

# HOW TO AVOID FOUR COMMON LEMON LAW RIP-OFFS



## Consumer Awareness Guide

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## **HOW TO AVOID FOUR COMMON LEMON LAW RIP-OFFS**

### **How to Avoid Lemon Law Rip-Off No. 1: NEVER sign your rights away in exchange for a minimal compensation offer from a car, motorcycle, boat, or RV company.**

We've had consumers come to us with egregious vehicle problems and repair histories, but we can't help them. Why? **Because they signed away all of their Lemon Law and breach of warranty rights**, usually for a lot less than what they're legally entitled to. A common tactic of car, motorcycle, boat, or RV manufacturers is to offer consumers who call to complain about excessive vehicle problems minimal compensation like a warranty extension or reimbursement for one or two months of payments. The problem is that this compensation comes with a huge catch. Often times to receive this compensation a consumer must sign a "release" of claims for the entire vehicle repair history as well as a release of all future claims. Most consumers do not understand the rights they are giving up, including the right to pursue a Lemon Law or a breach of warranty action in the future if they keep having vehicle problems. Under the law, people are generally deemed to have agreed to what they sign, even if they don't understand all of the terms. Over the years we've seen several unfortunate consumers sign their rights away like this when they could have been entitled to a Lemon Law Refund, a New Car, or thousands of dollars more in Cash Compensation than what they received. Don't let this happen to you! If a car, motorcycle, boat, or RV company offers to provide you reimbursement for monthly payments or a warranty extension NEVER EVER agree to sign any document to receive this compensation without having a Lemon Law attorney review the document for you first.

### **How to Avoid Lemon Law Rip-Off No. 2: When picking up your vehicle after a warranty repair is completed, NEVER leave a repair shop or authorized repairing dealership without being given repair records showing everything that was done to it and listing all of your defect complaints.**

A common tactic by repairing dealerships when a vehicle has numerous and/or untimely warranty repairs is not to give consumers all repair records for every repair attempt showing everything that was complained of and repaired. Dealerships do this because they know the number one most important type of evidence for Lemon Law and breach of warranty claims is their repair records. According to the Ninth Circuit Court of Appeals (which covers Arizona) the repair records containing warranty repair information are a legal admission of repairs to a warrantable defect that triggers Lemon Law and breach of warranty protection. Although the Lemon Law and breach of warranty laws generally apply to vehicle manufacturers, not selling or repairing

dealerships, the dealerships have a business relationship with manufacturers and they often try and shield their business partners from potential Lemon Law or breach of warranty claims. If you don't protect yourself by demanding and keeping track of all your repair records, when you request them later, sometimes records conveniently disappear from the dealership's files or new records are drafted that do not list all of the repair issues and/or blame you for the repair issues. That greatly complicates Lemon Law or breach of warranty claims and makes it much more difficult to prove them when it turns into a he said/she said situation. The frame of mind to have is that **if you don't have it in writing it didn't happen** because anyone can obviously say anything after the fact. **So NEVER EVER let a dealership get away with not giving you a repair order showing exactly *what issues you complained of and what repairs were done* when you pick up your vehicle.** When you are given the repair order be sure to review it for accuracy regarding the repair issues described and the time your vehicle was in the repair shop. If there are inaccuracies then request that the dealership fix them right then and there. It is much easier to get a record corrected in the moment rather than at some point in the future. If you encounter this situation, live by the adage that you catch more flies with honey than you do with vinegar—be polite and non-confrontational, but assertive in your request that the full repair records be provided and that they are accurate.

**How to Avoid Lemon Law Rip-Off No. 3: NEVER sign an out of court Lemon Law representation agreement that charges you for attorneys' fees, has ways you can be charged for attorneys' fees out of pocket, or allows the attorney to be paid more than you out of a cash compensation settlement.**

The State Lemon Law entitles consumers to recover attorneys' fees from car and motorcycle companies for Lemon Law cases. The federal Lemon Law also gives consumers the right to recover attorneys' fees from any company that warrants a consumer product. The vast majority of legitimate Lemon Law and breach of warranty cases settle out of court without any lawsuit if you have a reputable Lemon Law attorney. For that reason, do not ever sign an out of court representation agreement that obligates you to pay attorneys' fees out of your pocket. The attorney should be able to recover attorneys' fees as part of any overall Lemon Law settlement, but many attorneys still find ways to charge their clients out of pocket anyway. Some common ways attorneys have an unfair attorney's fee arrangement include:

- ✓ If there was a settlement where the car, motorcycle, boat, or RV company refused to pay all the attorneys' fees, some attorneys require you to pay the remaining balance out of pocket if the fee cannot be covered out of the overall settlement;

- ✓ If there was a smaller cash compensation settlement where there was not enough money to cover the attorneys' fee, some attorneys actually end up getting paid more than you even though you are the one who is suffering with a Lemon vehicle.



**The only limited exception where you could reasonably be charged for attorneys' fees out of pocket is if there is a lawsuit filed.** Unlike out of court, where the process takes roughly the same amount of time and work for each case, it is not possible to know exactly how long a lawsuit will take or how much work will be involved once a lawsuit is filed. It can take much more time and work to resolve a court case

than an out of court case, which requires that both the client and the attorney share the financial burden and risk of litigating. So unless your case is one of just a small percentage of Lemon Law or breach of warranty claims that require a lawsuit, you should **NEVER** agree to pay attorneys' fees out of pocket for representation in an *out of court* Lemon Law or breach of warranty claim.

**How to Avoid Lemon Law Rip-Off No. 4: Do not try to resolve a Lemon Law claim through the Car Companies' BBB Auto Line or NCDS arbitration process.**

If you contact the car company with your defective car issues or search online, you may be directed to BBB Auto Line Arbitration or NCDS arbitration to resolve your Lemon Law or breach of warranty matter. You might mistakenly think that if you go through these arbitration processes you will be treated fairly. Unfortunately, that is rarely the case. The BBB Auto Line decides to award a repurchase or replacement at arbitration a mere 22.8% of the time and repair 12% of the time, but repairs are meaningless because they are already required under warranty. These numbers were posted on the 2009 BBB Auto Line Statistics section of the Autoline website, but were taken down when we used the statistics against a car company that was trying (unsuccessfully) to argue to a judge that the consumer should have to use the Auto Line prior to bringing a court claim in one of our court cases where we defeated the argument. Consumers who go through the Autoline or NCDS arbitration and lose **might mistakenly believe that they don't have a valid Lemon Law or breach of warranty case when *even though they DO have a valid case.*** Over the years we have had numerous cases where a consumer lost at the Auto Line or NCDS arbitration, refused to accept that unfair result, and hired us to get them a

fair result. In *almost all* of those cases we were able to get those consumers a Refund, New Car, or Cash Compensation. **If they just accepted the arbitration result, they would have received NOTHING, despite having a VALID Lemon Law or breach of warranty case.**

Additionally, the Auto Line arbitration program was found non-compliant in the Federal District Court for all of Arizona for (among other things) not providing all of the available legal recovery/compensation options to consumers. *See Muller v. Winnebago Indus.*, 318 F. Supp. 2d 844 (D. Ariz. 2004). To this day, neither the Auto Line nor the NCDS arbitration processes offer Cash Compensation to consumers so they are still non-compliant, which means **you are not required to go through arbitration prior to pursuing a Lemon Law or breach of warranty claim** as stated in the *Muller* case. For the vast majority of consumers, the Auto Line and NCDS are just unnecessary unfair procedural hurdles that cause delay and could affect applicable statutes of limitations (time limits for bringing a claim). These processes also increase the time you must keep your defective vehicle and force you to continue to make payments while delaying resolution.

Finally, and most importantly, **both the Auto Line and NCDS programs are paid for by car companies**—who do you think that favors, you the consumer or the car company? Arbitrators try their best, but studies show that decision makers are heavily influenced by who pays them. It is basic human nature. People don't want to bite the hand that feeds them. **Would you ever want to be in a court case where *the judge was paid for by the other side*?** We're not saying that the arbitration process is rigged, but you don't have to experience that situation, and hiring an attorney to protect your rights is a much smarter move than attempting to go it alone in an unfair process.

**To receive more information or have your case reviewed by one of our attorneys for FREE, give us a call today!**



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