



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

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In the Matter of Claims Against the Dealer Bond  
of Esmar Motors LLC

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Case No: DOT-20-0026

FINAL DECISION

On September 23, 2020, Edgar Molina filed a claim with the Wisconsin Department of Transportation (Department) against the motor vehicle dealer bond of Esmar Motors 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 Portage Daily Register, on July 13, 2020, related to another bond claim filed with the Department against the Dealer (Case No. DOT-20-0019). The notice informed persons who may have claims against the Dealer to file them with the Department by September 11, 2020. Although Edgar Molina's bond claim was formally filed with the Department on September 23, 2020, there exist sufficient bond funds to pay this additional claim under Wis. Admin. Code § Trans 140.23. On December 14, 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:

Esmar Motors LLC  
101 Skyline Dr #1 Unit W268  
Arlington, WI 53911-9520

Alicia Martinez  
3619 W. 61<sup>st</sup> Street  
Chicago, IL 60629-3921

Western Surety Company  
101 Reid St. #300  
Sioux Falls, SD 57103

Edgar Molina  
1300 Crooks Street  
Green Bay, WI 54301

## FINDINGS OF FACT

1. At all times relevant herein Esmar Motors LLC (the Dealer) was licensed by the Wisconsin Department of Transportation as a motor vehicle dealer. The Dealer's facilities have a last known address located at 101 Skyline Dr., #1 W268, Arlington, Wisconsin.
2. The Dealer has had a surety bond in force in the amount of \$25,000 since March 29, 2019 satisfying the requirements of Wis. Stat. § 218.0114(5) (Bond # 64590338 from Western Surety Company Corporation).
3. On or about August 7, 2019 Esmar Motors LLC placed a bid of \$1,650.00 to purchase a 2010 Chevrolet Equinox (vehicle identification number 2CNALDEW0A6395446) at the Greater Mishawaka Auto Auction located in Mishawaka, Indiana.
4. According to the Certificate of Title (title #MI0001740135) for the 2010 Chevrolet Equinox (vehicle identification number 2CNALDEW0A6395446), which was assigned to Esmar Motors on August 7, 2019, the odometer read 192894. This was confirmed by the Sales Contract dated August 7, 2019, a Carfax vehicle history report for the vehicle as of the same date and was further verified by Mishawaka Auto Auction.
5. On September 2, 2019 Esmar Motors LLC sold the 2010 Chevrolet Equinox to Edgar Molina in exchange for payment of \$5,000.00.
6. According to the MV1 Title and License Plate Application for the 2010 Chevrolet Equinox executed on September 2, 2019, the odometer on the vehicle read 093012.
7. On September 3, 2019 a representative of the Green Bay Department of Motor Vehicles Field Customer Service Center contacted the Department and reported that the Certificate of Title for the 2010 Chevrolet Equinox had been altered to read 092483 as of July 4, 2019, 092894 as of August 7, 2019 and 093012 as of September 2, 2019.
8. The Dealer failed to respond to the Department's repeated communication attempts and its investigation into the claim by Edgar Molina.
9. On September 23, 2020, Edgar Molina filed a claim against the surety bond of the Dealer with the Department of Transportation. The amount of the claim sought is \$2,000 which represents 40% of the original \$5,000 purchase price based upon the decreased value of the vehicle due to the fraudulent odometer alteration decreasing the actual mileage by 100,000 miles.
10. Edgar Molina suffered an actual loss and monetary damages as a result of the Dealer's false disclosure and tampering of the odometer reading prior to selling the 2010 Chevrolet Equinox to Mr. Molina. The Dealer's action is a violation of Wis. Stat. §§ 218.0146(3)(b), 342.155(2), 342.155(3), 347.415(1m) and Wis. Admin. Code § Trans 138.027(2), which in turn constitutes a violation of Wis. Stat. § 218.0116(1)(gm).

11. Edgar Molina's claim arose on September 2, 2019, the day the Dealer sold the 2010 Chevrolet Equinox (vehicle identification number 2CNALDEW0A6395446) to Edgar Molina. 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.

12. A prior claim has been made against the same Dealer and bond pursuant to a preliminary determination issued on December 10, 2020 in the amount of \$6,135.00 in Case No. DOT-20-0019.

## 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 provides in relevant part:

(1) 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 claimant'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.

2. A recreational vehicle dealer license, in the case of a bonded recreational vehicle dealer, pursuant to s. 218.11(6), Stats.

3. A salvage dealer license, in the case of a bonded salvage dealer, pursuant to s. 218.22(3), Stats.

4. An auction dealer license, in the case of a bonded auction dealer, pursuant to s. 218.32(3), Stats.

5. Any other license issued by the department under ch. 218, Stats., in any other case, including that of a bonded manufacturer, distributor, distributor-wholesaler, or trailer dealer, pursuant to s. 218.0116(1), 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 Edgar Molina'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. In the present matter, the evidence demonstrates that the Dealer tampered with the vehicle's odometer by rolling it back to appear that it had 100,000 fewer miles on it and then intentionally misrepresented the vehicle's odometer reading in the sale of the vehicle to Edgar Molina. The Dealer's actions constitute multiple violations of law, including the following:

1. Under Wis. Stat. § 218.0146(3)(b), except for motor vehicles obtained by involuntary transfer under s. 342.17, a person required to be licensed under this chapter may not sell, offer for sale or have possession of a motor vehicle if any of the following applies:...the mileage disclosure statement has been altered.
2. Under Wis. Stat. § 342.155(2), no transferor may knowingly make a false statement, including providing an odometer reading that is different from the actual reading on the odometer, in disclosing the vehicle's mileage to a transferee under this section.
3. Under Wis. Stat. § 342.155(3), no transferee, nor any other person, may alter, erase or obliterate any information, including the mileage disclosure, contained on any mileage disclosure statement.
4. Under Wis. Stat. § 347.415(1m), no person may, either personally or through an agent, remove, replace, disconnect, reset, tamper with, alter, or fail to connect the odometer of any motor vehicle, snowmobile, all-terrain vehicle, or utility terrain vehicle with the intent to change or affect the number of miles indicated thereon.
5. Under Wis. Admin. Code § Trans 138.027(2), a wholesaler may not sell motor vehicles to retail buyers.

As the Dealer's violations occurred as a result of a vehicle sale, they constitute a violation of Wis. Stat. § 218.0116(1)(gm). Wis. Stat. § 218.0116(1)(gm) is identified in Wis. Admin. Code § Trans 140.21(1)(c)1. Edgar Molina sustained a loss as a result of the Dealer's fraudulent odometer tampering and misrepresentation which resulted in him overpaying for a vehicle that had 100,000 more miles on it than reported. The claimant seeks reimbursement of \$2,000 representing 40% of the original purchase price of \$5,000, along with retention of the 2010 Chevy Equinox vehicle. Although the claimant did not submit documentation of the estimated value of the vehicle at the time he purchased the vehicle, the Dealer purchased the vehicle for \$1,650 in August 2019. According to a review of the online Kelley's Blue Book, a similar 2010 Chevy Equinox LT in fair condition with mileage of 193,000 has a current trade-in value of \$1,044 (range of \$336 to \$1,751) and an estimated private party sale value of \$3,449 (range of \$2,117 to \$4,780). Based upon all of the above information, the Department's recommended claim of \$2,000, which is the amount that claimant requests for reimbursement, is fair, reasonable and appropriate under the circumstances. Finally, despite the fact that this claim was submitted after the deadline for filing claims under Wis. Admin. Code § Trans 140.26, there exist sufficient bond funds to pay the current claim after payment of priority claims as the total for all claims does not exceed the value of the bond of \$25,000.00. See, Wis. Admin. Code § Trans 140.23 and § Trans 140.27.

### CONCLUSIONS OF LAW

1. The claim of Edgar Molina arose on September 2, 2019, the day that Esmar Motors LLC sold the 2010 Chevrolet Equinox to Edgar Molina. The surety bond issued to the Dealer by Western Surety Company Corporation covers a one-year period commencing on March 29, 2019. The claim thus arose during the period covered by the surety bond.
2. Edgar Molina filed a claim against the motor vehicle dealer bond of the Dealer on September 23, 2020. 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. Edgar Molina's claimed loss of \$2,000 was caused by an act of the Dealer that would be grounds for suspension or revocation of its motor vehicle dealer license. Edgar Molina has supplied documentation that he paid \$5,000 for a vehicle with a tampered odometer that misrepresented the actual mileage by 100,000 fewer miles representing an actual loss sustained under Wis. Admin. Code § Trans 140.21(1)(c).
4. The Division of Hearings and Appeals has authority to issue the following order.

### ORDER

The claim filed by Edgar Molina against the motor vehicle dealer bond of Esmar Motors, LLC, is APPROVED in the amount of \$2,000.00. Western Surety Company shall pay Edgar Molina this amount for its loss attributable to the actions of Esmar Motors, LLC.

Dated at Madison, Wisconsin on February 2, 2021.

STATE OF WISCONSIN  
DIVISION OF HEARINGS AND APPEALS  
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By: \_\_\_\_\_  
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