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BUYERS FIGHT FOR RIGHT TO SUE GM HAULED INTO COURT OVER PURCHASE PLAN RULES

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Illustration: Photo NOLAN WELLS/Detroit Free Press

Memo: FORCED TO ARBITRATE WARRANTY
DISPUTES. SIDEBAR ATTACHED

Much like **483,000 other users** of General Motors Corp.'s employee vehicle purchase plan, Barb and John Abela bought a new vehicle last year with a significant discount.

What the Highland Township couple did three months later will impact not only everyone who uses GM's employee purchase plan but also hundreds of thousands of others who purchase their cars and trucks through discount plans at Ford Motor Co. and DaimlerChrysler Corp.

After taking their Chevy pickup to three dealers in three months in an unsuccessful attempt to fix various braking, shaking and acceleration problems, the Abelas sued GM last October over a warranty claim. Their lawsuit in Oakland County Circuit Court has become the flashpoint of a dispute among GM, the State of Michigan and attorneys for others like the Abelas who have sued automakers over warranty disputes.

The issue is sure to intensify because DaimlerChrysler and Ford have similar purchase plans with some similar rules. Meanwhile, **other** states and possibly the Federal Trade Commission are watching the case.

The debate surrounds a clause in the GM purchase plan that forbids plan buyers from suing the automaker in a warranty dispute. Consumers who have a warranty dispute with GM -- DaimlerChrysler has a similar clause while Ford doesn't -- must use a process called mandatory, binding arbitration. Buyers can't sue in a court of law and can't appeal the arbitration ruling if they lose.

In essence, people who buy vehicles under the purchase plan are waiving their right to seek compensation in state and federal courts. The distinction is important because

consumers win more frequently and more money in court than they do in front of an arbitrator or dispute-resolution board.

Automakers prefer arbitration because it is quicker and cheaper.

GM's mandatory, binding-arbitration clause affects every purchase-plan **user** who bought after March 1, 1999. Ford put in its mandatory arbitration clause in May 1998.

DaimlerChrysler could not say when its binding arbitration clause was put in.

Barb and John Abela say they didn't intend to get in the middle of such a large dispute when, as newlyweds, they bought the truck on the purchase plan available through Barb's employer, Delphi Automotive Systems. Delphi retained the employee purchase plan after it was spun off from GM. The silver pickup was John's first new vehicle.

"My wife got it for me because she thought it would be safer than the old truck I had," said John, 40, a UPS fleet mechanic. "The day I bought it, I remember the speedometer said 15 miles. It jumped and surged on me when I was sitting at a light."

So far, GM is losing

The Abelas say they never intended to pit the world's largest automaker against the state.

Their suit, *Abela v. GM*, seeks more than \$25,000 in damages and an injunction against the binding arbitration requirement. The case has so far gone against GM.

On Aug. 9, Judge David F. Breck ruled GM's purchase plan requiring mandatory and binding arbitration violated state and federal laws. That ruling, if it sticks, would void GM's arbitration plan and allow the Abelas to proceed with their suit. The ruling cleared the way for them to proceed with their efforts to recover damages under the state's lemon laws.

GM appealed Aug. 31 to the Michigan Court of Appeals, taking the rare step of asking the higher court to rule on GM's binding arbitration plan even while the case was proceeding in circuit court. A decision in GM's favor would pre-empt the circuit court.

GM's appeal is expected to be decided later this year.

Wednesday, the Abelas' attorneys asked Breck to give their suit class-action status, which would allow the attorneys to

bring thousands of GM purchase-plan **users** into the suit and would force GM to notify purchase-plan **users** that binding arbitration was no longer part of the plan.

Breck is expected to rule on that matter next Wednesday.

The Michigan Attorney General has intervened in the Abela suit as an interested party. The office is asking GM to eliminate the binding arbitration clause.

Attorneys involved in the suit said the Federal Trade Commission had contacted them and was tracking the matter. Officials at the FTC could not be reached to confirm that.

Arbitration clauses within carmaker purchase plans are volatile and potentially costly issues of national importance to consumers, carmakers and government officials.

"We are watching pretty closely what happens in Michigan with that case. States all over are aware of it and any state that has GM employees or automaker employees is watching," said Cathy Skaar, policy analyst with the Wisconsin Department of Transportation.

Her state is interested because it has more than 5,000 GM employees. "We still maintain what GM does is illegal," she said.

Thousands use the plan

Nearly **483,000** buyers used GM's purchase plan to buy new vehicles last year. That represents 9.6 percent of the 5 million vehicles GM sold in the United States in 1999.

Ford and DaimlerChrysler would not give out exact purchase-plan numbers, but it's safe to say the total number of purchase plan **users** among Detroit's three automakers is close to 1 million annually.

The automaker purchase plan is especially entrenched in Michigan, where seemingly everyone either works for an automaker, retired from one or is a relative of those people and eligible for the plans. The plans allow consumers to buy or lease a new vehicle at dealer cost, a savings of thousands of dollars per vehicle and tens of thousands for the many people that buy three or four vehicles on the plan yearly.

On GM's top-line sport-utility the GMC Yukon, for example, that means a savings of more than \$6,000 off retail, or nearly 15 percent. A GM employee or retiree can use the plan four times in one year and typically lets a relative use the plan.

Ford also lets employees or retirees use it four times a year. George Pipas, Ford sales analysis manager, said the plan is more popular than ever because of the increased popularity of leasing.

"People we talk to say it's the single-most important benefit of working for the automakers," said John Szczubelek, with the Michigan attorney general's consumer protection division.

The attorney general's office is involved because it says GM's binding arbitration clause violates Michigan's lemon laws, the federal Magnuson-Moss Warranty Act and Federal Trade Commission statutes, all of which say a consumer has an unwaivable right to sue in court for damages and **other** costs.

"We felt it was critical to the interests of Michigan we get involved," said Szczubelek. "There are hundreds of thousands of GM car buyers in the state and most of them aren't aware of this arbitration clause. They got some update from GM about the employee purchase plan and buried somewhere on like page 15 it says they have to go through binding arbitration in a warranty dispute."

GM wouldn't comment on the Abela case specifically but defended its arbitration plan.

"Our use of mandatory arbitration is consistent with the Federal Arbitration Act. The remedies a customer can get out of arbitration is consistent with Michigan's lemon laws," said Tom Wickham, a GM spokesman. "We are disappointed the attorney general intervened because we feel our program is legal and in the best interests of all parties."

Other plans under scrutiny

GM's purchase plan is not the only one being studied by the attorney general or plaintiff's attorneys.

Szczubelek said he's studying Ford's arbitration clause and is concerned it may violate the Michigan Whistleblower Protection Act. He said he couldn't comment on DaimlerChrysler's plan because he wasn't familiar with it.

DaimlerChrysler's plan, like GM's, mandates that purchase-plan participants with a warranty or repair dispute use a binding arbitration process.

If the arbitrator hands down a ruling the consumer doesn't like, they can't appeal.

"We really think the people that are complaining are trial

lawyers who can't get their fees through arbitration," said Dominick Infante, DaimlerChrysler spokesman.

Ford requires purchase plan **users** to go through arbitration, but it is not binding, which means the judgments can be appealed in court. But Ford's arbitration is mandatory; if employees or retirees fail to use it and instead file a lawsuit, the automaker will suspend their purchase-plan benefits for several years.

Szczubelek is looking at Ford's plan because of that last aspect, the suspension of employee purchase-plan benefits. The Michigan Whistleblower Protection Act says it is illegal to punish employees for simply asserting their legal rights.

"We only require arbitration as a first step," said Edward Miller, Ford manager of corporate news. "That makes our plan very different from GM's. If customers disagree with the arbitrator they can then go to court."

A limit on liability and costs

Szczubelek says he has no problem with arbitration, called alternative dispute resolution.

"Arbitration can be a really helpful thing for consumers and companies. But when it's binding and mandatory, then we have a problem with it," he said.

Plaintiffs' attorneys say automaker use of binding arbitration is part of a trend of large corporations trying to limit liability and legal costs.

Obviously, binding arbitration cuts back on the potential clients and winnings for plaintiffs' attorneys.

"Manufacturers, banks and even credit-card companies are all trying to force more people into arbitration. The difference with cars is that there's a federal act (Magnuson-Moss) that protects your right to sue," said Ron Balz, an attorney and cofounder of Garden City-based Consumer Legal Services, a firm that deals almost exclusively in lemon law lawsuits.

He estimates his firm handles about 1,000 lemon law claims in Michigan and across the Midwest each year. Consumer Legal Services is co-counsel on the Abela suit with the Troy law firm of Mantese, Miller and Shea.

"Our thought is that when there is no threat of a lawsuit, the companies don't try to take care of the consumers. Lawsuits are there as a check in the balance of power for consumers," he said.

The Abelas say they just wanted their truck fixed.

John says to keep the truck from surging at a light he must push hard to keep the brake down. He also complains that it shakes violently when he brakes.

"All we really wanted was for GM to fix it or replace it for us," said Barb.

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EMPLOYEE AUTO PURCHASE PLAN

* General Motors Corp: The purchase or lease program is open to more than 900,000 employees and retirees in the United States. Eligible purchasers can buy or lease up to four vehicles a year through the plan. Savings are \$2,000 to \$6,000 or more per vehicle. Eligible relatives include spouses, children, stepchildren, siblings and in-laws of employees and retirees.

* Ford Motor Co: A discount purchase or leasing plan called the A Plan is open to employees and their relatives. Retirees get a similar plan called the Z Plan. Eligible relatives include children, grandchildren and siblings. Savings amount to several thousand dollars per vehicle. Employees and retirees can purchase up to four vehicles a year on the plan.

* DaimlerChrysler: All full-time employees and retirees are eligible to buy or lease a vehicle under the plan. The savings is usually 5 to 6 percent off dealer cost. Up to four vehicles can be bought or leased per year. Eligible relatives include kids, parents, siblings and in-laws.

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{KEYWORDS} AUTO INDUSTRY; FORD MOTOR; GM;
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Caption: Because they bought their pickup under GM's employee plan, John and Barb Abela can't sue GM. A sign shows their displeasure.

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