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IN THE SUPREME COURT OF IOWA

No. 26-0636

AMY WISCO

Plaintiff-Appellee,

vs.

BMW OF NORTH AMERICA, LLC

Defendant-Appellant

APPEAL FROM THE POLK COUNTY DISTRICT COURT

THE HONORABLE HEATHER LAUBER

Case No: LACL155664

APPELLANT'S BRIEF AND ARGUMENT AND REQUEST FOR ORAL ARGUMENT

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ROUTING STATEMENT

The Supreme Court must retain this appeal as it raises an issue of first impression: Whether the statute, Iowa Code §322G.4(2)(a), as written is defective and prejudicial, as it gives consumers an ultimate veto power, where none was intended? A definitive ruling by the Supreme Court as to whether Iowa Code §322G.4(2)(a), specifically the "acceptable to the consumer" language, is superfluous when read in conjunction with the rest of the statute will have widespread ramifications on the consumer warranty industry in the State of Iowa.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

I. Whether the statute, Iowa Code §322G.4(2)(a), as written is defective and prejudicial, as it gives consumers an ultimate veto power, where none was intended?

II. Whether BMW provided a reasonably equivalent vehicle in June 2023?

III. Whether the District Court should have granted BMW's Motion to Withdraw the Jury Demand, and proceeded with a bench trial?

STATEMENT OF THE CASE

A. Nature of the Case

Plaintiff Amy Wisco filed a Petition to Affirm and Enforce Arbitration Under Iowa Lemon Law (Chapter 322G). Plaintiff purchased a 2021 BMW X3 (VIN 5UXTY5L00M9E77335). At arbitration, Plaintiff prevailed and the arbitrator found that BMW was to provide Plaintiff with a replacement vehicle under Iowa Code 322G. Count I asserts Plaintiff's Application to Affirm Arbitration. Defendant asserts that it complied with the arbitration award.

B. Proceedings

Plaintiff filed a Petition to Affirm and Enforce Arbitration Under Iowa Lemon Law (Chapter 322G). (Doc. 0001, Pet. to Affirm and Enforce Arb. Under Iowa Lemon Law, 5/12/2023). Plaintiff alleged that following an arbitration hearing, the arbitrator issued a decision that awarded Plaintiff a replacement vehicle under Iowa's Lemon Law, Iowa Code 322G. (Doc. 0001, Pet. to Affirm and Enforce Arb., at ¶30). Plaintiff alleged that Iowa Code 322G.6(5) provides that BMW had 30 days from notice of Plaintiff's acceptance of the arbitration award, to comply with said award. (Doc. 0001, Pet. to Affirm and Enforce Arb., at ¶34). Plaintiff alleged that BMW failed to comply with the award within that time frame, and therefore, filed the Petition to Affirm and Enforce. (Doc. 0001, Pet. to Affirm and Enforce Arb., at ¶¶ 35-38). BMW filed its Answer to the Petition to Affirm and Enforce wherein BMW

admitted that the arbitrator issued a decision that awarded Mrs. Wisco a replacement vehicle under Iowa's Lemon Law, Iowa Code 322G; admitted that under the Iowa Code 322G.6(5) a manufacturer, such as BMW, had 30 days to comply with an arbitration decision the consumer's favor; but denied that it had failed to comply with the decision. (Doc. 0009, BMW's Answer, at ¶¶ 30, 34, 36-43, 6/30/2023).

This matter proceeded to a jury trial on August 4, 2025 and concluded on August 6, 2025. After the three-day jury trial, the jury returned a verdict on two questions that were posed to it: (1) Did BMW of North America, LLC provide a reasonably equivalent replacement vehicle to the plaintiff as ordered by the arbitration award; and (2) If you find BMW of North America, LLC provided a reasonably equivalent replacement vehicle to the plaintiff on what date did it do so? (Doc. 0150, Verdict Form, 8/8/2025). The jury returned a verdict that (1) Yes, BMW did provide a reasonably equivalent replacement vehicle to the plaintiff as ordered by the arbitration award and (2) that vehicle was provided in 2025. (Doc. 0150, Verdict Form, 8/8/2025). After post-trial briefing by both Plaintiff and BMW, the Court issued its Findings of Fact and Ruling of Law on Post-Trial Matters. (Doc. 0162, Findings of Fact and Ruling of Law on Post-Trial Matters, 3/12/2026). Several of the rulings contained in the Court's order are not pertinent to this appeal, however, the Court's denial of BMW's Motion for Directed Verdict/Judgement Not Withstanding the Verdict is addressed herein.

STATEMENT OF FACTS

1. In November 2020, Plaintiff Amy Wisco purchased a 2021 BMW X3 (VIN 5UXTY5L00M9E77335). (Doc. 0001, Pet. to Affirm and Enforce Arb. Under Iowa Lemon Law, at ¶6).

2. At trial, Kip Wisco,[1] Amy Wisco's husband, testified that Amy Wisco was the primary driver of the BMW X3. (Doc. 0179, Tr. Trans. Vol I, at pg. 100:20-23, 101:16-18, 108:3-5, 5/29/2026).

3. In February 2023, Plaintiff and BMW proceeded to arbitration regarding alleged defects with her 2021 BMW X3. (Doc. 0002, Arbitration Decision, 5/12/2023). Ultimately, the arbitrator found that Amy Wisco was entitled to a replacement of her 2021 BMW X3 and that BMW "shall replace Amy Wisco's 2021 BMW X3 pursuant to the terms of the State of Iowa Lemon Law." (Doc. 0002, Arbitration Decision, pg. 4).

4. Prior counsel for BMW, Mr. Steve Andreacchi, testified that following the arbitration decision, BMW began working on procuring a replacement vehicle for Mrs. Wisco. (Doc. 0177, Tr. Trans. Vol II, at pg. 59-62, 5/29/2026).

5. Mr. Andreacchi testified that following the arbitration decision he began discussing, on behalf of BMW, with Dane Schumann, Mrs. Wisco's attorney

[1] Kip Wisco was formerly a Plaintiff, but the Trial Court granted BMW's Motion for Directed Verdict as to Mr. Wisco. He is not a party to this appeal.

at the time, the vehicle that BMW was offering as the replacement vehicle. (Doc. 0177, Tr. Trans. Vol II at pg. 59:19-25).

6. Mr. Andreacchi testified that he and Mr. Schumann discussed features that Mrs. Wisco wanted in her replacement vehicle. (Doc. 0177, Tr. Trans. Vol II at pg. 61:13-24). Mr. Andreacchi testified that Mr. Schumann never mentioned that Mrs. Wisco required passenger side lumbar support in the replacement vehicle. (Doc. 0177, Tr. Trans. Vol II at pg. 61-62:25-3).

7. Mr. Andreacchi testified to an email chain between him and Mr. Schumann. (Doc. 0177, Tr. Trans. Vol II at pg. 62-73). That email chain contained a discussion regarding BMW's efforts to obtain a replacement vehicle for Mrs. Wisco and how BMW was building the vehicle from scratch, specifically for Mrs. Wisco. (Doc. 0177, Tr. Trans. Vol II at pg. 63:17-21; Doc. 0124, Trial Exhibit 9, email chain from 5.24.23 – 5.30.23, 8/8/2025).

8. On May 25, 2023, Mr. Schumann sent an email to Mr. Andreacchi which requested full build sheets for the proposed vehicle and stated, in pertinent part, "I understand the replacement vehicle would include a heads-up display. I would also like to verify, either from you or the detailed build sheet, that the replacement vehicle includes the following features: lumbar support seat, remote start, Shadowline package. Also, please verify that the vehicle would have BMW's full factory warranty. If the replacement vehicle described within the attachment

does include or would include these features, then that vehicle is acceptable to my clients." (Doc. 0124, Trial Ex. 9 at pg. 5). Mr. Schumann's email does not specifically list "passenger side lumbar support" as one of the features Mrs. Wisco wanted in her replacement vehicle. (Doc. 0124, Trial Ex. 9 at pg. 5).

9. On May 30, 2023, Mr. Andreacchi responded providing Mr. Schumann with copies of the build sheets for both the replacement and the original vehicle. (Doc. 0124, Trial Ex. 9 at pg. 2). He also clarified that heads up display and lumbar support were included, but that remote start and the Shadowline package were upgrades that were not included on the original 2021 BMW X3, so they would not be included on the replacement 2023 BMW X3. (Doc. 0124, Trial Ex. 9 at pg. 2).

10. Jason Miller, a technical service engineer at BMW for 13 years, testified as to the features of the 2023 BMW X3 that BMW offered as the replacement vehicle to Mrs. Wisco. (Doc. 0177, Tr. Trans. Vol II at pg. 4-5, 4-36).

11. Mr. Miller testified that while the 2023 BMW X3 offered as a replacement vehicle did not include passenger side lumbar support, it did include driver side lumbar support. (Doc. 0177, Tr. Trans. Vol II at pg. 7-8:24-5).

12. The 2023 BMW X3 did not include passenger side lumbar support "due to supply issues from COVID." (Doc. 0177, Tr. Trans. Vol II at pg. 7-8:25,1). Lumbar support for the driver's seat was available in the 2023 BMW X3, but due to

uncontrollable supply restrictions from COVID, the vehicle did not feature passenger side lumbar support. (Doc. 0177, Tr. Trans. Vol II at pg. 8:1-5).

13. Aside from the passenger side lumbar support, the only other feature that the 2023 BMW X3 did not have that the 2021 BMW X3 had as "ten-way" power front seats. (Doc. 0177, Tr. Trans. Vol II at pg. 10:21-22). Instead, the 2023 BMW X3 had "eight-way" power seats. (Doc. 0177, Tr. Trans. Vol II at pg. 10:22-23). The 2023 BMW X3 still had power seats, the seats had "tilt, front tilt, rear tilt, scroll, rear recline, and then the whole seat will lift up and put you back down again." (Doc. 0177, Tr. Trans. Vol II at pg. 10-11:25-3).

14. Mr. Miller created a demonstrative exhibit that was utilized at trial which reflects the similarities and differences between the 2021 BMW X3, the 2023 BMW X3, and the 2025 BMW X3. (Doc. 0177, Tr. Trans. Vol II at pg. 9-21; Doc.0138, D2 - Defendant's Demonstrative, 8/8/2025).

15. Mr. Miller testified that the only two features that were on the 2021 BMW X3 but were not on the 2023 BMW X3 were the passenger side lumbar support and the ten-way power front seat. (Doc. 0177, Tr. Trans. Vol II at pg. 32:10-14).

16. Mr. Miller testified that, in his opinion, the 2023 BMW X3, offered by BMW as the replacement vehicle to Mrs. Wisco, was similar to the 2021 BMW X3 that she was replacing. (Doc. 0177, Tr. Trans. Vol II at pg. 36:9-11).

17. Mr. Miller testified that, in his opinion, the 2023 BMW X3, offered by BMW as the replacement vehicle to Mrs. Wisco, was "about the same vehicle as the 2021 X3" that Mrs. Wisco was replacing. (Doc. 0177, Tr. Trans. Vol II at pg. 36:12-14).

18. In June 2023, BMW filed its initial appearance. In doing so, BMW also filed a demand for a jury of twelve. (Doc. 0005, Appearance and Jury Demand, 6/7/2023).

19. On July 1, 2025, over a month before the trial was set to begin, BMW filed a Motion to Withdraw the Jury Demand. (Doc. 0078, Motion to Withdraw Jury Demand, 7/1/2025). Among the arguments raised by BMW was that the central issue of the case, whether or not BMW provided Mrs. Wisco with a reasonably equivalent vehicle, was an interpretation of a statute and therefore a legal question. (Doc. 0078, Motion to Withdraw Jury Demand at ¶6).

20. On July 23, 2025, the parties participated in a pre-trial hearing in which, among other items, the issue of BMW's Motion to Withdraw Jury Demand was argued and ruled upon. (Doc. 0176, Pre Tr. Trans. at pg. 3-11, 16-18).

21. On August 1, 2025, the Court denied the Motion to Withdraw the Jury Demand. (Doc. 0101, Order Denying Motion to Strike Jury Demand, 8/1/2025).

22. BMW filed a post-trial Motion on Remaining Issues Post Jury Verdict, wherein it again argued that the Court should have granted the Motion to Withdraw

the Jury Demand and proceeded with a bench trial. (Doc. 0156, BMW Motion on Remaining Issues Post Jury Verdict, 10/24/2025). This motion was part of the issues argued at the post-trial motion hearing. (Doc. 0178, Post-Trial Trans., 5/29/2026).

23. The Court ultimately denied this renewed Motion to Withdraw the Jury Demand. (Doc. 0162, Findings of Fact and Ruling of Law on Post-Trial Matters at pg. 6-7, 3/12/2026).

ARGUMENT

I. Whether the statute, Iowa Code §322G.4(2)(a), as written is defective and prejudicial, as it gives consumers an ultimate veto power, where none was intended?

Iowa Code §322G.4(2)(a), specifically the language "acceptable to the consumer", negates other sections of the same statute, and therefore should be found to be improper and prejudicial.

BMW preserved this issue several times throughout the trial and post-trial motion practice. At trial, during the argument on jury instructions, BMW argued that this notion that the vehicle had to be "acceptable to the consumer" completely negates the rest of the statute. (Doc. 0180, Tr. Trans. Vol. III, at pg. 5-13, 20, 24-34, 5/29/2026; *compare* Doc. 0058, Plaintiff's Proposed Jury Instructions, at pg. 8, 12/30/2024, *with* Doc. 0116, Defendant's Proposed Jury Instructions, at pg. 3, 8/6/2025). BMW argued, again, in its Motion on Remaining Issues Post Jury Verdict, and at the oral argument on the post-trial motions, that this "acceptable" to the consumer language is improper, not what the legislature intended, and renders other parts of the statute meaningless or superfluous. (Doc. 0156, BMW's Motion on Remaining Issues Post Jury Verdict, at pg. 7-11, 10/24/2025; Doc. 0178, Trans. Post Trial Motions, at pg. 9-18, 5/29/2026). BMW has preserved this issue for appeal.

In Iowa, the standard of review for questions of statutory interpretation is "correction of errors at law." *Noll v. Iowa Dist. Ct. for Muscatine County*, 919

N.W.2d 232, 234 (Iowa 2018); *Vance v. Iowa Dist. Ct. for Floyd County*, 907 N.W.2d 473, 476 (Iowa 2018). Iowa Court's enforce the plain language of a statute, when the statute's language is unambiguous. *Vance*, 907 N.W.2d at 477. If reasonable minds could differ or be uncertain as to the meaning of the statute, the statute is ambiguous, and courts must rely on our tools of statutory construction to resolve the ambiguity. *Id.* "It is universally accepted that where statutory terms are ambiguous, courts should interpret the statute in a reasonable fashion to avoid absurd results." *Id.*; *Brakke v. Iowa Dept. of Nat. Res.*, 897 N.W.2d 522, 534 (Iowa 2017). As a general rule of statutory construction, the Iowa Supreme Court has stated it "avoid[s] an interpretation or application of a statute that renders other portions of the statute superfluous or meaningless." *Little v. Davis*, 974 N.W.2d 70, 75 (Iowa 2022).

Applying the rules of statutory construction that Iowa Courts have used to interpret statutes, it is clear that the words "acceptable to the consumer" render other portions of the statute superfluous and meaningless. *Little*, 974 N.W.2d at 75. Plaintiff brings the Petition at issue pursuant to Iowa Code 322G, specifically 322G.4(2)(a). That section states, in pertinent part:

> If the manufacturer, or its authorized service agent, has not conformed the motor vehicle to the warranty by repairing or correcting one or more nonconformities that substantially impair the motor vehicle after a reasonable number of attempts, the manufacturer shall, within forty days of receipt of payment by the manufacturer of a reasonable offset for use by the consumer, **replace the motor vehicle *with a replacement motor vehicle***

> ***acceptable to the consumer***, or repurchase the motor vehicle form the consumer or lessor and refund to the consumer or lessor the full purchase or lease price, less a reasonable offset for use.

See Iowa Code §322G.4(2)(a) (emphasis added).

Here, Mrs. Wisco chose a replacement motor vehicle. BMW was obligated to provide her with a replacement motor vehicle, there is no dispute over that. The dispute on appeal mainly centers around, whether BMW provided a replacement motor vehicle within the meaning of the statute in June 2023 (addressed in Section II of the Argument), and what constitutes a replacement motor vehicle under the statute.

The statute specifically defines "replacement motor vehicle." Per Iowa Code ¶322G.2(19), "replacement motor vehicle means a motor vehicle which is identical ***or reasonably equivalent to the motor vehicle to be replaced***, and as the motor vehicle to be replaced would have existed without the nonconformity at the time of the original acquisition. Iowa Code ¶322G.2(19). The Iowa Code dictates that the replacement vehicle can be identical to the original vehicle or it can be reasonably equivalent to the original vehicle. "Reasonably equivalent", therefore, means something less than identical, otherwise there would be no reason to include the language "reasonably equivalent" if the manufacturer was required to provide an identical vehicle.

Due to the definition of "replacement vehicle", when read in conjunction with the manufacturers obligation to provide a replacement vehicle, specifically a replacement motor vehicle acceptable to the consumer, it is clear that Iowa Code §322G is ambiguous. This ambiguity is supported by the Trial Court stating, on the record, "that the statute is not very well written … it is poorly written." (Doc. 0180, Tr. Trans. Vol III at pg. 18:16-23). The Trial Court's statement, along with the inherent discrepancies between a vehicle being "reasonably equivalent" to the original vehicle and a vehicle that must be acceptable to the consumer no matter what, show that "reasonable minds could differ or be uncertain as to the meaning of the statute" rendering it ambiguous. *Vance*, 907 N.W.2d at 477. Given this ambiguity in Iowa Code §322G, this Supreme Court must rely on tools of statutory construction to resolve the ambiguity. *Id.*

Reading the statute literally renders the definition of "replacement vehicle" a complete nullity. The definition of "replacement vehicle" states: "a motor vehicle which is identical or reasonably equivalent to the motor vehicle to be replaced…". Iowa Code §322G.2(19). However, the statute states that the manufacturer must "replace the motor vehicle with a replacement motor vehicle ***acceptable to the consumer***." *See* Iowa Code §322G.4(2)(a) (emphasis added). This "acceptable to the consumer" language renders the entire definition of "replacement motor vehicle" a nullity, because even if the manufacturer provided the consumer with a

replacement vehicle that was identical to the original in every single way, the consumer could still reject the vehicle, it would not be "acceptable to the consumer," and therefore, despite providing a completely identical vehicle to the original, the manufacturer will not have complied with its obligation to provide a replacement vehicle, simply because the consumer has this ultimate veto power. This notion is completely contrary to even the most basic rules of statutory construction. *See Little*, 974 N.W. 2d at 75 ("As a general rule of statutory construction, we avoid an interpretation or application of a statute that renders other portions of the statute superfluous or meaningless."). This interpretation of the statute would result in "absurd results" which is against the principles of statutory interpretation, as outlined by this Supreme Court. *Vance*, 907 N.W.2d at 477; *Brakke*, 897 N.W.2d at 534.

Instead, the only logical conclusion is that the "acceptable to the consumer" language means that the consumer can accept something that is less than identical or less than reasonably equivalent, should the consumer choose to do so (i.e., the legislature meant to insert an "or" before "acceptable to the consumer"). It does not, and logically cannot mean, that the consumer has ultimate "veto power" over acceptance of the replacement vehicle, to the extent that the consumer can deny acceptance of a completely identical vehicle. In order for the statute to make logical sense, and to comply with the most basic rules of statutory construction and interpretation, the statute should read:

> If the manufacturer, or its authorized service agent, has not conformed the motor vehicle to the warranty by replacing or correcting one or more nonconformities that substantially impair the motor vehicle after a reasonable number of attempts, the manufacturer shall, within forty days of receipt of payment by the manufacturer of a reasonable offset for use by the consumer, ***replace the motor vehicle with a replacement motor vehicle as defined by this statute or a vehicle acceptable to the consumer*** . ..

Contra. with Iowa Code §322G.4(2)(a).

Due to the improper wording of the statute, Plaintiff was allowed to argue in closing arguments that the vehicle had to be acceptable to the consumer, in order to qualify as a replacement vehicle. (Doc. 0180, Tr. Trans. Vol III, at pg. 121:13-17, 134-135:24-1-5). In short, Plaintiff utilized the poor wording of the statute to prejudice and sway the jury into believing that simply because Mrs. Wisco did not accept the 2023 BMW X3, that meant it was not "reasonably equivalent" and that her acceptance, or lack thereof, was a major factor to consider in whether the vehicle was "reasonably equivalent". Plaintiff was allowed to do this due to the ambiguity that was created by the wording of the statute.

The only way that the statute makes sense, when read as a whole, is to find that the "acceptable to the consumer" language was meant to indicate that the consumer could accept a vehicle that was not identical or reasonably equivalent, but must accept a vehicle that was identical or reasonably equivalent. This "acceptable to the consumer" language was not intended to give an ultimate veto power to the

consumer because doing so would render the definition of replacement vehicle completely unnecessary, superfluous and meaningless, which is against the principles of statutory construction in Iowa. *See Little*, 974 N.W. 2d at 75.

BMW respectfully requests that this Honorable Court interpret the statute as indicated above, giving meaning to the statute in its entirety, and remand this case back to the trial court with instructions to do the same.

II. Whether BMW provided a reasonably equivalent vehicle in June 2023?

BMW provided Mrs. Wisco with a 2023 BMW X3 that was "reasonably equivalent" to her 2021 BMW X3, complied with its requirements under Iowa Code §322G.4(2)(a), and should have been accepted as a "replacement vehicle" under the statute.

BMW preserved the issue of whether the 2023 BMW X3 was a proper "replacement motor vehicle" under Iowa Code §322G several times throughout the trial and post-trial proceedings. First and foremost, it was BMW's main position throughout the trial that Mrs. Wisco improperly rejected this vehicle. Almost the entirety of Mr. Jason Miller's direct testimony focused on the 2023 BMW X3 being "reasonably equivalent" to the 2021 BMW X3. (Doc. 0177, Tr. Trans. Vol II at pg. 5-36). At the close of Plaintiff's case, BMW made a motion for directed verdict on the issue of whether or not it provided Mrs. Wisco with a "reasonably equivalent" replacement vehicle. (Doc. 0180, Tr. Trans. III at pg. 98-104). Following the jury's

verdict, BMW filed its post-trial motion wherein BMW argued that the Trial Court should grant its Judgement Notwithstanding the Verdict and find that BMW provided a "reasonably equivalent" replacement vehicle to Mrs. Wisco on or about June 28, 2023. (Doc. 0156, BMW's Motion on Remaining Issues Post Jury Verdict, at pg. 7-11, 10/24/2025; Doc. 0178, Trans. Post Trial Motions). BMW has preserved this issue for appeal.

In Iowa, the standard of review for questions of statutory interpretation is "correction of errors at law." *Noll v. Iowa Dist. Ct. for Muscatine County*, 919 N.W.2d 232, 234 (Iowa 2018); *Vance v. Iowa Dist. Ct. for Floyd County*, 907 N.W.2d 473, 476 (Iowa 2018). Due to the fact that Section II of this Argument is so intertwined with Section I and the interpretation of the statute, BMW believes that this appellate review should be "correction of errors at law."

As mentioned in Section I of the Argument, due to the arbitration ruling, BMW was ordered to provide a "replacement vehicle" to Mrs. Wisco, pursuant to Iowa Code §322G. The Iowa legislature specifically defined what is meant by "replacement motor vehicle." Per Iowa Code §322G.2(19), "replacement motor vehicle means a motor vehicle which is identical ***or reasonably equivalent to the motor vehicle to be replaced***, and as the motor vehicle to be replaced would have existed without the nonconformity at the time of the original acquisition. Iowa Code §322G.2(19). When defining what constitutes a "replacement motor vehicle" under

the statute, the Iowa legislature made the conscious choice that a replacement vehicle need not be identical in every single way; instead, the "replacement motor vehicle" need only be "reasonably equivalent" to the original vehicle. *See* Iowa Code ¶322G.2(19). As previously argued, "reasonably equivalent", therefore, means something less than identical, otherwise there would be no reason to include the language "reasonably equivalent" if the manufacturer was required to provide an identical vehicle.

Based on the evidence presented at trial, it is unquestionable that the 2023 BMW X3 was "reasonably equivalent" to the 2021 BMW X3. At trial, Mr. Miller admitted that the 2023 BMW X3 was not identical to the 2021 BMW X3. He testified that the only two actual "features" that were on the 2021 BMW X3 but were not on the 2023 BMW X3 were (1) the passenger side lumbar support and (2) the ten-way power front seat. (Doc. 0177, Tr. Trans. Vol II at pg. 32:10-14; *see also* Doc. 0138, D2 - Defendant's Demonstrative). Other than those two features, the vehicles were virtually identical.

With that said, the 2023 BMW X3 had (1) driver side lumbar support and (2) eight-way power seats. (Doc. 0177, Tr. Trans. Vol II at pg. 7-8:24-5, 10-11:21-3). Mrs. Wisco was the owner of the 2021 BMW X3 that BMW was ordered to replace. (Doc. 0001, Plaintiff's Petition at ¶6). Per Mr. Wisco, Mrs. Wisco was the primary driver of the BMW X3. (Doc. 0179, Tr. Trans. Vol I, at pg. 100:20-23, 101:16-18,

108:3-5). As the primary driver and owner, Mrs. Wisco would spend a majority of her time in the vehicle in the driver's seat. The driver's seat had lumbar support. (Doc. 0177, Tr. Trans. Vol II at pg. 7-8:24-5).

Again, "reasonably equivalent" assumes something less than "identical." If a replacement vehicle contains every feature in the original, outside of passenger side lumbar support (for a vehicle wherein the complaining party is the primary driver) and has eight-way instead of ten-way power seats, does not qualify as "reasonably equivalent" then no vehicle will ever be considered "reasonably equivalent' to the original and the manufacturer will be required to provide an identical vehicle to constitute a "replacement vehicle". This all circles back to the "acceptable to the consumer" language discussed in Section 1 of the Argument. That "acceptable to the consumer" language gives the consumer an ultimate veto power, where one was never intended to exist. It also allows the consumer to reject any vehicle, regardless of the features included, until they get a vehicle they want; by the specific wording of the statute, they can reject a vehicle that is completely identical to the original in every way and it will not qualify as a "replacement vehicle" under the statute. This cannot be and is not what the legislature intended.

By including the term "reasonably equivalent" in the statute, the legislature evidenced its intent that something less than identical, or about the same as the original, would be considered enough to qualify as a replacement vehicle. Iowa Code

¶322G.2(19). The 2023 BMW X3 offered to Mrs. Wisco in June 2023 qualified as a "replacement vehicle" under the statute because it was "reasonably equivalent" to the 2021 BMW X3 that was being replaced. Based upon the evidence presented at trial, the jury should have found this and the trial court should have granted BMW's Motion for Directed Verdict and/or the Motion for Judgment Notwithstanding the verdict, but due to the wording of the statute neither happened.

BMW respectfully requests that this Honorable Court find that the 2023 BMW X3 offered to Mrs. Wisco satisfied BMW's requirement to provide Mrs. Wisco with a "replacement motor vehicle" and that she should have accepted the same when it was presented to her in June 2023.

III. Whether the District Court should have granted BMW's Motion to Withdraw the Jury Demand, and proceeded with a bench trial?

The Trial Court should have granted BMW's Motion to Withdraw the Jury Demand because the issue presented to the jury, whether the replacement vehicle was reasonably equivalent, was a legal issue and BMW did not have a right to demand the jury trial to begin with.

BMW preserved this issue throughout the course of this case. Prior to trial, BMW filed a Motion to Withdraw the Jury Demand. (Doc. 0078, Motion to Withdraw Jury Demand). This motion was argued at oral argument and ruled upon by the Trial Court. (Doc. 0176, Pre Tr. Trans; Doc. 0101, Order Denying Motion to Strike Jury Demand). Following the trial, BMW filed its Motion on Remaining

Issues Post Jury Verdict which included, among other topics, the Motion to Withdraw the Jury Demand. (Doc. 0156, BMW Motion on Remaining Issues Post Jury Verdict). That motion was argued at the post-trial motion hearing but was denied by the Trial Court. (Doc. 0156, BMW Motion on Remaining Issues Post Jury Verdict; Doc. 0162, Findings of Fact and Ruling of Law on Post-Trial Matters at pg. 6-7). BMW has preserved this issue for appeal.

In Iowa, in equity cases, review is de novo. *See* I.C.A. Rule 6.907. BMW posits that given this Petition to Approve the Arbitration is actually an equity case, the review should be de novo.

First and foremost, you cannot demand a right that you do not have. BMW is aware that it initially demanded a jury trial in this case, but simply because it demanded a jury trial does not mean that it had a right to make such a demand. In *Weltzin v. Nail*, the Iowa Supreme Court affirmed the striking of a jury demand in a derivative suit "because their right to the derivative suit exists only in equity where there is no general preference for a jury trial." *Weltzin v. Nail*, 618 N.W. 2d 293, 302-303 (Iowa 2000). A request for restitution as money damages is properly heard in equity. *Id.* at 300. "Restitution is defined as '[a]ct of … restoration of anything to its rightful owner; the act of making good or giving equivalent for any loss, damage or injury." *Id.* (quoting Black's Law Dictionary 1447 (rev. 4th ed. 1968).

"Restitution is any equitable remedy which creates no right to a jury." *Weltzin*, 618 N.W. 2d at 300.

Here, Plaintiff brought a Petition to Approve and Enforce Arbitration Award. At its core that is a suit in equity more akin to a derivative suit such as the one in *Weltzin*. The purpose of the lemon law is to put Plaintiff in the place, or as close to the place, as they would have been in if the vehicle they received was not a lemon. Under the Iowa Lemon Law, a manufacturer is required to repurchase the vehicle from the consumer and refund the consumer the full purchase price (less any offset) or provide the consumer with a replacement vehicle that is identical to or reasonably equivalent to the original vehicle. Iowa Code §322G.4(2)(a). This is akin to an "equitable remedy which creates no right to a jury." *Weltzin*, 618 N.W. 2d at 300. Thus, BMW requested a jury trial for an issue which there was no right to a jury, and the Trial Court should have stricken the jury demand and/or granted the Motion to Withdraw the jury demand.

Second, as has been explained throughout this appeal, the central issue in this case is one of statutory construction. The entire case centered around whether BMW provided Mrs. Wisco with a "reasonably equivalent" replacement vehicle. Whether or not the replacement vehicle offered by BMW was "reasonably equivalent" in order to come in compliance with the requirement under the statute is a matter of statutory interpretation. Issues concerning the interpretation and construction of

statutes are questions of law for the Court to decide. *Holding v. Franklin County Zoning Bd. Of Adjustment*, 565 N.W.2d 318, 320 (Iowa 1997); *see also State v. Daniel*, 574 N.W. 2d 333 (Iowa 1998) (referring to statutory interpretation as a "legal issue"). Given that this entire case centers around the interpretation of "reasonably equivalent" within the Lemon Law statute, this is a legal issue that should have been decided by the Court and not a jury. For that reason, the Trial Court should have stricken the jury demand and/or granted BMW's Motion to Withdraw the Jury Demand and proceeded with a bench trial.

Whether or not a vehicle offered as a replacement vehicle is an objective standard, as opposed to a subjective standard. Either the vehicle is reasonably equivalent within the meaning of the statute or it is not – there is no subjective component based on what the consumer thinks is reasonably equivalent to their original vehicle. This is, again, why the case should have been a bench trial and not a jury trial.

BMW respectfully requests this Honorable Court grant its Motion to Withdraw the Jury Demand and remand the case for a bench trial wherein the court will determine the legal issue of whether either the 2023 BMW X3 and/or the 2025 BMW X3 were "reasonably equivalent" under the statute, or, remand the case for another jury trial with a properly interpreted statute, as outlined by BMW above.

CONCLUSION

This entire case comes down to the interpretation of a statute. Specifically, it comes down to what is meant by "reasonably equivalent" and whether the "acceptable to the consumer" language gives consumers an ultimate veto power over the replacement vehicle. When you read the statute as a whole, specifically the definition of "replacement motor vehicle", every principle of statutory construction favors an interpretation that consumers do not have this ultimate veto power. If every replacement motor vehicle had to be "acceptable to the consumer" there would be no need to define "replacement motor vehicle", it would just need to say that you have to provide a vehicle that the consumer accepts. If every replacement motor vehicle had to be "acceptable to the consumer", a manufacturer could provide a vehicle identical in every single way to the original vehicle, the consumer could say, as she did here, no I do not accept the vehicle, and the vehicle would not qualify as a replacement, despite being a vehicle precisely defined by the statute as a "replacement motor vehicle." That cannot be what the legislature intended when it drafted this Lemon Law statute, and this is precisely why this case should never have been in front of a jury in the first place – the case could not be properly decided without the trial court first properly interpreting the statute and this was a legal in equity function and not on for the jury.

As requested throughout the Argument section, BMW respectfully requests this Honorable Court (1) interpret the Iowa Lemon Law statute to dictate that a manufacturer must "replace the moto vehicle with a replacement motor vehicle as defined by this statute or a vehicle acceptable to the consumer, (2) find that the 2023 BMW X3 was a reasonably equivalent replacement vehicle within the meaning of the statute, that Mrs. Wisco should have accepted, (3) that BMW complied with its obligation under the arbitration award to provide Mrs. Wisco with a replacement vehicle when it offered the 2023 BMW X3, and (4) to the extent further trial on the issue of the replacement vehicle, find that the Trial Court should have granted the Motion to Withdraw the Jury Demand and remand the case for bench trial. In the alternative, if the Court disagrees with BMW that this case should not have been brought before a jury, the Court, if it agrees BMW's argument regarding the fact that the statute must be properly interpreted, should remand the case for a new jury trial, on the issue of "reasonably equivalent" of the June 2023 BMW X3 vehicle with the jury deciding the issue under the proper "or" interpretation of that statute as argued by BMW.

WHEREFORE, Defendant/Appellant BMW of NORTH AMERICA, LLC, prays that this Honorable Court grant its appeal and grant the relief requested above, and for any other relief this Court deems just and proper.

REQUEST FOR ORAL ARGUMENT

Appellant respectfully request oral argument on this appeal.

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that:

1. This brief complies with the type volume limitation of Iowa R. App. Pro. 6.903(1)(i)(1) because the brief contains 5,837 words, excluding the parts of the brief exempted by rule 6.903(1)(i)(1).

2. This brief complies with the typeface requirements of Iowa R. App. Pro. 6.903(1)(g)(1) and the type-style requirements of Iowa R. App. Pro. 6.903(1)(g)(1) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14pt. Times New Roman.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Appellant's Brief was electronically filed with the Clerk of the Iowa Supreme Court using the EDMS File & Serve System, which will send notification of such filing to the attorneys of record listed below on August 5, 2026, and that this statement as set forth is true and correct.

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