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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 REPLY BRIEF

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TABLE OF CONTENTS

TABLE OF CONTENTS ……..... 2

TABLE OF AUTHORITIES ……..... 3

STATEMENT OF ISSUES PRESENTED FOR REVIEW ……..... 4

ARGUMENT ……..……..... 5

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? ……..... 5

II. Whether BMW provided a reasonably equivalent vehicle in June 2023? ……..…… 11

III. Whether the District Court should have granted BMW's Motion to Withdraw the Jury Demand, and proceeded with a bench trial? …….. 13

CONCLUSION ……..…… 16

CERTIFICATE OF COMPLIANCE ……..… 18

CERTIFICATE OF SERVICE ……..…….. 19

TABLE OF AUTHORITIES

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?

Brakke v. Iowa Dept. of Nat. Res., 897 N.W.2d 522 (Iowa 2017) ….....……... 5

Little v. Davis, 974 N.W.2d 70, 75 (Iowa 2022) ……..……..... 5-6

Koenig v. Koenig, 766 N.W. 2d 635, 637 (Iowa 2009) ……..... 8

Vance v. Iowa Dist. Ct. for Floyd County, 907 N.W.2d 473 (Iowa 2018) …….. 5, 7

Iowa Code §322G.4(2)(a) ……..…….. 5-6

Iowa Code §322G.2(19) ……..……...… 7

Iowa R. Civ. P. 1.1004(6), (8) …… 10

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

Iowa Code §322G.4(2)(a) ……..… 12

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

Van Sloun v. Agans Bros., Inc., 778 N.W.2d 174, 178 (Iowa 2010) …….. 14

State ex rel. Attorney General of Iowa v. Autor, 991 N.W.2d 159, 168 (Iowa 2023) …… 14

Cato v. American Suzuki Motor Corp., 622 N.W. 2d 486 (Iowa 2001) ……. 15

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?

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?

BMW's initial contention for this appeal, which Plaintiff does not appear to disagree with, is that the statute at issue here, Iowa Code §322G.4(2)(a), is poorly drafted and nonsensical when read in conjunction with the rest of the statute. The aspect of BMW's argument that Plaintiff disputes is that this poorly drafted and nonsensical statute leads to a virtual veto power for the consumer, and which also leads to a prejudicial Jury Instruction that "is in line with the statute."

Initially, BMW must reject Plaintiff's argument that this Honorable Court or this appeal is not a proper vehicle for appealing the statute at issue. Iowa Appellate Courts interpret statutes on a regular basis. Iowa Appellate Courts have rules that govern their interpretation of statutes. As an example, when reasonable minds could differ or be uncertain as to the meaning of the statute, the statute is deemed to be ambiguous, and courts, including appellate courts, must rely on tools of statutory construction to resolve the ambiguity. *Vance v. Iowa Dist. Ct. for Floyd County*, 907 N.W.2d 473, 477 (Iowa 2018). When a statute is 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). Further, the Iowa Supreme Court has stated that in its interpretation of statutes, it avoids "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). Thus, while the Appellate Courts in Iowa may not be actually rewriting or redrafting a poorly drafted statute, the Iowa Appellate Courts are well within their rights to interpret and enforce a statute, especially, as in this case, where a statute is poorly drafted. (*See* Doc. 0180, Tr. Trans. Vol III at pg. 18:16-23) (District Court Judge Lauber agreeing that "the statute is not very well written . . . it is poorly written.").

At bottom, BMW's argument is that the poorly drafted, confusing statute led to its misapplication at the District Court level. In her response, Plaintiff does not appear to dispute the fact that the statute at issue is confusing and contradicts itself. Reading the statute as a whole, with the definitions provided by the legislature, leads to absurd results, and renders portions of the statute completely meaningless.

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).

The statute then goes on to define "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) (emphasis added). However, when you read the definition of "replacement motor vehicle" in conjunction with the obligation to provide a replacement motor vehicle ***acceptable to the consumer*** it becomes evident that the "acceptable to the consumer" language "swallows up" the definition of "replacement motor vehicle" and renders it a nullity. If, at the end of the day, the "replacement motor vehicle" must be acceptable to the consumer, the consumer could reject a vehicle that is identical in every single way to the original vehicle, despite the fact that an identical vehicle would fit the definition of "replacement motor vehicle." This renders the statute ambiguous, it renders portions of the statute meaningless and superfluous (specifically the actual definition of "replacement motor vehicle") and it can lead to absurd results, as it did here. In cases such as this, Appellate Courts interpret statutes to resolve the ambiguity. *Vance*, 907 N.W.2d at 477 (Iowa 2018). BMW's articulation of how the statute should read, is its argument for how the Appellate Court should interpret the statute in order to resolve this inherent ambiguity.

Plaintiff's next argument is that the jury instruction, which incorporated the aforementioned ambiguous language from the statute, was not prejudicial to BMW. Plaintiff specifically argued "[e]ven where an instruction is erroneous, Iowa law does not reverse for errors sake, but 'unless it results in prejudice to the complaining party.'" (Appellee Resp. at pg. 21 (quoting *Koenig v. Koenig*, 766 N.W. 2d 635, 637 (Iowa 2009)). Plaintiff further argues that the jury instruction did not give Plaintiff this "veto power" when it came to accepting the replacement vehicle, despite the wording of the statute.

Contrary to Plaintiff's arguments in the Response, Plaintiff explicitly argued in closing arguments that she had a "veto power" over the replacement vehicle. During closing arguments, Plaintiff specifically argued "[a]nd as the court has instructed you – and we will talk about this in a little bit in more detail – a replacement vehicle ***has to*** either be acceptable to the consumer and have those important features that the customer paid for." (Doc. 0180, Tr. Trans. Vol III, at pg. 121:13-17) (emphasis added). Right there, Plaintiff is arguing that the replacement "***has to be acceptable to the consumer***". (Doc. 0180, Tr. Trans. Vol III, at pg. 121:13-17). That is the argument Plaintiff made during closing, those are the exact words stated, and that amounts to a "veto power" when none was intended by the legislature. Plaintiff further argued in closing arguments, with regards to the factors to consider as to whether the vehicle qualifies as a "replacement vehicle",

"[p]aragraph number one is ***you are to*** consider whether the replacement vehicle was acceptable to the plaintiff. Well, right there at that point is a dead banger …". (Doc. 0180, Tr. Trans. Vol III, at pg. 134-135:24-2). Again, Plaintiff is arguing that the jury must consider whether Ms. Wisco accepted the proffered vehicle as a replacement vehicle, and, not only that, because she did not accept the proffered vehicle, that is a "dead banger". Put another way, because she did not accept the proffered vehicle, they can stop their analysis there, because it does not qualify as a replacement vehicle under the statute. That is prejudice, that is a "veto power", and that is the fatal flaw in the jury instruction, which was created by the poorly drafted statute.

Whether a vehicle qualifies as "reasonably equivalent" to qualify as a replacement vehicle under the statute is an objective standard; it is not a subjective standard of what the consumer wants. However, the arguments posited by Plaintiff, specifically in closing, amount to a "veto power" and convert "reasonably equivalent" to a subjective standard, which was not the intention of the legislature. If it was, there would be no definition for the term "replacement motor vehicle" and instead the statute would simply state that the manufacture has to provide a vehicle made to the consumers specifications.

Plaintiff also argues that, if this Court interprets the statute as BMW requests, BMW cannot request a new trial with that interpretation because it did not make that

specific request before. First, it would not have been possible to make that specific request before being in front of the Appellate Court. BMW could not request that District Court order a new trial based on an anticipated reading of the statute by the Appellate Court. Second, BMW effectively made a request for a new trial by consistently raising the issue of the Motion to Withdraw the Jury Verdict and the Motion for Mistrial. (Doc. 0078, Motion to Withdraw Jury Demand, 7/1/2025; Doc. 0176, Pre Tr. Trans. at pg. 3-11, 16-18; Doc. 0156, BMW Motion on Remaining Issues Post Jury Verdict, 10/24/2025; Doc. 0178, Post-Trial Trans., 5/29/2026).

Third, Plaintiff points out the 9 grounds for a new trial in her Response Brief. Among those are a verdict not sustained by sufficient evidence or contrary to law and errors of law occurring in the proceedings. *See* Iowa R. Civ. P. 1.1004(6), (8). BMWs entire argument with regards to the statute and the jury instruction, which were articulated throughout the trial and post-trial, was an argument that there were errors of law. (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; 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). With a new, and in BMW's opinion, a correct interpretation of the statute, a new trial would be necessary.

For these reasons, and the reasons stated in its Appellant Brief, BMW respectfully requests that this Honorable Court interpret the statute as indicated in its Appellant Brief, 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?

Iowa Code §322G.4(2)(a) does not require a manufacturer such as BMW to provide a vehicle that is identical in every single way to the original, it requires that the manufacturer provide a vehicle that is "reasonably equivalent" to the original. The 2023 BMW X3 was "reasonably equivalent" to Ms. Wisco's 2021 BMW X3 and should have been accepted as a "replacement vehicle" under the statute.

Plaintiff argues that the jury's verdict was correct and should not be overturned because the 2023 BMW X3 lacked certain features, and Mr. Miller, the BMW technical service engineer confirmed the features were not on the 2023 BMW X3. One of those features Plaintiff points to was the panoramic moonroof. The 2023 BMW X3 that was proffered as the replacement vehicle by BMW unequivocally had a panoramic moonroof. (Doc. 0177, Tr. Tran. II, at pg. 20:19-22). Mr. Miller confirmed this via his testimony, he also confirmed this by review of the window sticker, which cannot be falsified under federal law. (Doc. 0177, Tr. Tran. II, at pg. 21:12-17, Doc. 0132, Exhibit 29, 8/8/2025).

The two features that Mr. Miller conceded were different from the 2021 BMW X3 and the 2023 BMW X3 were the passenger lumbar support and the 10-way power seats. (Doc. 0177, Tr. Tran. II, at pg. 40:13-24). With respect to the 10-way power seats, Mr. Miller testified that the 2023 BMW X3 had front power seats, but they were 8 way and not 10 way. (Doc. 0177, Tr. Tran. II, at pg. 10-11:21-3). The "feature" that was not included in the power seats was the "hugging feature" or side bolster. (Doc. 0177, Tr. Tran. II, at pg. 32-33:18-5). Mr. Miller also testified that the 2023 BMW X3 did not have passenger side lumbar support, however, it did have driver's side lumbar support. (Doc. 0177, Tr. Trans. Vol II at pg. 7-8:24-5, 10-11:21-3). In short, the 2023 BMW X3 had eight way power seats, as opposed to 10 way, and driver's side lumbar support but not passenger side lumbar support. (Doc. 0177, Tr. Trans. Vol II at pg. 32:10-14). Those were the only two differences in the features between the two vehicles. (Doc. 0177, Tr. Trans. Vol II at pg. 32:10-14).

Whether a replacement vehicle is "reasonably equivalent" under the statute is an objective standard; it is not a subjective standard. The "reasonably equivalent" vehicle is not required to be made to the consumer's specifications or at the will of the consumer. The replacement vehicle may, but is not required to be, identical in every single way to the original. *See* Iowa Code §322G.4(2)(a). If a vehicle that is missing two minor features is not "reasonably equivalent" to the original, it is hard to see what vehicle would qualify as "reasonably equivalent." This ruling is setting

up a standard whereby the manufacturer has to provide a vehicle to the exact specifications of whatever the consumer wants, regardless of what the statute calls for.

Plaintiff also argues that the jury's verdict should not be overturned because they heard evidence and testimony, weighed that testimony and rendered their verdict. However, as argued in Section I, the jury's verdict was skewed and prejudiced by the incorrect interpretation of the statute, which allowed Plaintiff to argue that the vehicle had to be accepted to Ms. Wisco and had to have these "must have features" regardless of whether they were even available or not. (Doc. 0180, Tr. Trans. Vol III, at pg. 121:13-17). The "weighing of evidence" the jury performed was prejudiced by an instruction and argument that told them Plaintiff's subjective wants were an aspect of whether the vehicle was "reasonably equivalent" when they should not have been.

For these reasons and the reasons stated in its Appellant Brief, 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?

BMWs final argument on appeal is that the District Court should have granted its Motion to Withdraw the Jury Demand and proceeded with a bench trial, as opposed to a jury trial.

Plaintiff cites to *Van Sloun v. Agan Bros., Inc.,* for the proposition that "[w]here the basic rights of the parties derive from the nonperformance of a contract, where the remedy is monetary and where the damages are 'full and certain, remedies are usually provided by actions at law.'" *Van Sloun v. Agans Bros., Inc.,* 778 N.W.2d 174, 178 (Iowa 2010). The issue with this citation is that this case revolves around the application and alleged noncompliance with an arbitration decision. (*See* Appellee Brief at pg. 34). An arbitration decision is not a contract; an arbitration decision is effectively an order or ruling. Further, despite Plaintiff's contention, the "primary remedy" was not monetary; the primary remedy was providing a replacement motor vehicle. That is an equitable relief, not monetary. *See State ex rel. Attorney General of Iowa v. Autor*, 991 N.W.2d 159, 168 (Iowa 2023) ("those remedies are aimed at equitable and remedial goals of making victims whole, extracting ill-gotten gains, and 'protective Iowa consumers' by encouraging compliance with the law."). Providing a replacement vehicle is aimed at making Ms. Wisco whole (i.e. putting her in a place she would have been had she not received a vehicle with defects). The primary relief is unquestionably equitable.

Plaintiff cites to the *Cato v. American Suzuki Motor Corp*. matter for its contention that whether a replacement vehicle is reasonably equivalent is a question of fact for the jury. Plaintiff also points out that the District Court relied on this opinion in determining that the question of reasonable equivalent is a question for the jury. *See* Appellee's Brief at pg. 37. Reliance on the *Cato* case is misplaced by Plaintiff and was misplaced by the District Court. While the *Cato* case dealt with the statute at issue in this matter, Iowa Code §322G, it had nothing to do with whether a replacement vehicle was reasonably equivalent. *Cato v. American Suzuki Motor Corp*., 622 N.W. 2d 486 (Iowa 2001).

At the end of the day, you cannot demand a right that you do not have. BMW had not right to demand a jury trial in this Petition to Approve the Arbitration. Plaintiff's refusal to agree to the withdraw of the jury demand should have been deemed irrelevant because there was no right to a jury trial to begin with.

For these reasons and the reasons stated more fully in the Appellant Brief, 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. 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 case turns on the reading of a statute, not one singular portion of the statute, but the entire statute as a whole. 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.

As requested throughout its Appellant Brief, BMW respectfully requests this Honorable Court (1) interpret the Iowa Lemon Law statute to dictate that a manufacturer must replace the motor vehicle with a replacement motor vehicle as defined by this statute or a lesser 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.

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 3,519 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.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was electronically filed with the Clerk of the Court using the EDM File & Serve System, which will send notification of such filing to the attorneys listed below on September 28, 2026, and that this statement as set forth is true and correct.

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