

1989

## Sour Lemon: Federal Preemption of Lemon Law Regulations of Informal Dispute Settlement Mechanisms - Motor Vehicle Manufacturers Association v. Abrams, A

David P. Hiatt

Follow this and additional works at: <https://scholarship.law.missouri.edu/jdr>



Part of the [Dispute Resolution and Arbitration Commons](#)

---

### Recommended Citation

David P. Hiatt, *Sour Lemon: Federal Preemption of Lemon Law Regulations of Informal Dispute Settlement Mechanisms - Motor Vehicle Manufacturers Association v. Abrams, A*, 1989 J. Disp. Resol. (1989)  
Available at: <https://scholarship.law.missouri.edu/jdr/vol1989/iss/12>

This Note is brought to you for free and open access by the Law Journals at University of Missouri School of Law Scholarship Repository. It has been accepted for inclusion in Journal of Dispute Resolution by an authorized editor of University of Missouri School of Law Scholarship Repository. For more information, please contact [bassettcw@missouri.edu](mailto:bassettcw@missouri.edu).

Hiatt: Hiatt: Sour Lemon: Federal Preemption of Lemon Law Regulations of Informal Dispute

# **A SOUR LEMON?: FEDERAL PREEMPTION OF LEMON LAW REGULATIONS OF INFORMAL DISPUTE SETTLEMENT MECHANISMS**

*Motor Vehicle Manufacturers Association v. Abrams*<sup>1</sup>

## I. INTRODUCTION

Federal preemption of state "lemon laws" is a relatively recent development in the battle between federal and state law for control of regulation in the consumer protection area. Although preemption is the key issue upon which *Motor Vehicle Manufacturers Association v. Abrams*<sup>2</sup> was decided, the outcome affects the continued viability of manufacturers to establish workable settlement mechanisms to handle the resolution of disputes with consumers. The court, in holding the New York "Lemon Law"<sup>3</sup> preempted by the Magnuson-Moss Warranty Act<sup>4</sup>, determined that the federal policy of encouraging manufacturers to voluntarily establish dispute resolution mechanisms outweighed New York's efforts to extend more protection to consumers.<sup>5</sup> In the court's opinion, the more stringent requirements established by the New York statute would frustrate this federal policy and hence, the statute was preempted.<sup>6</sup>

---

1. 697 F. Supp. 726 (S.D.N.Y. 1988).

2. *Id.*

3. N.Y. GEN. BUS. LAW § 198-a (McKinney 1988).

4. 15 U.S.C. §§ 2301-12 (1982).

5. *Abrams*, 697 F. Supp. at 732-37.

6. *Id.* at 737-43.

## II. BACKGROUND

### A. *The Federal Scheme*

In the 1960's and 1970's Congress became concerned with increasing consumer protections in the marketplace.<sup>7</sup> Consumers were worried about the quality and durability of many mass-produced items that flooded the market.<sup>8</sup> Moreover, there was increased confusion and dissatisfaction with the extent of manufacturers' warranties. To meet these concerns, the Magnuson-Moss Warranty--Federal Trade Commission Improvement Act<sup>9</sup> (Magnuson-Moss Act) was enacted by Congress in 1975. This Act was to serve several purposes: to make manufacturers' written warranties more understandable to consumers (through the establishment of designation and disclosure requirements); to define content standards for "full" warranties; and to create remedies for breach of warranty.<sup>10</sup> In sum, the purpose of the Magnuson-Moss Act was to assure minimum warranty protection for consumers while assuring warranty performance on the part of manufacturers.<sup>11</sup>

In order to better carry out these purposes, Congress established guidelines for the use of informal dispute settlement procedures between manufacturers and consumers. The policy behind the use of these procedures was "[t]o encourage warrantors to establish procedures whereby

---

7. In H.R. REP. 93-1107, 93d Cong., 1st Sess. 22, 24, *reprinted in* 1974 U.S. CODE CONG. & ADMIN. NEWS 7702, 7706, the House Committee stated: Paralleling the growth of acquisition of consumer products has been a growing concern of the American consumer with the quality and durability of many of these products. Another growing source of resentment has been the inability to get many of those products properly repaired and the developing awareness that the paper with the filigree border bearing the bold caption "Warranty" or "Guarantee" was often of no greater worth than the paper it was printed on. Indeed, in many cases where a warranty or guarantee was ostensibly given the old saying applied "The bold print giveth and the fine print taketh away." For the paper operated to take away from the consumer the implied warranties of merchantability and fitness arising by operation of law leaving little in its stead.

8. *Id.*

9. 15 U.S.C. §§ 2301-12 (1982).

10. See H.R. REP. 93-1107, 93d Cong., 1st Sess. 22, 29, *reprinted in* 1974 U.S. CODE CONG. & ADMIN. NEWS 7702, 7711; *Chrysler Corp. v. Texas Motor Vehicle Comm'n*, 755 F.2d 1192, 1204 (5th Cir. 1985).

11. See *Boelens v. Redman Homes, Inc.*, 748 F.2d 1058, 1061-62 (5th Cir. 1984); H.R. REP. 93-1107, 93rd Cong., 1st Sess., 22, *reprinted in* 1974 U.S. CODE CONG. & ADMIN. NEWS at 7702 states:

The purpose of this legislation is (1) to make warranties on consumer products more readily understood and enforceable, (2) to provide the Federal Trade Commission (FTC) with means of *better protecting consumers* . . . . (emphasis added).

consumer disputes are fairly and expeditiously settled through informal dispute settlement mechanisms."<sup>12</sup> Section 2310 of the Magnuson-Moss Act authorizes the Federal Trade Commission (FTC) to establish procedures to implement this policy.<sup>13</sup> The law provides that if the informal dispute settlement mechanism established by the manufacturer complies with the minimum requirements set out in section 2310, the manufacturer can require the consumer to resort to this mechanism before seeking relief in a civil suit.<sup>14</sup>

The Magnuson-Moss Act marked the first time that Congress had entered into the area of consumer protection warranty law. This was an area that the states had traditionally regulated both through the common law and the Uniform Commercial Code.<sup>15</sup>

### B. *The State Scheme*

In 1982, Connecticut enacted the first state "lemon law" because of unsatisfactory protection for purchasers of new motor vehicles under then existing warranty law.<sup>16</sup> Since that time, the majority of states have enacted similar statutes to protect this class of consumers.<sup>17</sup> New York originally enacted its "Lemon Law" in 1983.<sup>18</sup>

---

12. 15 U.S.C. § 2310(a)(1).

13. *Id.* at § 2310(a)(2). This section reads:

The Commission shall prescribe rules setting forth minimum requirements for any informal dispute settlement procedure which is incorporated into the terms of a written warranty to which any provision of this chapter applies. Such rules shall provide for participation in such procedure by independent or governmental entities.

14. *Id.* at § 2310(a)(3). The relevant portion of this subsection reads:

One or more warrantors may establish an informal dispute settlement procedure which meets the requirements of the Commission's rules under paragraph (2). If--

(A) a warrantor establishes such a procedure,

(B) such procedure, and its implementation, meets the requirements of such rules, and

(C) he incorporates in a written warranty a requirement that the consumer resort to such procedure before pursuing any legal remedy under this section respecting such warranty,

then (i) the consumer may not commence a civil action (other than a class action) under subsection (d) of this section unless he initially resorts to such procedure.

15. See H.R. REP. 93-1107, 93rd Cong., 1st Sess., 24, reprinted in 1974 U.S. CODE CONG. & ADMIN. NEWS at 7706; *Chrysler Corp.*, 755 F.2d at 1205.

16. Annotation, *Validity, Construction, and Effect of State Motor Vehicle Warranty Legislation (Lemon Laws)*, 51 A.L.R.4th 872, 877 (1987).

17. *Id.* at 877.

18. N.Y. GEN. BUS. LAW § 198-a (McKinney 1983).

Generally, lemon laws provide a statutory warranty which compels the manufacturer either to give purchasers a refund or to replace the vehicle if the vehicle fails to conform with the manufacturer's express warranty after a reasonable number of repair attempts, and if the defects substantially impair the value or use of the vehicle.<sup>19</sup> Many of these lemon laws, like the New York law, further require that owners of covered vehicles submit to manufacturer-sponsored informal dispute resolution mechanisms before seeking the remedy provided by the statute.<sup>20</sup>

### III. THE STANDARD FOR PREEMPTION

The Supremacy Clause of the United States Constitution mandates that when there is an actual conflict between state and federal law, federal law prevails.<sup>21</sup> Hence, the clearest case for preemption is where there are actual, specific conflicts between the federal and state law or regulations.<sup>22</sup> Such conflict would be found if it were impossible to comply with both state and federal laws,<sup>23</sup> or if the existence of the state law is destructive to the full purposes and objectives of the federal law.<sup>24</sup> Under these circumstances, a court must find the state law to be preempted.

The courts have also found preemption by looking to the congressional intent behind the federal law.<sup>25</sup> If Congress explicitly provided in the language of the statute for the federal law to be preemptive, then the court has an easy task in determining that state law is preempted.<sup>26</sup> A court may also find implied preemption where the federal regulatory scheme is so

19. Annotation, *supra* note 16, at 877..

20. See N.Y. GEN. BUS. LAW § 198-a(g) which reads:

If a manufacturer has established an informal dispute settlement mechanism, such mechanism shall comply in all respects with the provisions of this section and the provisions of subdivision (c) of this section concerning refunds or replacement shall not apply to any consumer who has not first resorted to such mechanism.

21. U.S. CONST. art. VI, cl. 2. Specifically, the clause reads:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

22. See *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132 (1963), *reh'g denied* 374 U.S. 858 (1963).

23. *Id.* at 142-43.

24. See *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941).

25. See *Abrams*, 697 F. Supp. at 730 (citing *California Fed. Savings & Loan Ass'n v. Guerra*, 107 S. Ct. 683, 689 (1987)).

26. See *Jones v. Rath Packing Co.*, 430 U.S. 519, 525 (1977).

pervasive and comprehensive that there is "no room" for state regulation of the same subject matter.<sup>27</sup>

If the area to be regulated by the federal law is one which is traditionally occupied by state regulatory schemes, the court must find clear and compelling evidence of the intent to preempt.<sup>28</sup> The court must "[s]tart with the assumption that the historic police powers of the states were not to be superseded . . . unless that was the clear and manifest purpose of Congress."<sup>29</sup> Since the consumer protection area is traditionally state-occupied, clear and compelling evidence is required.<sup>30</sup>

State law may also be preempted by the actions of federal regulatory agencies like the FTC. This is true where the agency has been given authority and discretion by Congress to regulate the particular area pursuant to congressional policy. An agency decision which preempts state law will be upheld unless it is clear that Congress would not have sanctioned preemption in the particular situation.<sup>31</sup> Again, there is not a presumption of federal preemption, rather there must be either a clear intent that the federal regulations be preemptive, or a substantial showing that the state law frustrates the federal policy.<sup>32</sup>

In all of these situations, whether the question deals with the preemptive effect by federal statute or federal regulation, the cases are treated individually upon their facts, applying the general principles set forth above. It should be further noted that the standard for determining preemption is rather malleable and requires a great deal of balancing of interests by the courts.

---

27. See *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947); *Pennsylvania v. Nelson*, 350 U.S. 497 (1956), *reh'g denied*, 351 U.S. 934 (1956); *Abrams*, 697 F. Supp. at 730.

28. See *Abrams*, 697 F. Supp. at 730.

29. See *Id.* (quoting *Pacific Gas & Elec. Co. v. Energy Resources Comm'n*, 461 U.S. 190, 206 (1983)); *State Dept. of Social Services v. Dublino*, 413 U.S. 405 (1973); *Hisquierdo v. Hisquierdo*, 439 U.S. 572 (1979).

30. See *Abrams*, 697 F. Supp. at 730; *Environmental Encapsulating Corp. v. City of New York*, 855 F.2d 48, 58 (2d Cir. 1988).

31. See *Fidelity Fed. Savings & Loan Ass'n v. De la Cuesta*, 458 U.S. 141, 154 (1982).

32. See *Id.* at 155-56; *Hillsborough County v. Automated Medical Labs*, 471 U.S. 707, 717 (1985).

## IV. THE CASE

The Motor Vehicle Manufacturers Association (Association) challenged several provisions of the New York "Lemon Law"<sup>33</sup> pertaining to informal dispute resolution mechanisms. The challenge rested on the contention that under the Supremacy Clause,<sup>34</sup> such provisions were preempted by the Magnuson-Moss Act<sup>35</sup> and federal regulations<sup>36</sup> promulgated thereunder.<sup>37</sup>

The New York Lemon Law was amended in 1986 to include provisions regulating dispute resolution mechanisms which are voluntarily established by automobile manufacturers. The Lemon Law does not require the manufacturer to establish the mechanisms; it only requires that any mechanism established by the manufacturer to handle consumer disputes meet certain minimum requirements as a condition to requiring consumer use.<sup>38</sup> The provisions of the Lemon Law that were challenged by the Association concerned the binding effect of an arbitrator's decision on the parties,<sup>39</sup> the training of an arbitrator,<sup>40</sup> the requirements for recordkeeping,<sup>41</sup> notice to the consumer,<sup>42</sup> compliance with FTC regulations,<sup>43</sup> and whether to allow oral hearings and at whose request.<sup>44</sup>

The court examined extensively the legislative history of the Magnuson-Moss Act, the history of the FTC regulations, the text of the Act, and the text of the regulations in reaching its decision that the New York Lemon Law was preempted.<sup>45</sup> The court did not find express preemption,<sup>46</sup> but rather based its decision on two grounds: first, that Congress had occupied the field;<sup>47</sup> and second, that there were conflicts between state and federal

---

33. N.Y. GEN. BUS. LAW § 198-a (McKinney 1983).

34. U.S. CONST. art. VI, cl. 2.

35. 15 U.S.C. §§ 2301-12 (1982).

36. *See* Informal Dispute Settlement Procedures, 16 C.F.R. § 703 (1983).

37. *Abrams*, 697 F. Supp. at 728.

38. N.Y. GEN. BUS. LAW § 198-a(g). *See supra* note 14 for the full text of this provision.

39. *Id.* at § 198-a(h).

40. *Id.* at § 198-a(m)(1)(i).

41. *Id.* at § 198-a(m)(3).

42. *Id.* at § 198-a(m)(2).

43. *Id.* at § 198-a(m)(1)(ii).

44. *Id.* at § 198-a(m)(1)(i).

45. *Abrams*, 697 F. Supp. at 730-40.

46. *Id.* at 732.

47. *Id.* at 732-37.

law such that the purposes and objectives of Congress would be frustrated by upholding the state law.<sup>48</sup>

## V. THE DECISION

### A. *Occupying the Field*

The court considered statutory language and FTC regulations in determining whether Congress occupied the field. The statutory language examined by the court centered on the meaning of "minimum requirements."<sup>49</sup> The Magnuson-Moss Act states that the FTC "[s]hall prescribe rules setting forth minimum requirements for any informal dispute settlement procedure which is incorporated into the terms of a written warranty."<sup>50</sup> Attorney General Abrams argued that this section was intended by Congress to leave open some room for "supplementary state regulation in this area."<sup>51</sup> This argument finds support in the express savings clause found in section 2311(b) which states, "[n]othing in this chapter shall invalidate or restrict any right or remedy of any consumer under State law or any other Federal law."<sup>52</sup> This clause would suggest that Congress contemplated a continued presence by the state in regulating consumer protection warranties. Furthermore, section 2311 provides for the approval of state laws which are expressly preempted if the laws give greater protection to the consumer and do not unduly burden interstate commerce.<sup>53</sup> However, this subsection was not discussed by the court.

The Association's interpretation of the meaning of "minimum requirements" was that only the manufacturers were to be free to experiment with different provisions so long as the minimum requirements were met.<sup>54</sup> The

---

48. *Id.* at 737-43.

49. *Id.* at 732-33.

50. 15 U.S.C. § 2310 (a)(2).

51. *Abrams*, 697 F. Supp. at 732.

52. 15 U.S.C. § 2311(b)(1).

53. *Id.* at § 2311(c)(2). This subsection states:

If, upon application of an appropriate State agency, the Commission determines (pursuant to rules issued in accordance with section 2309 of this title) that any requirement of such State covering any transaction to which this chapter applies (A) affords *protection to consumers greater* than the requirements of this chapter and (B) does not unduly burden interstate commerce, then such State requirement shall be applicable (notwithstanding the provisions of paragraph (1) [the express preemption clause] of this subsection) to the extent specified in such determination for so long as the State administers and enforces effectively any such *greater* requirement. (emphasis added).

54. *Abrams*, 697 F. Supp. at 732.

Association conceded that the Act did envision a continued presence by the states in regulating consumer protection, but urged that such was not the case with respect to the dispute settlement mechanisms.<sup>55</sup> The court agreed and states that it could not have been the intent of Congress to have each of the fifty states regulating these mechanisms.<sup>56</sup> Moreover, the court noted the non-existence of state lemon laws at the time the Magnuson-Moss Act was passed.<sup>57</sup>

The court then examined the FTC regulations for guidance as to whether Congress intended to occupy the field.<sup>58</sup> Although the court stated that it saw no indication of a desire on the part of the FTC or Congress to "establish total uniformity of the mechanism system throughout the United States," it nonetheless found that the FTC wanted to preserve existing nation-wide mechanisms.<sup>59</sup> This conclusion seems strange in that it is unlikely there were any automobile manufacturers who had already established such dispute settlement mechanisms at the time of the FTC statement cited by the court.<sup>60</sup>

The court noted that the FTC did invite and consider comment on its proposed regulations.<sup>61</sup> In discussing this issue, the court placed strong emphasis on references to an equilibrium which the FTC strove to find<sup>62</sup>--one that kept the "burdens on the manufacturer to a minimum while still sufficiently protecting the consumer."<sup>63</sup> Further, the court stated "[i]t would appear that the Commission did not contemplate the coexistence of regulation from other sources that would increase the potential discouragement of the mechanisms."<sup>64</sup> The court found that the comprehensiveness of the federal regulations spoke of a "clear intent" for them to be "exclusive."<sup>65</sup> The court held that "[t]here is no room in this system for states to tinker with the federal criteria, possibly discouraging the creation of the mechanisms, and possibly 'outlawing' mechanisms which the federal government

---

55. *Id.* at 733.

56. *Id.* at 732.

57. *Id.*

58. *Id.* at 732-36.

59. *Id.* at 732.

60. *Id.* Both the State and plaintiff's attorneys agreed there were no lemon laws in existence at the time the Act was passed. *Id.*

61. *Id.* at 735. The court seems to assume that the solicited comments received by the FTC reflect the ultimate positions of all those who were to be affected by the regulations, namely manufacturers and consumers. *Id.*

62. *Id.* at 732.

63. *Id.* at 735.

64. *Id.*

65. *Id.*

has defined to be acceptable."<sup>66</sup> Therefore, the court preempted the state law to the extent that it interfered with the balancing of interests undertaken by the FTC.

According to the court, the manufacturers have a "federally granted right to require consumers to utilize that mechanism as a prerequisite to bringing suit under the Act."<sup>67</sup> It is true that complying mechanisms can incorporate such a requirement into their warranties, but the real issue is what makes the mechanism a complying one. The ultimate question seems to be: can the state enhance the protections to the consumer by making more stringent mechanism requirements before granting the manufacturers this "right"?

### B. *Specific Conflicts*

The court next turned to the question of whether there was an actual, specific conflict between the state and federal law such that the federal purposes and objectives were frustrated.<sup>68</sup> The key point in this analysis was whether the state lemon law frustrated the congressional policy as it affects the specific workings of the dispute resolution mechanisms.<sup>69</sup>

The court found the mandatory oral hearings and binding arbitration provisions to be in conflict with congressional policy.<sup>70</sup> A complying provision in New York would be non-complying under the federal scheme because it conflicts with the federal goals and methods of national mechanisms and increased information to consumers.<sup>71</sup> The court discussed the other challenged provisions and found them to be in violation of the federal regulations in part, if not in whole, based on similar reasoning.<sup>72</sup> In essence, the court decided that more stringent requirements would discourage the private mechanisms which Congress said were so necessary for the fair and expeditious settlement of disputes.<sup>73</sup>

---

66. *Id.* at 736.

67. *Id.* at 735.

68. *Id.* at 737.

69. *Id.*

70. *Id.* at 737-40.

71. *Id.* The FTC regulations state that oral presentations will be allowed only if the warrantor and the consumer agree to them. 16 C.F.R. § 703.5(f)(1). The New York law permits the consumer to make oral presentations upon request. N.Y. GEN. BUS. LAW § 198(m)(1)(i). FTC regulations provide that the decision of the mechanism is not binding on anyone. 16 C.F.R. § 703.2(g). New York law makes them binding on the warrantor if the consumer so elects, but never binding on the consumer. N.Y. GEN. BUS. LAW § 198-a(h).

72. *Abrams*, 697 F. Supp. at 741-743.

73. *Id.*

## VI. OTHER COURTS' VIEWS

Only two federal appellate courts have previously addressed the preemptive effect of the Magnuson-Moss Act and the FTC regulations with respect to manufacturers' voluntary dispute resolution mechanisms. In *Chrysler Corp. v. Texas Motor Vehicle Commission*,<sup>74</sup> the court was not faced with precisely the same situation with which the court in *Abrams* was faced. The *Chrysler* case concerned the preemptive effect of the Magnuson-Moss Act on a state administrative procedure for warranty disputes as an alternative to the manufacturer's dispute mechanism.<sup>75</sup> The case did not concern regulations affecting a private manufacturer's mechanism.

Based on these facts, the court found no preemption by Magnuson-Moss Act.<sup>76</sup> It held that there was "[n]o clear statement either in the express language of section [23]10 or in its legislative history of any intention by Congress to occupy the field of informal settlement mechanisms for warranty disputes."<sup>77</sup> The court did state, however, that "[t]he preclusive effect of section [23]10 is limited to rules governing informal dispute resolution procedures created by private warrantors and does not affect such schemes where provided as an option for consumers by state law."<sup>78</sup> Thus, it would seem from this last statement that the Fifth Circuit Court suggested that a state regulatory scheme over private manufacturers' mechanisms, such as New York's Lemon Law, would be precluded by the Magnuson-Moss Act. However, Attorney General Abrams in *Abrams* argued that since this was not the issue before the Fifth Circuit, it was no more than dictum.<sup>79</sup>

In *Wolf v. Ford Motor Co.*,<sup>80</sup> the Fourth Circuit addressed the issue of whether a consumer could bring a state common law fraud action to challenge the operation of the manufacturer's dispute settlement mechanism. The case did not involve the Virginia Lemon Law. The consumer felt that Ford's dispute settlement mechanism was not being operated fairly.<sup>81</sup> The court held the state law preempted and stated that there was a "[c]ongressional intent to reserve to the federal regulatory body the authority to

---

74. 755 F.2d 1192 (5th Cir. 1985).

75. *Id.* at 1195.

76. *Id.*

77. *Id.* at 1205-06.

78. *Id.* at 1206.

79. *Abrams*, 697 F. Supp. at 734.

80. 829 F.2d 1277 (4th Cir. 1987).

81. *Id.* at 1278.

supervise whether the mechanisms are created and operated fairly."<sup>82</sup> The court reasoned that to "[p]ermit consumers to test the bona fide nature and validity of private dispute settlement mechanisms . . . under the law of each state would frustrate completely the goal of national uniformity painstakingly designed by federal statute and regulation."<sup>83</sup> This is an understandable conclusion when one looks at section 2310(a)(4) which gives the FTC the authority to supervise whether dispute settlement mechanisms are complying or not.<sup>84</sup>

Two federal district courts have also addressed the preemptive effect of the Magnuson-Moss Act with respect to dispute resolution mechanisms. In *Automobile Importers of America v. Minnesota*,<sup>85</sup> the court found that the state lemon law in question was not preempted by federal law.<sup>86</sup> One of the challenged provisions of the Minnesota law required that the manufacturer establish dispute mechanisms.<sup>87</sup> Under the federal law, the manufacturer has the option of establishing the mechanism.<sup>88</sup>

The court reasoned that this case was distinguishable from *Wolf*,<sup>89</sup> in that this case "concerns the power of a state legislature to attempt to enhance protections accorded to consumers by federal law."<sup>90</sup> *Wolf* had involved a common law fraud action by a consumer. Based on its analysis of the savings and preemption clauses, the court found that there was congressional intent to preserve some state law on the subject and only a very narrow class of state laws was preempted.<sup>91</sup> The court thus determined

---

82. *Id.* at 1279.

83. *Id.* at 1280.

84. The full text of § 2310(a)(4) reads:

The Commission [FTC] on its own initiative may, or upon written complaint filed by any interested person, shall, review the bona fide operation of any dispute settlement procedure resort to which is stated in a written warranty to be a prerequisite to pursuing a legal remedy under this section. If the Commission finds that such procedure or its implementation fails to comply with the requirements of the rules under paragraph (2), the Commission may take appropriate remedial action under any authority it may have under this chapter or any other provision of law.

85. 681 F. Supp. 1374 (D. Minn. 1988).

86. *Id.* at 1378-79.

87. MINN. STAT. § 325F.655 (1983).

88. *See* 15 U.S.C. § 2310(a).

89. *See supra* notes 80-83 and accompanying text.

90. *Automobile Importers*, 681 F. Supp. at 1378.

91. *Id.* at 1378-79. The express preemption clause is limited to labeling and disclosure in written warranties. 15 U.S.C. § 2311(c) provides:

- (1) Except as provided in subsection (b) [savings clause] of this section and in paragraph (2) of this subsection, a State requirement--

that Congress had not occupied the field. In considering the "actual conflict" test of preemption, the court found none to exist. It reasoned that the "[o]verriding intent behind Magnuson-Moss appears to have been to enhance consumer protections."<sup>92</sup> Therefore, it stated that the Minnesota Lemon Law was not "an obstacle to the full purposes and objectives of Congress."<sup>93</sup> Rather, the lemon law sought to further the congressional purpose of protecting consumers by enhancing the Magnuson-Moss protections.<sup>94</sup> The FTC regulations were only perceived as minimum requirements which could be enhanced by the state. The court further noted that Magnuson-Moss was not intended to grant "rights" to manufacturers.<sup>95</sup>

A Kentucky federal district court upheld a challenge to Kentucky's Lemon Law provisions. In *Chrysler Corp. v. Armstrong*,<sup>96</sup> the court found that a provision which required manufacturers to hold an oral hearing unless waived by the consumer was within the savings clause of Magnuson-Moss because it was a right or remedy granted by state law.<sup>97</sup> The court agreed with a non-binding FTC staff opinion which held that the "Act and its history show no Congressional intent whatsoever to occupy the field of warranty law, or even to exercise exclusive jurisdiction as to those aspects of warranty law addressed in the Act."<sup>98</sup> Moreover, the FTC staff opinion stated that "a finding of implied preemption of a state law outside the narrow realm of express preemption must be based on strong evidence of a necessary conflict with the federal Act or rule."<sup>99</sup>

Based on these four prior decisions, it would appear that there is a split in opinion as to whether the Magnuson-Moss Act should have preemptive

(A) which relates to labeling or disclosure with respect to written warranties or performance thereunder;

(B) which is within the scope of an applicable requirement of sections 2302 [content], 2303 [designation], and 2304 [minimum standards for warranties] of this title (and rules implementing such sections), and

(C) which is not identical to a requirement of section 2302, 2303, or 2304 of this title (or a rule thereunder),

shall not be applicable to written warranties complying with such sections (or rules thereunder).

92. *Automobile Importers*, 681 F. Supp. at 1378. See H.R. 93-1107, *supra* note 5.

93. *Armstrong*, 681 F. Supp. at 1378.

94. *Id.*

95. *Id.* at 1380.

96. No. 83-45, slip op. (E.D. Ky. Apr. 30, 1985).

97. *Id.* at 1.

98. *Id.*

99. *Id.*

effect on state lemon laws. The court in *Abrams* considered all of these prior decisions, and relied as well upon its own perception of the legislative history and language of the Act and the FTC regulations in its decision.

## VII. CONCLUSION

In the final analysis, the court in *Abrams* placed most of its emphasis on the interests of the manufacturers when weighing the interests between the manufacturers and the consumers. It is worth reiterating the overriding purpose of the Magnuson-Moss Act, i.e., to enhance consumer protection, and to ask whether the court has lost sight of this ultimate goal. The burdens to the manufacturers must be considered, but they have greater resources than the average consumer to bear such burdens. The court decided that the New York Lemon Law overburdened the manufacturers to a degree that would be unacceptable in the federal scheme. The court held that New York General Business Law section 198-a (g), (h), and (m) were severed from the remainder of the Lemon Law because they were preempted by the Magnuson-Moss Warranty Act and FTC regulations promulgated thereunder.<sup>100</sup>

The court was very thorough in its examination of the issues in this case and succeeded in discussing all of the relevant points of view. However, in coming down on the side of the manufacturers, the court has severely limited the ability of New York (and possibly other states if courts there find the rationale of this court persuasive) to further enhance protections to consumers in the area of consumer protection warranty law.<sup>101</sup>

DAVID P. HIATT

---

100. *Abrams*, 697 F. Supp. at 743-44.

101. The state of New York could seek to have those statutes granting greater protection to consumers approved by the FTC, notwithstanding the court's finding of preemption, pursuant to section 2311(c)(2) of the Magnuson-Moss Act so long as it can show that interstate commerce will not be unduly burdened. See *supra* note 53 for the text of this subsection.

