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ADVISORY RULING #83
OCTOBER 1, 1985

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Re: Limitations on Lessee's Liability at End of Lease Term, §3-401

A lessor has inquired whether the provisions of §3-401 of the Maine Consumer Credit Code, limiting a lessee's liability at the end of the lease term to no more than two times the average monthly payment, applies to all liabilities including those occasioned by excessive use of the leased property, such as occurs when a leased automobile is drive more miles than contracted for.

The answer to the question is "No." Section 3-401 is primarily designed to prevent large "balloon"-type payments at the conclusion of open-end leases. Excessive use charges greater than two times the monthly lease payment can be recovered, provided they are based upon reasonable standards, are contracted for and are properly disclosed.

Section 3-401 provides that:

> The obligation of a lessee upon expiration of a consumer lease may not exceed twice the average payment allocable to a monthly period under the lease. This limitation does not apply to charges for damages to the leased property or for other default.

There is no further clarification in the Code of the types of charges that are considered "charges for damages" or "default" charges under §3-401. However, two other outside sources provide clear evidence the limitation in §3-401 was intended to cover liability at the end of open-end leases, and not charges imposed for excessive use of leased property.

First, §3-401 of the 1974 Uniform version of the Code is identical to the current Maine version of that section. The official comment to the Uniform version states that the section is designed to prevent "deceptively low rental payments" to "gullible" consumers who will ultimately face a large balloon-type payment at the end of an open-end lease when the difference between the estimated value of the leased property at the end of the lease and the realized value is determined.

Second, a parallel provision exists in the federal Truth-in-Leasing Act, and Regulation M, which implements it. Section 213.4(g)(15) of Regulation M requires the lessee to be informed of the law's rebuttable presumption that, in an open-end lease, the originally estimated value of the property at the end of the lease was unreasonable and not made in good faith to the extent that the difference between the estimated value and the realized value exceeds three times the monthly

payment. Unlike State law which prohibits a collection of more than two times the monthly payment, federal law would allow it if the lessor brings successful lawsuit to recover it and pays the lessee's attorney's fees along the way.

Lending further credence to the conclusion that a charge for excess mileage is not limited by §3-401 and §213.4(g)(15) is a declaration in that latter provision that the presumption of unreasonableness does no arise to the extent that "the excess of estimated value over realized value is due to unreasonable wear or use, or excessive use" (emphasis added). Thus, in an automobile lease situation, to the extent that the car's value is further reduced by mileage beyond what was contracted for and disclosed, the lessor can recover such diminution, whatever it may be, regardless of the two-times -the-monthly-payment limit.

Such a conclusion makes economic sense as well. Without an ability to assess heavy users for their additional mileage, all consumers would have to pay higher lease payments to subsidize such users. Allowing excess use fees allocates cost where it belongs. Additionally such a system is not subject to abuse in that it is objectively verifiable and easily understood by the lessee.

Lessors are reminded that in adopting Regulation M as State law, the Bureau expressly rejected the federal standard for excess liability at the end of a lease, substituting the provisions of §3-401. Additionally, any standards set by the lessor for defining excessive use of leased property must be reasonable, and must be disclosed to the lessee prior to the consummation of the lease (Regulation Z-2, §213.4(g)(8)).

Finally, the Bureau takes this opportunity to remind lessors that with the modification of §3-308 of the Code (P.L. 1985, c. 113), lessees facing balloon payments at the conclusion of open-end leases are permitted to repay those balloons at the same rate at which they had been paying on the lease. While this will not have much practical impact in that §3-401 limits liability to no more than two monthly payments, it does mean that consumers could insist on repayment such obligations in two installments rather than in one, larger balloon payment.

/s/ Robert A. Burgess
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