

SEVEN QUESTIONS TO ASK A LEMON LAW FIRM ABOUT POTENTIAL REPRESENTATION



Consumer Awareness Guide

Katz & Amar LLP

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1. How long will you take to review my records once I send them?

The first step for any law firm that handles Lemon Law claims is to review your repair records. However, some law firms are understaffed and can take several days, or even a week or more to get back to you. If a firm is properly staffed it should take no longer than one business day (usually the same day if the records are provided by mid-day) to review your vehicle records and then let you know your options. Be very leery of sending your vehicle repair records to any firm that tells you it will take more than one business day to review your records. That is a huge red flag that the firm is not sufficiently staffed, which could affect its efficiency in processing your Lemon Law or breach of warranty claim.

2. Are you willing to litigate my case if it does not settle out of court?

Common sense tells us that in order to obtain the best results through negotiation, we need both sticks and carrots. There are some attorneys who only handle Lemon Law or breach of warranty claims out of court and are unwilling to sue the car, RV, boat or motorcycle company if there is an unfair offer made—or even worse, an outright rejection of the claim. The reason is simple: filing a lawsuit and litigating in court requires much more work and a



bigger time investment including legal research, drafting, and factual investigation. It can also be stressful for the attorney due to having to battle about legal and factual issues with the manufacturer's attorneys. Because of these issues, some attorneys simply will not litigate *any* Lemon Law or breach of warranty case. If the claim is rejected out of court or an unfair, low-ball offer is made to try and settle the case, the firm may pressure its clients to accept a bad deal or just drop the matter entirely rather than going to court. Such attorneys tell their clients (usually for the first time) that their firm does not litigate and that they should seek out another attorney if they want to go to court for a better result. Of course, manufacturers know who these attorneys and firms are and use that information to their advantage. Without the threat of a lawsuit, the companies have little incentive to make a fair settlement offer no matter how strong the case is.

To ensure that you are provided the best possible out of court offer, you should verify that any law firm you hire to assist you in your Lemon Law or breach of warranty claim will not hesitate to file a lawsuit on a valid case if you are not happy with a pre-litigation settlement offer, provided

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that you are reasonable and open-minded regarding your settlement options. Keep in mind that litigation in these cases should be rare, especially when you're represented by a law firm that negotiates with both sticks and carrots. Think about a potential attorney like a trained boxer or martial artist. They usually have to fight less in the real world because of their reputation for being well trained and willing to fight if they have to.

Because Katz & Amar, LLP is willing to litigate legitimate cases that are unfairly rejected out of court or have unreasonably low settlement offers made, over 95% of our firm's cases settle without the need for a lawsuit. The manufacturers know they have a high likelihood of being sued if they are not fair to our clients. That generally leads the companies to make reasonable offers to our clients that comply with the law, which avoids a court battle and means the quickest, easiest, and most risk-free results for you.

3. What is your firm's policy regarding answering and returning client calls?

One of the biggest complaints about attorneys is how difficult it is to get them on the phone. Attorneys can take days to respond or will respond to calls with an email. That can be extremely frustrating and aggravating to deal with, especially if you are calling because of an urgent problem. In our view, you are entitled to and should have an *accessible* attorney. It is fair of you to expect open communication and accessibility and not to be treated as a nuisance if you call when there are a variety of law firms you could take your business to. **You should choose the firm that is willing to put your interests first.** Always be sure to ask about a law firm's policy regarding accessibility and responding to client phone calls when considering who to hire to represent you in your Lemon Law claim.

4. Are Lemon Law and breach of warranty claims your firm's primary practice area?

Any law firm can technically take on any type of legal matter as long as it doesn't create a conflict of interest with existing or past clients. Because of that, there are attorneys who dabble in Lemon Law and breach of warranty claims despite specializing in other practice areas. But it is very difficult to be an expert in multiple areas of law considering that there are constant legal developments and potential changes to the law, which is why most law firms focus on a limited number of practice areas. Think about it like this—if you have a broken foot, would you go to a brain surgeon? Of course not. You go to a podiatrist. The same is true for lawyers. A law firm that focuses its efforts on your specific legal problem is much more likely to be able to help you and get the best results possible.



Additionally, a firm that handles primarily Lemon Law matters is more likely to have developed better relationships with the representatives of car, RV, boat, and motorcycle manufacturers over the years. Those relationships can obviously benefit clients in terms of negotiating and reaching potential settlements. It is human nature to be more accommodating to someone you know, have dealt with before and will keep dealing

with in the future. Hiring a firm with this sort of experience and expertise has obvious benefits compared to firms that have only occasionally and sporadically dealt with these issues and the representatives who handle these claims.

Car companies and other manufacturers are well aware of the difference in knowledge between general or multi-practice firms vs. niche single practice firms, which can affect the settlement offers they are willing to make. The differences in reputation, experience, and skill in handling the specific sort of issues raised by Lemon Law and breach of warranty claims could mean very different results depending on who you choose to represent you.

5. What is your fee for out of court representation and under what circumstances are you willing to reduce the fee?

Although most Lemon Law firms seek their attorneys' fees from the vehicle company or manufacturer as part of settlement, you should know what that fee actually is. When considering attorneys, always ask what the law firm charges for attorneys' fees for out of court settlements. You should also ask under what circumstances, if any, the firm would be willing to reduce the fee for you if necessary.



Remember that under the law, there are multiple ways to be compensated for a Lemon Law or breach of warranty claim, including Repurchase or Replacement of your vehicle or Cash

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Compensation with you keeping the vehicle. For Replacements, some attorneys will charge their clients the difference if a company is not willing to cover their entire fee. Some firms are willing to cut part of their fee if this occurs and some are not. Be sure you know a firm's policy about reducing fees before hiring the firm.

For cash-and-keep compensation offers (meaning you are provided compensation while keeping your vehicle), companies typically do not differentiate between the attorneys' fees and the compensation amount to the consumer, leaving it up to the attorney and the client to split the offer however they choose. Some attorneys will insist on charging their entire fee regardless of how much that leaves you, even if it's less than what they get paid. They try and justify this unequal split by the time, overhead, and overall cost of handling Lemon Law claims or by the fact that the company would not have made the settlement offer without the attorney threatening to file a lawsuit and/or the reputation of the firm. Although these are rational explanations regarding the costs and factors that go into handling Lemon Law cases for attorneys, in our view it is still unfair for a law firm to get paid *more* than you for these types of claims out of court. After all, you are the one who has been inconvenienced and has suffered aggravation, uncertainty, even embarrassment from dealing with the defective product.

An important exception is if a case is filed in court. The difference in time an attorney must spend on a court case vs. an out of court settlement negotiation can be dramatic. Unlike out of court, once a lawsuit is filed, there is no way to predict just how many hours it will take for an attorney to resolve the case. That is not an issue for out of court settlement negotiations where the amount of work involved is predictable from start to finish. For this reason, many law firms offer a flat fee to represent clients out of court, which means that their fee will not change no matter how many hours are spent working on the case or how much their client receives in compensation.

However, if a settlement offer is made that would result in the attorney receiving a larger share of the compensation offered because of the flat fee, the fee should be cut so that the amount is split in half with you. In our view, both attorneys and clients should compromise in situations where a low offer is made and filing a lawsuit is unlikely to obtain a better result due to factual and/or legal problems with the case, or you simply do not want to deal with the risk, time commitment, and expense of a lawsuit. For cases like these, the attorney should not get paid more than you, so be sure to ask any firm you are considering hiring about these scenarios and how they are handled.

6. Is there any way I will be charged out of pocket for out of court representation?

Some Lemon Law firms charge potential clients just to review their claim, while others like ours will review your case for FREE. It is obviously in your best interests to see if your vehicle qualifies as a Lemon without being charged. Moreover, many Lemon Law firms say they will seek attorneys' fees from the other side out of settlement, but have language in their attorney-client agreements that make you responsible for fees in certain situations such as if the company offers to Repurchase or Replace your vehicle but refuses to pay the full attorneys' fees. It is

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understandable why some consumers agree to this, considering how badly they want out of their Lemon vehicle and how valuable it is to have a qualified attorney fighting in their corner. Some consumers don't mind contributing for part of the attorneys' fees out of their Refund (or even out of pocket for a new vehicle Replacement) if they are rid of their Lemon vehicle through a Repurchase or Replacement. It is frankly unfair of companies not to offer the full attorneys' fees to the firm that negotiated a max recovery for their client under the law (i.e., a Repurchase or Replacement). However, you should at least be aware that you could be charged out of pocket for a Replacement in this scenario *prior* to hiring a firm to represent you. Then you can decide if that potential charge would be acceptable to you or not.

7. Do you have a written representation agreement for out of court representation?

There are some firms that will send a notice/demand letter to a manufacturer on your behalf after reviewing your vehicle repair records without having any representation agreement signed by you. The firm will then contact you when it receives a settlement offer or will send you a letter after the fact outlining the terms of representation. You should obviously have the choice whether to hire an attorney or agree to the terms of representation *before* any correspondence is sent on your behalf. That way you can decide if the terms are acceptable to you or not. As such, you should always ask whether the firm has a representation agreement for out of court representation and make it clear in writing (when emailing or faxing repair records for review) that the firm is not to send any letters on your behalf or claim it represents you without you having a chance to review and agree to a representation contract *first*.

To receive more information or have your case reviewed by one of our attorneys for FREE, give us a call today!

Katz & Amar LLP

949-490-5594 (phone)

docs@katzandamar.com (email)

1-866-226-1333 (fax)