an implied warranty of merchantability as defined in 15 U.S.C. § 2301(7), running from the Manufacturer to the Plaintiffs herein.

31. Manufacturer is a supplier of consumer goods as a "person" engaged in the business of making a consumer product directly available to Plaintiffs.

32. Manufacturer is prohibited from disclaiming or modifying any implied warranty when making a written warranty to the consumer.

33. Plaintiffs' Tribute was impliedly warranted to be substantially free of defects and nonconformities in both material and workmanship, and thereby fit for the ordinary purpose for which the Tribute was intended.

34. The above-described defects and nonconformities present in the Tribute render the Tribute unmerchantable, unsafe, and thereby not fit for the ordinary and essential purpose for which the Tribute was intended, as represented by Manufacturer.

35. As a result of the breaches of implied warranty by Manufacturer, Plaintiffs are without the reasonable value of the Tribute and Plaintiffs have suffered and continue to suffer various damages, including attorneys' fees incurred in connection with this action.

WHEREFORE, Plaintiffs, CARMEN TULINO and MARGARET TULINO, pray for judgment against Manufacturer as follows:

a. Return of all monies paid or diminution in value of the Tribute, and all incidental and consequential damages incurred, including, but not limited to, all finance charges incurred;
b. All reasonable attorneys' fees, witness fees, court costs and other fees incurred by Plaintiffs; and
c. Such other and further relief that this Court deems just and appropriate.

COUNT III
OHIO MOTOR VEHICLES WITH WARRANTY NONCONFORMITIES ACT MANUFACTURER

36. Plaintiffs re-allege and incorporate by reference as though fully set forth herein, all paragraphs of this Complaint set forth above.

37. Pursuant to O.R.C. §1345.72, Manufacturer has been unable to conform the Tribute to the written warranties issued to Plaintiff by Manufacturer after a reasonable number of repair attempts to said vehicle.

38. Pursuant to O.R.C. §1345.72(B), Plaintiffs are entitled to a refund of the full purchase price of the vehicle, including all collateral charges and finance charges, and/or a replacement vehicle, plus all attorney fees and costs.

WHEREFORE, Plaintiffs, CARMEN TULINO and MARGARET TULINO, pray for judgment against Manufacturer as follows:

a. Return of the Tribute's purchase price and all incidental and consequential damages incurred by Plaintiffs;
b. Return of all finance charges incurred by Plaintiffs for the Tribute;
c. All reasonable attorneys' fees, witness fees, court costs and other fees incurred by Plaintiffs; and
d. Such other and further relief that this Court deems just and appropriate.

JURY DEMAND

Plaintiff demands trial by jury on all issues in this action, except for any issues relating to the amount of attorneys' fees and litigation costs awarded should Plaintiff prevail in this action.

Respectfully Submitted,

By: _____
David B. Levin
One of Plaintiff's Attorneys

David B. Levin
Ohio Registration No. 0059340
Mitchel E. Luxenburg
Ohio Registration No. 0071239
Ronna S. Lucas
Ohio Registration No. 0063304

Krohn & Moss, Ltd.
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Chicago, Illinois 60602
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fax: (419) 818-1376
e-mail: dlevin@consumerlawcenter.net

Copies of service items need only be mailed to the Chicago address.

Craig Thor Kimmel, Esquire
Identification No. 57100
KIMMEL & SILVERMAN, P.C.
30 East Butler Pike
Ambler, PA 19002
(215) 540-8888

ATTORNEY FOR PLAINTIFFS

THIS IS AN ARBITRATION MATTER. ASSESSMENT OF DAMAGES HEARING IS REQUESTED.

HARVEY R. TURNER AND DONNA M. TURNER 1281 Alexander Drive Hatfield, Pennsylvania 19440 v. MAZDA MOTOR AMERICA 7755 Irvin Center Drive P.O. Box 19734 Irvin, California 92713-9734	COURT OF COMMON PLEAS PHILADELPHIA COUNTY CIVIL ACTION

COMPLAINT
CODE: 1900

1. Plaintiffs, Harvey R. Turner and Donna M. Turner, are adult individual citizens and legal residents of the Commonwealth of Pennsylvania , 1281 Alexander Drive, Hatfield, Pennsylvania 19440.

2. Defendant, Mazda Motor of America, Inc., is a business corporation qualified to do business and regularly conduct business in the Commonwealth of Pennsylvania, and is a corporation of the State of California, with its legal residence and principal place of business located at 7755 Irvine Center Drive, P.O. Box 19734, Irvine, CA, 92713-9734, and can be served at same.

BACKGROUND

3. On or about January 20, 2001, Plaintiffs leased a new 2001 Mazda Tribute, manufactured and warranted by Defendant, bearing the Vehicle Identification Number 4F2YU08111KM34356.

4. The vehicle was leased in the Commonwealth of Pennsylvania and is registered in the Commonwealth of Pennsylvania .

5. The lease price of the vehicle, including registration charges, document fees, sales tax, finance and bank charges, but excluding other collateral charges not specified, yet defined by the Lemon Law, totaled more than $18,147.16. A true and correct copy of the contract is attached hereto, made a part hereof, and marked Exhibit "A".

6. In consideration for the purchase of said vehicle, Defendant issued to Plaintiffs several warranties, guarantees, affirmations or undertakings with respect to the material or workmanship of the vehicle and/or remedial action in the event the vehicle fails to meet the promised specifications.

7. The above-referenced warranties, guarantees, affirmations or undertakings are/were part of the basis of the bargain between Defendant and Plaintiffs.

8. The parties' bargain includes an express 3-year / 50,000 mile warranty, as well as other guarantees, affirmations and undertakings as stated in Defendant's warranty materials and owner's manual.

9. However, as a result of the ineffective repair attempts made by Defendant through its authorized dealer(s), the vehicle is rendered substantially impaired, unable to be utilized for its intended purposes, and is worthless to Plaintiffs.

10. Plaintiffs have or may have resorted to Defendant's informal dispute settlement procedure, to the extent said procedure complies with 16 CFR 703.

11. Plaintiffs aver that the Federal Trade Commission (FTC) has determined that no automobile manufacturer complies with 16 CFR 703. See, Fed. Reg. 15636, Vol. 62, No. 63 (Apr. 2, 1997)

12. Within the warranty period, Plaintiffs' complained on at least three (3) occasions about defects and or non-conformities to the following vehicle components: engine and stalling condition . True and correct copies of all invoices in Plaintiff's possession are attached hereto, made a part hereof, and marked Exhibit "B".

13. Plaintiffs aver the vehicle has been subject to additional repair attempts for defects and conditions which Defendant's warranty dealer did not provide or maintain itemized statements or records as required by law.

14. Plaintiffs aver that such itemized statements which were not provided also include technicians' notes of diagnostic procedures and repairs, and Defendant's Technical Service Bulletins relating to this vehicle.

15. Plaintiffs have and will continue to suffer damages due to Defendant's failure to maintain and provide itemized statements of repair.

COUNT I
MAGNUSON-MOSS (FTC) WARRANTY IMPROVEMENT ACT

16. Plaintiffs hereby incorporate all facts and allegations set forth in this Complaint by reference as if fully set forth at length herein.

17. Plaintiffs are "Consumers" as defined by 15 U.S.C. §2301(3).

18. Defendant is a "supplier," "warrantor," and a "service contractor" as defined by 15 U.S.C. § 2301 (4),(5) and (8).

19. The subject vehicle is a "consumer product" as defined by 15 U.S.C. § 2301(1).

20. By the terms of its written warranties, affirmations, promises, or service contracts, Defendant agreed to perform effective repairs at no charge for parts and/or labor.

21. The Magnuson-Moss Warranty Improvement Act requires Defendant to be bound by all warranties implied by state law. Said warranties are imposed on all transactions in the state in which the vehicle was delivered.

22. Defendant has made attempts on several occasions to comply with the terms of its express warranties; however, such repair attempts have been ineffective.

23. The Magnuson-Moss Warranty Improvement Act, 15 U.S.C. §2310(d)(2) provides:

> If a consumer finally prevails on an action brought under paragraph (1) of this subsection, he may be allowed by the court to recover as part of the judgment a sum equal to the amount of aggregate amount of costs and expenses (including attorney fees based upon actual time expended), determined by the court to

have been reasonably incurred by the Plaintiff for, or in connection with the commencement and prosecution of such action, unless the court, in its discretion shall determine that such an award of attorney's fees would be inappropriate.

24. Plaintiffs have afforded Defendant a reasonable number of opportunities to conform the vehicle to the aforementioned express warranties, implied warranties and contracts.

25. As a direct and proximate result of Defendant's failure to comply with the express written warranties, Plaintiffs have suffered damages and, in accordance with 15 U.S.C. §2310(d)(1), Plaintiffs is entitled to bring suit for such damages and other legal and equitable relief.

26. Defendant's failure is a breach of Defendant's contractual and statutory obligations constituting a violation of the Magnuson-Moss Warranty Improvement Act, including but not limited to: breach of express warranties; breach of implied warranty of merchantability; breach of implied warranty of fitness for a particular purpose; breach of contract; and constitutes an Unfair Trade Practice.

27. Plaintiffs aver Defendant's Dispute Resolution Program is not in compliance with 16 CFR 703 by the FTC for the period of time this claim was submitted.

28. Plaintiffs aver that upon successfully prevailing upon the Magnuson-Moss claim herein, all attorney fees are recoverable and are demanded against Defendant.

WHEREFORE, Plaintiffs respectfully demand judgment against Defendant in an amount equal to the price of the subject vehicle, plus all collateral charges, incidental and consequential damages, reasonable attorneys' fees, and all court costs.

COUNT II
PENNSYLVANIA UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION LAW

29. Plaintiffs hereby incorporate all facts and allegations set forth in this Complaint by reference as if fully set forth at length herein.

30. Plaintiffs are "Persons" as defined by 73 P.S. §201-2(2).

31. Defendant is a "Person" as defined by 73 P.S. §201-2(2).

32. Section 201-9.2(a) of the Act authorizes a private cause of action for any person "who purchases or leases goods or services primarily for personal, family or household purposes."

33. Section 1961 of the Pennsylvania Automobile Lemon Law, provides that a violation of its provisions shall automatically constitute a violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Act, 73 P.S. 201-1 et seq.

34. In addition, the Pennsylvania Unfair Trade Practices and Consumer Protection Act, 73 P.S. §201-2(4), defines "unfair or deceptive acts or practices" to include the following conduct:

> (vii). Representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if they are of another;
>
> (xiv). Failing to comply with the terms of any written guarantee or warranty given to the buyer at, prior to, or after a contract for the purchase of goods or services is made;
>
> (xv). Knowingly misrepresenting that services, replacements or repairs are needed if they are not needed;
>
> (xvi). Making repairs, improvements or replacements on tangible, real or personal property of a nature or quality inferior to or below the standard of that agreed to in writing;
>
> (xvii). Engaging in any other fraudulent conduct which creates a likelihood of confusion or of misunderstanding.

35. Plaintiffs aver Defendant has violated these, as well as other provisions, of 73 P.S. §201-2 et seq.

36. Section 201-3.1 of the Act provides that the Automotive Industry Trade Practice rules and regulations adopted by the Attorney General for the enforcement of this Act shall constitute additional violations of the Act.

37. Defendant's conduct surrounding the sale and servicing of the subject vehicle falls within the aforementioned definitions of "unfair or deceptive acts or practices."

38. The Act also authorizes the Court, in its discretion, to award up to three (3) times the actual damages sustained for violations.

WHEREFORE, Plaintiffs respectfully demand judgment against Defendant in an amount not in excess of Fifty Thousand Dollars ($50,000.00), together with all collateral charges, attorneys' fees, all court costs and treble damages.

KIMMEL & SILVERMAN, P.C.

By: _____

CRAIG THOR KIMMEL, ESQUIRE
Attorney for Plaintiffs
30 East Butler Pike
Ambler, Pennsylvania 19002
(215) 540-8888

IN THE COURT OF COMMON PLEAS OF LEHIGH COUNTY, PENNSYLVANIA

CIVIL DIVISION - LAW

REBECCA WEHR and JAMES DOUGHERTY III,	:	
Plaintiffs	:	NO.
vs.	:	IN CIVIL ACTION
MAZDA NORTH AMERICAN OPERATIONS,	:	
Defendant	:	

COMPLAINT

NOW COME the Plaintiffs, REBECCA WEHR and JAMES DOUGHERTY III, by and through their counsel, JEFFREY B. MATZKIN, ESQUIRE, who file this Complaint against the above-named Defendant of which the following is a statement.

1. Plaintiffs, REBECCA WEHR and JAMES DOUGHERTY III, are adult individuals, residing at 1510 Fernwood Road, Slatington, Lehigh County, Pennsylvania, 18080.

2. Defendant, MAZDA NORTH AMERICAN OPERATIONS, is a business entity organized under the laws of the State of California which can be served at 7755 Irvine Center Drive, Irvine, California, 92618.

BACKGROUND

3. On or about March 13, 2001, Plaintiffs purchased a new 2001 Mazda Tribute, manufactured and warranted by Defendant, bearing the Vehicle Identification Number 4F2YU08171KM39948. The vehicle was purchased from Allentown Mazda-Volvo, a Motor Vehicle

Dealer, 3209 Lehigh Street, Allentown, Lehigh County, Pennsylvania, and registered in the Commonwealth of Pennsylvania.

4. The purchase price of the vehicle, including registration charges, document fees, sales tax, finance and bank charges but, excluding other collateral charges not specified yet defined by the Lemon Law, totaled more than $26,430.90. A true and correct of the Sales Agreement is attached hereto, made a part hereof and marked Exhibit "A".

5. In consideration for the purchase of the above-named vehicle, Defendant issued to Plaintiffs several written warranties, including a three (3) year or fifty thousand (50,000) mile warranty, as well as other standard warranties fully outlined in the warranty booklet, delivered at time of sale.

COUNT I
LEMON LAW

6. Plaintiffs hereby incorporate Paragraphs 1 through 5 inclusive as if set forth fully below.

7. Plaintiffs, REBECCA WEHR and JAMES DOUGHERTY III, are the "Purchasers" as defined by 73 Pa. C.S.A. Section 1952.

8. Defendant is a "Manufacturer" as defined by 73 Pa. C.S.A. Section 1952.

9. Allentown Mazda-Volvo is and/or was at the time of sale a Motor Vehicle Dealer in the business of buying, selling, and/or exchanging vehicles as defined by 73 Pa. C.S.A. Section 1952.

10. On or about March 13, 2001, Plaintiffs took possession of the above mentioned vehicle and experianced non-conformities as

defined by 73 Pa. C.S.A. Section 1951 et. seq., which substantially impair the use, value and/or safety of the vehicle.

11. The non-conformities described violate the express written warranties issued to Plaintiffs by Defendant.

12. Section 1955 of the Act provides:

> If a manufacturer fails to repair or correct a non-conformity after a reasonable number of attempts, the manufacturer shall, at the option of the purchaser, replace the motor vehicle...or accept return of the vehicle from the purchaser, and refund to the purchaser the full purchase price, including all collateral charges, less a reasonable allowance for the purchaser's use of the vehicle, not exceeding $.10 per mile driven or 10% of the purchase price of the vehicle, whichever is less.

13. Section 1956 provides a presumption of a reasonable number of repair attempts if the subject vehicle:

> (1) "...has been subject to repair three times by the manufacturer, its agents or authorized dealers and the non-conformity still exists...or
>
> (2) ...is out of service by reason of any non-conformity for a cumulative total of thirty or more calendar days."

14. Plaintiffs have satisfied the above definition as their vehicle has been subject to repair more than three (3) times for the same non-conformity, and the non-conformity remains uncorrected.

15. In addition, the above vehicle has or will be in the future out of service by reason of the non-conformities complained of for a cumulative total of thirty (30) days or more.

16. Plaintiffs have delivered the non-conforming vehicle to an authorized service and repair facility of the manufacturer on numerous occasions. After a reasonable number of attempts, the manufacturer was unable to repair the non-conformities.

17. The first warranty repair attempt is believed to have occurred on or before July 19, 2001. On that date, repair attempts were made to the engine and mechanical system. The vehicle was out of service for five (5) days. A true and correct copy of the repair invoice is attached hereto, made a part hereof and marked Exhibit "B".

18. The second warranty repair attempt is believed to have occurred on or before August 3, 2001. On that date, repair attempts were made to the engine and mechanical system. The vehicle was out of service for one hundred six (106) days. A true and correct copy of the repair invoice is attached hereto, made a part hereof and marked Exhibit "C".

19. The third warranty repair attempt is believed to have occurred on or before May 8, 2002. On that date, repair attempts were made to the engine and mechanical system. The vehicle was out of service for nine (9) days. A true and correct copy of the repair invoice is attached hereto, made a part hereof and marked Exhibit "D".

20. The vehicle continues to exhibit defects and non-conformities which substantially impair its use, value and/or safety as provided in 73 Pa. C.S.A. Section 1951 et. seq.

21. In addition, Plaintiffs aver their vehicle has been subject to additional repair attempts for defects and/or non-conformities and/or conditions for which the dealer did not maintain records.

22. Plaintiffs have and will continue to be financially damaged due to Defendant's intentional, reckless, wanton and negligent failure to comply with the provisions of 73 Pa. C.S.A. Section 1951 et. seq.

23. Pursuant to 73 Pa. C.S.A. Section 1958, Plaintiffs seek relief for losses due to the non-conformities and defects in the above-mentioned vehicle in addition to reasonable attorney's fees and all court costs.

WHEREFORE, Plaintiffs respectfully demands judgment in their favor and against Defendant in an amount equal to the purchase price of the subject vehicle, plus all available collateral charges and attorney's fees.

COUNT II
MAGNUSON-MOSS CLAIM

24. Plaintiffs hereby incorporate Paragraphs 1 through 23 by reference as if set forth at length herein.

25. Plaintiffs are "Consumers" as defined by 15 U.S.C. Section 2301(3).

26. Defendant is a "Warrantor" as defined by 15 U.S.C. Section 2301(5).

27. By the terms of the express written warranties referred

to in this Complaint, Defendant agreed to perform effective warranty repairs at no charge for parts and/or labor.

28. Defendant's authorized service facility has made attempts on several occasions to comply with the terms of its express warranties, however, such repair attempts have been ineffective.

29. As a direct and proximate result of Defendant's failure to comply with the express written warranties, Plaintiffs have suffered damages and, in accordance with 15 U.S.C. Section 2310(d)(1), Plaintiffs are entitled to bring suit for such damages and other legal and equitable relief.

30. Title 15 U.S.C. provides:

> If a consumer finally prevails on an action brought under paragraph (1) of this subsection, he may be allowed by the court to recover as part of the judgment a sum equal to the amount of aggregate amount of costs and expenses (including attorney fees based upon actual time expended), determined by the court to have been reasonably incurred by the Plaintiff for, or in connection with the commencement and prosecution of such action, unless the court, in its discretion shall determine that such an award of attorney's fees would be inappropriate.

31. Plaintiffs aver that upon successfully prevailing upon the Magnuson-Moss claim herein, all reasonable attorney fees are recoverable and are demanded against Defendant.

WHEREFORE, Plaintiffs respectfully demands judgment in their favor and against Defendant in an amount equal to the purchase price of the subject vehicle, plus all available collateral charges and attorney fees.

COUNT III
UNIFORM COMMERCIAL CODE

32. Plaintiffs hereby incorporate Paragraphs 1 through 31 by reference as if set forth at length herein.

33. The defects and non-conformities existing within the vehicle constitute a breach of contractual and statutory obligations of Defendant, including but not limited to the following:

a. Express Warranty;

b. Implied Warranty of Merchantability; and

c. Implied Warranty of Fitness for A Particular Purpose.

34. The purposes for which Plaintiffs purchased this vehicle include but are not limited to their personal, family and household use.

35. At the time of this purchase and at all times subsequent thereto, Plaintiffs have justifiably relied upon Defendant's express warranties and implied warranties of fitness for a particular purpose and implied warranties of merchantability.

36. At the time of the purchase and at all times subsequent thereto, Defendant was aware Plaintiffs were relying upon Defendant's express and implied warranties, obligations, and representations with regard to the subject vehicle.

37. Plaintiffs have incurred damages as a direct and proximate result of the breach and failure of Defendant to honor

its express and implied warranties.

38. Such damages include, but are not limited to, the purchase price of the vehicle plus all collateral charges, including attorney fees and costs, as well as other expenses, the full extent of which are not yet known.

WHEREFORE, Plaintiffs respectfully demands judgment in their favor and against Defendant, in an amount equal to the purchase price of the subject vehicle, plus all available collateral charges and attorney fees.

COUNT IV
UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION CLAIM

39. Plaintiffs hereby incorporate Paragraphs 1 through 38 by reference as if set forth at length herein.

40. Section 1961 of The Pennsylvania Automobile Lemon Law, provides that a violation of its provisions is also a violation of the Unfair Trade Practices and Consumer Protection Law.

41. In addition, the Unfair Trade Practices and Consumer Protection Law defines unfair methods of competition to include the following:

> (xiv). Failing to comply with the terms of any written guarantee or warranty given to the buyer at, prior to, or after a contract for the purchase of goods or services is made.

42. Plaintiffs believe, and therefore aver, the reckless, wanton and willful failure of Defendant to comply with the terms of the written warranties constitutes an unfair method of competition.

43. Section 201-9.2(a) of the Unfair Trade Practices and

Consumer Protection Law, authorizes the Court, in its discretion, to award up to three (3) times the actual damages sustained for violations of the Act.

WHEREFORE, Plaintiffs respectfully demands judgment in their favor and against Defendant in an amount equal to three (3) times the purchase price of the subject vehicle, plus all available collateral charges and attorney fees.

Respectfully submitted:

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ATTORNEYS FOR PLAINTIFFS

THIS IS AN ARBITRATION MATTER. ASSESSMENT OF DAMAGES HEARING IS REQUESTED.

JAMES WINWARD AND MELISSA WINWARD 3704 Grandview Avenue Bensalem, Pennsylvania 19020 v. MAZDA MOTOR AMERICA 7755 Irvine Center Drive P.O. Box 19734 Irvine, California 92713-9734	COURT OF COMMON PLEAS PHILADELPHIA COUNTY CIVIL ACTION

COMPLAINT
CODE: 1900

1. Plaintiffs, James Winward and Melissa Winward, are adult individual citizens and legal residents of the Commonwealth of Pennsylvania, 3704 Grandview Avenue, Bensalem, Pennsylvania 19020.

2. Defendant, Mazda Motor of America, Inc., is a business corporation qualified to do business and regularly conduct business in the Commonwealth of Pennsylvania, and is a corporation of the State of California, with its legal residence and principal place of business located at 7755 Irvine Center Drive, P.O. Box 19734, Irvine, CA, 92713-9734, and can be served at same.

BACKGROUND

3. On or about October 06, 2000, Plaintiffs purchased a new 2001 Mazda Tribute, manufactured and warranted by Defendant, bearing the Vehicle Identification Number 4F2CU08141KM12922.

4. The vehicle was purchased in the Commonwealth of Pennsylvania and is registered in the Commonwealth of Pennsylvania

5. The contract price of the vehicle, including registration charges, document fees, sales tax, finance and bank charges, but excluding other collateral charges not specified, yet defined by the Lemon Law, totaled more than $27,256.16. A true and correct copy of the contract is attached hereto, made a part hereof, and marked Exhibit "A".

6. In consideration for the purchase of said vehicle, Defendant issued to Plaintiffs several warranties, guarantees, affirmations or undertakings with respect to the material or workmanship of the vehicle and/or remedial action in the event the vehicle fails to meet the promised specifications.

7. The above-referenced warranties, guarantees, affirmations or undertakings are/were part of the basis of the bargain between Defendant and Plaintiffs.

8. The parties' bargain includes an express 3-year / 50,000 mile warranty, as well as other guarantees, affirmations and undertakings as stated in Defendant's warranty materials and owner's manual.

9. However, as a result of the ineffective repair attempts made by Defendant through its authorized dealer(s), the vehicle is rendered substantially impaired, unable to be utilized for its intended purposes, and is worthless to Plaintiffs.

10. Plaintiffs have or may have resorted to Defendant's informal dispute settlement procedure, to the extent said procedure complies with 16 CFR 703.

11. Plaintiffs aver that the Federal Trade Commission (FTC) has determined that no automobile manufacturer complies with 16 CFR 703. See, Fed. Reg. 15636, Vol. 62, No. 63 (Apr. 2, 1997)

COUNT I
PENNSYLVANIA AUTOMOBILE LEMON LAW

12. Plaintiffs hereby incorporate all facts and allegations set forth in this Complaint by reference as if fully set forth at length herein.

13. Plaintiffs are "Purchasers" as defined by 73 P.S. §1952.

14. Defendant is a "Manufacturer" as defined by 73 P.S. §1952.

15. Pacifico Mazda is and/or was at the time of sale a Motor Vehicle Dealer in the business of buying, selling, and/or exchanging vehicles as defined by 73 P.S. §1952.

16. On or about October 06, 2000, Plaintiffs took possession of the above mentioned vehicle and experienced nonconformities as defined by 73 P.S §1951 et seq., which substantially impair the use, value and/or safety of the vehicle.

17. The nonconformities described violate the express written warranties issued to Plaintiffs by Defendant.

18. Section 1955 of the Pennsylvania Automobile Lemon Law provides:

> If a manufacturer fails to repair or correct a nonconformity after a reasonable number of attempts, the manufacturer shall, at the option of the purchaser, replace the motor vehicle... or accept return of the vehicle from the purchaser, and refund to the purchaser the full purchase price, including all collateral charges, less a reasonable allowance for the purchasers use of the vehicle, not exceeding $.10 per mile driven or 10% of the purchase price of the vehicle, whichever is less.

19. Section 1956 of the Pennsylvania Automobile Lemon Law provides a presumption of a reasonable number of repair attempts if:

> (1) The same nonconformity has been subject to repair three times by the manufacturer, its agents or authorized dealers and the nonconformity still exists; or
>
> (2) The vehicle is out-of-service by reason of any nonconformity for a cumulative total of thirty or more calendar days.

20. Plaintiffs have satisfied the above definition as the vehicle has been subject to repair more than three (3) times for the same nonconformity, and the nonconformity remained unconnected.

21. In addition, the above vehicle has or will be out-of-service by reason of the nonconformities complained of for a cumulative total of thirty (30) or more calendar days.

22. Plaintiffs have delivered the nonconforming vehicle to an authorized service and repair facility of the Defendant on numerous occasions as outlined below.

23. After a reasonable number of attempts, Defendant was unable to repair the nonconformities.

24. During the first 12 months and/or 12,000 miles, Plaintiffs complained on at least three (3) occasions about defects and or non-conformities to the following vehicle components: stalling condition. True and correct copies of all invoices in Plaintiffs possession are attached hereto, made a part hereof, and marked Exhibit "B".

25. Plaintiffs aver the vehicle has been subject to additional repair attempts for defects and conditions for which Defendant's warranty dealer did not provide or maintain itemized statements as required by 73 P.S. § 1957.

26. Plaintiffs aver that such itemized statements, which were not provided as required by 73 P.S. § 1957 also include technicians' notes of diagnostic procedures and repairs, and Defendant's Technical Service Bulletins relating to this vehicle.

27. Plaintiffs aver the vehicle has been subject to additional repair attempts for defects and conditions for which Defendant's warranty dealer did not provide the notification required by 73 P.S. § 1957.

28. Plaintiffs have and will continue to suffer damages due to Defendant's failure to comply with the provisions of 73 P.S. §§ 1954 (repair obligations), 1955 (manufacturer's duty for refund or replacement), and 1957 (itemized statements required).

29. Pursuant to 73 P.S. § 1958, Plaintiffs seek relief for losses due to the vehicle's nonconformities, including the award of reasonable attorneys' fees and all court costs.

WHEREFORE, Plaintiffs respectfully demand judgment against Defendant in an amount equal to the price of the subject vehicle, plus all collateral charges, attorneys' fees, and court costs.

COUNT II
MAGNUSON-MOSS (FTC) WARRANTY IMPROVEMENT ACT

30. Plaintiffs hereby incorporate all facts and allegations set forth in this Complaint by reference as if fully set forth at length herein.

31. Plaintiffs are "Consumers" as defined by 15 U.S.C. §2301(3).

32. Defendant is a "supplier", "warrantor", and a "service contractor" as defined by 15 U.S.C. § 2301 (4),(5) and (8).

33. The subject vehicle is a "consumer product" as defined by 15 U.S.C. § 2301(1).

34. By the terms of its written warranties, affirmations, promises, or service contracts, Defendant agreed to perform effective repairs at no charge for parts and/or labor.

35. The Magnuson-Moss Warranty Improvement Act requires Defendant to be bound by all warranties implied by state law. Said warranties are imposed on all transactions in the state in which the vehicle was delivered.

36. Defendant has made attempts on several occasions to comply with the terms of its express warranties; however, such repair attempts have been ineffective.

37. The Magnuson-Moss Warranty Improvement Act, 15 U.S.C. §2310(d)(2) provides:

> If a consumer finally prevails on an action brought under paragraph (1) of this subsection, he may be allowed by the court to recover as part of the judgment a sum equal to the amount of aggregate amount of costs and expenses (including attorney fees based upon actual time expended), determined by the court to have been reasonably incurred by the Plaintiff for, or in connection with the commencement and prosecution of such action, unless the court, in its discretion shall determine that such an award of attorney's fees would be inappropriate.

38. Plaintiffs have afforded Defendant a reasonable number of opportunities to conform the vehicle to the aforementioned express warranties, implied warranties and contracts.

39. As a direct and proximate result of Defendant's failure to comply with the express written warranties, Plaintiffs have suffered damages and, in accordance with 15 U.S.C. §2310(d)(1), Plaintiffs are entitled to bring suit for such damages and other legal and equitable relief.

40. Defendant's failure is a breach of Defendant's contractual and statutory obligations constituting a violation of the Magnuson-Moss Warranty Improvement Act, including but not limited to: breach of express warranties; breach of implied warranty of merchantability; breach of implied warranty of fitness for a particular purpose; breach of contract; and constitutes an Unfair Trade Practice.

41. Plaintiffs aver Defendant's Dispute Resolution Program is not in compliance with 16 CFR 703 by the FTC for the period of time this claim was submitted.

42. Plaintiffs aver that upon successfully prevailing upon the Magnuson-Moss claim herein, all attorney fees are recoverable and are demanded against Defendant.

WHEREFORE, Plaintiffs respectfully demand judgment against Defendant in an amount equal to the price of the subject vehicle, plus all collateral charges, incidental and consequential damages, reasonable attorneys' fees, and all court costs.

COUNT III
PENNSYLVANIA UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION LAW

43. Plaintiffs hereby incorporate all facts and allegations set forth in this Complaint by reference as if fully set forth at length herein.

44. Plaintiffs are "Persons" as defined by 73 P.S. §201-2(2).

45. Defendant is a "Person" as defined by 73 P.S. §201-2(2).

46. Section 201-9.2(a) of the Act authorizes a private cause of action for any person "who purchases or leases goods or services primarily for personal, family or household purposes."

47. Section 1961 of the Pennsylvania Automobile Lemon Law, provides that a violation of its provisions shall automatically constitute a violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Act, 73 P.S. 201-1 et seq.

48. In addition, the Pennsylvania Unfair Trade Practices and Consumer Protection Act, 73 P.S. §201-2(4), defines "unfair or deceptive acts or practices" to include the following conduct:

> (vii). Representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if they are of another;
>
> (xiv). Failing to comply with the terms of any written guarantee or warranty given to the buyer at, prior to, or after a contract for the purchase of goods or services is made;
>
> (xv). Knowingly misrepresenting that services, replacements or repairs are needed if they are not needed;
>
> (xvi). Making repairs, improvements or replacements on tangible, real or personal property of a nature or quality inferior to or below the standard of that agreed to in writing;
>
> (xvii). Engaging in any other fraudulent conduct which creates a likelihood of confusion or of misunderstanding.

49. Plaintiffs aver Defendant has violated these, as well as other provisions, of 73 P.S. §201-2 et seq.

50. Section 201-3.1 of the Act provides that the Automotive Industry Trade Practice rules and regulations adopted by the Attorney General for the enforcement of this Act shall constitute additional violations of the Act.

51. Defendant's conduct surrounding the sale and servicing of the subject vehicle falls within the aforementioned definitions of "unfair or deceptive acts or practices."

52. The Act also authorizes the Court, in its discretion, to award up to three (3) times the actual damages sustained for violations.

WHEREFORE, Plaintiffs respectfully demand judgment against Defendant in an amount not in excess of Fifty Thousand Dollars ($50,000.00), together with all collateral charges, attorneys' fees, all court costs and treble damages.

KIMMEL & SILVERMAN, P.C.

By: _____
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