



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

In the Matter of Claims Against the Dealer Bond
of C4 Sims Auto, LLC

Case No: DOT-21-0011

FINAL DETERMINATION

On January 21, 2021, a Public Notice to File Dealer Bond Claims was published in the Milwaukee Journal Sentinel, a newspaper published in Milwaukee, Wisconsin pursuant to Wis. Admin. Code § Trans 140.26 and in response to the submission of a separate bond claim against the motor vehicle dealer bond of C4 Sims Auto, LLC (Dealer). The notice informed other persons who may have claims against the Dealer to file them with the Department by March 22, 2021. On March 8, 2021, Custom Impala Holdings (Claimant) filed an additional claim against the Dealer's bond. The total amount of both claims does not exceed the value of the bond. The initial bond claim is addressed in a separate preliminary determination, Case No. DOT-21-0001. On June 2, 2021 a Preliminary Determination was issued under Wis. Admin. Code § Trans 140.26(4)(a). 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:

C4 Sims Auto, LLC,
6310 N. Sherman Blvd.
Milwaukee, WI 53209

Jimmie Sims
2945 N. 29th Street
Milwaukee, WI 53210

Western Surety Company
101 South Reid Street
Sioux Falls, SD 57103

Custom Impala Holdings
By Oscar Rodriguez
524 N. 10th Street
Manitowoc, WI 54220

FINDINGS OF FACT

1. C4 Sims Auto, LLC (Dealer) is licensed by the Wisconsin Department of Transportation as a motor vehicle dealer. The Dealer's facilities are located at 6310 N. Sherman Blvd, Milwaukee, Wisconsin.
2. The Dealer had a continuous surety bond in force in the amount of \$50,000 satisfying the requirements of Wis. Stat. § 218.0114(5) since March 1, 2019 (Bond # 64511658 from Western Surety Company).
3. On February 14, 2020 the Claimant, Custom Impala Holdings, by Oscar Rodriguez, purchased a 2004 Cadillac Escalade (vehicle) with VIN 3GYEK62N94G122895 from the Dealer for \$2,517 including tax, title, and registration fees. The motor vehicle purchase contract disclosed that the vehicle was sold "as is" and that the "front grill hood" was "not legal."
4. Between February 20, 2020 and April 26, 2020, the Claimant had the vehicle serviced, repaired and additional components installed on the vehicle at a total cost of \$1,236.85.
5. Despite having received payment from the Claimant towards the title and plate application fees, the Dealer failed to submit the application for certificate of title with payment to the Department.
6. On November 30, 2020, the Claimant submitted a complaint to the Department due to never having received the title or plates to the vehicle.
7. Based upon the Department's investigation it was discovered that the Dealer had purchased the vehicle at auction on January 28, 2020 on a junk vehicle bill of sale. However, the Dealer failed to disclose to the Claimant that it was a junk vehicle, which prevented it from being registered.
8. On March 8, 2021, the Claimant filed a bond claim with the Department regarding the purchase of the 2004 Cadillac Escalade. The amount of damages set forth in the bond claim is \$3,753.85, which includes \$2,517 for the price paid for the vehicle (inclusive of the title/registration fees), repairs to the vehicle incurred in the amount of \$792.65 and purchased components for the vehicle in the amount of \$444.20.
9. The Claimant's claim arose on February 14, 2020, which is the date the Claimant purchased the vehicle. The bond claim was filed within three years of the ending date of the one-year period the bond issued by Western Surety Company was in effect.
10. A prior claim was filed against the Dealer's bond in the amount of \$1,220.50 on December 2, 2020 in Case No. DOT-21-0001. The total amount of both claims is less than the full amount of the bond.

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. 218.0116(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.

Under Wis. Admin. Code § Trans 349.04(5)(c):

If because of the condition of the vehicle at the time of sale it meets the definition of a junk vehicle or a salvage vehicle, the dealer and salespersons shall make one of the following disclosures conspicuously on the motor vehicle purchase contract prior to its execution:

1. If the vehicle is a junk vehicle: "WARNING! Sold as junk vehicle. This vehicle may never be retitled." The dealer shall notate the title as "Junk Vehicle" and forward the title to the department within 10 days after determining that the vehicle is a junk vehicle.

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To allow the Claimant'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. As set forth above, licensed motor vehicle dealers are required to disclose on the motor vehicle purchase contract if a vehicle is a “junk vehicle” pursuant to Wis. Admin. Code § Trans 139.04(5). The Dealer in this matter failed to disclose that the vehicle had been deemed a junk vehicle based upon the Dealer’s prior purchase of the vehicle on a “Junk Bill of Sale”. In addition, the Dealer failed to forward the title to the Department noting the title as “Junk Vehicle” as required.

The Dealer’s failure to disclose that the vehicle sold to the Claimant was considered a “junk vehicle” and the Dealer’s failure to forward title to the Department noting that the vehicle was a “junk vehicle” constitute violations of Wis. Admin. Code § Trans 139.04(5)(c). Violations of this section, in turn, constitute a violation of Wis. Stat. §§ 218.0116(1)(gm). The Claimant did not receive title to the vehicle purchased from the Dealer and the Department has advised Claimant that a junk vehicle cannot be registered. Thus, the Claimant sustained a loss as the result of the Dealer’s violations.

The Claimant’s Bond Claim form submitted in this matter listed damages totaling \$3,753.85, including \$2,517.00 for the cost of the vehicle plus \$1,236.85 for parts and service repairs to the vehicle incurred after the purchase. The Claimant’s claim arose on February 14, 2020, which is the date the Claimant purchased the vehicle. The bond claim was filed on March 8, 2021 following publication of a Public Notice of Time to File Dealer Bond Claims issued in response to a prior claim against the bond totaling \$1,220.50, Case No. DOT-21-0001. The current bond claim was filed within three years of the ending date of the one-year period the bond issued by Western Surety Company was in effect and is, therefore, a timely claim. In addition, the total amount of all claims against the bond is less than the \$50,000 bond amount issued on behalf of the Dealer.

CONCLUSIONS OF LAW

1. The Claimant Custom Impala Holdings claim arose on February 14, 2020, which is the date that the vehicle was purchased from the Dealer and when the Dealer failed to disclose that the vehicle was a Junk Vehicle. The continuous surety bond issued to the Dealer by Western Surety Company covers the one-year period commencing on March 1, 2019. The claim arose during the period covered by the surety bond.

2. The Claimant Custom Impala Holdings filed a claim against the motor vehicle dealer bond of the Dealer on March 8, 2021. 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. The Claimant’s loss was caused by an act of the Dealer that would be grounds for suspension or revocation of its motor vehicle dealer license. The Claimant has supplied documentation to support a claim in the amount of \$3,753.85.

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

ORDER

The claim filed by the Claimant Custom Impala Holdings against the motor vehicle dealer bond of C4 Sims Auto, LLC is APPROVED in the amount of \$3,753.85. Western Surety Company shall pay the Claimant Custom Impala Holdings this amount for its loss attributable to the actions of C4 Sims Auto, LLC.

Dated at Madison, Wisconsin on July 12, 2021.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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By: _____
Kristin P. Fredrick
Administrative Law Judge