

07-1263-CD  
M. Pfingstler vs Daimlerchrysler al

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

**MARGARET PFINGSTLER,**

CIVIL DIVISION

**Plaintiff,**

**vs.**

NO.: *07-1263-cd*

**DAIMLERCHRYSLER MOTOR  
COMPANY, LLC,**

**Defendant.**

**COMPLAINT IN CIVIL ACTION**

Filed on behalf of Plaintiff:  
Margaret Pfingstler

COUNSEL OF RECORD FOR THIS PARTY:

Craig Thor Kimmel, Esquire  
Identification No. 57100

Robert A. Rapkin, Esquire  
Identification No. 61628

**KIMMEL & SILVERMAN, P.C.**

30 E. Butler Pike  
Ambler, PA 19002  
(215) 540-8888

**WRIT WAIVED**

**FILED** Atty pd.  
*M/3:27/07 85.00*  
AUG 06 2007  
*jm* No CC  
William A. Shaw  
Prothonotary/Clerk of Courts

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION**

**MARGARET PFINGSTLER,**

**Plaintiff,**

**vs.**

**No.:**

**DAIMLERCHRYSLER MOTOR  
COMPANY, LLC,**

**Defendant.**

**NOTICE TO DEFEND**

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in the following pages, you must take action within TWENTY (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

**YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.**

Court Administrator  
Clearfield County Courthouse  
Clearfield, PA 16830  
(814) 765-2641, ext. 51

Lawyer Referral Service:  
Pennsylvania Lawyer Referral Service  
(800) 692-7375

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION**

**MARGARET PFINGSTLER,**

**Plaintiff,**

**vs.**

**No.:**

**DAIMLERCHRYSLER MOTOR  
COMPANY, LLC,**

**Defendant.**

**COMPLAINT**

1. Plaintiff, Margaret Pfingstler, is an adult individual citizen and legal resident of the Commonwealth of Pennsylvania, 504 Bush Court, Du Bois, PA 15801.

2. Defendant, DaimlerChrysler Motor Company, LLC, is a corporation qualified to do and regularly conduct business in the Commonwealth of Pennsylvania, with its address and principal place of business located at 12000 Chrysler Drive, Highland Park, Michigan 48288-1919, and can be served at c/o CT Corporation, 1515 Market Street, Suite 1210, Philadelphia, PA 19103.

**BACKGROUND**

3. On or about November 28, 2006, Plaintiff purchased a new 2007 Jeep Wrangler, manufactured and warranted by Defendant, bearing the Vehicle Identification Number 1J4GA59187L104744.

4. The vehicle was purchased in the Commonwealth of Pennsylvania and is registered in the Commonwealth of Pennsylvania.

5. The contract price of the vehicle, including registration charges, document fees, sales tax, finance and bank charges, but excluding other collateral charges not specified, yet defined by the Lemon Law, totaled more than \$29,000.00.

6. In consideration for the purchase of said vehicle, Defendant issued to Plaintiff several warranties, guarantees, affirmations or undertakings with respect to the material or workmanship of the vehicle and/or remedial action in the event the vehicle fails to meet the promised specifications.

7. The above-referenced warranties, guarantees, affirmations or undertakings are/were part of the basis of the bargain between Defendant and Plaintiff.

8. The parties' bargain includes an express 3-year / 36,000 mile warranty, as well as other guarantees, affirmations and undertakings as stated in Defendant's warranty materials and owner's manual.

9. However, as a result of the ineffective repair attempts made by Defendant through its authorized dealer(s), the vehicle is rendered substantially impaired, unable to be utilized for its intended purposes, and is worthless to Plaintiff.

10. During the first 12 months and/or 12,000 miles, Plaintiff complained on at least three (3) occasions about defects and or non-conformities to the following vehicle components: abnormal, defective, and dangerous loss of power, electrical system, electronic braking system, water leak, and steering. True and correct copies of the repair invoices are not in Plaintiff possession, however they can be obtained from Defendant's authorized dealership.

**COUNT I**  
**PENNSYLVANIA AUTOMOBILE LEMON LAW**

11. Plaintiff hereby incorporates all facts and allegations set forth in this Complaint by reference as if fully set forth at length herein.

12. Plaintiff is a "Purchaser" as defined by 73 P.S. §1952.

13. Defendant is a "Manufacturer" as defined by 73 P.S. §1952.

14. Classic Dodge, Clearfield is and/or was at the time of sale a Motor Vehicle Dealer in the business of buying, selling, and/or exchanging vehicles as defined by 73 P.S. §1952.

15. On or about November 28, 2006, Plaintiff took possession of the above mentioned vehicle and experienced nonconformities as defined by 73 P.S. §1951 et seq., which substantially impair the use, value and/or safety of the vehicle.

16. The nonconformities described violate the express written warranties issued to Plaintiff by Defendant.

17. Section 1955 of the Pennsylvania Automobile Lemon Law provides:

If a manufacturer fails to repair or correct a nonconformity after a reasonable number of attempts, the manufacturer shall, at the option of the purchaser, replace the motor vehicle... or accept return of the vehicle from the purchaser, and refund to the purchaser the full purchase price, including all collateral charges, less a reasonable allowance for the purchasers use of the vehicle, not exceeding \$.10 per mile driven or 10% of the purchase price of the vehicle, whichever is less.

18. Section 1956 of the Pennsylvania Automobile Lemon Law provides a presumption of a reasonable number of repair attempts if:

(1) The same nonconformity has been subject to repair three times by the manufacturer, its agents or authorized dealers and the nonconformity still exists; or

(2) The vehicle is out-of-service by reason of any nonconformity for a cumulative total of thirty or more calendar days.

19. Plaintiff has satisfied the above definition as the vehicle has been subject to repair more than three (3) times for the same nonconformity, and the nonconformity remained uncorrected.

20. In addition, the above vehicle has or will be out-of-service by reason of the nonconformities complained of for a cumulative total of thirty (30) or more calendar days.

21. Plaintiff has delivered the nonconforming vehicle to an authorized service and repair facility of the Defendant on numerous occasions as outlined below.

22. After a reasonable number of attempts, Defendant was unable to repair the nonconformities.

23. Plaintiff avers the vehicle has been subject to additional repair attempts for defects and conditions for which Defendant's warranty dealer did not provide or maintain itemized statements as required by 73 P.S. § 1957.

24. Plaintiff avers that such itemized statements, which were not provided as required by 73 P.S. § 1957 also include technicians' notes of diagnostic procedures and repairs, and Defendant's Technical Service Bulletins relating to this vehicle.

25. Plaintiff avers the vehicle has been subject to additional repair attempts for defects and conditions for which Defendant's warranty dealer did not provide the notification required by 73 P.S. § 1957.

26. Plaintiff has and will continue to suffer damages due to Defendant's failure to comply with the provisions of 73 P.S. §§ 1954 (repair obligations), 1955 (manufacturer's duty for refund or replacement), and 1957 (itemized statements required).

27. Pursuant to 73 P.S. § 1958, Plaintiff seeks relief for losses due to the vehicle's nonconformities, including the award of reasonable attorneys' fees and all court costs.

**WHEREFORE**, Plaintiff respectfully demands judgment against Defendant in an amount equal to the price of the subject vehicle, plus all collateral charges, attorneys' fees, and court costs.

**COUNT II**  
**MAGNUSON-MOSS (FTC) WARRANTY IMPROVEMENT ACT**

28. Plaintiff may or may have resorted to Defendant's informal dispute settlement procedure, to the extent said procedure complies with 16 CFR 703.

29. Plaintiff avers that the Federal Trade Commission (FTC) has determined that no automobile manufacturer complies with 16 CFR 703. See, Fed. Reg. 15636, Vol. 62, No. 63 (Apr. 2, 1997).

30. Plaintiff hereby incorporates all facts and allegations set forth in this Complaint by reference as if fully set forth at length herein.

31. Plaintiff is a "Consumer" as defined by 15 U.S.C. §2301(3).

32. Defendant is a "supplier", "warrantor", and a "service contractor" as defined by 15 U.S.C. § 2301 (4),(5) and (8).

33. The subject vehicle is a "consumer product" as defined by 15 U.S.C. § 2301(1).

34. By the terms of its written warranties, affirmations, promises, or service contracts, Defendant agreed to perform effective repairs at no charge for parts and/or labor.

35. The Magnuson-Moss Warranty Improvement Act requires Defendant to be bound by all warranties implied by state law. Said warranties are imposed on all transactions in the state in which the vehicle was delivered.

36. Defendant has made attempts on several occasions to comply with the terms of its express warranties; however, such repair attempts have been ineffective.

37. The Magnuson-Moss Warranty Improvement Act, 15 U.S.C. §2310(d)(2) provides:

If a consumer finally prevails on an action brought under paragraph (1) of this subsection, he may be allowed by the court to recover as part of the judgment a sum equal to the amount of aggregate amount of costs and expenses (including attorney fees based upon actual time expended), determined by the court to have been reasonably incurred by the Plaintiff for, or in connection with the commencement and prosecution of such action, unless the court, in its discretion shall determine that such an award of attorney's fees would be inappropriate.

38. Plaintiff has afforded Defendant a reasonable number of opportunities to conform the vehicle to the aforementioned express warranties, implied warranties and contracts.

39. As a direct and proximate result of Defendant's failure to comply with the express written warranties, Plaintiff has suffered damages and, in accordance with 15 U.S.C. §2310(d)(1), Plaintiff is entitled to bring suit for such damages and other legal and equitable relief.

40. Defendant's failure is a breach of Defendant's contractual and statutory obligations constituting a violation of the Magnuson-Moss Warranty Improvement Act, including but not limited to: breach of express warranties; breach of implied warranty of merchantability; breach of implied warranty of fitness for a particular purpose; breach of contract; and constitutes an Unfair Trade Practice.

41. Plaintiff avers that Defendant's warranty was not provided to Plaintiff until after the vehicle was delivered, making any and all limitations, disclaimers and/or alternative dispute provisions ineffective for a failure of consideration.

42. Plaintiff avers Defendant's Dispute Resolution Program was not in compliance with 16 CFR 703 for the model year of the subject vehicle.

43. Plaintiff avers that Defendant's warranty did not require Plaintiff to first resort to a Dispute Resolution Program before filing suit.

44. Plaintiff avers that upon successfully prevailing upon the Magnuson-Moss claim herein, all attorney fees are recoverable and are demanded against Defendant.

WHEREFORE, Plaintiff respectfully demands judgment against Defendant in an amount equal to the price of the subject vehicle, plus all collateral charges, incidental and consequential damages, reasonable attorneys' fees, and all court costs.

**COUNT III**  
**PENNSYLVANIA UNFAIR TRADE**  
**PRACTICES AND CONSUMER PROTECTION LAW**

45. Plaintiff hereby incorporates all facts and allegations set forth in this Complaint by reference as if fully set forth at length herein.

46. Plaintiff is a "Person" as defined by 73 P.S. §201-2(2).

47. Defendant is a "Person" as defined by 73 P.S. §201-2(2).

48. Section 201-9.2(a) of the Act authorizes a private cause of action for any person "who purchases or leases goods or services primarily for personal, family or household purposes."

49. Section 1961 of the Pennsylvania Automobile Lemon Law, provides that a violation of its provisions shall automatically constitute a violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Act, 73 P.S. 201-1 et seq.

50. In addition, the Pennsylvania Unfair Trade Practices and Consumer Protection Act, 73 P.S. §201-2(4), defines "unfair or deceptive acts or practices" to include the following conduct:

- (vii). Representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if they are of another;
- (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;
- (xv). Knowingly misrepresenting that services, replacements or repairs are needed if they are not needed;
- (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;
- (xvii). Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding.

51. Plaintiff avers Defendant has violated these, as well as other provisions, of 73 P.S. §201-2 et seq.

52. Section 201-3.1 of the Act provides that the Automotive Industry Trade Practice rules and regulations adopted by the Attorney General for the enforcement of this Act shall constitute additional violations of the Act.

53. Defendant's conduct surrounding the sale and servicing of the subject vehicle falls within the aforementioned definitions of "unfair or deceptive acts or practices."

54. The Act also authorizes the Court, in its discretion, to award up to three (3) times the actual damages sustained for violations.

**WHEREFORE**, Plaintiff respectfully demands judgment against Defendant in an amount not in excess of Twenty Five Thousand Dollars (\$25,000), together with all collateral charges, attorneys' fees, all court costs and treble damages.

KIMMEL & SILVERMAN, P.C.

By:

  
Craig Thor Kimmel, Esquire  
Robert A. Rapkin, Esquire

Attorney for Plaintiff  
30 E. Butler Pike  
Ambler, PA 19002

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA**

MARGARET PFINGSTLER

## CIVIL DIVISION

Plaintiff,

vs.

NO.: 07-1263-CD

## DAIMLERCHRYSLER MOTOR COMPANY

Defendant.

**AFFIDAVIT OF SERVICE**

I, Lori Lee Harrison, an employee of Kimmel & Silverman, P.C., and a competent adult, being duly sworn according to law, depose and say that at 9:00 A.M., on 8/10/07, I personally handed to NANCY ARMSTRONG, on behalf of DaimlerChrysler Motor Company, LLC, c/o CT Corporation, 1515 Market Street, Suite 1210, Philadelphia, PA 19103.

\_\_\_\_\_ Adult family member with whom said Defendant(s) reside(s). Relationship is \_\_\_\_\_.

\_\_\_\_\_ Adult in charge of Defendant's residence who refused to give name or relationship.

\_\_\_\_ Manager/Clerk of place of lodging in which  
Defendant(s) reside(s).

X Agent or person in charge of Defendant's office  
or usual place of business.

\_\_\_\_ and officer of  
said Defendant's company.

Other \_\_\_\_\_.

a true and correct copy of complaint issued in the above-captioned matter.

(Signature of Server)

Sworn to and subscribed  
before me this 20th day  
of August 2007

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NOTARY PUBLIC

**THE ROSE LAW FIRM, PLLC**

By: Keith B. Rose, Esquire

Identification No.: 202676

501 New Karner Road  
Albany, New York 12205  
(518) 869-9200

Attorney for Defendant:  
Chrysler Motors LLC (formerly known as  
DaimlerChrysler Motors Company LLC)

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MARGARET PFINGSTLER : COURT OF COMMON PLEAS  
CLEARFIELD COUNTY

:  
vs.

:  
:

DAIMLERCHRYSLER MOTOR : NO.: 07-1263-CD  
COMPANY, LLC

:

**ENTRY OF APPEARANCE**

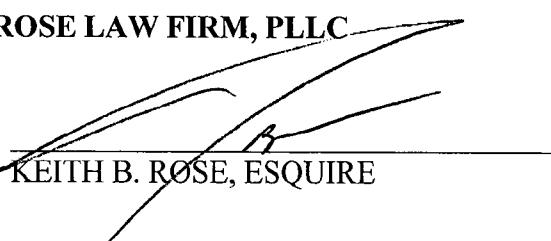
TO THE PROTHONOTARY:

Kindly enter my appearance on behalf of the Defendant Chrysler Motors LLC (formerly known as DaimlerChrysler Motors Company LLC) s/h/a DaimlerChrysler Motor Company, LLC, in connection with the above-captioned matter.

Respectfully submitted,

**THE ROSE LAW FIRM, PLLC**

By:

  
KEITH B. ROSE, ESQUIRE

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FILED  
MAY 11 2008  
MAY 29 2008  
NOCC  
62  
*(initials)*

William A. Shaw  
Prothonotary/Clerk of Courts

TO PLAINTIFF:  
YOU ARE HEREBY NOTIFIED TO  
PLEAD TO THE ENCLOSED  
NEW MATTER WITHIN (20) DAYS  
FROM THE SERVICE HEREOF OR A  
DEFAULT JUDGMENT MAY BE ENTERED  
AGAINST YOU.

*[Signature]*  
Attorney for Defendant Chrysler Motors LLC (formerly  
known as DaimlerChrysler Motors Company LLC)

**THE ROSE LAW FIRM, PLLC**

By: Keith B. Rose, Esquire  
Identification No.: 202676  
501 New Karner Road  
Albany, New York 12205  
(518) 869-9200

Attorney for Defendant:  
Chrysler Motors LLC (formerly known as  
DaimlerChrysler Motors Company LLC)

---

MARGARET PFINGSTLER : COURT OF COMMON PLEAS  
CLEARFIELD COUNTY

:  
vs.  
:

DAIMLERCHRYSLER MOTOR : NO.: 07-1263-CD  
COMPANY, LLC

:

**DEFENDANT CHRYSLER MOTORS LLC  
(FORMERLY KNOWN AS DAIMLERCHRYSLER MOTORS COMPANY LLC)  
S/H/A DAIMLERCHRYSLER MOTOR COMPANY, LLC  
ANSWER WITH NEW MATTER TO PLAINTIFF'S COMPLAINT**

Defendant Chrysler Motors LLC (formerly known as DaimlerChrysler Motors Company LLC) s/h/a DaimlerChrysler Motor Company, LLC, by and through its attorneys, The Rose Law Firm, PLLC, hereby answers Plaintiff's Complaint and asserts new matter defenses as follows:

1. Denied. After reasonable investigation, Answering Defendant is without information or knowledge sufficient to form a belief as to the truth of this averment and the same therefore, is denied.

**FILED** *7-11-3641 CC*  
*MAY 29 2008*

William A. Shaw  
Prothonotary/Clerk of Courts

2. Admitted in part; denied in part. Chrysler Motors LLC is a limited liability company authorized to transact business in the Commonwealth of Pennsylvania with a principle place of business in Michigan. In addition, it can be served process in care of CT Corporation. The remaining averments are denied.

**WHEREFORE**, Defendant Chrysler Motors LLC, respectfully demands judgment in its favor and against Plaintiff, together with costs.

**BACKGROUND**

3. Admitted in part; denied in part. It is admitted that Chrysler Motors LLC is the warrantor of a vehicle commonly known as the 2007 Jeep Wrangler. After reasonable investigation, Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining averments and the same therefore, are denied.

4. Denied. After reasonable investigation, Answering Defendant is without information or knowledge sufficient to form a belief as to the truth of this averment and the same therefore, is denied.

5. Denied. After reasonable investigation, Answering Defendant is without information or knowledge sufficient to form a belief as to the truth of this averment and the same therefore, is denied.

6. Denied. Because Plaintiff has failed to define the specifics of the alleged warranties, guarantees, affirmations or undertakings, after reasonable investigation, Answering Defendant is without information or knowledge sufficient to form a belief as to the truth of this averment and the same therefore, is denied.

7. Denied. Because Plaintiff has failed to define the specifics of the alleged warranties, guarantees, affirmations or undertakings, after reasonable investigation, Answering Defendant is without information or knowledge sufficient to form a belief as to the truth of this averment and the same therefore, is denied.

8. Denied. It is denied that Answering Defendant entered into a contract or "bargain" with Plaintiff. On the contrary, no contract was negotiated or completed between the parties. Inasmuch as Plaintiff fails to define the specifics of the alleged guarantees, affirmations and undertakings, after reasonable investigation, Answering Defendant is without information or knowledge sufficient to form a belief as to the truth of this averment and the same therefore, is denied.

9. Denied. It is denied that the vehicle experienced nonconformities or conditions that were not corrected within the terms of the express written limited warranties issued by Chrysler Motors LLC. It is denied repair attempts were ineffective. It is further denied that the subject vehicle is rendered substantially impaired, unable to be utilized for its intended purposes, and worthless to Plaintiff.

10. Denied. The Answering Defendant is without information or knowledge sufficient to form a belief as to the truth of this averment and the same therefore, is denied.

**WHEREFORE**, Defendant Chrysler Motors LLC, respectfully demands judgment in its favor and against Plaintiff, together with costs.

#### **COUNT I**

#### **PENNSYLVANIA AUTOMOBILE LEMON LAW**

11. Defendant, Chrysler Motors LLC hereby incorporates its previous answers to Plaintiff's Complaint as though the same was set forth herein at length.

12. Denied. The averments contained in this paragraph constitute conclusions of law to which no response is required.

13. Denied. The averments contained in this paragraph constitute conclusions of law to which no response is required.

14. Denied. The averments contained in this paragraph constitute conclusions of law to which no response is required.

15. Denied. The averments contained in this paragraph constitute conclusions of law to which no response is required.

16. Denied. The averments contained in this paragraph constitute conclusions of law to which no response is required.

17. Denied. The averments contained in this paragraph constitute conclusions of law to which no response is required.

18. Denied. The averments contained in this paragraph constitute conclusions of law to which no response is required.

19. Denied. The averments contained in this paragraph constitute conclusions of law to which no response is required.

20. Denied. After reasonable investigation, Answering Defendant is without information or knowledge sufficient to form a belief as to the truth of the remaining averments and the same therefore, are denied.

21. Denied. After reasonable investigation, Answering Defendant is without information or knowledge sufficient to form a belief as to the truth of the remaining averments and the same therefore, are denied.

22. Denied. The averments contained in this paragraph constitute conclusions of law to which no response is required.

23. Denied. The averments contained in this paragraph constitute conclusions of law to which no response is required.

24. Denied. The averments contained in this paragraph constitute conclusions of law to which no response is required.

25. Denied. The averments contained in this paragraph constitute conclusions of law to which no response is required.

26. Denied. The averments contained in this paragraph constitute conclusions of law to which no response is required.

27. Denied. The averments contained in this paragraph constitute conclusions of law to which no response is required.

**WHEREFORE**, Defendant Chrysler Motors LLC, respectfully demands judgment in its favor and against Plaintiff, together with costs.

## **COUNT II**

### **MAGNUSON-MOSS (FTC) WARRANTY IMPROVEMENT ACT**

28. Denied. The averments contained in this paragraph constitute conclusions of law to which no response is required.

29. Denied. The averments contained in this paragraph constitute conclusions of law to which no response is required.

30. Defendant, Chrysler Motors LLC, hereby incorporates its previous answers to Plaintiff's Complaint as though the same were set forth herein at length.

31. Denied. The averments contained in this paragraph constitute conclusions of law to which no response is required.

32. Denied. The averments contained in this paragraph constitute conclusions of law to which no response is required.

33. Denied. The averments contained in this paragraph constitute conclusions of law to which no response is required.

34. Denied. The averments contained in this paragraph constitute conclusions of law to which no response is required.

35. Denied. The averments contained in this paragraph constitute conclusions of law to which no response is required.

36. Denied. It is denied that Answering Defendant's independently owned and operated authorized dealerships have performed ineffective repairs. It is further denied that Answering Defendant has breached any warranty or is otherwise liable to Plaintiff as a result of any action or inaction on the part of Answering Defendant.

37. Denied. The averments contained in this paragraph constitute conclusions of law to which no response is required.

38. Denied. The averments contained in this paragraph constitute conclusions of law to which no response is required.

39. Denied. The averments contained in this paragraph constitute conclusions of law to which no response is required.

40. Denied. The averments contained in this paragraph constitute conclusions of law to which no response is required.

41. Denied. The averments contained in this paragraph constitute conclusions of law to which no response is required.

42. Denied. The averments contained in this paragraph constitute conclusions of law to which no response is required.

43. Denied. The averments contained in this paragraph constitute conclusions of law to which no response is required.

44. Denied. The averments contained in this paragraph constitute conclusions of law to which no response is required.

**WHEREFORE**, Defendant Chrysler Motors LLC, respectfully demands judgment in its favor and against Plaintiff, together with costs.

### **COUNT III**

#### **PENNSYLVANIA UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION LAW**

45. Defendant, Chrysler Motors LLC, hereby incorporates its previous answers to Plaintiff's Complaint as though the same were set forth herein at length.

46. Denied. The averments contained in this paragraph constitute conclusions of law to which no response is required.

47. Denied. The averments contained in this paragraph constitute conclusions of law to which no response is required.

48. Denied. The averments contained in this paragraph constitute conclusions of law to which no response is required.

49. Denied. The averments contained in this paragraph constitute conclusions of law to which no response is required.

50. Denied. The averments contained in this paragraph constitute conclusions of law to which no response is required.

51. Denied. The averments contained in this paragraph constitute conclusions of law to which no response is required.

52. Denied. The averments contained in this paragraph constitute conclusions of law to which no response is required.

53. Denied. The averments contained in this paragraph constitute conclusions of law to which no response is required.

54. Denied. The averments contained in this paragraph constitute conclusions of law to which no response is required.

**WHEREFORE**, Defendant Chrysler Motors LLC, respectfully demands judgment in its favor and against Plaintiff, together with costs.

**NEW MATTER**

55. Plaintiff's Complaint fails to state a claim for which relief may be granted against Chrysler Motors LLC.

56. Plaintiff's claims are barred and/or limited by the applicable disclaimers of warranty and limitations of damage provision.

57. Plaintiff's claims are barred and/or limited by her neglect, misuse, abuse, modification, and/or alteration of the vehicle which is the subject of this litigation.

58. Plaintiff's claims are barred and/or limited by her failure to mitigate damages.

59. If Plaintiff sustained any alleged injuries, damages or losses, the injuries, damages or losses were caused by persons and/or entities over whom Answering Defendant has no control and for whom Answering Defendant is not responsible.

60. Plaintiff's alleged claims of nonconformity do not substantially impair the use, value, or safety of the vehicle.

61. Plaintiff's claims are, or may be, barred by the applicable doctrine of laches, estoppels or waiver or by any applicable contracts, releases, and/or agreements.

62. Plaintiff's Complaint fails to state a claim for which any attorney fees may be awarded.

63. Plaintiff's claims may be barred and/or limited by the Lemon Law, Unfair Trade Practices and Consumer Protection Law, Uniform Commercial Code and the Magnuson-Moss Warranty Act.

64. If it is determined that Plaintiff did not obtain or use the vehicle primarily or normally for personal use, family or household purposes, Plaintiff is not entitled to recovery under the Lemon Law, Magnuson-Moss Warranty Act, or the Pennsylvania Unfair Trade Practices Act.

65. Plaintiff's Complaint may be barred by the applicable statute of limitations.

66. Plaintiff may have failed to provide timely and adequate notice of Plaintiff's claims to Chrysler Motors LLC.

67. Plaintiff's damages if any, were caused by the intervening and/or superseding acts and/or omissions of persons and/or entities for whose conduct Chrysler Motors LLC cannot be held liable.

68. The vehicle referred to in Plaintiff's Complaint was fit for its intended uses, did not contain any nonconformities or defects, and complied with all applicable express limited written warranties.

69. Some or all of the damages claimed in Plaintiff's Complaint are not recoverable under applicable law.

70. Plaintiff's claims may be barred and/or limited as a result of her failure to fulfill the conditions precedent of, and/or failure to, comply with the terms and conditions of any express limited warranty under which Plaintiff asserts causes of action.

71. No act, conduct or omission of Chrysler Motors LLC caused any injury/damage or loss to Plaintiff.

72. Plaintiff accepted the vehicle; failed to or improperly revoked her acceptance; and/or improperly revoked her acceptance; and/or improperly rejected or failed to reject the vehicle.

73. Plaintiff may have failed to join an indispensable party to this matter, including but not limited to, the selling and servicing dealership requiring that this matter be dismissed.

74. There is no privity of contract between Plaintiff and Chrysler Motors LLC. Therefore, as a matter of law, Plaintiff's Complaint to the extent it seeks revocation of acceptance fails to state a cause of action.

75. Under the terms of Chrysler Motors LLC's written limited warranty, Chrysler Motors LLC has disclaimed all implied warranties of merchantability and fitness for a specific use or has limited the duration of any implied warranty to the terms of the written limited warranty.

76. Under the terms of Chrysler Motors LLC's written limited warranty, Chrysler Motors LLC's sole obligation to Plaintiff is to pay for repairs and/or the performance of repairs and needed adjustments to correct defects related to factory material and workmanship. Chrysler Motors LLC has paid for or performed all such repairs and needed adjustments and therefore, there has been no breach of the written limited warranty.

77. Under the terms of Chrysler Motors LLC's written limited warranty, the payment for and/or the performance of repairs and needed adjustments to correct defects related to factory material or workmanship is Plaintiff's exclusive remedy.

78. Under the terms of Chrysler Motors LLC's written limited warranty, the payment for and/or the performance of repairs and needed adjustments to correct defects related to factory material or workmanship is Plaintiff's exclusive remedy. Chrysler Motors LLC has paid for and/or performed all repairs and needed adjustments and therefore, there has been no breach of the written limited warranty.

79. Under the terms of Chrysler Motors LLC's written limited warranty, Chrysler Motors LLC is not liable for incidental or consequential damages resulting from breach of the written limited warranty.

80. Chrysler Motors LLC has no obligation to modify or alter the vehicle to address a design characteristic of the vehicle which is not to the liking of Plaintiff.

81. Plaintiff failed to inspect the vehicle within a reasonable period of time and therefore, is barred by the doctrine of laches from rescinding the contract or revoking acceptance.

82. Plaintiff has accepted the vehicle and is not entitled to rescission or to revoke acceptance because Plaintiff has performed acts inconsistent with the Answering Defendant's ownership, and exercised dominion and control over the vehicle. Should the court determine that

Plaintiff's alleged revocation was proper, Answering Defendant is entitled to an offset for Plaintiff's use of the vehicle.

83. Plaintiff failed to offer to tender the vehicle to Answering Defendant. Thus, as a matter of law, Plaintiff fails to state a cause of action for rescission, rejection and/or revocation of acceptance.

84. Plaintiff examined the vehicle as fully as Plaintiff desired or refused to examine it. Thus, there is no implied warranty with regard to defects to which an examination ought in the circumstances to have revealed.

85. The vehicle was not non-conforming at the time of purchase. Therefore, Plaintiff fails to state a cause of action for rescission, rejection, breach of implied warranty and/or revocation of acceptance.

86. Plaintiff has failed to mitigate Plaintiff's damages.

87. Upon information and belief, Plaintiff no longer is in possession of the vehicle. Therefore, as a matter of law, Plaintiff fails to state a cause of action for rescission, rejection, revocation of acceptance or pursuant to the Lemon Law.

88. Plaintiff has failed and/or has refused to allow the Answering Defendant a reasonable opportunity to cure the alleged defect or the alleged breach of warranty. Therefore, Plaintiff fails to state a cause of action for revocation of acceptance.

89. Plaintiff failed and/or refused to allow the vehicle's warrantor a reasonable opportunity to repair the vehicle's alleged defects or cure the alleged breach of warranty. Therefore, Plaintiff has failed to satisfy a condition prerequisite to a Magnuson-Moss claim.

90. Any attempted revocation of acceptance of the vehicle which is the subject of this matter was not undertaken prior to a substantial change in condition of the vehicle which was not caused by any alleged defect.

91. Plaintiff has reaccepted the vehicle following the alleged revocation and therefore, is not entitled to the revocation remedy.

92. Plaintiff's second count fails to state a cause of action as a matter of law. It does not allege that Answering Defendant was provided with a reasonable opportunity to cure its alleged breach of warranty, which is a prerequisite to a claim under the Federal Magnuson-Moss Warranty Act.

93. Venue is improper.

**WHEREFORE**, Defendant Chrysler Motors LLC (formerly known as DaimlerChrysler Motors Company LLC) s/h/a DaimlerChrysler Motor Company, LLC, respectfully demands judgment in its favor and against Plaintiff, together with costs.

Respectfully submitted,

**THE ROSE LAW FIRM, PLLC**

By:

  
Keith B. Rose, Esq.

Attorney for Defendant:  
Chrysler Motors LLC (formerly known as  
DaimlerChrysler Motors Company LLC)  
s/h/a DaimlerChrysler Motor Company,  
LLC

Dated: May 27, 2008

**VERIFICATION**

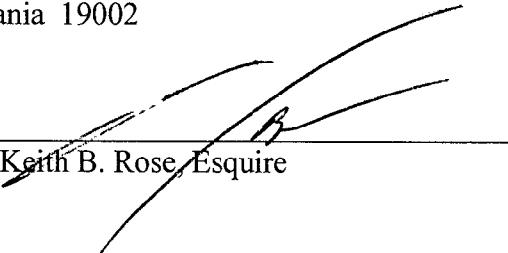
I, Keith B. Rose, Esquire, hereby state that I am the attorney for Defendant Chrysler Motors LLC (formerly known as DaimlerChrysler Motors Company LLC) s/h/a DaimlerChrysler Motor Company, LLC, and I verify that the statements made in the foregoing Answer with New Matter of Defendant Chrysler Motors LLC (formerly known as DaimlerChrysler Motors Company LLC) s/h/a DaimlerChrysler Motor Company, LLC, to Plaintiff's Complaint, are true and correct to the best of my knowledge, information and belief. The undersigned understands that the statements therein are made subject to the penalties of 18 Pa. C. S. §4904, relating to unsworn falsification to authorities.

\_\_\_\_\_  
Keith B. Rose, Esquire

## **CERTIFICATE OF SERVICE**

I, Keith B. Rose, Esquire, do hereby certify that I am the attorney for Defendant Chrysler Motors LLC (formerly known as DaimlerChrysler Motors Company LLC) s/h/a DaimlerChrysler Motor Company, LLC, in the within action; that I am duly authorized to make this certification, and that on this 27<sup>th</sup> day of May, 2008, I did cause a true and correct copy of the Entry of Appearance, Answer and New Matter of Defendant Chrysler Motors LLC (formerly known as DaimlerChrysler Motors Company LLC) s/h/a DaimlerChrysler Motor Company, LLC, to Plaintiff's Complaint, to be forwarded via First Class Mail, to counsel below as follows:

Craig Thor Kimmel, Esq.  
Kimmel & Silverman, P.C.  
30 East Butler Pike  
Ambler, Pennsylvania 19002

  
Keith B. Rose, Esquire

J:\Data\Chrysler PA Lit\matter\17060\Pleadings\Answer.doc

Craig Thor Kimmel, Esquire  
Identification No. 57100  
Robert A. Rapkin, Esquire  
Identification No. 61628  
KIMMEL & SILVERMAN, P.C.  
30 East Butler Pike  
Ambler, PA 19002  
(215) 540-8888

MARGARET PFINGSTLER

v.

CHRYSLER LLC

FILED  
O 1:14 p.m. CK  
JUN 02 2008

William A. Shaw  
Prothonotary/Clerk of Courts

1CC TO  
Amy  
(CK)

ATTORNEYS FOR  
PLAINTIFF

COURT OF COMMON PLEAS  
Clearfield County

NO. 07-1263-CD

PLAINTIFF'S ANSWER TO NEW MATTER OF  
DEFENDANT, CHRYSLER LLC

55. Denied. The allegations of this paragraph constitute a conclusion of fact and/or law to which no responsive pleading is required. However and to the extent there are any allegations contained herein, such allegations are specifically denied and strict proof thereof is demanded at the time of trial.

56. Denied. The allegations of this paragraph constitute a conclusion of fact and/or law to which no responsive pleading is required. However and to the extent there are any allegations contained herein, such allegations are specifically denied and strict proof thereof is demanded at the time of trial.

57. Denied. The allegations of this paragraph constitute a conclusion of fact and/or law to which no responsive pleading is required. However and to the extent there are any allegations contained herein, such allegations are specifically denied and strict proof thereof is demanded at the time of trial.

58. Denied. The allegations of this paragraph constitute a conclusion of fact and/or law to which no responsive pleading is required. However and to the extent there are any

allegations contained herein, such allegations are specifically denied and strict proof thereof is demanded at the time of trial.

59. Denied. The allegations of this paragraph constitute a conclusion of fact and/or law to which no responsive pleading is required. However and to the extent there are any allegations contained herein, such allegations are specifically denied and strict proof thereof is demanded at the time of trial.

60. Denied. The allegations of this paragraph constitute a conclusion of fact and/or law to which no responsive pleading is required. However and to the extent there are any allegations contained herein, such allegations are specifically denied and strict proof thereof is demanded at the time of trial.

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62. Denied. The allegations of this paragraph constitute a conclusion of fact and/or law to which no responsive pleading is required. However and to the extent there are any allegations contained herein, such allegations are specifically denied and strict proof thereof is demanded at the time of trial.

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law to which no responsive pleading is required. However and to the extent there are any allegations contained herein, such allegations are specifically denied and strict proof thereof is demanded at the time of trial.

65. Denied. The allegations of this paragraph constitute a conclusion of fact and/or law to which no responsive pleading is required. However and to the extent there are any allegations contained herein, such allegations are specifically denied and strict proof thereof is demanded at the time of trial.

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76. Denied. The allegations of this paragraph constitute a conclusion of fact and/or law to which no responsive pleading is required. However and to the extent there are any allegations contained herein, such allegations are specifically denied and strict proof thereof is demanded at the time of trial.

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92. Denied. The allegations of this paragraph constitute a conclusion of fact and/or law to which no responsive pleading is required. However and to the extent there are any allegations contained herein, such allegations are specifically denied and strict proof thereof is demanded at the time of trial.

93. Denied. The allegations of this paragraph constitute a conclusion of fact and/or law to which no responsive pleading is required. However and to the extent there are any allegations contained herein, such allegations are specifically denied and strict proof thereof is demanded at the time of trial.

WHEREFORE, Plaintiff respectfully demands judgment against Defendant in an amount equal to the contract price of the subject vehicle, plus all collateral charges and attorney fees.

**KIMMEL & SILVERMAN, P.C.**

By: \_\_\_\_\_

Robert A. Rapkin, Esquire  
Identification No. 61628  
Attorney for Plaintiff  
30 East Butler Pike  
Ambler, Pennsylvania 19002  
(215) 540-8888

## VERIFICATION

Robert A. Rapkin, Esquire, states that he/she is the attorney for the Plaintiff herein; that he/she is acquainted with the facts set forth in the foregoing Answer to New Matter; and that same are true to the best of his/her knowledge, information and belief. This statement is being made subject to the penalties of 18 Pa. C.S. Section 4904 relating to unsworn falsification to authorities.

By:

Robert A. Rapkin, Esquire  
Identification No. 61628  
Attorney for Plaintiff  
30 East Butler Pike  
Ambler, Pennsylvania 19002  
(215) 540-8888

## **CERTIFICATE OF SERVICE**

I, Robert A. Rapkin, Esquire, counsel for Plaintiff, do hereby certify that I served all parties with true and correct copies of the foregoing Answer to New Matter, by placing same in the United States Mail, First Class, Postage Paid addressed as follows:

Keith B. Rose, Esq.  
The Rose Law Firm, PLLC  
501 New Karner Rd.  
Albany, NY 12205

**KIMMEL & SILVERMAN, P.C.**

By:

Robert A. Rapkin, Esquire  
Identification No. 61628  
Attorney for Plaintiff  
30 East Butler Pike  
Ambler, Pennsylvania 19002  
(215) 540-8888

Date: 30th day of May, 2008

**THE ROSE LAW FIRM, PLLC**

By: Keith B. Rose, Esquire

Identification No.: 202676

501 New Karner Road

Albany, New York 12205

(518) 869-9200

Attorney for Defendant:

Chrysler Motors LLC (formerly known as  
DaimlerChrysler Motors Company LLC)

---

MARGARET PFINGSTLER

: COURT OF COMMON PLEAS  
CLEARFIELD COUNTY

:  
vs.

:

DAIMLERCHRYSLER MOTOR  
COMPANY, LLC

: NO.: 07-1263-CD

:

**PRAECIPE FOR WITHDRAWAL OF APPEARANCE**

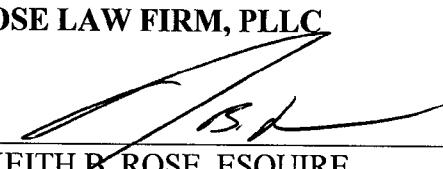
TO THE PROTHONOTARY:

Kindly withdraw my appearance on behalf of the Defendant Chrysler Motors LLC  
(formerly known as DaimlerChrysler Motors Company LLC) s/h/a DaimlerChrysler Motor  
Company, LLC, in the above-captioned matter.

Respectfully submitted,

**THE ROSE LAW FIRM, PLLC**

By:

  
KEITH B. ROSE, ESQUIRE

FILED NOCC  
10/03/08  
AUG 11 2008  
B&W  
William A. Shaw  
Prothonotary/Clerk of Courts

**CERTIFICATE OF SERVICE**

I hereby certify that I have served upon all persons listed below a true and correct copy of  
a **PRAECIPE FOR WITHDRAWAL OF APPEARANCE** in the above-captioned matter by  
United States first-class mail, postage prepaid, this 8<sup>th</sup> day of **AUGUST, 2008**.

Robert A. Rapkin, Esquire  
KIMMEL & SILVERMAN, P.C.  
30 E. Butler Pike  
Ambler, PA 19002

**MARSHALL, DENNEHEY, WARNER  
COLEMAN AND GOGGIN**

BY:

  
Heather M. Smith, Esquire  
Attorney for Defendant

12/667409.v1

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA**

MARGARET PFINGSTLER, ) CIVIL DIVISION  
 )  
 Plaintiff, ) NO. 07-1263-CD  
 )  
 vs. )  
 ) PRAECIPE FOR ENTRY OF  
 DAIMLERCHRYSLER COMPANY LLC, ) APPEARANCE  
 )  
 Defendant. )  
 ) Filed on Behalf of Defendant  
 )  
 )  
 ) Counsel of Record for This Party:  
 )  
 ) HEATHER M. SMITH, ESQUIRE  
 ) PA I.D. #87591  
 )  
 ) Marshall, Dennehey, Warner,  
 ) Coleman & Goggin  
 ) 2900 US Steel Tower  
 ) 600 Grant Street  
 ) Pittsburgh, PA 15219  
 )  
 ) HMSmith@mdwcg.com  
 )  
 )  
 ) 412.803.1140  
 ) 412.803.1188 – fax

**FILED**  
mho:03/01/2008  
AUG 11 2008  
BPA  
William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

MARGARET PFINGSTLER, ) CIVIL DIVISION  
Plaintiff, )  
vs. ) NO. 07-1263-CD  
DAIMLERCHRYSLER COMPANY LLC, )  
Defendant. )

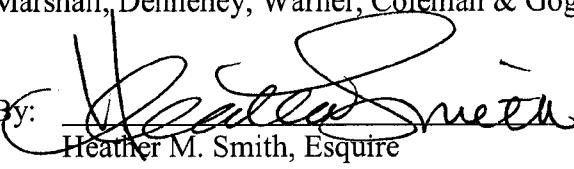
**PRAECIPE FOR ENTRY OF APPEARANCE**

TO: Prothonotary of Clearfield County, Pennsylvania

KINDLY enter the appearance of Marshall, Dennehey, Warner, Coleman & Goggin and Heather M. Smith, Esquire on behalf of Defendant DaimlerChrysler Company LLC, in regards to the above-captioned matter.

Respectfully submitted,

Marshall, Dennehey, Warner, Coleman & Goggin

By: 

Heather M. Smith, Esquire

Attorney for Defendant

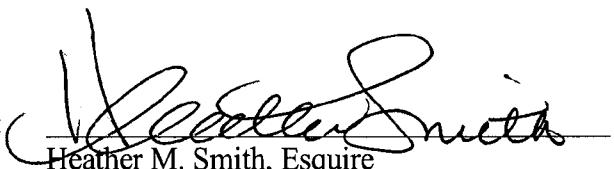
**CERTIFICATE OF SERVICE**

I hereby certify that I have served upon all persons listed below a true and correct copy of the **PRAECIPE FOR ENTRY OF APPEARANCE** in the above-captioned matter by United States first-class mail, postage prepaid, this 8<sup>th</sup> day of **AUGUST, 2008**.

Robert A. Rapkin, Esquire  
KIMMEL & SILVERMAN, P.C.  
30 E. Butler Pike  
Ambler, PA 19002  
(*Attorney for Plaintiff*)

**MARSHALL, DENNEHEY, WARNER  
COLEMAN AND GOGGIN**

BY:

  
Heather M. Smith, Esquire  
Attorney for Defendant

FILED

AUG 22 2008

WILLIAM A. SHAW

Prothonotary/Clerk of Courts

CLERK TO FILE (b)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

MARGARET PFINGSTLER, ) CIVIL DIVISION  
 )  
 Plaintiff, ) NO. 07-1263-CD  
 )  
 vs. )  
 ) PRAECIPE TO SUBSTITUTE  
 DAIMLERCHRYSLER COMPANY LLC, ) VERIFICATION OF CHRYSLER LLC  
 ) FORMERLY DAIMLERCHRYSLER  
 Defendant. ) CORPORATION'S RESPONSE TO  
 ) PLAINTIFF'S REQUEST FOR  
 ) ADMISSION  
 )  
 ) Filed on Behalf of Defendant  
 )  
 )  
 ) Counsel of Record for This Party:  
 )  
 ) HEATHER M. SMITH, ESQUIRE  
 ) PA I.D. #87591  
 ) hsmith@mdwcg.com  
 )  
 )  
 ) Marshall, Dennehey, Warner,  
 ) Coleman & Goggin  
 )  
 ) 2900 US Steel Tower  
 ) 600 Grant Street  
 ) Pittsburgh, PA 15219  
 )  
 ) 412.803.1140  
 ) 412.803.1188 – fax

STATE OF MICHIGAN )  
                          )  
COUNTY OF OAKLAND    )

KRIS W. KRUEGER, being first duly sworn, deposes and says that he is Staff Counsel –  
Warranty Litigation for Chrysler LLC (“Chrysler”) that he is authorized to verify the foregoing

**CHRYSLER MOTORS LLC'S RESPONSE TO PLAINTIFF'S REQUEST FOR  
ADMISSION – SET I**; that he has read the foregoing responses and subscribed to the same on  
behalf of Chrysler Motors LLC; that the foregoing responses are based on information  
communicated by Chrysler Motors LLC personnel and other persons and information obtained  
from books and records of Chrysler Motors LLC; and that he has no reason to believe that the  
foregoing responses are not true and correct.

  
STAFF COUNSEL – WARRANTY LITIGATION  
Chrysler LLC

Subscribed and sworn to before me  
In Oakland County, Michigan on  
this 23rd day of June, 2008.

  
Notary Public, State of Michigan, County of \_\_\_\_\_  
Acting in Oakland County  
My Commission Expires: \_\_\_\_\_

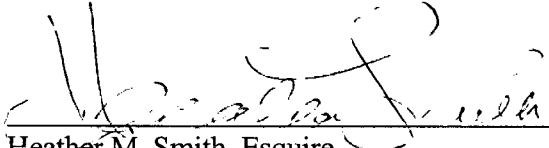


**CERTIFICATE OF SERVICE**

I hereby certify that I have served upon all persons listed below a true and correct copy of the **PRAECIPE TO SUBSTITUTE VERIFICATION OF CHRYSLER LLC FORMERLY DAIMLERCHRYSLER CORPORATION'S RESPONSE TO PLAINTIFF'S REQUEST FOR ADMISSION** in the above-captioned matter by United States first-class mail, postage prepaid, this **20<sup>th</sup>** day of **AUGUST, 2008**.

Robert A. Rapkin, Esquire  
KIMMEL & SILVERMAN, P.C.  
30 E. Butler Pike  
Ambler, PA 19002  
(*Attorney for Plaintiff*)

**MARSHALL, DENNEHEY, WARNER  
COLEMAN AND GOGGIN**

BY: 

Heather M. Smith, Esquire  
Attorney for Defendant

FILED

AUG 22 2008

2008-10-22

William A. Shaw  
Prothonotary/Clerk of Courts

cc: [unclear]

610

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

MARGARET PFINGSTLER, ) CIVIL DIVISION  
)  
Plaintiff, ) NO. 07-1263-CD  
)  
vs. )  
)  
DAIMLERCHRYSLER COMPANY LLC, ) **NOTICE OF SERVICE OF CHRYSLER**  
) **LLC FORMERLY DAIMLERCHRYSLER**  
) **COMPANY LLC'S SUPPLEMENTAL**  
) **RESPONSE TO REQUEST FOR**  
) **PRODUCTION OF DOCUMENTS**  
)  
)  
File on Behalf of Defendant  
)  
Counsel of Record for This Party:  
)  
HEATHER M. SMITH, ESQUIRE  
PA I.D. #87591  
)  
Marshall, Dennehey, Warner,  
Coleman & Goggin  
2900 US Steel Tower  
600 Grant Street  
Pittsburgh, PA 15219  
)  
HMSmith@mdwcg.com  
)  
412.803.1140  
)  
412.803.1188 – fax

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA**

MARGARET PFINGSTLER, : CIVIL DIVISION

Plaintiff, : NO. 07-1263-CD

vs. :

DAIMLERCHRYSLER COMPANY LLC, :

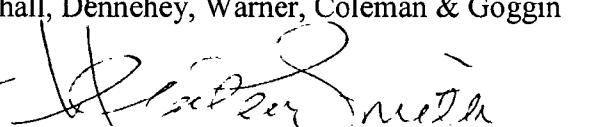
Defendant. :

**NOTICE OF SERVICE OF CHRYSLER LLC FORMERLY  
DAIMLERCHRYSLER COMPANY LLC'S SUPPLEMENTAL RESPONSE TO  
REQUEST FOR PRODUCTION OF DOCUMENTS**

I HEREBY CERTIFY that the Defendant, Chrysler LLC, formerly DaimlerChrysler Company, LLC's Supplemental Response to Request for Production of Documents were served upon all parties referenced on Certificate of Service this 20th day of AUGUST, 2008:

Respectfully submitted,

Marshall, Dennehey, Warner, Coleman & Goggin

By: 

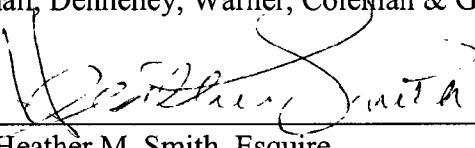
Heather M. Smith, Esquire  
Attorney for Defendant

**CERTIFICATE OF SERVICE**

I hereby certify that I have served upon all persons listed below a true and correct copy of the **NOTICE OF SERVICE OF CHRYSLER LLC FORMERLY DAIMLERCHRYSLER COMPANY LLC'S SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS** in the above-captioned matter by United States first-class mail, postage prepaid, this **20<sup>TH</sup>** day of **AUGUST, 2008**.

Robert A. Rapkin, Esquire  
KIMMEL & SILVERMAN, P.C.  
30 E. Butler Pike  
Ambler, PA 19002  
*(Attorney for Plaintiff)*

Marshall, Dennehey, Warner, Coleman & Goggin

By: 

Heather M. Smith, Esquire  
Attorney for Defendant

12/671085.v1

FILED  
AUG 22 2008  
n/10/08  
William A. Shaw  
Prothonotary/Clerk of Courts  
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, CIVIL TO ATT

**PENNSYLVANIA**

MARGARET PFINGSTLER, ) CIVIL DIVISION  
 )  
 Plaintiff, ) NO. 07-1263-CD  
 )  
 vs. )  
 )  
 DAIMLERCHRYSLER COMPANY LLC, ) PRAECIPE TO SUBSTITUTE  
 ) VERIFICATION OF CHRYSLER LLC  
 ) FORMERLY DAIMLERCHRYSLER  
 ) CORPORATION'S RESPONSE TO  
 ) PLAINTIFF'S INTERROGATORIES  
 )  
 ) Filed on Behalf of Defendant  
 )  
 ) Counsel of Record for This Party:  
 )  
 ) HEATHER M. SMITH, ESQUIRE  
 ) PA I.D. #87591  
 ) hsmith@mdwcg.com  
 )  
 )  
 ) Marshall, Dennehey, Warner,  
 ) Coleman & Goggin  
 )  
 ) 2900 US Steel Tower  
 ) 600 Grant Street  
 ) Pittsburgh, PA 15219  
 )  
 ) 412.803.1140  
 ) 412.803.1188 – fax

STATE OF MICHIGAN )  
COUNTY OF OAKLAND )

KRIS W. KRUEGER, being first duly sworn, deposes and says that he is Staff Counsel –  
Warranty Litigation for Chrysler LLC (“Chrysler”) that he is authorized to verify the **foregoing**

**CHRYSLER MOTORS LLC'S RESPONSE TO PLAINTIFF'S INTERROGATORIES**

– **SET I**; that he has read the foregoing responses and subscribed to the same on behalf of Chrysler Motors LLC; that the foregoing responses are based on information communicated by Chrysler Motors LLC personnel and other persons and information obtained from books and records of Chrysler Motors LLC; and that he has no reason to believe that the foregoing responses are not true and correct.

**STAFF COUNSEL – WARRANTY LITIGATION**  
**Chrysler LLC**

Subscribed and sworn to before me  
In Oakland County, Michigan on  
this 23rd day of June, 2008.

Notary Public, State of Michigan, County of \_\_\_\_\_  
Acting in Oakland County  
My Commission Expires: \_\_\_\_\_

Macheelle J. Kling  
Notary Public, Oakland County, Michigan  
Acting in Oakland County, Michigan  
My Commission Expires 7/10/12

**CERTIFICATE OF SERVICE**

I hereby certify that I have served upon all persons listed below a true and correct copy of the **PRAECIPE TO SUBSTITUTE VERIFICATION OF CHRYSLER LLC FORMERLY DAIMLERCHRYSLER CORPORATION'S RESPONSE TO PLAINTIFF'S INTERROGATORIES** in the above-captioned matter by United States first-class mail, postage prepaid, this **20<sup>th</sup>** day of **AUGUST, 2008**.

Robert A. Rapkin, Esquire  
KIMMEL & SILVERMAN, P.C.  
30 E. Butler Pike  
Ambler, PA 19002  
*(Attorney for Plaintiff)*

**MARSHALL, DENNEHEY, WARNER  
COLEMAN AND GOGGIN**

BY: 

Heather M. Smith, Esquire  
Attorney for Defendant

FILED

*REC'D*  
AUG 22 2008

*m/10:00/08*  
William A. Shaw  
Prothonotary/Clerk of Courts  
Clerk to Atty

*AUG 22 2008*

Attest.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

MARGARET PFINGSTLER, ) CIVIL DIVISION  
 )  
 Plaintiff, ) NO. 07-1263-CD  
 )  
 vs. )  
 ) PRAECIPE TO SUBSTITUTE  
 DAIMLERCHRYSLER COMPANY LLC, ) VERIFICATION OF CHRYSLER LLC  
 ) FORMERLY DAIMLERCHRYSLER  
 Defendant. ) CORPORATION'S RESPONSE TO  
 ) PLAINTIFF'S REQUEST FOR  
 ) PRODUCTION OF DOCUMENTS  
 )  
 ) Filed on Behalf of Defendant  
 )  
 )  
 ) Counsel of Record for This Party:  
 )  
 ) HEATHER M. SMITH, ESQUIRE  
 ) PA I.D. #87591  
 ) hsmith@mdwcg.com  
 )  
 )  
 ) Marshall, Dennehey, Warner,  
 ) Coleman & Goggin  
 )  
 ) 2900 US Steel Tower  
 ) 600 Grant Street  
 ) Pittsburgh, PA 15219  
 )  
 ) 412.803.1140  
 ) 412.803.1188 – fax

STATE OF MICHIGAN )  
COUNTY OF OAKLAND )

KRIS W. KRUEGER, being first duly sworn, deposes and says that he is Staff Counsel –  
Warranty Litigation for Chrysler LLC (“Chrysler”) that he is authorized to verify the foregoing

**CHRYSLER MOTORS LLC'S RESPONSE TO PLAINTIFF'S REQUEST FOR PRODUCTION OF DOCUMENTS**; that he has read the foregoing responses and subscribed to the same on behalf of Chrysler Motors LLC; that the foregoing responses are based on information communicated by Chrysler Motors LLC personnel and other persons and information obtained from books and records of Chrysler Motors LLC; and that he has no reason to believe that the foregoing responses are not true and correct.

~~STAFF COUNSEL – WARRANTY LITIGATION~~  
Chrysler LLC

Subscribed and sworn to before me  
In Oakland County, Michigan on  
this 23rd day of June, 2008.

Machelle Klein

Notary Public, State of Michigan, County of  
Acting in Oakland County  
My Commission Expires:

ty of  
Michelle J. Kling  
Notary Public, Oakland County, Michigan  
Acting in Oakland County, Michigan  
My Commission Expires 7/10/12

**CERTIFICATE OF SERVICE**

I hereby certify that I have served upon all persons listed below a true and correct copy of the **PRAECIPE TO SUBSTITUTE VERIFICATION OF CHRYSLER LLC FORMERLY DAIMLERCHRYSLER CORPORATION'S RESPONSE TO PLAINTIFF'S REQUEST FOR PRODUCTION OF DOCUMENTS** in the above-captioned matter by United States first-class mail, postage prepaid, this **20<sup>th</sup>** day of **AUGUST, 2008**.

Robert A. Rapkin, Esquire  
KIMMEL & SILVERMAN, P.C.  
30 E. Butler Pike  
Ambler, PA 19002  
(*Attorney for Plaintiff*)

**MARSHALL, DENNEHEY, WARNER  
COLEMAN AND GOGGIN**

BY:   
Heather M. Smith, Esquire  
Attorney for Defendant

315 9:00 AM

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

Civil Trial Listing/Certificate of Readiness

Plaintiff(s): Margaret Pfingstler

Case Number: 07-1263-CD

Defendant(s): Daimler Chrysler Motor Company, LLC

**FILED**  
11/11/08 DEC 22 2008  
Atty Rapkin  
William A. Shaw  
Prothonotary/Clerk of Courts  
Atty pd  
20.00

To the Prothonotary:

Arbitration Limit: \$20,000

Type Trial Requested: Jury

Non-Jury

Estimated Trial Time: 2hr

5

Atty pd  
20.00

(X)

Jury Demand Filed By: \_\_\_\_\_

Date Jury Demand Filed: \_\_\_\_\_

Please place the above-captioned case on the trial list. I certify that all discovery in the case has been completed; all necessary parties and witnesses are available; serious settlement negotiations have been conducted; the case is ready in all respects for trial, and a copy of this Certificate has been served upon all counsel of record and upon all parties of record who are not represented by counsel.



(Signature)

12.12.08

(Date)

For the Plaintiff: Robert A. Rapkin 215-540-8888 Telephone Number

For the Defendant: Heather M. Smith 412-803-1155 Telephone Number

For Additional Defendant: \_\_\_\_\_ Telephone Number

Certification of Current Address for all parties or counsel of record:

Name: <u>Robert A. Rapkin</u>	Address: <u>30 E. Butler Pk</u>	City/State/Zip: <u>Ambler PA 19002</u>
Name: <u>Heather M. Smith</u>	Address: <u>Suite 2900, 600 Grant St.</u>	City/State/Zip: <u>Pittsburgh PA 15219</u>
Name: _____	Address: _____	City/State/Zip: _____
Name: _____	Address: _____	City/State/Zip: _____
Name: _____	Address: _____	City/State/Zip: _____
Name: _____	Address: _____	City/State/Zip: _____

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

Margaret Pfingstler

CIVIL DIVISION

Plaintiff,

NO.: 07-1263-CD

vs.

**PRAECIPE FOR APPEARANCE  
AS TRIAL COUNSEL**

Chrysler LLC,

Defendant.

Filed on behalf of Plaintiff:  
Margaret Pfingstler

Counsel of Record for this Party:

Craig Thor Kimmel, Esq.  
PA I.D. No.: 57100

Christina Gill Roseman, Esq.  
PA I.D. NO.: 71492

**KIMMEL & SILVERMAN, P.C.**  
210 Grant St., Suite 202  
Pittsburgh, PA 15219  
(412) 566-1001

*FILED NO cc  
7/12/09  
JUL 12 2009 Copy to CIA  
S*  
William A. Shaw  
Prothonotary/Clerk of Courts  
*610*

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

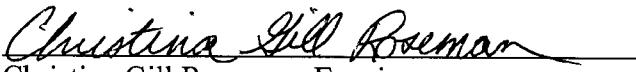
Margaret Pfingstler )  
                          )  
Plaintiff,            )  
                          )  
vs.                    )                   NO.: 07-1263-CD  
                          )  
Chrysler LLC,        )  
                          )  
Defendant.            )

**PRAECIPE FOR APPEARANCE AS TRIAL COUNSEL**

TO THE PROTHONOTARY:

Kindly enter the appearance of Christina Gill Roseman, Esquire, as trial counsel of behalf  
of the Plaintiff, Margaret Pfingstler.

Respectfully submitted,

  
Christina Gill Roseman, Esquire  
KIMMEL & SILVERMAN, P.C.  
Attorneys for Plaintiff

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the within **Praecipe for Appearance as Trial Counsel** was served on January 8, 2009, via U.S. Mail to:

**Heather M. Smith, Esquire**  
**Marshall, Dennehey, Warner, Coleman & Goggin**  
**Suite 2900**  
**600 Grant Street**  
**Pittsburgh, PA 15219**

*Christina Gill Roseman*  
Christina Gill Roseman, Esquire  
KIMMEL & SILVERMAN, P.C.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

MARGARET PFINGSTLER :  
vs. : No. 07-1263-CD  
DAIMLER CHRYSLER MOTOR, :  
COMPANY, LLC :  
: 10a

**O R D E R**

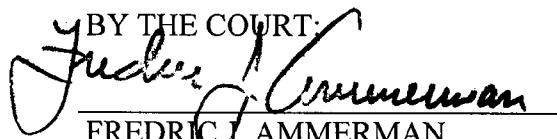
NOW, this 13<sup>th</sup> day of February, 2009, it is the ORDER of the Court that the above-captioned matter is scheduled for Arbitration on **Thursday, March 5, 2009 at 9:00 P.M.** in the Conference/Hearing Room No. 3, 2<sup>nd</sup> Floor, Clearfield County Courthouse, Clearfield, PA. The following have been appointed as Arbitrators:

Paula M. Cherry, Esquire, Chairman

Theron G. Noble, Esquire

Lea Ann Heltzel, Esquire

Pursuant to Local Rule 1306A, you must submit your Pre-Trial Statement seven (7) days prior to the scheduled Arbitration. **The original should be forwarded to the Court Administrator's Office and copies to opposing counsel and each member of the Board of Arbitrators.** For your convenience, a Pre-Trial (Arbitration) Memorandum Instruction Form is enclosed as well as a copy of said Local Rule of Court.

BY THE COURT:  
  
FREDRIC J. AMMERMAN  
President Judge

FILED  
01/00/09  
FEB 17 2009  
cc  
CIA  
©  
S

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

Margaret Pfingstler

CIVIL DIVISION

Plaintiff,

NO.: 07-1263-CD

vs.

**PLAINTIFF'S MOTION TO  
ADJOURN ARBITRATION**

Chrysler LLC,

Defendant.

Filed on behalf of Plaintiff:  
Margaret Pfingstler

Counsel of Record for this Party:

Craig Thor Kimmel, Esq.  
PA I.D. No.: 57100

Christina Gill Roseman, Esq.  
PA I.D. NO.: 71492

**KIMMEL & SILVERMAN, P.C.**  
210 Grant St., Suite 202  
Pittsburgh, PA 15219  
(412) 566-1001

5 **FILED** *2/23/09* *Atty Roseman*  
*2/23/09*  
*2/23/09*

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

Margaret Pfingstler )  
                          )  
                          )  
                          Plaintiff, )  
                          )  
                          )  
                          vs. )                          NO.: 07-1263-CD  
                          )  
                          )  
                          )  
                          Chrysler LLC, )  
                          )  
                          )  
                          Defendant. )

**PLAINTIFF'S MOTION TO ADJOURN ARBITRATION**

Plaintiff, Margaret Pfingslter, by and through her attorneys, Kimmel & Silverman, P.C. and Christina Gill Roseman, Esquire, submits the within Motion to Adjourn Arbitration, and in support, states as follows:

1. This matter is scheduled for arbitration on March 5, 2009.
2. The undersigned, Christina Gill Roseman, is trial counsel for this matter.
3. Ms. Roseman is the only attorney in the Western Pennsylvania office of Kimmel & Silverman.
4. Ms. Roseman is scheduled for trial call at 9:00 a.m. on March 5, 2009 in the matter of Sokolowski v Chrysler, Allegheny County Court of Common Pleas, No. GD-07-24311, and an arbitration in the matter of Peterson v. Hyundai Motor America, Allegheny County Court of Common Pleas, No. AR-08-07603.
5. The trial call in the Sokolowski matter is expected to be a brief appearance at 9:00 a.m., followed by a pretrial conciliation on the same day, the time of which is not announced until after the trial call.

6. The arbitration in the Peterson matter will take until approximately 11:30 a.m., leaving insufficient time to travel from Allegheny County to Clearfield for the arbitration in this matter.

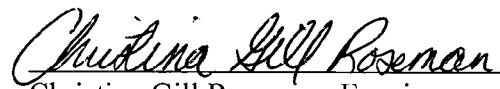
7. The arbitration hearing in the Peterson matter has been adjourned twice previously.

8. This is the first request for adjournment of arbitration in this matter.

9. Because the arbitration in this matter conflicts with the trial call in the Sokolowski matter and the arbitration in the Peterson matter, Plaintiff requests that the arbitration in this matter be adjourned to a new date.

10. Counsel for defendant has no objection to the adjournment of the arbitration in this matter.

Respectfully submitted,

  
Christina Gill Roseman, Esquire  
KIMMEL & SILVERMAN, P.C.  
Attorneys for Plaintiff

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the within Motion to Adjourn Arbitration was served on February 19, 2009, via U.S. Mail:

**Heather M. Smith**  
**Marshall, Dennehey, Warner, Coleman & Goggin**  
**Suite 2900**  
**600 Grant Street**  
**Pittsburgh, PA 15219**

*Christina Gill Roseman*

Christina Gill Roseman, Esquire  
KIMMEL & SILVERMAN, P.C.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

Margaret Pfingstler )  
vs. Plaintiff, )  
Chrysler LLC, )  
Defendant. )  
NO.: 07-1263-CD

**ORDER OF COURT**

AND NOW, this 23, day of February, 2009, it is hereby  
ORDERED that Plaintiff's Motion to Adjourn Arbitration is ~~GRANTED~~ denied. fja  
It is further ORDERED that the arbitration hearing scheduled in this matter, for  
March 5, 2009 is hereby adjourned and is rescheduled \_\_\_\_\_,  
2009 at \_\_\_\_ a.m./p.m. fja

BY THE COURT:

Frederick J. Kinnane

FILED 2CC  
014-00604 Amy Roseman  
FEB 23 2009  
S William A. Shaw  
Prothonotary/Clerk of Courts  
G#

Robert A. Rapkin, Esquire  
Identification No. 61628  
KIMMEL & SILVERMAN, P.C.  
30 East Butler Pike  
Ambler, PA 19002  
(215) 540-8888

ATTORNEY FOR PLAINTIFF

MARGARET PFINGSTLER

v.

CHRYSLER LLC

COURT OF COMMON PLEAS  
Clearfield County

07-1263-CD

MAR 25 2009

3 M/11:10/w  
William A. Shaw  
Prothonotary/Clerk of Court  
I cert to

Attn

ORDER TO SETTLE, DISCONTINUE AND END

TO THE PROTHONOTARY:

Kindly mark the above matter as settled, discontinued and ended.

KIMMEL & SILVERMAN, P.C.

By:

Robert A. Rapkin ESQUIRE

Attorney for Plaintiff  
30 East Butler Pike  
Ambler, Pennsylvania 19002  
(215) 540-8888

MAY 07 2009

M/11:15/09

William A. Shaw

Prothonotary/Clerk of Courts

Lent to ARA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

MARGARET PFINGSTLER, ) CIVIL DIVISION  
)  
Plaintiff, ) NO. 07-1263-CD  
)  
vs. )  
) NOTICE OF SUGGESTION OF  
DAIMLERCHRYSLER COMPANY LLC, ) BANKRUPTCY  
)  
Defendant. )  
) Filed on Behalf of Defendant  
)  
)  
) Counsel of Record for This Party:  
)  
) HEATHER M. SMITH, ESQUIRE  
) PA I.D. #87591  
) hsmith@mdwcg.com  
)  
)  
) Marshall, Dennehey, Warner,  
) Coleman & Goggin  
)  
) 2900 US Steel Tower  
) 600 Grant Street  
) Pittsburgh, PA 15219  
)  
) 412.803.1140  
) 412.803.1188 – fax

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA**

MARGARET PFINGSTLER, ) CIVIL DIVISION  
                          )  
Plaintiff,            ) NO. 07-1263-CD  
                          )  
vs.                    )  
                          )  
DAIMLERCHRYSLER COMPANY LLC, )  
                          )  
Defendant.            )  
                          )

**NOTICE OF SUGGESTION OF BANKRUPTCY**

**PLEASE TAKE NOTICE THAT** on April 30, 2009 (the "Petition Date"), Chrysler LLC ("Chrysler") and certain domestic direct and indirect subsidiaries (the "Debtors"), filed a voluntary petition for relief in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"), which is being jointly administered and which is pending before the Honorable Arthur J. Gonzalez as Case No. 09-50002 (AJG).

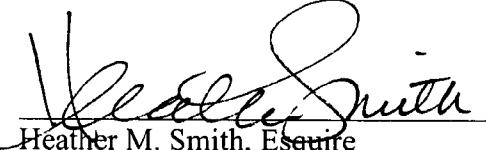
**PLEASE TAKE FURTHER NOTICE THAT**, in accordance with the automatic stay imposed by operation of section 362 of the Bankruptcy Code, from and after the Petition Date no cause of action arising prior to, or relating to the period prior to, the Petition Date, including this action, may be commenced or prosecuted against the Debtors including DaimlerChrysler Company, LLC, in this civil action, and no related judgment may be entered or enforced against

the Debtors outside of the Bankruptcy Court without the Bankruptcy Court first issuing an order lifting or modifying the automatic stay for such specific purpose.

Respectfully Submitted,

MARSHALL, DENNEHEY, WARNER,  
COLEMAN & GOGGIN, P.C.

BY:



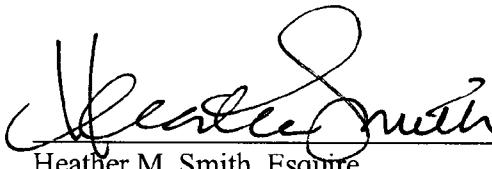
Heather M. Smith, Esquire  
Attorney for Defendant

**CERTIFICATE OF SERVICE**

I hereby certify that I have served upon all persons listed below a true and correct copy of the **NOTICE OF SUGGESTION OF BANKRUPTCY** in the above-captioned matter by  United States first-class mail, postage prepaid, this \_\_\_\_\_ day of **MAY, 2009**.

Christina Gill Roseman, Esquire  
KIMMEL & SILVERMAN, P.C.  
210 Grant Street  
Suite 202  
Pittsburgh, PA 15219

**MARSHALL, DENNEHEY, WARNER  
COLEMAN AND GOGGIN**

BY: 

Heather M. Smith, Esquire  
Attorney for Defendant

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY  
PENNSYLVANIA**

Margaret Pfingstler

vs.

Daimlerchrysler Motor Company, LLC

No. 2007-01263-CD

## OATH OR AFFIRMATION OF ARBITRATORS

Now, this 5th day of March, 2009, we the undersigned, having been appointed arbitrators in the above case do hereby swear, or affirm, that we will hear the evidence and allegations of the parties and justly and equitably try all matters in variance submitted to us, determine the matters in controversy, make an award, and transmit the same to the Prothonotary within twenty (20) days of the date of hearing of the same.

Paula M. Cherry, Esq.

---

### Chairperson

Theron G. Noble, Esq.  
Lea Ann Heltzel, Esq.

Sworn to and subscribed before me this  
March 5, 2009

3-5-09 8:30

NOTIFIED BY ATTY CHARNEY Q:00

THAT CAIR  
SETTLED + ~~ARE~~ was OFF.

---

## Prothonotary

## **AWARD OF ARBITRATORS**

Now, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, we the undersigned arbitrators appointed in this case, after being duly sworn, and having heard the evidence and allegations of the parties, do award and find as follows:

### Chairman

(Continue if needed on reverse.)

## ENTRY OF AWARD

Now, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, I hereby certify that the above award was entered of record this date in the proper dockets and notice by mail of the return and entry of said award duly given to the parties or their attorneys.

**WITNESS MY HAND AND THE SEAL OF THE COURT**

---

Prothonotary  
By

## **ARBITRATION BOARD**

I, William A. Shaw, Prothonotary of the Courts of Clearfield County, hereby certify that:

Case # 2007-01263-CD

**Paula M. Cherry, Esq.**  
**Chairperson**  
**Theron G. Noble, Esq.**  
**Lea Ann Heltzel, Esq.**

are members of the Clearfield County Bar and have served as arbitrators on the 5th day of March, 2009, starting at \_\_\_\_\_ A.M./P.M. and ending at \_\_\_\_\_ A.M./P.M.

### **COMPENSATION OF ARBITRATORS**

Each attorney shall receive an appearance fee of \$150.00 for appearing as a member of the Board of Arbitration on the day designated and shall receive additional fees as follows:

- 1) An additional fee of \$50.00 in the event the attorney is required to hear cases until 10:00 A.M.;
- 2) An additional fee of \$75.00 if the attorney is required to be present between the hours of 10:00 A.M. and 12:00 Noon;
- 3) An additional fee of \$150.00 if an attorney, after a normal lunch break, is required to return for arbitration after 1:00 P.M.; or
- 4) If the attorney is only scheduled for afternoon arbitration, an additional fee of \$50.00 if the attorney is required to hear cases until 2:00 p.m., and an additional fee of \$75.00 if the attorney is required to remain after 2:00 p.m.

### **ACKNOWLEDGEMENT OF ARBITRATORS DATE**

Chairman \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

### **APPROVED**

\_\_\_\_\_  
Prothonotary  
Clearfield County Commissioner's Office  
By: \_\_\_\_\_

07-1263-CD

3/5

Arb


**MARSHALL, DENNEHEY, WARNER, COLEMAN & GOGGIN**

A PROFESSIONAL CORPORATION

www.marshalldennehey.com

Suite 2900, 600 Grant Street, Pittsburgh, PA 15219

**FACSIMILE TRANSMISSION SHEET**

<b>TO:</b>	<b>COMPANY:</b>	<b>TELEPHONE</b>	<b>FAX NUMBER(S):</b>
Rhonda Wiser	Clearfield County Court Administrator		814-765-7649

<b>ATTORNEY:</b> Heather M. Smith	<b>NUMBER:</b> 838
-----------------------------------	--------------------

<b>OUR FILE #:</b> 0322100615	<b>DATE:</b> 03/04/09	<b>ORIGINATOR:</b> Colleen
-------------------------------	-----------------------	----------------------------

<b>CASE NAME:</b> Margaret Pfingstler v. Chrysler	<b>CLAIM #:</b>
---	-----------------

<b>NUMBER OF PAGES:</b> 11 (including cover page)
---

***IF COPY IS ILLEGIBLE OR INCOMPLETE  
PLEASE CALL (412) 803-1140 IMMEDIATELY FOR RETRANSMISSION***

**OUR FAX NUMBER IS: (412) 803-1188**

(This space to be used for short or supplemental messages)

RE: Pre-Trial Statement

MAK U 4 2009

**\*\*\*CONFIDENTIALITY NOTICE\*\*\***

The documents accompanying this telexopy transmission contain information from the law firm of Marshall, Dennehey, Warner, Coleman & Goggin which is confidential and/or legally privileged. This information is intended only for the use of the individual or entity named on this transmission sheet. If you are not the intended recipient, you are hereby notified that you should refrain from reading the contents of the transmission, that any disclosure, copying, distribution or the taking of any action in reliance on the contents of this telexopyed information is strictly prohibited, and that the documents should be returned to this Firm immediately. In this regard, if you have received this telexopy in error, please notify us by telephone immediately so that we may arrange for the return of the original documents to us.

**MARSHALL, DENNEHEY, WARNER,  
COLEMAN & GOGGIN**

Heather M. Smith, Esquire  
Attorney I.D: 87591  
2900 US Steel Tower  
Pittsburgh, PA 15219  
(412)803-1140

Attorney for Defendant,  
Chrysler Company, LLC, formerly DaimlerChrysler  
Company LLC, formerly  
DaimlerChrysler Corporation

**DEFENDANT, CHRYSLER LLC'S  
ARBITRATION MEMORANDUM OF LAW**

**I. STATEMENT OF FACTS**

Margaret Pfingstler's Complaint claims a violation of the Pennsylvania Lemon Law, 73 Pa.Stat.Ann. §§1951-1963, the Magnuson-Moss Warranty Act (MMWA), 15 U.S.C. §2301 et seq., the Pennsylvania Uniform Commercial Code (UCC), 13 P.S. §1101 et seq., and the Pennsylvania Unfair Trade Practices and Consumer Protection Law (UTPCPL), 73 P.S. §201-1 et seq. as a result of the purchase and operation of a 2007 Jeep Wrangler.

Plaintiff purchased a 2007 Jeep Wrangler manufactured by Defendant Chrysler , LLC, formerly DaimlerChrysler Company LLC formerly DaimlerChrysler Corporation, (hereinafter, "Chrysler"), from C Classic DCJ in Clearfield, PA. The purchase agreement was signed at C Classic DCJ in Clearfield, PA. C Classic DCJ is an independent franchise dealership with no corporate or managerial ties with Defendant Chrysler. Chrysler did not participate in the purchase of this vehicle.

This vehicle came with a 3 year / 36,000 miles basic limited warranty issued by Chrysler. The warranty does not warrant the vehicle to be free of defects. In fact, the warranty contemplates that defects may be found but will be addressed within the terms and conditions of the warranty. The warranty provides that Chrysler will repair or replace parts that are defective

in material or workmanship for a period of 3 years or 36,000 miles, whichever comes first from the in-service date. Plaintiff will acknowledge she was never charged for warranty repairs.

## II. LEGAL ARGUMENT

### A. Pennsylvania Lemon Law

The Pennsylvania Lemon Law states that:

The manufacturer of a new motor vehicle sold and registered in the Commonwealth shall repair or correct, at no cost to the purchaser, a nonconformity which substantially impairs the use, value or safety of said motor vehicle which may occur within a period of one year following the actual delivery of the vehicle to the purchaser, within the first 12,000 miles of use or during the term of the warranty, whichever may first occur.

73 P.S. §1954(a) (emphasis added). Section 1952 defines a "nonconformity" as "a defect or condition which substantially impairs the use, value or safety of a new motor vehicle and does not conform to the manufacturers express warranty" Id. (emphasis added). A manufacturer is permitted a reasonable number of repair attempts to correct a nonconformity. The owner of the vehicle must make the vehicle available for the manufacturer to repair the vehicle. 73 P.S. §1954(b). If the manufacturer fails to repair a nonconformity, as defined by the statute, within a reasonable number of repair attempts, then the manufacturer is in violation of the statute. The statute contains a rebuttable presumption that a reasonable number of repair attempts to a nonconformity has occurred, if the same nonconformity has been subject to three (3) repair attempts by the manufacturer, its agents or authorized dealers and the nonconformity still exists, or, if the vehicle is out of service for a cumulative total of thirty (30) or more calendar days. 73 P.S. §1956. In either situation, the nonconformity must first appear within twelve (12) months or 12,000 miles of use, whichever may first occur. 73 P.S. §1954(a). Most important of all, this statute only applies to a nonconformity, as more fully discussed below.

### 1. Nonconformity

The plaintiff must show that the alleged defect is a substantial one, so substantial that it impairs the use, value or safety of a new motor vehicle and does not conform to the manufacturer's express warranty. Stolle v. Nissan Motor Corporation 1989 WL 52555 (E.D.Pa.), CIV.A.NO. 88-5807. In Stolle, the plaintiffs complained that a water leak had substantially affected the use, value or safety of the vehicle. Id. At 2. The court held that the "Plaintiffs must prove that the vehicle is unsafe to drive, has depreciated in excess of normal depreciation or is not operable. The record contains no evidence that the vehicle is unsafe or unable to be driven." The court further held that the "substantial impairment requirement precludes revocation for trivial defects or defects which may be easily corrected." Id., citing Trost v. Porreco Motors, Inc., 443 A.2d 1179 (Pa.Super. 1982). See also: Horan v. Ford Motor Company 93 N.J.A.R.2d (CMA) 92 (noisy car defect insufficient as proof of impaired use or value); Hoe v. Chrysler Motor Corporation 94 N.J.A.R.2d. (CMA) 68 (break "chatter" does not constitute defect under Lemon Law); Collura v. General Motors Corporation 94 N.J.A.R.2d (new car transmission annoyance not nonconforming defect adversely affecting value, safety, and use).

Whether a vehicle has a nonconformity that substantially impairs the use, value or safety of a vehicle is a question of fact that must be proved by a preponderance of the evidence. Stolle v. Nissan Motor Corp at 3. In Ford v. Chrysler Corporation 1996 U.S.Dist. LEXIS 9073, CIV.A. No. 95-4143, the plaintiff returned his vehicle for axle repairs seven (7) times. He testified that he was afraid the axle would "lock up" because of a fluid leak. Id. at 4. He further testified that he did not alter the way he drove his truck, that he was not forced to stop driving the truck and that he never incurred any expenses for repairs other than his warranty deductible. Id.

The jury found that although a defect existed, it did not substantially affect the use, value or safety of the vehicle.

## 2. Presumption of Reasonable Number of Attempts

The Lemon Law states that it is presumed that a reasonable number of repair attempts have been undertaken if the same nonconformity has been subject to three (3) repair attempts by the manufacturer, its agents or authorized dealers and still exists, or, if the vehicle is out of service for a total of thirty (30) calendar days. 73 P.S. §1956. However, this is only a rebuttable presumption, not a legal conclusion. Lowe v. Volkswagen of America, Inc. CIV.A. 94-4404 (E.D.Pa. 1995). "A presumption is not evidence and has no weight as such." Lyn v. Ceputneek, 508 A.2d 308, 312 (Pa.Super. 1985). When evidence is introduced that rebuts the presumption, the presumption disappears. Id. After the presumption is removed, only the facts remain to be considered along with the other evidence. Id.

## 3. Damages

In the event that a violation of the Lemon Law is found, the statute states that the manufacturer shall, at the purchaser's choice, replace the vehicle or refund the purchaser. 73 P.S. §1955. The refund shall include the full purchase price including collateral charges, minus a reasonable allowance for the purchasers use of the vehicle not exceeding 10¢ per mile driven or 10% of the purchase price of the vehicle, whichever is less. Id.

## B. Magnuson-Moss Warranty Act (MMWA) and Uniform Commercial Code (UCC)

The MMWA statute provides a cause of action to an injured consumer when a warrantor fails to comply with a written or implied warranty. 15 U.S.C. § 2310(d)(1). It also disallows a limitation on implied warranties with the exception of limiting any implied warranties to the duration of any express written warranty, 15 U.S.C. § 2308(b), which Chrysler's warranty does.

Note, however, that express warranties do not cover repairs made after the applicable warranty period has expired, therefore any latent defects arising after the warranty term are not actionable.

Duquesne Light Co. v. Westinghouse Elec. Corp. 66 F.3<sup>rd</sup> 604 (3<sup>rd</sup> Cir. 1995)

**1. Breach of Warranty**

To prevail on a claim of breach of warranty, the plaintiff must show that the defendant breached an implied or written warranty and that the defendant was afforded a reasonable opportunity to remedy the defect pursuant to its warranty obligations. Kruse v. Chevrolet Motor Div. 1997 U.S.Dist. Lexis 10398 (E.D.Pa. 1997), No. CIV.A.96-1474. Defendant's express warranty is a three year, 36,000 mile limited warranty. It covers the costs of all parts and labor needed to repair or adjust any of the supplied items that proves defective in material, workmanship or factory preparation. Chrysler paid for all the repairs covered under its written warranty and all conditions complained of by the plaintiff have been repaired within a normal number of attempts.

Chrysler paid for the repairs submitted under its written warranty and all conditions complained of by the Plaintiff has been addressed and repairs made within a normal number of attempts. It cannot be said that this vehicle was not fit for its ordinary purpose and Plaintiff has failed to present evidence which would entitle her to a recovery under any breach of warranty theory.

**2. Breach of Implied Warranty of Merchantability**

The Uniform Commercial Code in Pennsylvania for implied warranties of merchantability states in pertinent part:

(b) Merchantability Standard for Goods--Goods to be merchantable must be at least such as (1) passed without objection in the trade under the contract description; (2) in the case of fungible goods are of fair, average quality within the description; (3) are fit for the ordinary purpose for which such goods are used; (4)

run, within the variations permitted of even kind, quality and quantity within each unit and among all units involved; (5) are adequately contained, packaged, and labeled as the agreement may require; and (6) conform to the promises or affirmations of fact made on the container or label, if any.

13 P.S. §2314(b).

The implied warranty of merchantability serves to protect buyers from loss where the goods purchased are below commercial standards. See Borden, Inc. v. Advent, Inc. Co., 701A2d 255 (Pa. Super. 1977). To establish a breach of the implied warranty of merchantability a plaintiff is required to show the following: (1) that the product malfunctioned; (2) that the plaintiff used a product as intended or reasonably expected by the manufacturer; and (3) the absence of other reasonable secondary causes. See Altronics of Bethlehem, Inc. v. Repco, Inc., 57 F.2d 1102, 1105 (3<sup>rd</sup> Cir. 1992). "Since cars are designed to provided transportation, the implied warranty of merchantability is simply a guaranty that they will operate in a 'safe condition' and 'substantially free of defects', thus 'where a car can provide safe, reliable transportation [,] it is generally considered merchantable'." Hornberger v. General Motors Corp., 929 F. Supp. 884, 888 (E.D. Pa. 1996) (quoting, Carlson v. General Motors Corp., 883 F. 2d 287, 297 (4<sup>th</sup> Cir. 1989).

### 3. Damages

In breach of warranty cases, the standard measure of damages is as follows:

**MEASURE OF DAMAGES FOR BREACH OF WARRANTY.** --The measure of damages for breach of warranty is the difference at the time and place of acceptance between the value of the goods accepted and the value they would have had if they had been as warranted, unless special circumstances show proximate damages of a different amount.

13 Pa.Cons.Stat. §2714(b). See also, Kruger v. Subaru of America, Inc., 996 F.Supp. 451, 455 (1998); Ford v. Chrysler Corporation 1996 U.S.Dist. LEXIS 9073, CIV.A. No. 95-4143 at 8; AM/PM Franchise Assn. v. Atlantic Richfield Co., 584 A.2d 915, 920 (Pa. 1990).

“The difference between the value ‘as is’ and ‘as warranted’ can be measured by the cost of repair.” Kruse v. Chevrolet Motor Div. at 5. See also Pompa v. Hart, 15 Pa. D.& C.4<sup>th</sup> 119, 124 (1992). As in Kruse and the instant matter, the Plaintiff did not pay for any of the cost of repair. There is no difference between the value as warranted and as is. There is no evidence to suggest that the vehicle had a defect and therefore, there is no evidence support a claim of a difference in value from the vehicle as warranted and as received by the plaintiff. Therefore, the Plaintiff has failed to produce the necessary evidence to show he suffered damages.

The plaintiff should not be allowed to submit “his own unsubstantiated, subjective determination of the damages...To allow such a measure of damages would be contrary to the requirement that damages not be speculative.” Ford v. Chrysler Corporation at 11-12. The “Plaintiff has a duty and burden to establish by proper testimony the damages which he claims to have sustained...” Natale Bros. Towing v. Murray Ford 41 D. & C. 3d 224, 228 (1985).

The Plaintiff has failed to produce the necessary evidence to show he suffered damages.

#### C. Unfair Trade Practices and Consumer Protection Law (UTPCPL)

##### 1. Purpose of the Law

The purpose of the UTPCPL is to protect the public from unfair or deceptive business practices. Pirozzi v. Penske Olds-Cadillac-GMC, Inc., 605 A.2d 373 (Pa. 1992). The underlying foundation of the Act is to prevent fraud. Com. By Creamer v. Monumental Properties, Inc., 329 A.2d 812 (Pa.Cmwlth. 1974). In the present action, there is no evidence to

suggest that the actions of Chrysler or its authorized dealers performed unfair or deceptive business practices or were fraudulent in its actions concerning the plaintiff.

## 2. Violations

A violation of this law can only be found if defendant purposely and wrongfully failed to comply with the terms of a written guarantee or warranty given to the buyer at, prior to, or after a contract for the purchase of goods or services is made. 73 P.S. 201-2 (Only malfeasance, improper performance of contractual obligation, raise a cause of action under Pennsylvania Unfair Trade Practices and Consumer Protection Law.) Horowitz v. Federal Kemper Life Assur. Co., 57 F.3d 300 (3rd. Cir. 1995); (Nonfeasance is insufficient for a claim under Pennsylvania's UTPCPL.) Leo v. State Farm Mutual Auto Ins. Co., 939 F. Supp. 1186 (E.D. Pa. 1996). Therefore, it must be found that more than just the warranty was breached, it must be found that Chrysler intentionally failed to comply with their warranty.

Not only has the warranty not been breached, there is no evidence that Chrysler intentionally failed to comply with its warranty.

## 3. Damages

Under the UTPCPL, damages are limited to actual damages or \$100.00, whichever is greater. 73 Pa. Cons.Stat.Ann. § 201-9.2(a) (emphasis added). The plaintiff must produce proof that he or she suffered actual damages from the alleged breach or he or she is not entitled to recover. Kruse v. Chevrolet Motor Div. 1997 U.S.Dist. Lexis 10398 (E.D.Pa. 1997), No. CIV.A.96-1474, at 6. If actual damages are not proven, then the plaintiff's recovery under this act is limited to \$100.00.

The court may also, in its discretion, award three (3) times the actual damage sustained.

Id. However, treble damages are essentially punitive in nature. Johnson v. Hyundai Motor Am. 698 A.2d 631, 639 (Pa.Super. 1997) app'l denied 712 A.2d 286 (Pa. 1998). Although the UTPCPL does not require "outrageous conduct", before imposing treble damages, courts should follow the general principals of law governing punitive damages when exercising discretion under the UTPCPL. Id. at 639. As such, the law of Pennsylvania holds that punitive damages are not recoverable in solely contract actions. Id. at 639 citing Thorsen v. Iron and Glass Bank 476 A.2d 928, 932 (Pa.Super. 1984). Punitive damages are used "to punish outrageous and egregious conduct done in reckless disregard of another's rights" Johnson v. Hyundai Motor Am. at 639. citing SHV Coal, Inc. v. Continental Grain Co. 587 A.2d 702, 704 (Pa.Super.1991). In following these principles, courts should find that a defendant has acted with outrageous and egregious conduct before awarding treble damages. Johnson v. Hyundai Motor Am. at 639-640.

Outrageous conduct is that which is committed with bad motive or reckless indifference to the rights of others. See Bannar v. Miller, 701 A.2d 232 citing Restatement (Second) Torts § 908(2). There is no evidence in the record that the defendant has acted with outrageous or egregious conduct or has acted in reckless disregard of another's rights and therefore the Plaintiff is not entitled to treble damages.

Aside from there being no breach of warranty, there are no *actual* damages. The plaintiffs did not pay for repairs to the vehicle. There is no economic loss. Furthermore, as it cannot even be shown that a breach occurred, it most definitely cannot be shown that Chrysler intentionally failed to comply with its warranty or acted with outrageous conduct.

### III. WITNESSES

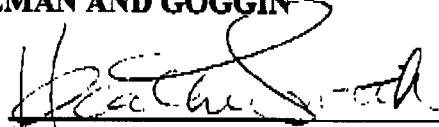
A. Roy E. Wagner  
(Technical Advisor Chrysler, LLC)

**IV. CONCLUSION**

WHEREFORE, Defendant respectfully requests that an award be entered in its favor and against the Plaintiff.

**MARSHALL, DENNEHEY, WARNER,  
COLEMAN AND GOGGIN**

BY:

  
Heather M. Smith, Esquire  
Attorney for Defendant,  
Chrysler, LLC

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Arb.

## IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

Margaret Pfingstler

CIVIL DIVISION

Plaintiff,

NO.: 07-1263-CD

vs.

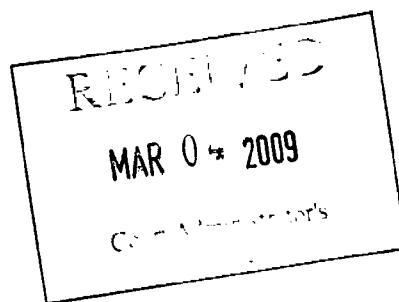
**PLAINTIFF'S  
PRETRIAL/ARBITRATION  
STATEMENT**

Chrysler LLC,

Defendant.

Filed on behalf of Plaintiff:  
Margaret Pfingstler

Counsel of Record for this Party:

Craig Thor Kimmel, Esq.  
PA I.D. No.: 57100Christina Gill Roseman, Esq.  
PA I.D. NO.: 71492**KIMMEL & SILVERMAN, P.C.**  
210 Grant St., Suite 202  
Pittsburgh, PA 15219  
(412) 566-1001

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

Margaret Pfingstler )  
Plaintiff, )  
vs. ) NO.: 07-1263-CD  
Chrysler LLC, )  
Defendant. )

**PLAINTIFF'S PRETRIAL/ARBITRATION STATEMENT**

Plaintiff, Margaret Pfingstler, by and through her attorneys, Kimmel & Silverman, P.C. and Christina Gill Roseman, submits the following as her Pretrial/Arbitration Statement:

a. Plaintiff, Margaret Pfingstler, purchased a new 2007 Jeep Wrangler on November 27, 2006. Ms. Pfingstler's vehicle came with a 3 year/36,000 mile warranty from Defendant Chrysler which obligated Defendant to repair defects in material or workmanship during the warranty period.

Within the first year and 12,000 miles, Ms. Pfingstler experienced numerous problems with the vehicle, including the vehicle shutting off while in motion, stiffness in the steering, water and air leaks and erratic operation of the cruise control. Ms. Pfingstler has also experienced violent shaking of the vehicle. These nonconformities have not been repaired in a reasonable amount of time or a reasonable number of attempts by Chrysler's authorized agents for warranty repair.

b. Chrysler's failure to repair the vehicle in a reasonable amount of time and reasonable number of attempts is in violation of the Pennsylvania Lemon Law, 73 P.S.

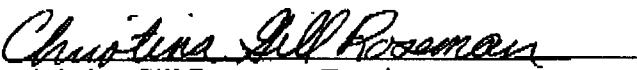
§1951 et seq., the Magnuson Moss Warranty Act, 15 U.S.C. §2301 et seq., and the Unfair Trade Practices and Consumer Protection Law. 73 P.S. §201-2(2) et seq. Further, Chrysler's failure to deliver a vehicle substantially free of defects and reasonably fit for its intended purpose is in violation of the Magnuson Moss Warranty Act.

c. Margaret Pfingstler

Robb Brown

d. Plaintiff seeks repurchase or replacement of the vehicle pursuant to the Pennsylvania Lemon Law, and reasonable attorneys fees. Under the Magnuson Moss Warranty Act and the Unfair Trade Practices Act, Plaintiff seeks damages in the amount of \$6,497 and reasonable attorneys' fees.

Respectfully submitted,

  
Christina Gill Roseman, Esquire  
KIMMEL & SILVERMAN, P.C.  
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the within Plaintiff's Pre-Trial Statement was served on March 3, 2009, via facsimile:

**Heather M. Smith, Esquire**  
**Marshall, Dennehey, Warner, Coleman & Goggin**  
**Suite 2900**  
**600 Grant Street**  
**Pittsburgh, PA 15219**



Christina Gill Roseman  
Christina Gill Roseman, Esquire  
KIMMEL & SILVERMAN, P.C.



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**KIMMEL & SILVERMAN**  
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**TO:** Heather M. Smith, Esquire (412) 803-1188  
Paula Cherry – Arbitrator Chairman (814) 371-0936  
Theron G. Noble – Arbitrator (814) 765-9377  
Lea Ann Heltzel – Arbitrator (814) 375-5035  
Clearfield County Court Administrator (814) 765-7649

**From:** Christina Gill Roseman  
**Fax Number:** (412) 566-1005  
**Business Phone:** (412) 566-1001

**Date & Time:** March 03, 2009  
**Pages (including cover):**  
**Re:** Pfingstler, Margaret v. DCC (Docket No. 07-1263-CD)

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**Pre-Trial Statement.**

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