

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

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In the Matter of Claims Against the Dealer Bond  
of Donald Driver Motors, LLC

Case No. TR-14-0010

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FINAL DETERMINATION

On May 8, 2014, James Berg filed a claim with the Wisconsin Department of Transportation (Department) against the motor vehicle dealer bond of Donald Driver Motors, LLC. The claim along with documents gathered by the Department during its investigation of the claim was referred to the Division of Hearings and Appeals. The Administrative Law Judge issued a Preliminary Determination in this matter on November 4, 2014. 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:

James L. Berg  
N1867 Shale Avenue  
Campbellsport, WI 53010

Richard Jungen  
Donald Driver Motors, LLC  
4711 N. 100<sup>th</sup> Street  
Wauwatosa, WI 53225

Thomas Burns, Sr.  
Donald Driver Motors, Inc.,  
W350N5317 Road "B"  
Post Office Box 152  
Okauchee, WI 53069

Donald Driver  
Donald Driver Motors, Inc.,  
1501 Noble Way  
Flower Mound, TX 75022

Universal Underwriters Insurance Group  
Bond Department  
7045 College Blvd.  
Overland Park, KS 55211-1523

#### FINDINGS OF FACT

1. Donald Driver Motors, LLC, (Dealer) was licensed by the Wisconsin Department of Transportation (Department) as a motor vehicle dealer. The Dealer's facilities were located at 113 East Main Street, Campbellsport, Wisconsin. The dealership was put out of business effective of November 30, 2011.
2. The Dealer has had a surety bond satisfying the requirements of Wis. Stat. § 218.0114(5) in force since January 3, 2008 (Bond #824044 from Universal Underwriters Insurance Group).
3. On April 30, 2006, James Berg (Berg) purchased a 2007 Buick Terraza, vehicle identification number 4GLDV13WX70211913, from the Dealer. Berg paid \$29,849.00, not including taxes and registration fees, for the vehicle. The vehicle came with a limited warranty administered by the Dealer. The warranty covered the powertrain of the vehicle and was for an unlimited term. The warranty has a \$100.00 deductible.
4. In 2014, Berg experienced a coolant leak with the vehicle which was subsequently diagnosed as a leak in the timing cover gasket. To repair the timing cover gasket the power steering pump, alternator, coolant bypass hoses, belt, pulleys, and idlers had to be removed. The limited warranty that Berg was given with the purchase of the vehicle covers seals and gaskets. However, Berg was unable to have the coolant leak repaired by the Dealer under the warranty because the Dealer is closed. On April 24, 2014, Berg had the coolant leak repaired by Bud's Auto Repair in Campbellsport. The cost of the repair was \$1,202.27.
5. On April 30, 2014, Berg filed a complaint with the Department against the Dealer. The investigator from the Department contacted Tom Burns, one of the former owners of the dealership, about Berg's complaint. Mr. Burns informed the investigator that the Dealer was unable to pay for repairs to Berg's vehicle.
6. On May 8, 2014, Berg filed a claim against the surety bond of the Dealer in the amount of \$1,202.27, the cost of repairing the coolant leak.

7. The Dealer's failure to repair Berg's vehicle under the terms of the warranty constitutes a violation of Wis. Admin Code § Trans 130.06(10)(a).<sup>1</sup> A violation of Wis. Admin Code § Trans 130.06(10)(a), 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).

8. Berg sustained a loss as the result of an act of the Dealer that would be grounds for the suspension or revocation of its motor vehicle dealer license. Berg has provided documentation to support a claim in the amount of \$1,102.27, the amount that would have been covered by the warranty that the Dealer provided to Berg with the purchase of the vehicle they bought from the Dealer. The allowable claim is calculated as \$1,202.27 for the repair less the \$100.00 deductible.

9. Berg's claim arose in November of 2011. Although Berg did not attempt to use the warranty until 2014, the Dealer's violation of Wis. Admin Code § Trans 139.06(10)(a) occurred when it closed and did not make any arrangements to honor the terms of the warranty. The bond claim was filed within three years of the ending date of the one-year period the bond issued by Universal Underwriters Insurance Group 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

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<sup>1</sup> Wis. Admin Code § Trans 139.06(10)(a) provides that "It is an unfair practice and prohibited for a warrantor to fail to service or repair a motor vehicle in accordance with the terms and conditions of the warranty or service contract."

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. In this case, the Dealer violated Wis. Admin Code § Trans 130.06(10)(a). A violation of Wis. Admin Code § Trans 130.06(10)(a), in turn, constitutes a violation of Wis. Stat. § 218.0116(1)(gm). Wis. Stat. § 218.0116(1)(gm) is identified in Wis. Admin. Code § Trans 140.21(1)(c)1. James Berg sustained a loss as a result of this violation.

#### CONCLUSIONS OF LAW

1. James Berg's claim arose in November of 2011, when the Dealer closed without making any arrangements to honor the terms of the warranty it had given to him. Berg discovered the violation when he experienced mechanical problems with the vehicle he purchased from the Dealer and the Dealer failed to repair the vehicle in accordance with the terms of the warranty. The surety bond issued to the Dealer by Universal Underwriters Insurance Group covers a one-year period commencing on January 3, 2011. The claim arose during the period covered by the surety bond.

2. James Berg filed a claim against the motor vehicle dealer bond of the Dealer on May 8, 2014. 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. James Berg sustained a loss as the result of an act of the Dealer that would be grounds for the suspension or revocation of the Dealer's motor vehicle dealer license. Berg has submitted documentation to support a claim in the amount of \$1,102.27.

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

**ORDER**

The claim filed by James Berg against the motor vehicle dealer bond of Donald Driver Motors, LLC, is APPROVED in the amount of \$1,102.27. Universal Underwriters Insurance Group shall pay James Berg this amount for his loss attributable to the actions of Donald Driver Motors, LLC.

Dated at Madison, Wisconsin on January 21, 2015.

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.