

**WISCONSIN SUPREME COURT
WEDNESDAY, FEBRUARY 4, 2009
1:30 p.m.**

This is a certification from the U.S. Court of Appeals for the 7th Circuit. The certification procedure is governed by sec. 821.01, Stats., which says "Power to answer. The supreme court may answer questions of law certified to it by the Supreme Court of the United States, a court of appeals of the United States or the highest appellate court of any other state when requested by the certifying court if there are involved in any proceeding before it questions of law of this state which may be determinative of the cause then pending in the certifying court and as to which it appears to the certifying court there is no controlling precedent in the decisions of the supreme court and the court of appeals of this state."

2008AP1913-CQ Tammi v. Porsche

This certification from the U.S. District Court for the 7th Circuit asks the Wisconsin Supreme Court to clarify issues related to the state's "lemon law." A decision could affect consumers, auto manufactures and the sale of motor vehicles throughout the state.

Some background: On May 30, 2003, the plaintiff, Bruce Tammi, leased a 2003 Porsche 911 Turbo. The lease was through US Bank for a 36-month term and required an initial payment of \$1,999.85 and 35 subsequent monthly payments of \$1,912.35, for a total amount of lease payments of \$68,844.50. The lease provided a purchase option at the end of the lease term for \$64,344.10 plus tax and imposed a \$395 termination fee if the lessee elected not to purchase the car.

The plaintiff said he had taken the car in for repairs because of an automatic spoiler, which improperly deployed at least four times during the first year under warranty. The problem set off warning lights and alarms inside the vehicle.

On Oct. 14, 2004, the plaintiff filed a complaint in Wisconsin state court alleging a violation by Porsche of the Wisconsin Lemon Law. Porsche removed the case to federal court on the basis of diversity jurisdiction.

During the course of the lease, the plaintiff paid the initial payment, followed by 21 scheduled monthly payments, some of which were paid after he had filed suit. As the litigation continued, and before the lease expired, the plaintiff purchased the car in December 2005 with a final payment of \$75,621.88. Thus, the plaintiff bought a vehicle that he claimed was a lemon.

The 7th Circuit has certified the following issues:

- 1) *When a consumer defined in Wisconsin Statute § 218.0171(1)(b)4 brings an action pursuant to subsection (7), if that consumer, after making his Lemon Law demand, then exercises an option to purchase and buys the vehicle as provided in the lease, is the consumer then entitled to recover the amount of the purchase price?*
- 2) *If the consumer defined in Wisconsin Statute § 218.0171(1)(b)4 is entitled to recover the vehicle purchase price when he exercises*

the purchase option provided in the lease, does the purchase amount qualify as pecuniary loss subject to the doubling provision in subsection (7)?

- 3) *If the answers to questions 1 and 2 are in the affirmative, is the consumer permitted to keep the purchased vehicle in addition to the receipt of the damage award or must the vehicle be returned to the manufacturer?*
- 4) *Is a damage award under subsection (7) subject to a reduction for reasonable use of the vehicle?*

The 7th Circuit says both Wisconsin case law and statutes are silent on the four questions certified. It says guidance from the Supreme Court would be most helpful since resolution of the issues presented here implicate important policy considerations.