



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

In the Matter of Claims Against the Dealer Bond
of Muski Country Auto, LLC

Case Nos: DOT-19-0022, DOT-19-0023,
DOT-19-0024, DOT-19-0027,
and DOT-20-0001

FINAL DECISION

On September 10, 2019, Nicole Kassien filed a claim with the Wisconsin Department of Transportation (Department) against the motor vehicle dealer bond of Muski Country Auto, LLC, (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 Wausau Daily Herald, a newspaper published in Wausau, Wisconsin on October 10, 2019. The notice informed other persons who may have claims against the Dealer to file them with the Department by December 9, 2019.

On October 29, 2019, Gary and Jessica Koch filed a claim with the Department against the motor vehicle dealer bond of the Dealer. On October 25, 2019, Amanda Kowalski filed a claim with the Department against the motor vehicle dealer bond of the Dealer. On September 16, 2019, Naomi Terry filed a claim with the Department against the motor vehicle dealer bond of the Dealer. On December 6, 2019, Jerry Chubb filed a claim with the Department against the motor vehicle dealer bond of the Dealer. All the claims were forwarded by the Department to the Division of Hearings and Appeals. On February 7, 2020, a Preliminary Determination pursuant to Wis. Admin. Code § Trans 140.26(4)(a) was issued. 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:

Nicole Kassien
5453 Ada Street
Boulder Junction, WI 54512

Gary And Jessica Koch
150055 Ridge Road, #120
Mosinee, WI 54455

Amanda Kowalski
1916 1/2 North 3rd Street
Wausau, WI 54403

Naomi Terry
W8136 Holst Drive
Pembine, WI 54156

Jerry Chubb
2641 Bush Court, #11
Stevens Point, WI 54481

Michael Sadowski
Muski Country Auto, LLC
2301 West Jackson St. # 7
Merrill, WI 54452

Dale Sadowski
Muski Country Auto, LLC
6357 Nature Drive
Racine, WI 53402

Muski Country Auto LLC
291 Grand Avenue
Schofield, WI 54476

Auto-Owners Insurance Company
P.O. Box 30660
Lansing, MI 48909

Findings of Fact

1. Muski Country Auto, LLC (Dealer) is licensed by the Wisconsin Department of Transportation (Department) as a motor vehicle dealer. The Dealer's facilities were located at 291 Grand Avenue, Schofield, Wisconsin. The Dealer was placed out of business effective November 25, 2019.

2. The Dealer had a bond in force satisfying the requirements of Wis. Stat. § 218.0114(5) beginning on April 14, 2015 (Bond # 66201385 issued by Auto-Owners Insurance Company). The bond was cancelled effective on June 29, 2019.

Kassien claim, case no. DOT-19-0022

3. On May 22, 2019, Nicole Kassien (Kassien) purchased a 2004 Dodge Durango SUV, vehicle identification number 1D4HB48N24F102720, from the Dealer. According to the purchase contract, Kassien paid \$5,523.94, including taxes and fees, for the vehicle. The purchase contract indicates the Dealer provided a limited extended warranty for the vehicle. No Wisconsin Buyers Guide was displayed on the vehicle.

4. After the purchase, Kassien had problems with cylinders misfiring and the engine overheating. Kassien attempted to contact the Dealer regarding these mechanical problems, but the Dealer was nonresponsive. On July 22, 2019, Kassien filed a complaint with the Department's Dealer Section against the Dealer. In the complaint, Kassien listed the unresolved mechanical problems with the vehicle and also stated that she had not received a title, registration, and license plates for the vehicle. The investigator assigned to the complaint contacted the Dealer and was told the Dealer did not have the money to pay the title and registration fees for the vehicle purchased by Kassien.

5. On September 10, 2019, Kassien filed a claim against the surety bond of the Dealer in the amount of \$5,744.90. On the claim, Kassien indicates that this amount is the purchase price of the vehicle. However, she does not explain why the amount on her claim is greater than the amount on the purchase contract.

6. Wis. Stat. § 342.16(1) requires motor vehicle dealers to submit applications for titles and registrations to the Department's Division of Motor Vehicles within seven business

days of the sale of the vehicle to a retail customer. The Dealer violated this regulation. As a result of the Dealer's violation of Wis. Stat. § 342.16(1), Kassien has not received a title or registration for the vehicle she purchased and, therefore, is unable to lawfully operate or sell the vehicle.

7. Kassien sustained a loss as a result of the Dealer's violation of Wis. Stat. § 342.16(1). The loss sustained by Kassien was caused by an act of the Dealer that would be grounds for the suspension or revocation of his motor vehicle dealer license. Accordingly, the claim is allowable.

8. Kassien's claim arose on May 22, 2019, the date she purchased the vehicle from the Dealer. Because she is unable to lawfully operate or sell the vehicle, Kassien is entitled to a refund of the amount she paid for the vehicle. Kassien submitted documentation to support a claim in the amount of \$5,523.94, the purchase price of the vehicle, including taxes and license and registration fees, as shown on the purchase contract. Kassien filed a bond claim within three years of the ending date of the period the bond issued by Auto-Owners Insurance Company was in effect and it is, therefore, a timely claim.

Koch claim, case no. DOT-19-0023

9. On February 22, 2019, Gary and Jessica Koch (the Kochs) purchased a 2006 Chrysler Pacifica SUV, vehicle identification number 2A4GF68496R734443, from the Dealer. According to the purchase contract, they paid \$7,115.39, including taxes and fees, for the vehicle. The purchase contract indicates the Dealer provided a limited extended warranty/service contract for the vehicle. On the Wisconsin Buyers Guide displayed on the vehicle, the Dealer disclosed no problems with the vehicle's condition and that all equipment was legal.

10. The Dealer allowed the Kochs to take the vehicle home with them the night before they purchased it. The Kochs returned to the Dealer's facilities and expressed some concerns about the condition of the vehicle before they purchased it. According to the Kochs' statement in their complaint, the Dealer told them the vehicles would be fixed. Apparently based on that assurance, the Kochs completed the purchase of the vehicle.

11. On April 29, 2019, the Kochs filed a complaint with the Department's Dealer Section against the Dealer. The investigator contacted the Dealer regarding the Kochs' complaint. The investigator discovered several violations in the transaction involving the Kochs. The violations listed in the investigation report are that the Dealer did not sign the purchase contract, a warranty was not "fulfilled," the Wisconsin Buyers Guide displayed on the vehicle "did not disclose vehicle issues," and the Dealer failed to submit an application to the Department for a title and registration for the vehicle. The investigator directed the Dealer to repurchase the vehicle from the Kochs. The Dealer failed to do so. The investigator did arrange to have the title and registration for the vehicle transferred to the Kochs.

12. On October 29, 2019, the Kochs filed a claim against the surety bond of the Dealer. The amount of the claim is \$2,549.00 and is itemized as follows:

DAMAGES CLAIMED	ITEM DESCRIPTION	ITEM AMOUNT
Down payment		\$1,500.00
1 st month payment		\$220.00
Tie rod replacement		\$560.00
One week of loaner vehicle		<u>\$269.00</u>
Total		\$2,549.00

13. The investigator identified several violations of administrative regulations and a state statute committed by the Dealer; however, the Kochs have not supplied documentation that any of the identified violations caused the losses listed on the Kochs' claim. Specifically, Wis. Stat. § 342.16(1) requires motor vehicle dealers to submit applications for titles and registrations to the Department's Division of Motor Vehicles within seven business days of the sale of the vehicle to a retail customer. The investigator found the Dealer violated this regulation. However, the investigator was able to arrange to have a Wisconsin title and registration issued to the Kochs for the vehicle. Additionally, none of the items on the Kochs' bond claim is related to the delay in receiving a title and registration for the vehicle.

14. The investigator also determined that a warranty was not "fulfilled," and the Wisconsin Buyers Guide displayed on the vehicle "did not disclose vehicle issues." Presumably, these violations are related to the concerns that the Kochs raised with the Dealer after they took the vehicle home for an overnight "test drive" prior to purchasing the vehicle. However, the Kochs did not describe the issues in their complaint so it is impossible to determine whether their issues with the vehicle are mechanical problems that should have been disclosed on the Wisconsin Buyers Guide and/or covered by the limited extended warranty/service contract provided by the Dealer.¹ The Kochs have not provided any explanation for the other items on their claim, the amount of their down payment, first loan payment, and loaner vehicle.

15. The Kochs' claim arose on February 22, 2019, the date they purchased the vehicle from the Dealer. The investigator found the Dealer committed several violations in the transaction with the Kochs. However, the Kochs have not provided sufficient documentation that the violations caused the losses they are claiming on their bond claim. Accordingly, their claim is not allowable. The bond claim was filed within three years of the ending date the surety bond issued by Auto-Owners Insurance Company was in effect and is, therefore, a timely claim.

¹ One of the items on the claim is tie rod replacement in the amount of \$560.00. In the file forwarded by the Department is an invoice from Auto Select-Weston in the amount of \$556.06 which is close to the amount claimed for the tie rod replacement. However, the invoice does not list the repairs made and the Kochs have not provided any documentation that the tie rods were defective at the time they purchased the vehicle and, if so, whether the Dealer should have discovered the defect during a presale inspection of the vehicle. Alternatively, there is no documentation that tie rods should have been covered by the limited extended warranty/service contract.

Kowalski claim, case no. DOT-19-0024

16. On February 22, 2019, Amanda Kowalski (Kowalski) purchased a 2006 Kia Spectra automobile, vehicle identification number KNAFE121765370197 and a 2004 GMC Yukon SUV, vehicle identification number 1GKFK1GZ44J297164, from the Dealer. According to a combined purchase contract, Kowalski paid \$6,620.00, including taxes and fees, for both vehicles. On the Wisconsin Buyers Guides displayed on the vehicles the Dealer disclosed no problems with the vehicles' condition and that all equipment was legal. The Wisconsin Buyers Guides indicate that the Dealer would provide limited extended warranties for the vehicles. However, the purchase contract does not include a warranty for the vehicles.

17. On May 28, 2019, Kowalski filed a complaint with the Department's Dealer Section against the Dealer. In the complaint, Kowalski states that when she purchased the vehicles the Dealer retained possession of the Kia to repair the ball joints. Kowalski states that she picked up the Kia two weeks later and the "ball joint was still broken." In her complaint, Kowalski further states that there is a long list of things wrong with the Yukon that the Dealer promised to fix, but has not. Kowalski also states that as of May 1, 2019, she has not received titles, registrations, and plates for the vehicles.

18. The investigator assigned to the complaint contacted the Dealer and was told the Dealer did not have the money to pay the title and registration fees for the vehicles purchased by Kowalski. In his investigation report, the investigator concluded that the Dealer committed violations involving inadequate disclosure of vehicle problems, warranty nonfulfillment, and failure to submit title/registration application. On August 13, 2016, the investigator submitted processing requests to have Wisconsin titles and registrations issued to Kowalski for the vehicles, but there is no indication in the records filed with this claim that the request was approved. On the estimates for the repairs needed for the vehicles dated October 3, 2019, that Kowalski filed with filed bond claim, Midas of Wausau indicates both vehicles still had temporary plates.

19. On October 25, 2019, Kowalski filed a claim against the surety bond of the Dealer in the amount of \$7,037.31. The claim is itemized as \$2,671.68 for repairs to the Kia Spectra and \$4,365.63 for repairs to the GMC Yukon. As support for the claim, Kowalski submitted two estimates prepared by a Midas store in Wausau for work needed on each vehicle after the vehicles were inspected. Kowalski paid \$99.59 for each inspection.

20. Wis. Stat. § 342.16(1) requires motor vehicle dealers to submit applications for titles and registrations to the Department's Division of Motor Vehicles within seven business days of the sale of the vehicle to a retail customer. The Dealer violated this regulation. As a result of the Dealer's violation of Wis. Stat. § 342.16(1), Kowalski has not received a title or registration for the vehicles she purchased and, therefore, is unable to lawfully operate or sell the vehicles.

21. Kowalski sustained a loss as a result of the Dealer's violation of Wis. Stat. § 342.16(1). The loss sustained by Kowalski was caused by an act of the Dealer that would be grounds for the suspension or revocation of his motor vehicle dealer license. Accordingly, the claim is allowable.

22. Kowalski's claim arose on February 22, 2019, the date she purchased the vehicles from the Dealer. Because she is unable to lawfully operate or sell the vehicles, Kowalski is entitled to a refund of the amount she paid for the vehicles. Kowalski submitted documentation to support a claim in the amount of \$6,819.18, the purchase price of the vehicles, including taxes and license and registration fees, as shown on the purchase contract plus the total of \$199.18 she paid to have the vehicles inspected. Because she will be reimbursed the amount she paid for the vehicles, Kowalski will be required to surrender possession of the vehicles. Accordingly, she is not entitled to the cost to repair the vehicles. Kowalski filed a bond claim within three years of the ending date of the period the bond issued by Auto-Owners Insurance Company was in effect and it is, therefore, a timely claim.

Terry claim, case no. DOT-19-0027

23. On December 7, 2018, Naomi Terry (Terry) purchased a 2006 Ford F150 pick-up truck, vehicle identification number 1FTPX14526NA10739, from the Dealer. According to the purchase contract, Terry paid \$10,394.89, including taxes and fees, for the vehicle. The purchase contract shows Terry made a \$2,000.00 down payment on the vehicle. In her complaint, Terry states she also received \$500.00 for a trade-in, but the purchase contract does not show a trade-in as part of the transaction. The Dealer financed the purchase for Terry.

24. Three months after Terry purchased it, the vehicle "broke down." In May of 2019, Terry surrendered possession of the vehicle to the Dealer. On May 21, 2019, Terry filed a complaint with the Department's Dealer Section against the Dealer. In addition to mechanical problems with the vehicle, Terry indicated that she has not received a title, registration, or plates for the vehicle. The investigator was unable to resolve the complaint. On September 16, 2019, Terry filed a claim against the surety bond of the Dealer in the amount of \$3,433.83. The claim is itemized as the \$2,000.00 down payment Terry made toward the purchase of the vehicle and a list of repairs to the vehicle she paid for.

25. Wis. Stat. § 342.16(1) requires motor vehicle dealers to submit applications for titles and registrations to the Department's Division of Motor Vehicles within seven business days of the sale of the vehicle to a retail customer. The Dealer violated this regulation. As a result of the Dealer's violation of Wis. Stat. § 342.16(1), Terry has not received a title or registration for the vehicles she purchased and, therefore, is unable to lawfully operate or sell the vehicles.

26. Terry sustained a loss as a result of the Dealer's violation of Wis. Stat. § 342.16(1). The loss sustained by Terry was caused by an act of the Dealer that would be grounds for the suspension or revocation of his motor vehicle dealer license. Accordingly, the claim is allowable.

27. Terry's claim arose on December 7, 2018, the date she purchased the vehicle from the Dealer. Because she is unable to lawfully operate or sell the vehicles, Terry is entitled to a refund of the amount she paid for the vehicle. Terry submitted documentation to support a claim

in the amount of \$2,000.00, the down payment she made toward the purchase of the vehicle.² The balance of Terry's claim is for repairs to the vehicle. No documentation for any of the repairs is in the record forwarded by the Department. Terry filed a bond claim within three years of the ending date of the period the bond issued by Auto-Owners Insurance Company was in effect and it is, therefore, a timely claim.

Chubb claim, case no. DOT-20-0001

28. On May 7, 2018, Jerry Chubb (Chubb) purchased a 2007 Chevrolet Malibu automobile, vehicle identification number 1G1ZS58F27F208761, from the Dealer. According to the purchase contract, he paid \$7,115.39, including taxes and fees, for the vehicle. The purchase contract indicates the Dealer provided a limited extended warranty/service contract for the vehicle. On the Wisconsin Buyers Guide displayed on the vehicle, the Dealer disclosed no problems with the vehicle's condition and that all equipment was legal. The purchase contract indicates the Dealer provided a limited extended warranty/service contract for the vehicle.

29. According to Chubb, the vehicle "suffered an engine failure" in late January of 2019. Chubb contacted the Dealer about the engine failure. The Dealer recommended a mechanic who would replace the engine for \$1,400.00. On February 18, 2019, Chubb gave the Dealer \$1,400.00 to pay for the engine replacement. The Dealer "found" a loaner vehicle for Chubb to use while the repair work was being done. According to Chubb the repair to his vehicle was never done. Chubb stated that he contacted the mechanic and was told by the mechanic that the Dealer asked him for an estimate for the engine replacement but never made arrangements to have the repair completed. No date for this conversation is provided. On December 2, 2019, Chubb filed a complaint with the Department's Dealer Section against the Dealer.

30. The investigator contacted Joe Rader Towing company and confirmed that Chubb's vehicle was in their impound. On December 6, 2019, 2019, Chubb filed a claim against the surety bond of the Dealer. The amount of the claim is \$4,492.81 and is itemized as follows:

DAMAGES CLAIMED	ITEM DESCRIPTION	ITEM AMOUNT
Motor replacement		\$1,400.00
Restitution for a vehicle not driven since incident (10 months)		\$2,184.00
Tire replacement for a car that's not mine		\$154.07
Oil changes on a vehicle that is not mine (3)		\$71.88
Interest paid on Installment Loan		<u>\$682.86</u>
Total		\$4,492.81

31. The evidence in the file forwarded by the Department is sketchy, but it does appear that Chubb was defrauded by the Dealer. However, the fraud is related to a motor vehicle repair, not the purchase of the vehicle. Specifically, it appears that Chubb gave the Dealer cash

² Although not itemized on her bond claim, in her complaint Terry mentions she made one \$500 payment on the purchase loan. A payment would be partly principal and partly interest. Pursuant to Wis. Admin. Code § Trans 140.21(2)(e), claims for interest are not allowable against a motor vehicle dealer's surety bond. If Terry had provided documentation of the \$500.00 payment, the principal portion of the payment would have been allowable.

to cover the cost of the engine replacement, but the Dealer never used that money to pay the mechanic to complete the engine repair. This may constitute fraud, but it is not a violation of any regulation enforced by the Department and is not an act of the Dealer which would be grounds for suspension or revocation of Dealer's motor vehicle dealer license.

32. Chubb states that the engine in the vehicle he purchased from the Dealer failed almost nine months after he purchased the vehicle. Chubb does not allege that the engine failure resulted from any mechanical issue that existed at the time he purchased the vehicle and should have been disclosed by the Dealer at the time the vehicle was offered for sale. Additionally, Chubb does not explain what he means by "restitution for a vehicle not driven" for ten months or how the amount claimed was calculated. The amount Chubb spent maintaining the loaner vehicle is a function of the length of time he kept the loaner, which is related to the fraud the Dealer apparently committed with respect to the repair and not related to any act of the Dealer that would be grounds for suspension or revocation of Dealer's motor vehicle dealer license. Finally interest is expressly not an allowable bond claim. Accordingly, Chubb's claim is not allowable.

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 motorcycle dealer license, in the case of a secured salesperson or motor motorcycle 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 the various 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 claims filed by Kassien, Kowalski, and Terry, the Dealer violated Wis. Stat. § 342.16(1). A violation of Wis. Stat. § 342.16(1) is, in turn, a violation of Wis. Stat. § 218.0116(1)(gm) (having violated any law relating to the sale, lease, distribution, or financing of motor vehicles). These claimants all sustained a loss as a result of these violations.

With respect to the claims filed by Gary and Jessica Koch and Jerry Chubb, they have not shown that they sustained a loss as the result of an action by the Dealer that would constitute a violation of one of the sections of Wis. Stat. § 218.0116(1) identified in Wis. Admin. Code § Trans 140.21(1)(c)1. Accordingly, these claims are not allowable against the surety bond of the Dealer.

CONCLUSIONS OF LAW

1. Nicole Kassien's claim arose on May 22, 2019, the date she purchased the subject vehicle from the Dealer. The surety bond issued to the Dealer by Auto-Owners Insurance Company covers a period commencing on April 14, 2019. The claim arose during the period covered by the surety bond.

2. On September 10, 2019, Nicole Kassien filed a claim against the motor vehicle dealer bond of the Dealer. 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. Nicole Kassien's loss was caused by an act of the Dealer that would be grounds for suspension or revocation of its motor vehicle dealer license. Nicole Kassien has submitted documentation to support a claim in the amount of \$5,523.94. Pursuant to Wis. Admin. Code § 140.21(1)(c), the claim is allowable. Because she is being reimbursed the purchase price of the vehicle as a result of the Dealer's actions, it would constitute unjust enrichment to allow Ms. Kassien to also retain possession of the vehicle. Accordingly, she will be required to surrender possession of the vehicle to the Auto-Owners Insurance Company.

4. Gary and Jessica Koch's claim arose on February 22, 2019, the date they purchased the subject vehicle from the Dealer. The surety bond issued to the Dealer by Auto-Owners Insurance Company covers a period commencing on April 14, 2018. The claim arose during the period covered by the surety bond.

5. On October 29, 2019, Gary and Jessica Koch filed a claim against the motor vehicle dealer bond of the Dealer. 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. Gary and Jessica Koch have not shown that they sustained a loss that was caused by an act of the Dealer that would be grounds for suspension or revocation of its motor vehicle dealer license.

7. Amanda Kowalski's claim arose on February 22, 2019, the date she purchased the subject vehicles from the Dealer. The surety bond issued to the Dealer by Auto-Owners Insurance Company covers a period commencing on April 14, 2018. The claim arose during the period covered by the surety bond.

8. On October 25, 2019, Amanda Kowalski filed a claim against the motor vehicle dealer bond of the Dealer. 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.

9. Amanda Kowalski's loss was caused by an act of the Dealer that would be grounds for suspension or revocation of his motor vehicle dealer license. Amanda Kowalski has submitted documentation to support a claim in the amount of \$6,819.18. Pursuant to Wis. Admin. Code § 140.21(1)(c), the claim is allowable. Because she is being reimbursed the purchase price of the vehicles as a result of the Dealer's actions, it would constitute unjust enrichment to allow Ms. Kowalski to also retain possession of the vehicles. Accordingly, she will be required to surrender possession of the vehicles to the Auto-Owners Insurance.

10. Naomi Terry's claim arose on December 7, 2018, the date she purchased the subject vehicle from the Dealer. The surety bond issued to the Dealer by Auto-Owners Insurance Company covers a period commencing on April 14, 2017. The claim arose during the period covered by the surety bond.

11. On September 16, 2019, Naomi Terry filed a claim against the motor vehicle dealer bond of the Dealer. 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.

12. Naomi Terry's loss was caused by an act of the Dealer that would be grounds for suspension or revocation of his motor vehicle dealer license. Naomi Terry has submitted documentation to support a claim in the amount of \$2,000.00. Pursuant to Wis. Admin. Code § 140.21(1)(c), the claim is allowable. Because she is being reimbursed the purchase price of the vehicle as a result of the Dealer's actions, it would constitute unjust enrichment to allow Ms. Terry to also retain possession of the vehicle. Accordingly, if she has possession of the vehicle, she will be required to surrender possession of it to the Auto-Owners Insurance Company.³

13. On December 2, 2019, Jerry Chubb filed a claim against the motor vehicle dealer bond of the Dealer. 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.

14. Jerry Chubb has not shown that he sustained a loss that was caused by an act of the Dealer that would be grounds for suspension or revocation of its motor vehicle dealer license.

15. The Division of Hearings and Appeals has authority to issue the following orders.

³ The file provided by the Department includes a document indicating that Terry surrendered possession of the vehicle to the Dealer on April 17, 2019.

ORDERS

1. The claim filed by Nicole Kassien against the motor vehicle dealer bond of Muski Country Auto, LLC, is APPROVED in the amount of \$5,523.94. The Auto-Owners Insurance Company shall pay Nicole Kassien this amount for her loss attributable to the actions of Muski Country Auto, LLC. Upon receipt of the payment, Nicole Kassien shall surrender possession of the vehicle to the Auto-Owners Insurance Company.

2. The claim filed by Gary and Jessica Koch against the motor vehicle dealer bond of Muski Country Auto, LLC, is DENIED.

3. The claim filed by Amanda Kowalski against the motor vehicle dealer bond of Muski Country Auto, LLC, is APPROVED in the amount of \$6,819.18. The Auto-Owners Insurance Company shall pay Amanda Kowalski this amount for her loss attributable to the actions of Muski Country Auto, LLC. Upon receipt of the payment, Amanda Kowalski shall surrender possession of the vehicles to the Auto-Owners Insurance Company.

4. The claim filed by Naomi Terry against the motor vehicle dealer bond of Muski Country Auto, LLC, is APPROVED in the amount of \$2,000.00. The Auto-Owners Insurance Company shall pay Amanda Kowalski this amount for her loss attributable to the actions of Muski Country Auto, LLC. Upon receipt of the payment, if she has possession of the vehicle, Naomi Terry is required to surrender possession of it to the Auto-Owners Insurance Company.

5. The claim by filed Jerry Chubb against the motor vehicle dealer bond of Muski Country Auto, LLC, is DENIED.

Dated at Madison, Wisconsin on March 18, 2020.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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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.