

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PAUL R. RUFFIN & : CIVIL ACTION  
ERNESTINE RUFFIN :  
 :  
v. :  
 :  
FLEETWOOD MOTOR HOMES of :  
PENNSYLVANIA, INC., OSHKOSH :  
TRUCK CO., ALLISON TRANSMISSION :  
DIVISION of the GENERAL MOTORS :  
CORP. & CUMMINS ENGINE CO. : NO. 96-4922

MEMORANDUM and ORDER

Norma L. Shapiro, J.

December 3, 1997

Plaintiffs Paul R. Ruffin and Ernestine Ruffin (collectively the "Ruffins"), alleging violations of the Magnuson-Moss Warranty Federal Trade Commission Improvement Act, 15 U.S.C. § 2301, et seq. (the "Act"), the Uniform Commercial Code as adopted in Pennsylvania, 13 Pa. Cons. Stat. Ann. § 2101, et seq. (the "UCC"), and the Pennsylvania Unfair Trade Practices and Consumer Protection Law, Pa. Stat. Ann. tit. 73, § 201-1, et seq. ("UTPCPL"), filed suit against defendants Fleetwood Motor Homes of Pennsylvania, Inc. ("Fleetwood"), Oshkosh Truck Co. ("Oshkosh"), Allison Transmission Division of the General Motors Corp. ("Allison") and Cummins Engine Co. ("Cummins"). All defendants have filed motions for summary judgment. For the reasons stated below, defendants' motions will be granted in part and denied in part.

FACTS

On August 4, 1994, the Ruffins purchased a new 1994 Model

35J<sup>1</sup> Fleetwood Bounder motor home (the "Bounder" or the "motor home") from the Farnsworth Camping Center, Inc, in Elysburg, Pennsylvania.<sup>2</sup> Fleetwood manufactured the Bounder using the following component parts manufactured by Fleetwood's co-defendants: Allison manufactured the transmission; Cummins manufactured the engine; and Oshkosh manufactured the chassis and related parts.

Each defendant provided the Ruffins with a warranty offering different coverages. Fleetwood gave an express, written warranty covering the Bounder for one year/15,000 miles. The warranty required Fleetwood to "repair or replace any parts necessary to correct defects in material or workmanship." Fleetwood Warranty, attached as Ex. A to Fleetwood's Mem. Supp. Summ. J. ["Fleetwood Warranty"]. The Fleetwood Warranty stated it did not apply to "THE AUTOMOTIVE SYSTEM (INCLUDING THE CHASSIS AND DRIVE TRAIN), TIRES AND BATTERIES, WHICH ARE COVERED BY THE SEPARATE WARRANTIES OF THE RESPECTIVE MANUFACTURERS OF THESE COMPONENTS." Fleetwood Warranty. The warranty also excluded normal maintenance, wear and defects caused by the owners' failure to comply with instructions in the Bounder owner's manual. See Fleetwood Warranty.

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<sup>1</sup> Fleetwood identifies the motor home as a model 35J; Oshkosh identifies it as a model 35K.

<sup>2</sup> The Ruffins did not name the Bounder dealer as a defendant in this action.

The Ruffins acknowledged receiving a copy of this warranty. See Deposition of Ernestine Ruffin at 26-30, attached as Ex. B to Fleetwood's Mem. Supp. Summ. J. ["Ernestine Ruffin's Deposition"]; Deposition of Paul Ruffin Vol. 1 at 27-28, attached as Ex. C to Fleetwood's Mem. Supp. Summ. J. ["Paul Ruffin's Deposition"]. The Fleetwood warranty provided coverage for ten days following the expiration of its one-year period. Therefore, the written warranty expired on or before August 14, 1995.<sup>3</sup>

Allison's warranty provided the following coverage for the transmission:

The warranty covers repairs or replacement, at Allison Transmission's option, to correct any transmission malfunction resulting from defects in material or workmanship occurring during the warranty period. Needed repairs or replacements will be performed using the method Allison Transmission determines most appropriate under the circumstances.

Allison Warranty, attached as Ex. B to Allison's Mem. Supp. Summ. J. ["Allison Warranty"]. The Allison Warranty provided it did not cover:

CHASSIS, BODY and COMPONENTS-- The chassis and body company (assemblers) and other component and equipment manufacturers are solely responsible for warranties on the chassis, body, component(s) and equipment they provide. Any transmission repair

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<sup>3</sup> Fleetwood argues the warranty may have expired even earlier. As of August 31, 1995, the Ruffins' Bounder had 16,559 miles on it. See Repair Invoice, dated Aug. 31, 1995, attached as Ex. E to Fleetwood's Mem. Supp. Summ. J. ["Aug. 31, 1995 Repair Invoice"]. The Fleetwood Warranty provided coverage for one year/15,000 miles. The Ruffins' Bounder may have reached 15,000 miles before August 14, 1995.

caused by an alteration(s) made to the Allison transmission or the vehicle which allows the transmission to be installed or operated outside of the limits defined in the appropriate Allison Installation Guideline is solely the responsibility of the entity making the alteration(s).

Allison Warranty. The warranty also excluded normal maintenance and damage due to misuse.

Cummins offered a warranty on the engine covering "any failures of the Engine which result, under normal use and service, from defects in workmanship or material (Warrantable Failures)." Cummins Warranty, attached as Ex. F to Cummins' Mem. Supp. Summ. J. ["Cummins Warranty"]. This coverage was to last for five years/100,000 miles from the date of purchase. The Cummins Warranty did not cover normal wear and tear, incidental or consequential damages or damage due to the owners' neglect. See Cummins Warranty.

Oshkosh provided a limited warranty on the Bounder's chassis; it offered basic coverage, extended basic coverage and extended power train, drive train, steering axle and rear axle coverage. See Oshkosh Warranty, attached as Ex. C to Oshkosh's Mem. Supp. Summ. J. ["Oshkosh Warranty"]. Basic coverage, covering "all parts of the vehicle chassis, except those set forth in Items warranted separately and Items not covered," was for one year/12,000 miles. Extended basic coverage, covering all parts of the vehicle chassis, was for two years/24,000 miles. Extended power train, drive train, steering axle and

rear axle coverage ran for three years/36,000 miles and applied to those parts of the Bounder. The Oshkosh Warranty did not cover the tires, routine maintenance, or damage due to misuse or accidents. See id.

The Ruffins claim they encountered problems with their Bounder soon after purchasing it in August, 1994. While on a trip to Ohio in late August and early September, 1994, the Ruffins noticed an engine oil leak in the Bounder. They took the motor home to a Cummins Engine facility in Bristol, Pennsylvania; it diagnosed a leak in the fuel pump. See Cummins Engine Repair Order, dated Sept. 14, 1994, attached as Ex. B to Pltffs.' Second Amended Cmplt. ["Sept. 14, 1994 Cummins Repair Order"].

The Ruffins also observed a "dogtracking" problem in October, 1994; that is, the Bounder pulled to one side while on the road. Fleetwood instructed the Ruffins to take the Bounder to a facility in York, Pennsylvania for repair. Apparently the York facility did not have the proper equipment to correct the problem. The Ruffins planned a trip to Texas in their Bounder and obtained the name of a facility in Longhorn, Texas to correct the chassis irregularities producing the "dogtracking." The Longhorn facility corrected the problem. See Longhorn Alignment Repair Order, dated Nov. 8, 1994, attached as Ex. C to Pltffs.' Second Amended Cmplt. ["Nov. 8, 1994 Longhorn

Repair Order"].

On that same trip, the Bounder became stuck in "drive" and the Ruffins had to continue driving until their vehicle ran low on fuel. After reporting the problem to Fleetwood, they took the Bounder to Sierra Detroit Diesel Allison in Sacramento, California. See Sierra Detroit Diesel Allison Repair Order, dated Nov. 29, 1994, attached as Ex. D to Pltffs.' Second Amended Cmplt. ["Sierra Detroit Diesel Allison Repair Order"]. The following month, while the Ruffins were in Sparks, Nevada, the Bounder was stuck in "park." The motor home was towed to Smith Detroit Diesel Allison for servicing. See Smith Detroit Diesel Allison Repair Order, dated Jan. 4, 1995, attached as Ex. E to Pltffs.' Second Amended Cmplt. ["Smith Detroit Diesel Allison Repair Order"].

After returning to Pennsylvania, the Ruffins brought their Bounder to Fleetwood for the following repairs: a cracked wall and interior panels; water leaks; a sewer smell in the kitchen; an oil leak in the engine; loose cabinets; and "excessive air noise" on the driver's side. See Fleetwood Repair Order, dated Mar. 28, 1995, attached as Ex. F to Pltffs.' Second Amended Cmplt. ["Mar. 28, 1995 Fleetwood Repair Order"].

After Fleetwood returned the Bounder, the Ruffins noticed a fluid leak in the engine area. They took the Bounder to a Cummins facility in Bristol, Pennsylvania, where the

technicians discovered a leak in the power steering hose. See Cummins Power Systems, Inc. Repair Order, dated Apr. 7, 1995, attached as Ex. G to Pltffs.' Second Amended Cmplt. ["Apr. 7, 1995 Cummins Repair Order"]. About one month later, the Ruffins returned to the Cummins facility to report another fluid leak. Cummins found a leaking "#5 valve" in the fuel injection pump. See Cummins Power System, Inc. Repair Order, dated May 4, 1995, attached as Ex. H to Pltffs.' Second Amended Cmplt. ["May 4, 1995 Cummins Repair Order"]. The Ruffins also returned the Bounder to the Cummins facility in July, 1995, with fuel pump problems. See Cummins Power Systems, Inc. Repair Order, dated July 31, 1995, attached as Ex. I to Pltffs.' Second Amended Cmplt. ["Jul. 31, 1995 Cummins Repair Order"].

On a trip to Hagerstown, Maryland, the Bounder's generator failed. The main purpose of the generator is to power the air conditioning system where the motor home is not running. Upon returning to Pennsylvania, the Ruffins returned the Bounder to Fleetwood for repair. See Fleetwood Repair Order, dated Aug. 31, 1995, attached as Ex. J to Pltffs.' Second Amended Cmplt. ["Aug. 31, 1995 Fleetwood Repair Order"]. The Ruffins, complaining of their Bounder's problems, wrote to Mr. G. Kummer of Fleetwood Enterprises in Riverside, California on September 5, 1995. See Letter from Paul & Ernestine Ruffin to G. Kummer,

dated Sept. 5, 1995, attached as Ex. H to Fleetwood's Mem. Supp. Summ. J. ["Sept. 5, 1995 Ruffin letter"]. Finally, the Ruffins spent ten dollars to have the Bounder's right side window placed back in the frame. See Tom's Motor Sale's Repair Order, dated Sept. 19, 1995, attached as Ex. K to Pltffs.' Second Amended Cmpl. ["Tom's Repair Order"].<sup>4</sup>

### **DISCUSSION**

#### **I. Standard of Review**

Summary judgment may be granted only "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). A defendant moving for summary judgment bears the initial burden of demonstrating there are no facts supporting the plaintiff's claim; then the plaintiff must introduce specific, affirmative evidence there is a genuine

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<sup>4</sup> As far as the court can tell, the Ruffins have alleged the following twenty-four problems with the Bounder: oil drain on generator not centered properly; basement doors leak; rear clearance light leak; sewer smell in kitchen; radio speaker problems; loose cabinet; sidewall crack; generator inoperable; fuel door not shutting; loose front television; various defective switch lights; defective rear clearance light; improperly-sized trim molding; sealant color mismatch; sagging roof upholstery; leaking levelers; leaking windshield; leaking driver's side window; roof leak near the antenna; excessive wind noise on driver's side; leaking rear passenger window; right rear window popped out of frame; rattling entry door; and blinking rear-view television monitor.

issue for trial. See Celotex Corp. v. Catrett, 477 U.S. 317, 322-324 (1986). "When a motion for summary judgment is made and supported as provided in [Rule 56], an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in [Rule 56], must set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e).

The court must draw all justifiable inferences in the non-movant's favor. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). A genuine issue of material fact exists only when "the evidence is such that a reasonable jury could return a verdict for the non-moving party." Id. at 248. The non-movant must present sufficient evidence to establish each element of its case for which it will bear the burden at trial. See Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 585-86 (1986).

## **II. Magnuson-Moss Warranty Federal Trade Commission Improvement Act**

The Ruffins claim each of the defendants violated the Magnuson-Moss Act by failing to comply with the terms of their express and implied warranties. The Magnuson-Moss Act was implemented "to improve the adequacy of information available to consumers, prevent deception, and improve competition in the marketing of consumer products." 15 U.S.C. § 2302(a). It

establishes federal minimum standards for warranties issued by suppliers who are warrantors of consumer products.<sup>5</sup> A warrantor who has provided a written warranty to a consumer when notified of a product defect, malfunction or failure to conform to the written warranty must "remedy" the problem "within a reasonable time and without charge." 15 U.S.C. § 2304(a)(1). "Remedy" is defined as either repair, replacement or refund. See 15 U.S.C. § 2301(10).

The Magnuson-Moss Warranty Federal Trade Commission Improvement Act (the "Act") imposes a duty of notification on the consumer. See 15 U.S.C. § 2304(b)(1). The warrantor can impose other requirements as long as they are "reasonable." See id. A consumer is entitled to replacement or refund only after the warrantor has made a "reasonable number of attempts" to correct the problem. 15 U.S.C. § 2304(a)(4).<sup>6</sup>

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<sup>5</sup> A "consumer product" is defined as "any tangible personal property which is distributed in commerce and which is normally used for personal, family, or household purposes (including any such property intended to be attached to or installed in any real property without regard to whether it is so attached or installed)." 15 U.S.C. § 2301(1).

<sup>6</sup> 15 U.S.C. § 2304(a) provides in relevant part:

In order for a warrantor warranting a consumer product by means of a written warranty to meet the Federal minimum standards for warranty-- ... (4) if the product (or a component part thereof) contains a defect or malfunction after a reasonable number of attempts by the warrantor to remedy defects or malfunctions in such product, such warrantor must permit the consumer to elect either a refund for, or replacement without

The Act gave the Federal Trade Commission ("FTC") power to promulgate regulations defining "reasonable number of attempts," id., but it has not done so. The statutory language refers to "reasonable attempts"; a plain reading of the Act requires a consumer to give the warrantors more than one opportunity to correct a defect in the warranted product. See Marchionna v. Ford Motor Co., No. 94-275, 1995 WL 476591 at \*11 (N.D. Ill. Aug. 10, 1995).

**A. Fleetwood**

Fleetwood's warranty excluded defects in the "AUTOMOTIVE SYSTEM (INCLUDING THE CHASSIS AND DRIVE TRAIN)." Fleetwood Warranty. At the same time, the warranty was described as a "Full One-Year/15,000 Mile" warranty. The Ruffins argue this language implied the warranty covered the whole Bounder and contradicted the language excluding certain coverage; this allegedly made the warranty's terms ambiguous.

The Act provides:

Any warrantor warranting a consumer product by means of a written warranty shall clearly and conspicuously designate such warranty in the following manner ... :

(1) If the written warranty meets the Federal minimum standards for warranty set forth in section 2304 of this title, then it shall be conspicuously designated a "full (statement of duration) warranty."

(2) If the written warranty does not meet the

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charge of, such product or part (as the case may be)....

Federal minimum standards for warranty set forth in section 2304 of this title, then it shall be conspicuously designated a "limited warranty."

15 U.S.C. § 2303(a). Fleetwood was required to designate its warranty as either "full" or "limited," based on the warranty's terms.

The Act requires a "full warranty" to have: a minimum duration; a conspicuous statement of exclusions; and an offer to repair or replace defective parts within a reasonable time or provide a refund. See 15 U.S.C. § 2304(a). The Fleetwood Warranty contained all these provisions, so Fleetwood had to designate its warranty as "full." However, the warranty clearly and in capital letters on the same page disclaimed any coverage of defects in the chassis and drive train systems. Fleetwood's designation of its warranty as "full" does not make it liable for all defects in Bouncer component parts for which it expressly disclaimed coverage.

The Act allows Fleetwood to disclaim coverage of any component part warranted by the manufacturer of that part. The statute contemplates multiple warranties by the end-manufacturer and manufacturers of component parts. See 15 U.S.C. § 2302 (a) (requiring the written warranty to include the names and addresses of all "warrantors" and the parts covered by each warranty). The Act allows a warrantor, such as Fleetwood, to exclude "characteristics or properties of the

products, or parts thereof." 15 U.S.C. § 2302(12). The Act does not "require that a consumer product or any of its components be warranted." 15 U.S.C. § 2302(b)(2); see also 16 C.F.R. § 700.4 (supplier or distributor of a consumer product covered by a written warranty provided by another "is not liable for the failure of the written warranty to comply with the Act or rules thereunder." Fleetwood effectively and legally disclaimed liability for any defects in the "automotive system," chassis, drive train, tires and batteries. See Fleetwood Warranty.

Of the twenty-four alleged Bounder defects, the Ruffins admitted Fleetwood fixed ten. In their depositions, the Ruffins conceded the following items had been repaired: the basement door leak, see Ernestine Ruffin's Deposition at 69; rear clearance door light, see id. at 99; location of the generator oil drain, see id. at 80-81; sewer smell, see id. at 81; radio speaker, see id. at 132-33; loose cabinet, see id. at 81; sidewall crack, see id. at 83; generator problems, see id. at 95-96; fuel door, see id. at 131; and loose front television, see id. at 131-32. See also Paul Ruffin's Deposition Vol. 1 at 46, 69-70, 94-95, 98; Paul Ruffin's Deposition Vol. 2 at 19, 29-34. If these ten alleged defects were corrected, they do not state a cause of action under the Act. See 15 U.S.C. § 2304. However, Ernestine Ruffin has

submitted an affidavit contradicting all these admissions and claiming all these problems still exist. See Ernestine Ruffin's Aff., attached as Ex. A to Pltffs.' Mem. Opp. Summ. J. ["Ernestine Ruffin's Aff."].

The doctrine of judicial estoppel "prevent[s] a party from playing 'fast and loose' with courts by asserting contradictory positions." McCarron v. FDIC, 111 F.3d 1089, 1097 (3d Cir. 1997) (citing United States v. Vastola, 989 F.2d 1318, 1324 (3d Cir. 1993)). Judicial estoppel "precludes a party from assuming a position in a legal proceeding inconsistent with one previously asserted." Government of the Virgin Islands v. Paniagua, 922 F.2d 178, 183 (3d Cir. 1990); see Delgrosso v. Spang and Co., 903 F.2d 234, 241-42 (3d Cir.), cert. denied, 498 U.S. 967 (1990); Murray v. Silberstein, 882 F.2d 61, 66 (3d Cir. 1989); Schwartz v. Industrial Valley Title Ins. Co., No. 96-5677, 1997 WL 330366 at \*7 (E.D. Pa. Jun. 5, 1997) (Shapiro, J.). Here, the Ruffins have never asserted in their pleadings that these ten defects were corrected, they only admitted as much in their depositions. They alleged these defects in their Complaint and their pleadings have remained consistent ever since. The doctrine of judicial estoppel does not preclude Ernestine Ruffin from submitting affidavits contradicting her previous sworn deposition testimony.

Fleetwood certainly will be able to impeach Ernestine

Ruffin if she testifies at trial that these problems still exist with her sworn deposition testimony to the contrary, but there is now a question of material fact whether these ten alleged defects have been repaired.<sup>7</sup>

Assuming that these ten alleged defects have not been repaired, the court must consider whether the Ruffins gave Fleetwood a "reasonable number of attempts" to correct them. See 15 U.S.C. § 2304(a). Several of the Fleetwood repair orders are difficult to read, but it appears the Ruffins frequently reported a litany of problems when they brought the Bounder in for repair. There is a question of material fact whether the Ruffins offered Fleetwood more than one opportunity to repair each of these ten alleged defects. The Ruffins have presented enough evidence to withstand a motion for summary judgment on claims predicated on these ten alleged defects.

The Ruffins conceded in their depositions they never informed Fleetwood of seven of their twenty-four alleged defects. These include: leaking/inoperative running lights, see Ernestine Ruffin's Deposition at 137; malfunctioning levelers, see id. at 59-60; leaking windshield, see id. at 134; and sagging ceiling upholstery, see Paul Ruffin's Deposition, Vol. 1 at 101-02. Three alleged defects were first disclosed

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<sup>7</sup> The court presently expresses no view on whether Ernestine Ruffin may be subject to prosecution for perjury based on her contradictory statements under oath.

in the expert report prepared by the Ruffins' witness, Scot A. Turner, months after the Fleetwood Warranty expired: short trim molding; sealant color mismatch; and flickering rear-view television. See Report of Scot. A Turner, attached as Ex. F to Fleetwood's Mem. Supp. Summ. J. ["Turner Report"].<sup>8</sup>

Consumers have a duty under the Act to notify the warrantor of alleged defects. See 15 U.S.C. § 2304(b)(1). The Ruffins did not inform Fleetwood of these seven alleged defects at all or not until after the warranty had expired. They cannot recover under the Act for these alleged defects.

The Ruffins claim an alleged defect in the various switch lights developed after Fleetwood repaired the interior and exterior water pump and generator switch on August 31, 1995; the Fleetwood Warranty had already expired. The Ruffins also admitted at their depositions that they never informed Fleetwood the repairs performed August 31, 1995, were unsatisfactory. See Ernestine Ruffin's Deposition at 97-99, 137; Paul Ruffin's Deposition Vol. 1 at 94-98; Paul Ruffin's Deposition Vol. 2 at 35. They failed to fulfill their duty of notification. See 15 U.S.C. § 2304(b)(1). This alleged defect

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<sup>8</sup> Fleetwood claims the Ruffins admitted they never informed Fleetwood about the leaking driver's side window or the leak by the antenna, but Paul Ruffin's deposition indicates otherwise. See Paul Ruffin's Deposition Vol. 2 at 12-17. A question of material fact remains as to whether Fleetwood had a reasonable number of attempts to repair these alleged defects; the Ruffins may base their Magnuson-Moss Act claim on these alleged problems.

occurred after the expiration of the warranty, so the Ruffins fail to state a cause of action on this claim.

Of the remaining four defects on the Ruffins' list, Fleetwood repaired (or at least attempted to repair) the following three problems during the warranty period: leaking rear passenger window; rattling entry door; and wind noise on the driver's side. The fourth item is a \$10 repair of the rear passenger window.

The Ruffins admit they did not inform Fleetwood of their dissatisfaction with Fleetwood's attempted repairs of the first three problems within the warranty period. See August 31, 1995 Fleetwood Repair Order; Ernestine Ruffin's Deposition at 69-70, 119; Paul Ruffin's Deposition Vol. 1 at 72-73. The Ruffins' \$10 repair of the rear passenger window occurred on September 19, 1995, after the warranty expired. See Tom's Repair Order. Because the Ruffins did not inform Fleetwood of their dissatisfaction within the warranty period, they have not stated a claim under the Act on these alleged defects.<sup>9</sup>

Material questions of fact remain as to Fleetwood's repairs the following defects after a reasonable number of attempts: the basement door leak; rear clearance door light;

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<sup>9</sup> The Ruffins argue they informed Fleetwood of their dissatisfaction by letter dated September 5, 1995. The Fleetwood Warranty expired on August 14, 1995, at the latest; any notification after that date was ineffective.

location of the generator oil drain; sewer smell; radio speaker; loose cabinet; sidewall crack; generator problems; fuel door; loose front television; leaking driver's side window; and a leak by the antenna. See *Lowe v. Volkswagen of America, Inc.*, 879 F. Supp. 28, 30 (E.D. Pa. 1995). These claims under the Act cannot be dismissed.

The Ruffins also claim Fleetwood is liable for requiring them to transport the Bounder to various facilities for repair. Under the Act, the warrantor can only impose duties deemed "reasonable." See 15 U.S.C. § 2304(b)(1). The Fleetwood Warranty made clear the consumer would have to "deliver the motor home to the dealer or manufacturing plant location for warranty service." Fleetwood Warranty. Requiring the owner of a motor home to transport the vehicle to a repair facility is not unreasonable, particularly where the owner has been put on notice of that obligation. See *Pratt v. Winnebago Indus., Inc.*, 463 F. Supp. 709, 714 (W.D. Pa. 1979). Fleetwood did not violate the Act by requiring the Ruffins to bear the costs of delivering their Bounder to service facilities.

#### **B. Allison**

Allison manufactured the transmission installed in the Bounder. Its warranty limited coverage to the transmission itself; it excluded the chassis, body company, assemblers and other components and equipment. See Allison Warranty. On two

occasions, the Ruffins sought repairs for problems tangentially related to the transmission. On November 29, 1994, the Ruffins brought the Bounder to Sierra Detroit Diesel Allison, an authorized Oshkosh repair shop in California. The repair facility diagnosed and repaired a problem with the shift control cable and brake cable. See Sierra Detroit Diesel Allison Repair Order. This defect was covered by the Oshkosh Warranty, not that of Allison.

On January 5, 1995, the Ruffins experienced further trouble with shifting the Bounder out of "park." They sought assistance at Smith Detroit Diesel Allison, an authorized Oshkosh repair facility. The facility found the problem in the shift control cable and brake cable. See Smith Detroit Diesel Allison Repair Order. This defect was also covered by the Oshkosh Warranty, not that of Allison.

Allison's assistant regional manager has stated the shift control cable was not manufactured or supplied by Allison and was not covered by the Allison Warranty. See Aff. of Ashton Harvey, attached as Ex. H to Allison's Mem. Supp. Summ. J. ["Harvey Aff."]. Oshkosh admitted it supplied the brake and transmission cables attached to the Allison transmission. See Allison's Request for Admissions, attached as Ex. F to Allison's Mem. Supp. Summ. J. ["Oshkosh Admissions"]. The Ruffins have presented no contradictory evidence. Allison had

no responsibility for the brake and transmission cables that were allegedly defective in the Bounder; Allison cannot be liable under the Act. The Ruffins have introduced no other evidence regarding transmission defects. Summary judgment will be granted in Allison's favor.

**C. Cummins**

The defects alleged by the Ruffins pertaining to the Cummins engine involve alleged oil leaks and poor gas mileage. As to the oil leaks, the Ruffins had a duty to notify Cummins of the problem so that Cummins would have the opportunity to repair the engine. See 15 U.S.C. § 2304(a)(4), (b)(1).

Cummins claims the Ruffins never informed it of oil leak problems. But the Ruffins took the Bounder to facilities named Cummins Diesel Engines, Inc. and Cummins Power Systems, Inc. for oil and fluid leaks on the following occasions: September 14, 1994, see Sept. 14, 1994 Cummins Repair Order; April 7, 1995, see Apr. 7, 1995 Cummins Repair Order; and May 4, 1995, see May 4, 1995 Cummins Repair Order. The Cummins Warranty instructed the consumer to take the vehicle to an authorized Cummins dealer for repair, so Cummins cannot now claim the Ruffins should have followed some other procedure in notifying Cummins of engine trouble. See Cummins Warranty. There is a question of material fact whether Cummins had a reasonable opportunity to repair the engine problems; the court will not

grant summary judgment.

The Ruffins also claim poor gas mileage for the Bounder. They have presented no mileage statistics and their expert did not define or determine whether the Bounder's mileage per gallon of gasoline is poor compared to other vehicles or the manufacturer's representations. The Cummins Warranty provides no coverage for gasoline mileage. See Cummins Warranty. Poor gasoline mileage is not a "defect or malfunction" under the Act. See 15 U.S.C. § 2304(a)(4). The court will grant summary judgment in favor of Cummins on the claim arising from the motor home's allegedly deficient gas mileage.

**D. Oshkosh**

The Ruffins have alleged several defects of the Oshkosh chassis and its related parts. On November 8, 1994, the Ruffins brought the Bounder to Longhorn Alignment for "dogtracking" problems. See Nov. 8, 1994 Longhorn Repair Order. On November 29, 1994 and January 4, 1995, the Ruffins sought repairs to the transmission shift control and parking brake cables. See Smith Detroit Diesel Repair Order; Sierra Detroit Diesel Repair Order. These problems were covered by the Oshkosh Warranty. The Ruffins next sought repair of the power steering hose in April, 1995. See Apr. 7, 1995 Cummins Repair Order. This defect was covered by the Oshkosh Warranty. In their depositions, Paul and Ernestine Ruffin testified these

problems had been corrected and no longer posed a problem. However, Ernestine Ruffin has stated in her later affidavit that all of these problems remain. See Ernestine Ruffin's Aff. Therefore, there is a question of material fact whether these problems remain or were repaired.

Oshkosh complains it did not learn of many of these defects until the Ruffins' expert presented his report on April 14, 1997. The Oshkosh Warranty's coverage was for one year/12,000 miles on "[a]ll parts of the vehicle chassis." Oshkosh Warranty at 2-3. The warranty was for two years/24,000 miles on "all parts of the vehicle chassis." Id. Coverage was for three years/36,000 miles for:

1. Steering axle, including the axle king pins and bush rings, hubs and bearings, brake calipers, rotors or brake backing plates and related parts of the axle, and the tie rods and drag links.

2. Engine, including the cylinder block, heads, and all internal parts, manifold, valve train, valve cover, engine sealing, flywheel, oil pump and pan, water pump, and timing gear chain and cover.

Id. Depending on which limitation period applies to each of the defects allegedly related to the Oshkosh chassis, the warranty may have expired in August, 1995, August, 1996, or August, 1997. Oshkosh has admitted that the Ruffins' Bounder was "still within the warranty and, thus, any problems currently alleged which are the responsibility of Oshkosh could be repaired pursuant to the warranty." Oshkosh's Mem. Supp.

Summ. J. at 3 n.1.

There are questions of material fact concerning the duration of warranty coverage and whether Oshkosh was afforded a reasonable opportunity to repair chassis defects. The court will deny summary judgment on the Ruffins' claim under the Act against Oshkosh.

### **III. Uniform Commercial Code**

The Act does not preempt all state law contract remedies. A federal court has pendant jurisdiction of state law claims under contractual express and implied warranties. See Walsh v. Ford Motor Co., 807 F.2d 1000, 1011 (D.C. Cir. 1986), cert. denied, 482 U.S. 915 (1987). When the written warranty is a "full warranty" under the Act, "then the warranty on such product shall, for purposes of any action under ... this title or under any State law, be deemed to incorporate at least the minimum requirements of this section and rules prescribed under this section." 15 U.S.C. § 2304(e). Therefore, when a warrantor provides a "full warranty," as in this action, the minimum requirements of the Act apply to breach of warranty actions under state law.

The UCC, like the Act, requires a buyer to notify the seller promptly after acceptance of any defects, or be barred from recovery. See 13 Pa. Cons. Stat. Ann. § 2607(c)(1). If a buyer fails to inform the seller of defects after discovering

them, the buyer forfeits any breach of contract remedy. See id.

The UCC also imposes implied warranties, such as an implied warranty of merchantability. See 13 Pa. Cons. Stat. Ann. § 2314. Goods sold by a merchant must be "fit for the ordinary purposes for which such goods are used" and "conform to the promises or affirmations of fact made on the container or label." 13 Pa. Cons. Stat. Ann. § 2314(b)(3), (6). There is a warranty of fitness for a particular purpose only if the seller knows of a particular purpose for which the buyer desires the product, and the buyer relies on the judgment of the seller. See 13 Pa. Cons. Stat. Ann. § 2315.

#### **A. Fleetwood**

Fleetwood provided a "full warranty" on the Ruffins' Bounder. Fleetwood argues implied warranties are inapplicable, because they only apply to products that are defective at the time of purchase and not to future performance. See Nationwide Ins. Co. v. General Motors Corp., 625 A.2d 1172, 1178 (Pa. 1993). It is unclear which, if any, of the defects alleged here were present at the time the Ruffins purchased the Bounder. The first oil leak was brought for repair only weeks after the Ruffins bought the Bounder. See Sept. 14, 1994 Cummins Repair Order. When each of the remaining twelve alleged defects originated are questions of material fact.

Fleetwood avers that regardless of when the defects originated, its express warranty displaces any implied warranties purporting to offer greater coverage than that contained in the written document. See 13 Pa. Cons. Stat. Ann. §§ 2317(3), 2719(a)(2). But the Act does not allow a "full warranty" to limit the scope of any implied warranty. See 15 U.S.C. § 2304(a)(2). A "full warranty" may not "disclaim or modify ... any implied warranty to a consumer with respect to such consumer product if (1) such supplier makes any written warranty to the consumer with respect to such consumer product, or (2) at the time of sale, or within 90 days thereafter, such supplier enters into a service contract with the consumer which applies to such consumer product." 15 U.S.C. § 2308(a). The Ruffins have stated a cause of action against Fleetwood for breach of implied warranty.

**B. Allison**

The Ruffins have presented no evidence of any transmission defects. A defect in the transmission and brake cables was repaired and paid under the Oshkosh Warranty. See Smith Detroit Diesel Allison Repair Order; Sierra Detroit Diesel Allison Repair Order. Allison, having no responsibility for these component parts, cannot be liable for breach of warranty under the UCC. Summary judgment will be granted in Allison's favor on the Ruffins' UCC claim.

**C. Cummins**

The Ruffins' UCC claim against Cummins is premised on several oil and fluid leaks and poor gas mileage. The first oil leak was diagnosed in September, 1994. See Sept. 14, 1994 Cummins Repair Order. The Ruffins have potential causes of action for breach of express and implied warranties. See 13 Pa. Cons. Stat. Ann. §§ 2314(b)(3), 2315. There are questions of material fact whether these fluid leaks were present from the date of delivery and whether Cummins received adequate notification and an opportunity to repair the fluid leaks. Summary judgment will be denied on the UCC fluid leak claims.

The Cummins Warranty did not expressly warrant the gas mileage of the Bounder. See Cummins Warranty. There is no evidence Cummins gave assurances regarding fuel economy that would have created any implied warranties. The court will grant summary judgment in favor of Cummins on the Ruffins' UCC gas mileage claim.

**D. Oshkosh**

The court cannot determine which warranty period applied to the alleged defects in the Oshkosh chassis system. Depending on the limitation period, the Ruffins may be able to prove that they gave timely notice to Oshkosh concerning Oshkosh's alleged breach of express and implied warranties, see 13 Pa. Cons. Stat. Ann. §§ 2314(b)(3), 2315, 2607(c)(1), and

offered reasonable opportunities for Oshkosh to repair the defects. Questions of material fact remain, so summary judgment cannot be granted.

#### **IV. Pennsylvania Unfair Trade Practices and Consumer Protection Law**

The UTPCPL makes it unlawful to engage in “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce.” Pa. Stat. Ann. tit. 73, § 201-3. The statute defines “unfair methods of competition” and “unfair or deceptive acts or practices” to include: “(xiv) Failing to comply with the terms of any written guarantee or warranty given to the buyer at, prior to or after a contract for the purchase of goods or services is made; ... (xvi) Making repairs, improvements or replacements on tangible, real or personal property, of a nature or quality inferior to or below the standard of that agreed to in writing; ... (xxi) Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding.” Pa. Stat. Ann. tit. 73, § 201-2. Treble damages may be awarded to individuals purchasing goods “primarily for personal, family or household purposes” and suffering economic harm due to violations of the UTPCPL. Pa. Stat. Ann. tit. 73, § 201-9.2(a).

##### **A. Fleetwood**

The Ruffins argue Fleetwood’s designation of its warranty

as "full" caused "confusion" in violation of the UTPCPL, because they thought it meant every component in the Bounder was warranted by Fleetwood. Fleetwood had to designate its warranty as "full" or "limited" under the Act. See 15 U.S.C. §§ 2303, 2304. A state law cannot make conduct required under a federal statute unlawful. See U.S. Const. art. VI; Escanaba & Lake Michigan Transp. Co. v. City of Chicago, 107 U.S. 678, 683 (1883). The Ruffins have no cause of action under the UTPCPL based on Fleetwood's designation of the warranty as "full."

The Ruffins also base their UTPCPL claim on Fleetwood's alleged failure to comply with the terms of the written warranty and make proper repairs. See Pa. Stat. Ann. tit. 73, § 201-3(xiv), (xvi). As with the UCC claim, the affirmative duties of the Magnuson-Moss Act apply to the claim under the UTPCPL. See 15 U.S.C. § 2304(e). The Ruffins had a duty to notify Fleetwood within the warranty period of any defects or improper repairs. See 15 U.S.C. § 2304(b)(1). The Ruffins can proceed on their UTPCPL claim against Fleetwood based on the same alleged defects and insufficient repairs actionable under their federal statutory claim.<sup>10</sup>

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<sup>10</sup> The alleged defects are: the basement door leak; rear clearance door light; location of the generator oil drain; sewer smell; radio speaker; loose cabinet; sidewall crack; generator problems; fuel door; loose front television; leaking driver's side window; and the leak by the antenna.

**B. Allison**

The Ruffins have presented no evidence of UTPCPL violations by Allison. The only alleged transmission defects involved parts manufactured and supplied under a separate warranty by another component manufacturer. See Smith Detroit Diesel Allison Repair Order; Sierra Detroit Diesel Allison Repair Order; Oshkosh Admissions; Hardy Aff. The Ruffins cannot maintain their action against Allison for violation of the UTPCPL without evidence of its "[u]nfair methods of competition" or "unfair or deceptive acts" as defined by statute. See Pa. Stat. Ann. tit. 73, § 201-2. Summary judgment will be granted in favor of Allison on the UTPCPL claim.

**C. Cummins**

The Ruffins have alleged Cummins breached the terms of its written warranty because their engine leaked fluids and Cummins failed to repair adequately those alleged defects. Both allegations, if true, would violate the UTPCPL. See Pa. Stat. Ann. tit. 73, § 201-2(xiv), (xvi). Summary judgment is not warranted on the Ruffins' UTPCPL fluid leak claims.

The Ruffins raise a claim under the UTPCPL for the Bounder's poor gas mileage. Cummins did not warrant the gas mileage and the court cannot conceive of any claim under the UTPCPL for poor gas mileage. The court will grant summary

judgment in favor of Cummins on the Ruffins' claim based on the Bounder's mileage per gallon of gasoline.

**D. Oshkosh**

The Ruffins' UTPCPL claim against Oshkosh is premised on Oshkosh's failure to comply with the terms of its written warranty and its allegedly shoddy repairs of the Bounder's chassis-related problems. See Pa. Stat. Ann. tit. 73, § 201-2(xiv), (xvi). In their depositions, the Ruffins admitted Oshkosh's repaired the defects, but now Ernestine Ruffin has stated by affidavit that the defects persist. See Ernestine Ruffin's Aff. Questions of material fact remain whether the defects were repaired and whether Oshkosh complied with the terms of its written warranty. The court will not grant summary judgment on the Ruffins' UTPCPL claim against Oshkosh.

**CONCLUSION**

On the Ruffins' Magnuson-Moss Act claims: as to Fleetwood, the court will deny summary judgment on the claims involving the basement door leak, rear clearance door light, location of the generator oil drain, sewer smell, radio speaker, loose cabinet, sidewall crack, generator problems, fuel door, loose front television, leaking driver's side window and the leak by the antenna, and grant summary judgment on the claims arising from all other alleged defects as well as the claim arising from Fleetwood's requirement that the Ruffins

transport the vehicle to an authorized facility for service; as to Allison, the court will grant summary judgment against the Ruffins on all claims; as to Cummins, the court will deny summary judgment on the oil and fluid leak claims and grant summary judgment against the Ruffins on the claim arising from the Bounder's poor gas mileage; and as to Oshkosh, the court will deny summary judgment against the Ruffins.

On the Ruffins' UCC claims: as to Fleetwood, the court will deny the motion for summary judgment; as to Allison, the court will grant summary judgment; as to Cummins, the court will deny summary judgment on the oil and fluid leak claims and grant summary judgment on the claim arising from the Bounder's inadequate gas mileage; and as to Oshkosh, the court will deny summary judgment.

On the Ruffins' UTPCPL claims: as to Fleetwood, the court will deny summary judgment on claims arising from the twelve defects remaining under the Act and grant summary judgment on the claims arising from all other defects as well as Fleetwood's alleged misleading designation of the warranty as "full"; as to Allison, the court will grant summary judgment; as to Cummins, the court will deny summary judgment on the oil and fluid leak claims and grant summary judgment on their claim based on the Bounder's gas mileage; and as to Oshkosh, the court will deny summary judgment.



IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PAUL R. RUFFIN & : CIVIL ACTION  
ERNESTINE RUFFIN :  
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v. :  
 :  
 :  
FLEETWOOD MOTOR HOMES of :  
PENNSYLVANIA, INC., OSHKOSH :  
TRUCK CO., ALLISON TRANSMISSION :  
DIVISION of the GENERAL MOTORS :  
CORP. & CUMMINS ENGINE CO. : NO. 96-4922

ORDER

AND NOW, this 3d day of December, 1997, upon consideration of defendants' motions for summary judgment, plaintiffs' responses thereto, and in accordance with the attached Memorandum, it is hereby **ORDERED** that:

1. On plaintiffs' claims under the Magnuson-Moss Act:

a. As to defendant Fleetwood Motor Homes of Pennsylvania, Inc., defendant's motion for summary judgment is **GRANTED IN PART AND DENIED IN PART**. The motion is **DENIED** as to claims arising from the twelve alleged defects enumerated in the Conclusion of the attached Memorandum; the motion is **GRANTED** as to claims arising from all other alleged defects and from defendant's allegedly misleading designation of its warranty as "full."

b. As to defendant Allison Transmission Division of the General Motors Corp., defendant's motion for summary judgment is **GRANTED**.

c. As to defendant Cummins Engine Co., defendant's motion for summary judgment is **GRANTED IN PART AND DENIED IN PART**. The motion is **GRANTED** as to the claim arising from the Bounder's gas mileage; the motion is **DENIED** as to claims arising from the oil and fluid leaks.

d. As to defendant Oshkosh Truck Co., defendant's motion for summary judgment is **DENIED**.

2. On plaintiffs' claims under the UCC:

a. As to defendant Fleetwood Motor Homes of Pennsylvania, Inc., defendant's motion for summary judgment is

**DENIED.**

b. As to defendant Allison Transmission Division of the General Motors Corp., defendant's motion for summary judgment is **GRANTED**.

c. As to defendant Cummins Engine Co., defendant's motion for summary judgment is **GRANTED IN PART AND DENIED IN PART**. The motion is **GRANTED** as to the claim based on the Bounder's gas mileage; the motion is **DENIED** as to claims based on oil and fluid leaks.

d. As to defendant Oshkosh Truck Co., defendant's motion for summary judgment is **DENIED**.

3. On plaintiffs' claims under the UTPCPL:

a. As to defendant Fleetwood Motor Homes of Pennsylvania, Inc., defendant's motion for summary judgment is **GRANTED IN PART AND DENIED IN PART**. The motion is **DENIED** as to claims arising from the twelve alleged defects enumerated in the Conclusion of the attached Memorandum; the motion is **GRANTED** as to claims arising from all other alleged defects and from defendant's allegedly misleading designation of its warranty as "full."

b. As to defendant Allison Transmission Division of the General Motors Corp., defendant's motion for summary judgment is **GRANTED**.

c. As to defendant Cummins Engine Co., defendant's motion for summary judgment is **GRANTED IN PART AND DENIED IN PART**. The motion is **GRANTED** as to the Ruffins' claim based on the Bounder's gas mileage; the motion is **DENIED** as to claims based on oil and fluid leaks.

d. As to defendant Oshkosh Truck Co., defendant's motion for summary judgment is **DENIED**.

4. The Clerk of Court is directed to amend the caption of this case to delete Allison Transmission Division of General Motors Corp. as a defendant.

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Norma L. Shapiro, J.