



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

---

In the Matter of Claims Against the Dealer Bond  
of Greg Ellious Motors, Inc., d/b/a G.E.M. Hot  
Wheels Corner (Dealer No. XXX0091)

---

Case No. TR-11-0025

FINAL DECISION

On April 26, 2011, Michael L. Higgins filed a claim with the Wisconsin Department of Transportation (Department) against the motor vehicle dealer bond of Greg Ellious Motors, Inc., d/b/a G.E.M. Hot Wheels Corner (Dealer). On May 20, 2011, the claim along with documents gathered by the Department was referred to the Division of Hearings and Appeals. The Administrative Law Judge issued a Preliminary Determination in this matter on December 21, 2011. No objections 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:

Gregory Ellious Motors, Inc., d/b/a G.E.M. Hot Wheels Corner, by

Gregory Ellious  
937 Sussex Court  
Nekoosa, WI 54457

Michael L. Higgins  
235 Sunrise Drive  
Stevens Point, WI 54482

CNA/Western Surety Company  
P. O. Box 5077  
Sioux Falls, SD 57177

FINDINGS OF FACT

1. Greg Ellious Motors, Inc., d/b/a G.E.M. Hot Wheels Corner (Dealer) was licensed by the Wisconsin Department of Transportation as a motor vehicle dealer. The Dealer's

facilities were located at 3241 Plover Road, Wisconsin Rapids, Wisconsin, 54494. 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 August 30, 2006, until it was cancelled effective April 18, 2009 (Bond #70152549 from Western Surety Company).

3. On December 1, 2008, Michael L. Higgins purchased a 2006 Jeep Liberty, vehicle identification number 1J4GL48K56W222813, from the Dealer. Mr. Higgins also purchased an extended warranty covering the vehicle. The extended warranty purchased by Mr. Higgins was administered by Auto Services Company, Inc., and cost \$2255.00. Mr. Higgins purchased the extended warranty policy through the Dealer.

4. Mr. Higgins did pay to the Dealer the \$2255.00 premium for the extended warranty. Mr. Higgins subsequently contacted the warranty company and was informed the warranty contract and premium had never been received. Mr. Higgins obtained a small claims judgment against Greg Ellious in the amount of \$2437.89, the amount of the premium for the extended warranty plus \$182.89 for court costs. On April 26, 2011, Michael Higgins filed a claim against the surety bond of the Dealer in the amount of \$2437.89, the amount of the small claims judgment.

5. The Dealer's retention of the premium Michael Higgins paid for the extended warranty to Auto Services Company, Inc., constitutes violations of Wis. Stat. § 218.0116(1)(c) (willfully defrauding a retail buyer) and Wis. Stat. § 218.0116(1)(cm) (willful failure to perform any written agreement with any retail buyer). This loss sustained by Mr. Higgins was caused by an act of the Dealer that would be grounds for the suspension or revocation of its motor vehicle dealer license.

6. Michael Higgins submitted documentation to support a bond claim of \$2255.00, the amount he paid for the warranty. The other component of Mr. Higgins' claim, court costs is not an allowable bond claim. Wis. Admin Code § Trans 140.21(2)(e) expressly disallows any claim for legal costs. The bond claim was filed within three years of the ending date of the one-year period the bond issued by the Auto Owners 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 claim filed against the security 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 the claim described above, the Dealer violated Wis. Stat. §§ 218.0116(1)(c) and 218.0116(1)(cm). Wis. Stat. §§ 218.0116(1)(c) and 218.0116(1)(cm) are both identified in Wis. Admin. Code § Trans 140.21(1)(c)1. The claimant sustained a loss as a result of these violations.

#### CONCLUSIONS OF LAW

1. The claim of Michael Higgins arose on December 1, 2008, the date he purchased an extended warranty through the Dealer and the Dealer failed to submit the application for the extended warranty and the premium paid by Mr. Higgins to Auto Services Company, Inc. The surety bond issued to the Dealer by Western Surety Company covers a one-year period commencing on August 30, 2008. The claim arose during the period covered by the surety bond.

2. Michael Higgins filed a claim against the motor vehicle dealer bond of the Dealer on April 26, 2011. 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. Michael Higgins sustained a loss as the result of an act of the Dealer that would be grounds for suspension or revocation of the Dealer's motor vehicle dealer license. Mr. Higgins has submitted documentation to support a claim in the amount of \$2255.00.

4. The Division of Hearings and Appeals has authority to issue the following order.

ORDER

1. The claim filed by Michael L. Higgins against the motor vehicle dealer bond of Greg Ellious Motors, Inc., d/b/a G.E.M. is APPROVED in the amount of \$2255.00. Western Surety Company shall pay Mr. Higgins this amount for his loss attributable to the actions of the Dealer.

Dated at Madison, Wisconsin on June 29, 2012.

STATE OF WISCONSIN  
DIVISION OF HEARINGS AND APPEALS  
5005 University Avenue, Suite 201  
Madison, Wisconsin 53705  
Telephone: (608) 266-7709  
FAX: (608) 264-9885

By: \_\_\_\_\_  
Mark 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.