

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

In the Matter of Claims Against the Dealer Bond
of Karcz Motor Company

Case No. TR-11-0022

FINAL DECISION

On March 8, 2011, Suzanna M. Lau filed a claim with the Wisconsin Department of Transportation (Department) against the motor vehicle dealer bond of Karcz Motor Company (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 Green Bay Press-Gazette, a newspaper published in Brown and Kewaunee Counties, Wisconsin. The notice informed other persons who may have claims against the Dealer to file them with the Department by August 8, 2011. No additional claims were filed. The claim was forwarded by the Department to the Division of Hearings and Appeals.

The Administrative Law Judge issued a Preliminary Determination in this matter on February 24, 2012. On March 26, 2012, Edward Karcz filed an objection to the Preliminary Determination. Mr. Karcz did not object to any of the findings in the Preliminary Determination. Rather he alleged that he had resigned from Karcz Motor Company and should not be held responsible for the claim. The Preliminary Determination includes no finding with respect to the individuals who own or control Karcz Motor Company. The Preliminary Determination merely holds that the claim against Karcz Motor Company's surety bond is allowable.

Whether Capitol Indemnity Corporation may seek reimbursement for the claim from the principals of the Karcz Motor Company and who those principals are is a matter between Capitol Indemnity Corporation and the Dealer. Although Edward Karcz filed a timely objection to the Preliminary Determination, the objection is to an issue outside of the scope of the Preliminary Determination. Accordingly, no evidentiary hearing needs to be scheduled in this matter. 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:

Michael Karcz
690 Rolling Meadows
Oneida, WI 54155

Edward R. Karcz
W5355 North Shore
Shawano, WI 54166

Suzanna M. Lau
P. O. Box 323
Gresham, WI 54128

Capitol Indemnity Corp.
P. O. Box 5900
Madison, WI 53705

Findings of Fact

1. Karcz Motor Company (Dealer) was licensed by the Wisconsin Department of Transportation as a motor vehicle dealer. The Dealer's facilities were located at 723 Highway 32 South, Pulaski, Wisconsin, 54162. 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 January 1, 2004, until it was cancelled effective January 3, 2009 (Bond No. LP0579395A from Capitol Indemnity Corporation).
3. On July 10, 2008, Suzanna M. Lau purchased a 2006 Toyota Camry, vehicle identification number 4T1BF32K56U632772, from the Dealer. Ms. Lau also purchased an extended warranty covering the vehicle. The extended warranty purchased by Ms. Lau was administered by Skye Protection Plan and cost \$1595.00. Ms. Lau purchased the extended warranty policy through the Dealer.
4. Suzanna Lau did pay to the Dealer the \$1595.00 premium for the extended warranty. In August of 2008, Ms. Lau telephoned the Dealer and asked for confirmation that the extended warranty was submitted and effective. She received no response from the Dealer.
5. On January 5, 2011, Ms. Lau filed a complaint against the Dealer with the Department. The investigator contacted Skye Protection Plan about the extended warranty purchased by Ms. Lau. The investigator was told the policy had been submitted by the Dealer, but was rejected because no payment for the warranty had been submitted. On March 8, 2011, Ms. Lau filed a claim against the surety bond of the Dealer in the amount of \$1595.00, the premium she paid for the extended warranty that was not forwarded to the warranty company.
6. The Dealer's retention of the premium Suzanna Lau paid for the extended warranty 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). Suzanna Lau sustained a loss as a result of these violations. The loss sustained by Suzanna Lau was caused by an act of the Dealer that would be grounds for the suspension or revocation of its motor vehicle dealer license.

7. Suzanna Lau submitted documentation to support a bond claim of \$1595.00, the amount she paid for the warranty. 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 surety 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 Suzanna Lau arose on, July 10, 2008, the date she purchased an extended warranty through the Dealer and the Dealer failed to submit the the premium paid by Ms. Lau to Skye Protection Plan. The surety bond issued to the Dealer by Capitol Indemnity Corporation covers a one-year period commencing on January 1, 2008. The claim arose during the period covered by the surety bond.
2. Ms. Lau filed a claim against the motor vehicle dealer bond of the Dealer on March 8, 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. Ms. Lau 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. Lau has submitted documentation to support a claim in the amount of \$1595.00.
4. The Division of Hearings and Appeals has authority to issue the following order.

ORDER

The claim filed by Suzanna Lau against the motor vehicle dealer bond of Karcz Motor Company is APPROVED in the amount of \$1595.00. Capitol Indemnity Corporation shall pay Ms. Lau this amount for her loss attributable to the actions of the Dealer.

Dated at Madison, Wisconsin on March 28, 2012.

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.