



What Upcoming California 'Lemon Law' Rulings Could Mean for Manufacturers

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Decisions Could Impact Song-Beverly Act Claims Beyond the Auto Industry

With California's appellate courts divided on crucial "[lemon law](#)" provisions and defective vehicle cases on the rise, the state's Supreme Court has finally entered the fray.

The coming decisions will have significant impacts on key aspects of the law—which under certain circumstances allows consumers to get their money back should their new car have a serious warranty defect—including manufacturers' duties to buy back vehicles and their ability to force arbitration.

Importantly, however, these decisions are about more than just "lemons," or defective vehicles: The Supreme Court's rulings could have wide-ranging impacts on manufacturers of all types that operate and/or sell to customers in the Golden State. Here's what manufacturers should know about these cases to prepare now.

A Growing Number of 'Lemon Law' Claims Against Manufacturers

The California lemon law provisions at stake generally involve the state's [Song-Beverly Consumer Warranty Act](#). Enacted in 1970 to provide protections to consumers beyond those afforded by the Uniform Commercial Code, the law:

- Requires all manufacturers who provide an express warranty to maintain sufficient California service/repair facilities (or designate/authorize independent facilities) reasonably close to all areas where its products are sold (so that consumers may obtain the benefit of that express warranty);

- Strictly limits the disclaimer of any implied warranties (such as the warranty of merchantability and the warranty of fitness for a particular purpose, which in many other states may be disclaimed); and
- Establishes remedies for consumers which may include monetary damages, equitable relief, civil penalties, and recovery of litigation costs, expenses, and attorneys' fees.

While the bulk of Song-Beverly Act claims are automotive, its applications are actually much broader— applying to any product that is used, bought, or leased for personal, family, or household purposes, ranging from recreational vehicles and boats to consumer electronics and household appliances; it excludes only clothing and consumables, such as food and drink, cosmetics, cleaning products, etc.

Recently, the number of claims filed against manufacturers for breach of express or implied warranties have skyrocketed in California. This is thanks in part to the Song-Beverly Act's fee-shifting provisions, which allow plaintiffs to recover attorneys' fees and the cost of litigation, and creative plaintiffs' attorneys often use those fee provisions as leverage against manufacturers.

The California Supreme Court Steps In

The influx of Song-Beverly claims poses challenges for manufacturers that operate in California or sell to customers in the state, but as outlined below, the state Supreme Court's impending decisions may make the situation even more fraught.

Buyback Questions in *Niedermeier v. FCA*

In early December 2023, the California Supreme Court heard oral arguments in *Lisa Niedermeier v. FCA US LLC*. The plaintiff sued Chrysler to comply with its obligations under the Song-Beverly Act to buy back her faulty vehicle, alleging that the company delayed doing so, which in turn led her to trade in the car for another. The California Supreme Court is considering whether the trade-in value should be offset from the award won at trial.

The decision is poised to resolve an appellate court split. The manufacturer argues that not subtracting the car's value amounts to a windfall and encourages even more lemon law litigation, while the plaintiffs argue that allowing subtraction would incentivize manufacturers to delay buybacks, effectively weakening the Song-Beverly Act's protections.

If the Supreme Court sides with the plaintiffs, manufacturers will want to evaluate whether to repurchase an alleged lemon earlier. By doing so, manufacturers could perhaps negotiate that a statutory repurchase of the vehicle includes the vehicle being turned over to the manufacturer, as it may have some salvage value to offset the settlement. But if manufacturers wait and the customer then trades in the vehicle, it is possible (again, depending on the ruling) that this potential value could be lost.

However, if the Supreme Court rules in favor of manufacturers and offsets the trade-in value, then customers might be more hesitant to part with their vehicles. In such cases, manufacturers—especially in litigation—will want to take steps to ensure preservation of the vehicle so that its value can be maximized.

Arbitration Provisions at Stake in *Ford Motor Warranty Cases*

Given the Song-Beverly Act's fee-shifting provisions (and the abuse of those provisions by creative plaintiffs' attorneys), manufacturers may seek to enforce binding arbitration provisions in their limited express warranty. That's because arbitration can often be quicker and more limited in scope than litigation, thereby decreasing later demands for attorneys' fees.

Yet this poses a problem: Although manufacturers may provide the warranty that contains the arbitration provision, they are not typically signatories to the sale contract between the consumer and retailer/dealer.

This exact issue was deliberated in *Felisilda v. FCA US LLC*, where the California Court of Appeals (Third District) decided that FCA (the manufacturer) could enforce the arbitration provision even though it did not sign the vehicle sale contract. The court found that the breach of warranty claims were closely connected with the

sales contract and the plaintiff could not seek to enforce certain terms of the warranty while simultaneously avoiding those he did not like (i.e., the arbitration provision).

Since *Felisilda*, however, California courts have been split on whether it was correctly decided, with the California Court of Appeals echoing others that held the lower court was wrong to order arbitration. So, while it is technically possible to enforce a mandatory arbitration provision in the contract between the consumer and retailer now, manufacturers should know that courts are not always in agreement over whether they can enforce that provision.

The California Supreme Court is likely to decide the issue, having granted review on *Ford Motor Warranty Cases*, which also deals with manufacturers' attempts to force arbitration. It is quite possible that the California Supreme Court will affirm decisions denying manufacturers' ability to force arbitration in such a situation.

Manufacturers Take Note

Manufacturers subject to the Song-Beverly Act should continue to monitor these cases closely, as the decisions could have a meaningful impact on how they handle their products' express warranties. As always, they should ensure that their practices are consistent with any changes to the Song-Beverly Act and understand new rulings to adapt to the ever-growing number of "lemon law" cases being filed today.

Frost Brown Todd attorneys have a distinguished reputation in product liability litigation (warranties, personal injury, and mass torts) based on more than 50 years' experience successfully defending manufacturers and distributors of a wide variety of products. If you need assistance reviewing your product warranty provisions or defending claims brought under the Song-Beverly Act, please contact the author or any attorney with the firm's [Product, Tort, & Insurance Litigation](#) practice.

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