



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

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In the Matter of Claims Against the Dealer Bond  
of Valley Auto Sales, LLC

Case Nos. TR-12-0039 and TR-13-0002

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FINAL DECISION

On September 11, 2012, Jamie Eick filed a claim with the Wisconsin Department of Transportation (Department) against the motor vehicle dealer bond of Valley Auto Sales, LLC, and (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 Post-Crescent, a newspaper published in Appleton, Wisconsin. The notice informed other persons who may have claims against the Dealer to file them with the Department by January 14, 2013. One additional claim was filed. The claims were forwarded by the Department to the Division of Hearings and Appeals. The Administrative Law Judge issued a Preliminary Determination in this matter on May 13, 2013. 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:

Brent Gerdts  
Valley Auto Sales, LLC  
W6877 County Road O  
Hortonville WI 54944

Larry Becklund  
Valley Auto Sales, LLC  
619 Hunters Point Road  
Neenah, WI 54956

Kenneth Wegner  
Valley Auto Sales, LLC  
933 Geiger Street  
Neenah, WI 54956

Jamie Eick  
N6071 County Road W  
New London, WI 54961

Wisconsin Department of Transportation  
Division of Motor Vehicles  
Revenue Accounting  
P. O. Box 7336  
Madison, WI 53707-7336

Western Surety Company  
P. O. Box 5077  
Sioux Falls, SD 57117

#### FINDINGS OF FACT

1. Valley Auto Sales, LLC (Dealer) was licensed by the Wisconsin Department of Transportation (Department) as a motor vehicle dealer. The Dealer's facilities were located at 1510 West Civic Street, Appleton, Wisconsin. The dealership is out of business.
2. The Dealer has had a bond in force satisfying the requirements of Wis. Stat. § 218.0114(5) since September 22, 2011. (Bond #71173144 from Western Surety Company)

#### Eick Claim (Case No. TR-12-0039)

3. On April 27, 2012, Jamie Eick and his wife, Ana Eick, (the Eicks) purchased a 1998 Volvo V70, vehicle identification number YV1LZ5640W2451172, from the Dealer. According to the purchase contract, Mr. Eick paid \$5,895.50, including tax and registration fees, for the vehicle. At the time of the sale, a Wisconsin Buyers Guide completed by the Dealer was displayed on the vehicle. The Wisconsin Buyers Guide disclosed that the Dealer had not discovered any problems with the vehicle and that all the vehicle's equipment was legal.
4. Shortly after the purchase, the vehicle's malfunction lights came on and the Eicks noticed several mechanical, electrical, and cosmetic problems with the vehicle. The problems included the "check engine" light, a "loose" steering column, a knocking noise when turning, and a heavy exhaust odor inside the vehicle. The Eicks took the vehicle back to the Dealer several times with complaints over the next two months.
5. The Dealer attributed the knocking sound when turning to the CV axles and recommended installing upgraded ones. The Dealer offered to split the cost of the upgraded CV axles with the Eicks. The Eicks accepted this offer and paid the Dealer \$228.58 for this repair. The Eicks subsequently discovered that the upgraded CV axles were never installed. After

repeated trips, the Dealer claimed to have repaired the defects, but problems with the vehicle persisted and new ones appeared. On June 27, 2012, the Eicks filed a complaint against the Dealer with the Department.

6. An investigator for the Department contacted the Dealer. The Dealer agreed to repair all the defects with the Eicks' vehicle. However, when the Eicks attempted to contact the Dealer to schedule an appointment to bring the vehicle in, they were unable to reach him. Eventually the Dealer informed the investigator that he was closing the dealership and would not be repairing the Eicks' vehicle.

7. The Eicks then took the vehicle to Al's Radiator & Auto Repair, Inc., (Al's) in New London to have the vehicle evaluated. The mechanic at Al's identified shoddy repairs made by the Dealer, unrepaired problems, and additional problems with the vehicle. No estimate of the cost to repairs to the vehicle was provided. However, the mechanic concluded that the cost of the repairs necessary to make the vehicle safe to operate would exceed the value of the vehicle. The Eicks paid Al's \$489.40 for the evaluation and some repairs to the vehicle.

8. On September 11, 2012, Jamie Eick filed a claim against the surety bond of the Dealer with the Department of Transportation. The amount of the claim is \$6,677.48 and is itemized as follows:

Purchase price of vehicle including taxes and fees	\$5,859.50
Reimbursement for charge to replace CV Axles	\$ 223.58
Insurance	\$ 105.00
Amount paid to Al's radiator	\$ 489.40

9. Licensed motor vehicle dealers are required by Wis. Admin. Code § Trans 139.04(4) to disclose "significant existing mechanical defects" in used vehicles offered for sale. Dealers are required to disclose defects that can be discovered during a reasonable pre-sale inspection on a Wisconsin Buyers Guide form that is displayed on the vehicle at the time it is offered for sale. A completed Wisconsin Buyers Guide was displayed on the vehicle at the time the Eicks purchased it from the Dealer. However, no defects were disclosed on the Wisconsin Buyers Guide. Either the Dealer failed to perform a reasonable presale inspection of the vehicle and discover the existing defects or, if a reasonable presale inspection was performed, the Dealer failed to properly disclose the result of the inspection on the Wisconsin Buyers Guide.

10. The Dealer's failure to conduct a reasonable presale inspection of the vehicle and/or accurately disclose any significant existing defects discovered during the presale inspection on the Wisconsin Buyers Guide constitutes a violation of Wis. Admin. Code §§ Trans 139.04(5) and (6)(a). Violations of these sections, in turn, constitute a violation of Wis. Stat. §§ 218.0116(1)(bm) and/or (gm). Jamie Eick sustained a loss as the result of this violation.

11. Jamie Eick's damages are the either the cost of the repairs necessary to bring the vehicle up to the condition that was disclosed by the Dealer at the time he and his wife purchased the vehicle or to rescind the transaction. Mr. Eick has not submitted an estimate of the cost to repair the vehicle, but the statement from Al's indicates the cost of repairs would exceed the

value of the vehicle. Mr. Eick is entitled to reimbursement of the amount he paid for the vehicle, including tax and registration fees, plus the amount he paid for repairs to the vehicle. The purchase price of the vehicle was \$5,859.50 and the amounts the Eicks paid for repairs were \$223.58 and 489.40. The amount the Eicks spent to insure the vehicle is not an allowable bond claim item.

12. Jamie Eick's claim arose on April 27, 2012, the day the Eicks purchased the vehicle that is the subject of their claim against the surety bond of the Dealer. The bond claim was filed within three years of the ending date of the one-year period that a surety bond issued by Western Surety Company was in effect and is, therefore, a timely claim.

Division of Motor Vehicles Claim  
(Case No. TR-13-0002)

13. During the month of August 2012, the Dealer sent to the Department's Division of Motor Vehicles (DMV) 31 Wisconsin Title and Registration Applications (MV-11s) for vehicles it sold to retail customers. The Dealer submitted 23 checks and three Automated Clearing House (ACH) payments along with the applications as payment of the registration fees for the vehicles. The checks submitted to the DMV were returned by the Dealer's financial institution and the ACH payments were denied due to insufficient funds in the Dealer's account. The DMV sent the Dealer letters requesting payment to cover the insufficient fund checks and denial of ACH payments. However, the Dealer failed to submit the required fees to process the applications.

14. On December 4, 2012, the DMV submitted a claim against the surety bond of the Dealer in the amount of \$4,733.85. The amount of the bond claim represents the sum of the unpaid fees for the 31 MV-11s submitted to the DMV.

15. The Dealer's failure to submit the required fees along with the MV-11s constitutes a violation of Wis. Stat. § 342.06(1). A violation of Wis. Stat. § 342.06(1), in turn, constitutes a violation of Wis. Stat. § 218.0116(1)(gm) (having violated any law relating to the sale, lease, distribution, or financing of motor vehicles).

16. The loss sustained by the DMV was caused by an act of the Dealer that would be grounds for the suspension or revocation of its motor vehicle dealer license. Accordingly, the claim is allowable. The DMV has provided documentation to support a claim in the amount of \$4,733.85.

17. The DMV's claim arose during August of 2012. The bond claim was filed within three years of the ending date of the one-year period that a surety bond issued by Western Surety 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 against the Dealer's surety bond findings 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 Jamie Eick's claim, the Eicks discovered numerous, significant problems with the vehicle immediately after they purchased it from the Dealer. The Dealer either failed to perform a reasonable pre-sale inspection of the vehicle or to accurately disclose the results of the pre-sale inspection on the Wisconsin Buyers Guide. Either way the Dealer's actions constitute a violation of Wis. Admin. Code §§ Trans 139.04(5) and (6)(a). A violation of either of these sections, in turn, constitutes a violation of Wis. Stat. §§ 218.0116(1)(bm) and/or (gm). Wis. Stat. §§ 218.0116(1)(bm) and (gm) are both sections identified in Wis. Admin. Code § Trans 140.21(1)(c)1. Jamie Eick's loss resulted directly from this violation.

With respect to the DMV's claim, the Dealer's failure to submit the required fees along with the MV-11s constitutes a violation of Wis. Stat. § 342.06(1). A violation of Wis. Stat. § 342.06(1), in turn, constitutes a violation of Wis. Stat. § 218.0116(1)(gm). Wis. Stat. §§

218.0116(1) (gm) is one of the sections identified in Wis. Admin. Code § Trans 140.21(1)(c)1. The DMV's loss resulted directly from this violation.

### CONCLUSIONS OF LAW

1. The claim of Jamie Eick arose on April 27, 2012, the day the Eicks purchased the subject vehicle from the Dealer. The surety bond issued to the Dealer by Western Surety Company covers a one-year period commencing on September 22, 2011. The claim arose during the period covered by the surety bond.
2. Jamie Eick filed a claim against the motor vehicle dealer bond of the Dealer on September 11, 2012. 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. Jamie Eick's loss was caused by an act of the Dealer that would be grounds for suspension or revocation of its motor vehicle dealer license. Pursuant to Wis. Admin. Code § Trans 140.21(1)(c), the claim is allowable. Jamie Eick has supplied documentation to support a claim in the amount of \$6,572.48. Because Jamie Eick is being reimbursed the purchase price of the vehicle and the amount he spent on repairs to the vehicle it would constitute unjust enrichment to allow him to also retain ownership of the vehicle. Accordingly, the Eicks will be required to surrender the vehicle to the Western Surety Company.
4. The DMV's claim arose during August of 2012. The surety bond issued to the Dealer by Western Surety Company covers a one-year period commencing on September 22, 2011. The claim arose during the period covered by the surety bond.
5. The DMV filed the claim against the motor vehicle dealer bond of the Dealer on December 4, 2012. 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. The DMV's loss was caused by an act of the Dealer which would be grounds for suspension or revocation of its motor vehicle dealer license. Pursuant to Wis. Admin. Code § Trans 140.21(1)(c), the claim is allowable. The DMV has provided documentation to support a claim in the amount of \$4,733.85.
7. The Division of Hearings and Appeals has authority to issue the following orders.

ORDERS

1. The claim filed by Jamie Eick against the motor vehicle dealer bond of Valley Auto Sales, LLC, is APPROVED in the amount of \$6,572.48. Western Surety Company shall pay Jamie Eick this amount for his loss attributable to the actions of Valley Auto Sales, LLC. Upon receipt of the payment, Jamie Eick shall surrender possession and title of the vehicle to Western Surety Company.

2. The claim filed by the Division of Motor Vehicles against the motor vehicle dealer bond of Valley Auto Sales, LLC, is APPROVED in the amount of \$4,733.85. Western Surety Company shall pay the Division of Motor Vehicles this amount for the loss attributable to the actions of Valley Auto Sales, LLC.

Dated at Madison, Wisconsin on June 14, 2013.

STATE OF WISCONSIN  
DIVISION OF HEARINGS AND APPEALS  
5005 University Avenue, Suite 201  
Madison, Wisconsin 53705-5400  
Telephone: (608) 266-7709  
FAX: (608) 264-9885

By: \_\_\_\_\_  
MARK F. 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.