



**Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of Claims Against the Dealer Bond
of Crawford County Motorcycle, LLC

Case Nos. TR-10-0050 and TR-10-0051

FINAL DECISION

On October 4, 2010, Linda Wellumson filed a claim with the Wisconsin Department of Transportation (Department) against the motor vehicle dealer bond of Crawford County Motorcycle, LLC (Dealer). On November 8, 2010, LeDonna Kaye Jones filed a claim with the Department against the Dealer. Pursuant to the procedures set forth at Wis. Admin. Code § Trans 140.26, a Public Notice to File Dealer Bond Claims was published in the Courier Press, a newspaper published in Prairie du Chien, Wisconsin. The notice informed other persons who may have claims against the Dealer to file them with the Department by January 21, 2011. No additional claims were filed. The two claims were forwarded by the Department to the Division of Hearings and Appeals. The Administrative Law Judge issued a Preliminary Determination on these claims on January 26, 2011. No objection to the Preliminary Determination were received. Pursuant to Wis. Admin. Code § Trans 140.26(5)(d), the Preliminary Determination is adopted as the final decision of the Department of Transportation.

In accordance with Wis. Stat. § 227.47 and 227.53(1)(c) the PARTIES to this proceeding are certified as follows:

Larry Engen
Crawford County Motorcycle, LLC
812 S. Marquette Road
Prairie du Chien, WI 53821-2214

Brandi Lee Johanningmeier
Crawford County Motorcycle, LLC
605 Parkview Ct., #1
Prairie du Chien, WI 53821

Linda Wellumson
1100 South 12th Street
Prairie du Chien, WI 53821

LeDonna Kaye Jones
P.O. Box 202
306 East Depue Street
Monona, IA 52159

Washington International Insurance Company
475 North Martingale Road
Schaumburg IL 60173-2405

FINDINGS OF FACT

1. Crawford County Motorcycle, LLC, (Dealer) was licensed by the Wisconsin Department of Transportation (Department) as a motor vehicle dealer. The Dealer's facilities were located at 812 South Marquette Road, Prairie du Chien, Wisconsin, 53821. The dealership is out of business.

2. The Dealer had a bond in force satisfying the requirements of Wis. Stat. § 218.0114(5)(a) from October 20, 2009 until it was cancelled effective December 18, 2010. (Bond #S906-7642 from Washington International Insurance Company). The amount of the bond is \$5000.00.

Wellumson claim, case no. TR-10-0050

3. On May 25, 2010, Linda Wellumson entered into a consignment agreement with the Dealer. The Dealer agreed to sell a 2003 Harley Davidson Sportster motorcycle, vehicle identification number 1HD4CJM153K404615, owned by Ms. Wellumson. Pursuant to the consignment agreement, the Dealer agreed to a selling price of not less than \$4,000.00. Ms. Wellumson agreed to pay the Dealer a sales commission of 10% of the selling price.

4. On June 8, 2010, the Dealer sold Ms. Wellumson's motorcycle to Ryan Zitelman for \$4,000.00. No proceeds from the sale were paid to Ms. Wellumson

5. Ms. Wellumson did not discover that her motorcycle had been sold until sometime in September of 2010. Ms. Wellumson filed a complaint with the Department against the Dealer.

6. The investigator for the Department was unable to resolve the complaint and on October 4, 2010, Ms. Wellumson filed a claim against the surety bond of the Dealer with the Department. The amount of the claim is \$4,000.00, the minimum sale price for the vehicle pursuant to the consignment agreement.

7. The Dealer's failure to pay Ms. Wellumson the amount owed her under the consignment agreement constitutes a violation of Wis. Admin. Code § Trans 139.08(3). Wis. Admin. Code § Trans 139.08(3) requires a motor vehicle dealer to "remit any monies due a consignor under a consignment agreement within 7 days of the date a consignment vehicle is sold." A violation of Wis. Admin. Code § Trans 139.08(3), is, in turn, a violation of Wis. Stat. § 218.0116(1)(gm). Ms. Wellumson sustained a loss as a result of the Dealer's violation of Wis. Stat. § 218.0116(1)(gm).

8. The claim of Ms. Wellumson arose on June 8, 2010, the day the Dealer sold Ms. Wellumson's motorcycle and failed to forward the proceeds of the sale to her. Ms. Wellumson has submitted documentation to support a bond claim in the amount of \$3,600.00, the amount due her according to the consignment agreement (\$4,000.00 sale price less a 10% commission). The bond claim was filed within three years of the ending date of the one-year period the bond issued by Washington International Insurance Company was in effect and is, therefore, a timely claim.

Jones claim, case no. TR-10-0050

9. On August 2, 2010, LaDonna Kaye Jones entered into a consignment agreement with the Dealer. The Dealer agreed to sell a 2003 Harley Davidson Sportster motorcycle, vehicle identification number 1HD4CEM153K442062, owned by Ms. Jones. Pursuant to the consignment agreement, the Dealer agreed to a selling price of not less than \$4,500.00. Ms. Jones agreed to pay the Dealer a sales commission of 15% of the selling price. However, in a letter dated October 17, 2010, Ms. Jones confirmed that she and the Dealer agreed that she would receive \$3700, the amount she still owed on a loan to purchase the motorcycle, from the consignment sale. The Dealer signed a statement attached to this letter admitting that this was the agreement.

10. The Dealer sold Ms. Jones' motorcycle to Kevin Lund. The Dealer paid Ms. Jones \$1750.00 of the amount he owed her under the consignment agreement.

11. On November 8, 2010, Ms. Jones filed a claim against the surety bond of the Dealer with the Department. The amount of the claim is \$1950.00, the balance owed her pursuant to the consignment agreement.

12. The Dealer's failure to pay Ms. Jones the total amount owed her under the consignment agreement constitutes a violation of Wis. Admin. Code § Trans 139.08(3). Wis. Admin. Code § Trans 139.08(3) requires a motor vehicle dealer to "remit any monies due a consignor under a consignment agreement within 7 days of the date a consignment vehicle is sold." A violation of Wis. Admin. Code § Trans 139.08(3), is, in turn, a violation of Wis. Stat. § 218.0116(1)(gm). Ms. Jones sustained a loss as a result of the Dealer's violation of Wis. Stat. § 218.0116(1)(gm).

13. The claim of Ms. Jones arose on the day the Dealer sold Ms. Jones's motorcycle and failed to forward the full amount owed to her under the consignment agreement. Ms. Jones has submitted documentation to support a bond claim in the amount of \$1950.00, the balance due her according to the consignment agreement. The bond claim was filed within three years of the ending date of the one-year period the bond issued by Washington International Insurance Company was in effect and is, therefore, a timely claim.

DISCUSSION

The procedure for determining claims against dealer bonds is set forth at Wis. Admin. Code Chapter Trans 140, Subchapter II. Wis. Admin Code § Trans 140.21(1) provides in relevant part:

A claim is an allowable claim if it satisfies each of the following requirements and is not excluded by sub. (2) or (3):

(a) The claim shall be for monetary damages in the amount of an actual loss suffered by the claimant.

(b) The claim arose during the period covered by the security.

(c) The claimant's loss shall be caused by an act of the licensee, or the [licensee's] agents or employees, which is grounds for suspension or revocation of any of the following:

1. A salesperson license or a motor vehicle dealer license, in the case of a secured salesperson or motor vehicle dealer, pursuant to s. 218.01 (3)(a) 1. to 14., 18. to 21., 25. or 27. to 31., Stats. *[recodified as §§ 218.0116(1)(a) to (gm), (im) to (k), (m), and (n) to (p) in Wis. Stats. (1999-2000)].*

(d) The claim must be made within 3 years of the last day of the period covered by the security. The department shall not approve or accept any surety bond or letter of credit which provides for a lesser period of protection.

Accordingly, to allow the claims filed against the surety bond of the Dealer, a finding must be made that the Dealer violated one of the sections of Wis. Stat. § 218.0116(1) identified in Wis. Admin. Code § Trans 140.21(1)(c)1, and that the violation caused the loss claimed. With respect to both claims, the Dealer's failure to pay the respective consignors the proceeds he received from the sale of their vehicles constitutes a violation of Wis. Admin. Code § Trans 139.08(3). The claimants each sustained a loss as a result of the Dealer's actions. As found above, the Dealer's violation of Wis. Admin.

Code § Trans 139.08(3) constitutes a violation of Wis. Stat. § 218.0116(1)(gm).¹ Wis. Stat. § 218.0116(1)(gm) is one of the provisions identified in Wis. Admin. Code § Trans 140.21(1)(c)1.

Pursuant to the priority classification of claims set forth at Wis. Admin. Code § Trans 140.22, both of these claims fall within the highest priority.² The total amount of the claims exceeds the amount available to pay the claims. The sum of the allowable amounts of the claims equals \$5,550.00 and the amount of funds available under the bond is \$5,000.00. Since the claims have the same priority, the claims must be prorated according to the formula set forth at Wis. Admin. Code § Trans 140.23(1)(d).³ Applying this formula, the claims for this bond year must be reduced. The Wellumson claim is reduced to \$3,243.24 and the Jones claim is reduced to \$1,756.76.

CONCLUSIONS OF LAW

1. Linda Wellumson's claim arose on June 8, 2010, the date on which the Dealer sold the motorcycle that Ms. Wellumson had placed with the Dealer to sell on a consignment basis and the Dealer failed to remit the amount owed to Ms. Wellumson under the consignment agreement. The surety bond issued to the Dealer by Washington International Insurance Company covers a one-year period commencing on October 20, 2009. The claim arose during the period covered by the surety bond.

¹ Wis. Stat. § 218.0116(1)(gm), provides that a motor vehicle dealer license may be denied, suspended, or revoked for the violation "of any law relating to the sale, lease, distribution or financing of motor vehicles."

² Wis. Admin. Code § Trans 140.22(1)(a) provides:

The priority classes of allowable claims against the security of any licensee except a wholesaler, salvage or auction dealer, in order of their priority, are as follows: (a) Claims of retail customers including, without limitation, claims arising from a particular motor vehicle purchase from the licensee or from a particular motor vehicle sale by the licensee, claims for repairs warranted by the licensee, claims for failure to furnish title to a motor vehicle, claims for deposits against an uncompleted motor vehicle purchase transaction, and claims for the failure of the licensee to pay the claimant for a trade-in a motor vehicle purchased by the licensee, or a consigned vehicle not returned to the consignor upon request.

³ Wis. Admin. Code § Trans 140.23(1)(d) provides:

If insufficient funds are available to pay all claims in a class, then each claim of the class shall be prorated according to the following formula:

$$\frac{\text{dollar amount of claim}}{\text{total dollar amount of claims in class}} \times \text{available funds} = \text{prorated dollar amount of claim}$$

2. Ms. Wellumson filed a claim against the motor vehicle dealer bond of the Dealer on October 4, 2010. The bond claim was filed within three years of the last day of the period covered by the surety bond. Pursuant to Wis. Admin. Code § Trans 140.21(1)(d), the claim is timely.

3. Ms. Wellumson's loss was caused by an act of the Dealer that would be grounds for suspension or revocation of its motor vehicle dealer license. Ms. Wellumson has submitted documentation to support a claim in the amount of \$3,600.00. However, pursuant to Wis. Admin. Code § Trans 140.23(1)(d), Ms. Wellumson's claim must be prorated to \$3,243.24.

4. LaDonna Kaye Jones' claim arose when the Dealer sold the motorcycle that Ms. Jones had placed with the Dealer to sell on a consignment basis and the Dealer failed to remit the amount owed to Ms. Jones under the consignment agreement. The surety bond issued to the Dealer by Washington International Insurance Company covers a one-year period commencing on October 20, 2009. The claim arose during the period covered by the surety bond.

5. Ms. Jones filed a claim against the motor vehicle dealer bond of the Dealer on November 8, 2010. The bond claim was filed within three years of the last day of the period covered by the surety bond. Pursuant to Wis. Admin. Code § Trans 140.21(1)(d), the claim is timely.

6. Ms. Jones' loss was caused by an act of the Dealer that would be grounds for suspension or revocation of its motor vehicle dealer license. Ms. Jones has submitted documentation to support a claim in the amount of \$1,950.00. However, pursuant to Wis. Admin. Code § Trans 140.23(1)(d), Ms. Jones' claim must be prorated to \$1,756.76.

7. The Division of Hearings and Appeals has authority to issue the following orders.

ORDERS

1. The claim filed by Linda Wellumson against the motor vehicle dealer bond of Crawford County Motorcycle, LLC, is APPROVED in the amount of \$3,243.24. Washington International Insurance Company shall pay Ms. Wellumson this amount for her loss attributable to the actions of the Dealer.

2. The claim filed by LaDonna Kaye Jones against the motor vehicle dealer bond of Crawford County Motorcycle, LLC, is APPROVED in the amount of \$1,756.76. Washington International Insurance Company shall pay Ms. Jones this amount for her loss attributable to the actions of the Dealer.

Dated at Madison, Wisconsin on March 4, 2011.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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Madison, Wisconsin 53705-5400
Telephone: (608) 266-7709
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By: _____

MARK J. KAISER
ADMINISTRATIVE LAW JUDGE

NOTICE

Set out below is a list of alternative methods available to persons who may wish to obtain review of the attached decision of the Administrative Law Judge. This notice is provided to insure compliance with Wis. Stat. § 227.48 and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Department of Transportation a written petition for rehearing pursuant to Wis. Stat. § 227.49. A copy of any such petition for rehearing should also be provided to the Administrative Law Judge who issued the order. Rehearing may only be granted for those reasons set out in Wis. Stat. § 227.49(3). A petition under this section is not a prerequisite for judicial review under Wis. Stat. §§ 227.52 and 227.53.
2. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefore in accordance with the provisions of Wis. Stat. §§ 227.52 and 227.53. Said petition must be filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (1) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Pursuant to Wis. Admin. Code § TRANS 140.26(7), the attached final decision of the Administrative Law Judge is a final decision of the Department of Transportation, so any petition for judicial review shall name the Department of Transportation as the respondent. The Department of Transportation shall be served with a copy of the petition either personally or by certified mail. The address for service is:

Office of General Counsel
4802 Sheboygan Avenue, Room 115B
Wisconsin Department of Transportation
Madison, Wisconsin 53705

Persons desiring to file for judicial review are advised to closely examine all provisions of Wis. Stat. § 227.52 and 227.53 to insure strict compliance with all its requirements.