



Before The  
State Of Wisconsin  
DIVISION OF HEARINGS AND APPEALS

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In the Matter of Claims Against the Dealer Bond of  
Hot Wheels, LLC

Case Nos. TR-11-0011 and TR-11-0014

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FINAL DECISION

On November 22, 2010, Miranda M. Baker filed a claim with the Wisconsin Department of Transportation (Department) against the motor vehicle dealer bond of Hot Wheels, LLC, (Dealer). On January 18, 2011, Jeff Clark filed a claim with the Department against the motor vehicle dealer bond of 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 Chippewa Herald, a newspaper published in Chippewa Falls, Wisconsin. The notice informed other persons who may have claims against the Dealer to file them with the Department by June 17, 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 in this matter on December 22, 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:

Auto-Owners Insurance Company, by

Attorney Richard E. Schmidt And  
Attorney Thomas T. Calkins  
Piper & Schmidt  
The Van Buren Building, Fifth Floor  
733 North Van Buren Street  
Milwaukee, WI 53202-4709

Robert J. Wilson  
Hot Wheels, LLC  
19337 Co Hwy 00  
Chippewa Falls Wi 54729

Peter J. Hagen  
Hot Wheels, LLC  
2807 Northwinds Drive  
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Mitch S. Levine  
Hot Wheels, LLC  
6744 189<sup>th</sup> Street  
Chippewa Falls, WI 54729

Miranda Marie Baker  
214 West Willow Street  
Chippewa Falls, WI 54729

Jeff Clark  
2310 Parmenter Street, #308  
Middleton, WI 53562

#### Findings of Fact

1. Hot Wheels, LLC (Dealer) was licensed by the Wisconsin Department of Transportation as a motor vehicle dealer. The Dealer's facilities were located at 2393 South Prairie View Road, Chippewa Falls, Wisconsin, 54729. The dealership is out of business.
2. The Dealer has had a bond in force satisfying the requirements of Wis. Stat. § 218.0114(5)(a) from July 28, 2009 until October 29, 2010 (Bond #66063526 from Auto Owners Insurance Company).

#### Baker claim (TR-11-0011)

3. On December 14, 2009, Miranda M. Baker purchased a 1994 GMC Sierra truck, vehicle identification number 2GTEK19K5R1548023, from the Dealer. Ms. Baker also purchased an extended warranty covering the vehicle. The extended warranty purchased by Ms. Baker was administered by Auto Life RX and cost \$898.00. Ms. Baker purchased the extended warranty policy through the Dealer.
4. Miranda Baker did pay to the Dealer the \$898.00 premium for the extended warranty. On May 4, 2010, Ms. Baker telephoned the warranty company and was informed the warranty contract and premium had never been received. Ms. Baker then contacted the Dealer to cancel the warranty. She was told her premium would be refunded to her but she never received it.
5. On May 10, 2010, Ms. Baker filed a complaint against the Dealer with the Department. The investigator contacted Auto Life RX about the extended warranty purchased by Ms. Baker and confirmed that the premium for the warranty was never

forwarded by the Dealer to the warranty company. On November 22, 2010, Ms. Baker filed a claim against the surety bond of the Dealer in the amount of \$1431.00. The claim is itemized as \$898.00 for the premium paid for the extended warranty that was not forwarded to the warranty company, \$221.00 for “maintenance required to satisfy the warranty,” and \$312.00 for interest paid on the amount financed to pay the premium for the warranty.

6. The Dealer’s retention of the premium Miranda Baker paid for the extended warranty to Auto Life RX 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 Miranda Baker was caused by an act of the Dealer that would be grounds for the suspension or revocation of its motor vehicle dealer license.

7. Miranda Baker submitted documentation to support a bond claim of \$898.00, the amount she paid for the warranty. The two other components of Ms. Baker’s claim, interest and maintenance expenses for the vehicle, are not allowable bond claims. Wis. Admin Code § Trans 140.21(2)(e) expressly disallows any claim for interest. With respect to the maintenance expenses claimed, Ms. Baker may have had less frequent maintenance performed on her vehicle or had it done less expensively if she did not think it was necessary to comply with the warranty requirements. However, based on the evidence in the record, one cannot determine that the maintenance was unnecessary and, therefore, an economic loss sustained by Ms. Baker. 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.

Clark claim (TR-11-0014)

8. On March 20, 2010, Jeff Clark purchased a 2006 Dodge Caravan, vehicle identification number 2D4GP44L36R782558, from the Dealer. Mr. Clark also purchased an extended warranty covering the vehicle. The extended warranty purchased by Mr. Clark was administered by Auto Life RX and cost \$980.00. Mr. Clark purchased the extended warranty policy through the Dealer.

9. Jeff Clark did pay to the Dealer the \$980.00 premium for the extended warranty. When he did not receive an additive that was necessary to comply with the warranty, Mr. Clark contacted Auto Life RX and was informed the warranty contract and premium had never been received.

10. On August 5, 2010, Mr. Clark filed a complaint against the Dealer with the Department. The investigator contacted Auto Life RX about the extended warranty purchased by Mr. Clark and confirmed that the premium for the warranty was never forwarded by the Dealer to the warranty company. On January 18, 2011, Mr. Clark filed a claim against the surety bond of the Dealer in the amount of \$2323.87. The claim is itemized as \$980.00 for the premium paid for the extended warranty that was not forwarded to the warranty company, \$343.87 for “maintenance to comply with warranty,” and \$1000.00 for a “higher sale price of vehicle based on the benefit of warranty.”

11. The Dealer's retention of the premium Jeff Clark paid for the extended warranty to Auto Life RX 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 Jeff Clark was caused by an act of the Dealer that would be grounds for the suspension or revocation of its motor vehicle dealer license.

12. Jeff Clark submitted documentation to support a bond claim of \$980.00, the amount he paid for the warranty. The two other components of Mr. Clark's claim, maintenance expenses for the vehicle and a higher price paid for the vehicle, are not allowable bond claims. With respect to the maintenance expenses claimed, Mr. Clark may have had less frequent maintenance performed on his vehicle or had it done less expensively if he did not think it was necessary to comply with the warranty requirements. However, based on the evidence in the record, one cannot determine that the maintenance was unnecessary and, therefore, an economic loss sustained by Mr. Clark. The higher sales price for the vehicle is not substantiated by any documentation in the record. 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.

13. Jeff Clark submitted documentation to support a bond claim of \$980.00. 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 claims 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 claims 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 claimants sustained a loss as a result of these violations.

### CONCLUSIONS OF LAW

1. The claim of Miranda M. Baker arose on, December 14, 2009, the date she purchased an extended warranty through the Dealer and the Dealer failed to submit the application for the extended warranty and the premium paid by Ms. Baker to Auto Life RX. The surety bond issued to the Dealer by Auto Owners Insurance Company covers a one-year period commencing on July 28, 2009. The claim arose during the period covered by the surety bond.
2. Ms. Baker filed a claim against the motor vehicle dealer bond of the Dealer on November 22, 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. Baker 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. Ms. Baker has submitted documentation to support a claim in the amount of \$898.00.
4. The claim of Jeff Clark arose on, March 20, 2010, 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. Clark to Auto Life RX. The surety bond issued to the Dealer by Auto Owners Insurance Company covers a one-year period commencing on July 28, 2009. The claim arose during the period covered by the surety bond.
5. Mr. Clark filed a claim against the motor vehicle dealer bond of the Dealer on January 18, 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.
6. Mr. Clark 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. Ms. Baker has submitted documentation to support a claim in the amount of \$980.00.
7. The Division of Hearings and Appeals has authority to issue the following orders.

ORDERS

1. The claim filed by Miranda M. Baker against the motor vehicle dealer bond of Hot Wheels, LLC, is APPROVED in the amount of \$898.00. Auto Owners Insurance Company shall pay Ms. Baker this amount for her loss attributable to the actions of the Dealer.

2. The claim filed by Jeff Clark against the motor vehicle dealer bond of Hot Wheels, LLC, is APPROVED in the amount of \$980.00. Auto Owners Insurance Company shall pay Mr. Clark this amount for his loss attributable to the actions of the Dealer.

Dated at Madison, Wisconsin on January 25, 2012.

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 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.