



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

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In the Matter of Claims Against the Dealer Bond  
of Greg Ellious Motors, Inc. (Dealer No.  
XXX1844)

Case No. TR-11-0024

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FINAL DECISION

On April 22, 2011, Teri and Dan Greco filed a claim with the Wisconsin Department of Transportation (Department) against the motor vehicle dealer bond of Greg Ellious Motors, Inc. On May 19, 2011, the claim along with documents gathered by the Department was referred to the Division of Hearings and Appeals. The Administrative Law Judge issued a Preliminary Determination in this matter on December 21, 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:

Greg Ellious Motors, Inc., by

Gregory Ellious  
937 Sussex Court  
Nekoosa, WI 54457

Teri and Dan Greco  
7196 Esker Road  
Custer, WI 54423

CNA/Western Surety Company  
P. O. Box 5077  
Sioux Falls, SD 57177

Findings of Fact

1. Greg Ellious Motors, Inc., (Dealer) was licensed by the Wisconsin Department of Transportation as a motor vehicle dealer. The Dealer's facilities were located at 3241 Plover Road, Wisconsin Rapids, Wisconsin, 54494. 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 June 19, 2006 until it was cancelled effective April 18, 2009 (Bond #70162767 from Western Surety Company).

3. On July 7, 2007, Teri and Dan Greco (the Grecos) purchased a 2004 Dodge Durango, vehicle identification number 1D4HB48N34F177829, from the Dealer. The Grecos also purchased an extended warranty covering the vehicle. The extended warranty purchased by the Grecos was administered by Auto Services Company, Inc., and cost \$2615.00. The Grecos purchased the extended warranty policy through the Dealer.

4. The Grecos did pay to the Dealer the \$2615.00 premium for the extended warranty. In the spring of 2010, the Grecos experienced some mechanical problems with their vehicle and attempted to file a claim under the warranty. After an extensive series of telephone calls and letters, the Grecos determined that the warranty and premium had never been forwarded to the warranty company.

5. On March 1, 2011, Teri Greco filed a complaint against the Dealer with the Department. On April 22, 2011, Teri Greco filed a claim against the surety bond of the Dealer in the amount of \$3026.05. The claim is itemized as \$2615.00 for the premium paid for the extended warranty that was not forwarded to the warranty company and \$411.05 for interest paid on the amount financed to pay the premium for the warranty.

6. The claim of Teri and Dan Greco arose on, July 7, 2007, the date they purchased an extended warranty through the Dealer and the Dealer failed to submit the application for the extended warranty and the premium paid by the Grecos to Auto Services Company, Inc. The Grecos' claim would be covered by the Dealer's surety bond for year commencing on July 19, 2006, and ending on July 18, 2007. Bond claims must be filed within three years of the ending date of the one-year period the bond covers. The Grecos did not file their bond claim within three years of the ending date of the one-year period the bond issued by the Auto Owners Insurance Company in effect at the time their claim arose and is, therefore, not a timely claim.<sup>1</sup>

#### CONCLUSIONS OF LAW

1. The claim of Teri and Dan Greco arose on, July 7, 2007, the date they purchased an extended warranty through the Dealer and the Dealer failed to submit the application for the extended warranty and the premium paid by the Grecos to Auto Services Company, Inc. The surety bond issued to the Dealer by Western Surety Company covers a one-year period commencing on July 19, 2006. The claim arose during the period covered by the surety bond.

2. Teri Greco filed a claim against the motor vehicle dealer bond of the Dealer on May 22, 2011. Wis. Admin Code § Trans 140.21(1)(d) provides that a "claim must be made within 3 years of the last day of the period covered by the security." The Grecos' claim was not 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 not timely.

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<sup>1</sup> Alternatively, one could argue that the Grecos' claim arose when they discovered that the warranty and premium had not been forwarded to Auto Services Company, Inc. This would have been sometime in the spring of 2010. The Dealer's surety bond had been cancelled effective April 18, 2009. Accordingly, even using the date of discovery as the date the claim arose, the Grecos' claim would still not be allowed.

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

ORDER

1. The claim filed by Teri Greco against the motor vehicle dealer bond of is Greg Ellious Motors, Inc., was not timely filed and must be DISALLOWED.

Dated at Madison, Wisconsin on June 29, 2012.

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

By: \_\_\_\_\_  
Mark J. 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.