



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

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In the Matter of Claims Against the Dealer Bond  
of Bruce Moen, d/b/a Bruce's Auto

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Case No: DOT-15-0006

FINAL DECISION

On December 21, 2014, Theodore Dahl filed a claim with the Wisconsin Department of Transportation (Department) against the motor vehicle dealer bond of Bruce Moen, d/b/a Bruce's Auto, (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 Marshfield News-Herald, a newspaper published in Marshfield, Wisconsin, on April 23, 2015. The notice informed other persons who may have claims against the Dealer to file them with the Department by June 22, 2015. No additional claims were filed.

A Preliminary Determination was issued in this matter on August 11, 2015. On August 20, 2015, Bruce Moen filed an objection to the Preliminary Determination. Pursuant to due notice an evidentiary hearing was conducted in Marshfield, Wisconsin, on September 10, 2015. Mark F. Kaiser, Administrative Law Judge, presided.

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

Bruce Moen, d/b/a Bruce's Auto, by

Bruce Moen  
Bruce's Auto  
9562 Highway 10  
Marshfield, WI 54449

Western Surety Company  
PO Box 5077  
Sioux Falls, SD 57117

Theodore Dahl  
W6757 Apple Avenue  
Marshfield, WI 54451

Only Bruce Moen appeared at the hearing. Mr. Moen did not dispute any of the findings in the Preliminary Determination. Mr. Moen did provide additional facts that were not previously part of the record. The Findings of Fact have been amended to reflect Mr. Moen's testimony. However, Mr. Moen admitted that he sold the vehicle to the Dahls without first inspecting it. Although he emphasized to the Dahls that he was selling the automobile "As-Is" and offered them a thirty day warranty, licensed motor vehicle dealers are required to perform a reasonable presale inspection of vehicles and to disclose in writing the result of the inspection prior to offering them for sale. Mr. Moen admitted he did not do this. Except for amending the Findings of Fact to include Mr. Moen's testimony, the Preliminary Determination is adopted as the Final Decision in this matter.

### FINDINGS OF FACT

1. Bruce Moen, d/b/a Bruce's Auto, (Dealer) is licensed by the Wisconsin Department of Transportation as a motor vehicle dealer. The Dealer's facilities are located at 9562 Highway 10, Marshfield, Wisconsin.

2. The Dealer has had a surety bond in force satisfying the requirements of Wis. Stat. § 218.0114(5) since May 26, 2013 (Bond # 71414052 from Western Surety Company Corporation).

3. On October 18, 2014, Theodore Dahl (Dahl) purchased a 2001 Chrysler Sebring automobile, vehicle identification number 1C3EL55U01N626632, from the Dealer. According to the purchase contract, Dahl paid \$1,516.00, including tax and registration fees for the vehicle. No Wisconsin Buyers Guide was displayed on the vehicle at the time of the sale. When the purchase contract was being executed, the Dealer completed a Wisconsin Buyers Guide. On the Wisconsin Buyers Guide, the Dealer disclosed every item on the vehicle's condition checklist as having a problem and every item on the equipment checklist as "not legal." However, no explanation of any condition or equipment problem was disclosed. In the explanation section of the Wisconsin Buyers Guide, the Dealer wrote "As-Is."

4. At the hearing, Mr. Moen explained that he took the vehicle purchased by Dahl as a trade-in and intended to sell it at an auction. Mr. Moen testified that his presale inspection of the vehicle was limited to "making sure the wheels would not fall off" during a test drive. Dahl immediately began to experience problems with the vehicle and took it to Craig's Automotive for an evaluation. The mechanic who inspected the vehicle noted the following problems: water pump leaking, rear brakes worn out, tie rod ends loose, and engine leaking oil. The estimate to repair these problems was \$1,240.88. Dahl made several attempts to contact the Dealer to demand that the Dealer either pay for the repairs or buy the vehicle back, but was unsuccessful.

5. On November 12, 2014, Dahl filed a complaint with the Department's Dealer Section against the Dealer. The investigator for the Department assigned to the complaint also made repeated attempts to contact the Dealer without success.

6. On December 21, 2014, Dahl filed a claim against the surety bond of the Dealer with the Department of Transportation. The amount of the claim is \$1240.88, the cost of the needed repairs for the vehicle.

7. Licensed motor vehicle dealers are required by Wis. Admin. Code §§ Trans 139.04(4) and (5) to disclose “significant existing mechanical defects” in used vehicles offered for sale and whether the vehicle can be legally operated on public roadways. 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. The problems Dahl experienced with the vehicle immediately after purchasing it should have been discovered during a reasonable presale inspection of the vehicle and should have been disclosed on a Wisconsin Buyers Guide. The Dealer failed to perform a reasonable presale inspection of the vehicle and to properly disclose the result of the inspection on the Wisconsin Buyers Guide.

8. The Dealer’s failure to conduct a reasonable presale inspection of the vehicle and accurately disclose any significant existing defects discovered during the presale inspection on a Wisconsin Buyers Guide constitutes a violation of Wis. Admin. Code §§ Trans 139.04(4), (5), and (6)(a). Violations of these sections, in turn, constitute a violation of Wis. Stat. §§ 218.0116(1)(bm) and/or (gm). Dahl sustained a loss as the result of this violation. Dahl has submitted documentation to support a claim in the amount of \$1,240.88.

9. Theodore Dahl’s claim arose on October 18, 2014, the day he purchased the automobile that is the subject of his 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 the bond issued by the Western Surety Company Corporation 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. 218.0116 (1) (a) to (gm), (im) 2., (j), (jm), (k), (m) or (n) to (p), Stats.

(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 Theodore Dahl's claim against the Dealer's surety bond, 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. Dahl began experiencing problems with the vehicle he purchased from the Dealer as soon as he purchased it. The Dealer admitted at the hearing that he failed to perform a presale inspection of the vehicle other than to make sure the wheels would not fall off. The Dealer provided undisputed testimony that he unequivocally informed Dahl that he was selling the vehicle "As-Is" and he would not fix any problems with the vehicle unless Dahl purchased a 30 day "warranty" on the vehicle for \$1000.

Licensed motor vehicle dealers are required to perform a reasonable presale inspection and to disclose the results of the inspection on a Wisconsin Buyers Guide displayed on the vehicle when it was offered for sale. No Wisconsin Buyers Guide was displayed on the vehicle when it was offered for sale. The Dealer did complete a Wisconsin Buyers Guide for the vehicle after Dahl agreed to purchase it. This disclosure does not comply with Wis. Admin Code § Trans 139.04(6) both because it was not displayed on the vehicle at the time it was offered for sale and because the Dealer disclosed all systems as having problems and all equipment as "not legal" without any explanation. This is not a meaningful disclosure.

By disclosing all systems as having problems and all equipment as "not legal," the Dealer attempted to evade any responsibility for inspecting the vehicle. Wis. Admin. Code § Trans 139.04(6)(c)1 provides that the disclosure requirements do not apply to a vehicle "prior to being displayed or offered for sale." However, under those circumstances the dealer is required to display a written statement on the vehicle that the vehicle is "Not inspected for sale." No such statement was displayed on the vehicle. A licensed motor vehicle dealer must inspect a vehicle before it is offered for sale and the results of the inspection must be accurately disclosed in writing. The Dealer cannot circumvent this requirement by telling a buyer that a vehicle is being sold "As-Is." The Dealer's actions constitute a violation of Wis. Admin. Code §§ Trans 139.04(4), (5), (6)(a), and (6)(b). A violation of any 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. Theodore Dahl sustained a loss as a result of this violation.

### CONCLUSIONS OF LAW

1. The claim of Theodore Dahl arose on October 18, 2014, the day he purchased the subject vehicle from the Dealer. The surety bond issued to the Dealer by Western Surety Company Corporation covers a one-year period commencing on May 26, 2014. The claim arose during the period covered by the surety bond.

2. Theodore Dahl filed a claim against the motor vehicle dealer bond of the Dealer on December 21, 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. Theodore Dahl's loss was caused by an act of the Dealer that would be grounds for suspension or revocation of its motor vehicle dealer license. Theodore Dahl has supplied documentation to support a claim in the amount of \$1,240.88. Pursuant to Wis. Admin. Code § Trans 140.21(1)(c), the claim is allowable.

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

### ORDER

The claim filed by Theodore Dahl against the motor vehicle dealer bond of Bruce Moen, d/b/a, Bruce's Auto, is APPROVED in the amount of \$1,240.88. Western Surety Company shall pay Theodore Dahl this amount for his loss attributable to the actions of Bruce Moen, d/b/a, Bruce's Auto.

Dated at Madison, Wisconsin on October 5, 2015.

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