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Congress enacted the Magnuson-Moss Warranty Federal Trade Commission Improvement Act\(^1\) to increase consumer rights and protections relative to product warranties, and to provide new avenues for consumer redress.\(^2\) The act created several important remedial rights\(^3\) including the right of a consumer,\(^4\) who obtains a full written
warranty, to demand replacement of a defective product from the

CASES 167 (1984) (fees not awarded if consumer failed to give the warrantor a reasonable opportunity to cure the defect) [hereinafter cited as R. BILLINGS].

The Magnuson-Moss Act allows consumers with small claims to consolidate their actions in order to satisfy the jurisdictional amount necessary to bring a class action in district court. Magnuson-Moss Warranty Act §110(d)(3), 15 U.S.C. §2310(d)(3) (1981). To invoke federal class action jurisdiction, three requirements must be met. The plaintiff must show that (1) the amount in controversy of each individual claim is at least $25; (2) the amount in controversy for all claims is at least $50,000; and (3) the number of named plaintiffs is at least 100. Id. See generally Comment, Magnuson-Moss Federal Court Class Actions—Federal Right Without A Federal Forum, 11 Cum. L. Rev. 133 (1980) (full utilization of federal court class actions, as a means of consumer redress, has not been realized).

The Act also provides incentive to manufacturers who set up arbitration programs for consumer disputes. Magnuson-Moss Warranty Act §110(a)(1), 15 U.S.C. §2310(a)(1) (1981). See R. BILLINGS, supra at 137 (warranty can require purchaser to go to arbitration before proceeding in court). If a buyer does not like an arbitration award, which is binding on the manufacturer, he or she can turn it down and file an action. Magnuson-Moss Warranty Act §110(a)(1), 15 U.S.C. §2310(a)(1) (1981). The manufacturer can then introduce the result of arbitration in court. Id. For a discussion on the success of such arbitration programs see R. BILLINGS, supra at 70 (requests for arbitration and mediation are running 8,000 per month for General Motors' program alone). See generally Eddy, Effects of the Magnuson-Moss Act Upon Consumer Product Warranties, 55 N.C.L. Rev. 835 (1977) (discussing the proposed rules setting forth minimum requirements for dispute mechanisms); Comment, The Magnuson-Moss Warranty—Federal Trade Commission Improvement Act: Protecting Consumers Through Product Warranties, 33 Wash. & Lee L. Rev. 163 (1976) (the purpose of the dispute mechanisms is to settle complaints fairly and expeditiously).


5. Magnuson-Moss Warranty Act §104(a), 15 U.S.C. 2304(a) (1981), states that to be designed as a full warranty, the following minimum standards must be met:

(1) The warrantor must agree to repair any product that fails to conform to the warranty, within a reasonable time, and at no cost to the consumer.

(2) The warrantor cannot limit the duration of any implied warranties.

(3) If the warrantor wishes to limit consequential damages he must so designate conspicuously and on the face of the warranty.

(4) The consumer is allowed to choose replacement or refund if the seller can-
manufacturer. If the manufacturer does not comply with the consumer's demand the consumer is entitled to bring an action against the manufacturer seeking equitable relief. In Sadat v. American Motors Corporation, the Illinois Supreme Court addressed the issue of whether the equitable relief entailed in the Magnuson-Moss Warranty Act allows a consumer to obtain a court order requiring a manufacturer to replace a defective product, absent a showing of two traditional equity considerations: irreparable harm and an inadequate remedy at law. Disregarding the broad remedial provision of the Act, the court held that these standard preconditions for equita-

not repair the defective product within a reasonable time. Id.

The Act requires that the written warranty be clearly and conspicuously designated either “full warranty” or a “limited warranty.” Id. §101(6), 15 U.S.C. §2301(6) (1981). These are the exclusive designations under the Act. In Federal Trade Commission v. Virginia Homes Mfg. Corp. 509 F. Supp. 51, 57 (D.C. Md. 1981), the district court ruled that a designation such as “[m]anufacturer's warranty and limitation of remedy” would violate the Act. See generally Strasser, Magnuson-Moss Warranty Act: An Overview and Comparison with U.C.C. Coverage, Disclaimer, and Remedies in Consumer Warranties, 27 MERCER L. REV. 1111 (1976) (theory behind the designation is that competitive pressure will force many, if not most, merchants to use a “full” warranty).

   (a) repair,
   (b) replacement, or
   (c) refund:
except that the warrantor may not elect refund unless (i) the warrantor is unable to provide replacement and repair is not commercially practicable or cannot be timely made, or (ii) the consumer is willing to accept such refund. Id. §101(10), 15 U.S.C. §2301(10) (1981).

7. Id. §110(d), 15 U.S.C. §2310(d) (1981). A consumer who is injured by the failure of a warrantor to comply with any obligations under a written warranty “may bring suit for damages and other legal and equitable relief.” Id.

Only the warrantor making the full warranty may be sued under the Act. Id. §110(f), 15 U.S.C. §2310(f) (1981). In the sale of new cars this is the manufacturer. Skelton v. General Motors Corp., 660 F.2d 311 (7th Cir. 1981) (private litigant brought suit against automobile manufacturer); Lieb v. American Motors Corp., 538 F. Supp. 127 (S.D.N.Y. 1981) (private litigant sought injunction against manufacturer). However, if under state law the dealer has adopted the warranty, it, too, may be sued under the Act. 16 C.F.R. §700.4 (1982).


9. Id. at 110, 470 N.E.2d at 1000. The injury will be an irreparable one if the remedy at law is inadequate. Bar Harbor Banking & Trust Co. v. Alexander, 411 A.2d 74 (Me. 1980). The remedy at law may be inadequate because (1) the relief which the court of law is empowered to grant is not the kind the situation demands, (2) the amount of damages cannot be ascertained with reasonable accuracy, or (3) the procedures at law cannot be adapted to meet the needs of the situation. H. McClintock, McClintock on Equity 103 (2d ed. 1948).

The earliest case on the subject of adequacy of the remedy at law, and perhaps the one most frequently cited, is Pusey v. Pusey, 1 Vern. 273 (1684). That case involved the possession of a horn given to the Pusey family by the Danish King Canute. Id. The bill for specific performance was maintained. Id. Because the object was so unique, the court found the plaintiff had no adequate remedy at law. Id.
bile relief must still be established before a court will issue a mandatory injunction.\footnote{10}{Sadat v. American Motors Corp., 104 Ill. 2d 105, 470 N.E.2d 997 (1984).}

On April 3, 1979, Roxanne Sadat purchased a new American Motors Automobile.\footnote{11}{Sadat v. American Motors Corp., 114 Ill. App. 3d 376, 448 N.E.2d 900 (1983), aff'd, 104 Ill. 2d 105, 470 N.E.2d 997 (1984).} The car was covered by a full 12 month/12,000 mile written warranty.\footnote{12}{Sadat, 104 Ill. 2d 105, 470 N.E.2d 997. Among all domestic and foreign marketers of new cars, only American Motors Corporation offers a full warranty. See R. Billings, supra note 3, at 171.} During the warranty period the vehicle exhibited several defects requiring Sadat to return the car to the dealer on several occasions.\footnote{13}{Sadat’s complaint alleged the following defects: the brakes often failed or were difficult to engage, the steering column vibrated excessively, the transmission slipped from park to reverse, the engine leaked oil, the car dieseled after the engine was turned off, and the passenger compartment was permeated with the smell of exhaust. Sadat, 104 Ill. 2d at 107, 470 N.E.2d at 998.} After attempts to repair the vehicle failed, Sadat requested a replacement car pursuant to section 104(a)(4) of the Magnuson-Moss Act.\footnote{14}{The Act provides that "if the product contains a defect or malfunction after a reasonable number of attempts by the warrantors to remedy the defects or malfunction in such product, such warrantor must permit the consumer to elect either a refund for, or replacement without charge of such product." Magnuson-Moss Warranty Act §104(a)(4), 15 U.S.C. §2304(a)(4) (1981). For a discussion of what criteria are required in order for a warranty to be designated as "full" under section 104 of the Act see supra note 5.} The manufacturer refused, so Sadat filed a complaint in state court seeking a mandatory injunction ordering AMC to replace the vehicle.\footnote{15}{Sadat sought either replacement of the automobile with a new vehicle of equal or superior quality, or a refund of the purchase price, plus attorney’s fees and costs. Complaint at Law, Count I D1, Sadat v. American Motors Corp., 104 Ill. 2d 105, 470 N.E.2d 997 (1984).}

The trial court granted AMC’s motion to dismiss, holding that the complaint did not state a cause of action.\footnote{16}{Sadat v. American Motors Corp., No. 81 CH 9469 (Cir. Ct. Cook Cty. 1982), aff’d, 114 Ill. App. 3d 376, 448 N.E.2d 900 (1983), aff’d, 104 Ill. 2d 105, 470 N.E.2d 997 (1984).} The appellate court

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affirmed the lower court's order. The court ruled that because the Act did not expressly create statutory injunctive rights for consumers, the plaintiff must show that she suffered irreparable harm and that she did not have an adequate remedy at law.

On appeal, the Illinois Supreme Court decided the issue of whether a consumer must prove traditional equity prerequisites, in addition to the expressed requisites of the Magnuson-Moss Act, in order to obtain replacement for a defective product. The issue was one of first impression. The court held that because the Act did not specifically afford consumers injunctive relief, common law equity criteria must be satisfied. The court, ruling that immunity from pleading irreparable harm and an inadequate remedy at law is limited to suits brought by governmental agencies or private parties acting in the public interest, concluded that its decision should not defeat the congressional intent of providing consumers with effective remedies against recalcitrant manufacturers.

The Illinois Supreme Court began its analysis by noting the general rule regarding pleading according to a statute, which provides that a plaintiff need only show what is expressly required in a statute in order to receive the statutory remedy. The court stated that a consumer in possession of a defective product, covered by a full written warranty, has a cause of action for damages if the dealer tenders delivery of the automobile. Ill. Rev. Stat. ch. 26, §725(2) (1983). See also Voth v. Chrysler Motor Corp., 218 Kan. 644, 545 P.2d 371 (1976) (action for breach of warranty was time barred since suit was brought more than four years after delivery). See generally Strasser, Magnuson-Moss Warranty Act: An Overview and Comparison with U.C.C. Coverage, Disclaimer, and Remedies in Consumer Warranties, 27 Mercer L. Rev. 1111 (1976) (discussion of relationship between state law and the Magnuson-Moss Act).

18. Id. at 116, 470 N.E.2d at 1001.
19. Id. at 114, 470 N.E.2d at 1001.
20. Id. at 1110, 470 N.E.2d at 1000.
21. Id. at 1110, 470 N.E.2d at 1000.
22. Id. at 1110, 470 N.E.2d at 1000.
23. Id. at 1110, 470 N.E.2d at 1000.
24. Id. at 1110, 470 N.E.2d at 1000.

The plaintiff need not state more than the Act requires in order to obtain the relief authorized by the act, to state more than the act requires”) (quoting Mullarkey v. Trautvetter, 276 Ill. 409, 411-12, 114 N.E.2d 920, 921 (1916). Similarly, in Mendelson v. General Motors Corp., 105 Misc. 2d 346, 432 N.Y.S.2d 132 (1980), the court held that plaintiff need allege only the facts required by the Magnuson-Moss Act. Id. at 350, 432 N.Y.S.2d at 136. In Mendelson, the defendant sought to dismiss two causes of action claiming violations of the Act on the grounds that the plaintiff had not notified the defendant prior to commencement of a class action. Id. at 349, 432 N.Y.S.2d at 134. Although the Magnuson-Moss Warranty Act permits warrantors to impose on the consumer a duty to notify, it does not by its own terms require such notice. Magnuson-Moss Warranty Act §111(b)(1), 15 U.S.C. §211(b)(1) (1981). Accordingly, the plaintiff stated a cause of action under the Act, and the defendants' motion to dismiss was denied. Mendelson v. General Motors Corp., 105 Misc. 2d 346, 432 N.Y.S.2d 132 (1980).
rantor cannot repair the vehicle within a reasonable time. The court held that these same criteria, however, are insufficient to state a cause of action for injunctive relief. The court concluded that Congress did not intend to establish injunctive relief for consumers on a showing of a statutory violation because it did not explicitly grant consumers injunctive rights, as it did when it gave the United States Attorney General and Federal Trade Commission the power to restrain noncompliance with the Act.

The supreme court noted that no statutes have been construed as relaxing the traditional requirements for an injunction when a private party plaintiff seeks to enforce private rights. The court found that the rule concerning immunity from pleading irreparable harm and an inadequate remedy at law applies only to governmental agencies seeking equitable relief or private parties seeking equitable relief to protect the public interest.

25. Sadat, 104 Ill. 2d at 111, 470, N.E.2d at 1000. As in other areas of contract law, it is incumbent on a plaintiff in a warranty action to use such means as are reasonable under the circumstances to avoid or minimize damages. Annot. 66 A.L.R. 3d 1162 (1982). See also C. Mccormick, Handbook on the Law of Damages 127 (1935) (law seeks to encourage the avoidance of loss by denying the wronged party a recovery for such loss as he could have reasonably avoided). Additionally, the burden is on the defendant to prove facts which will bring mitigation into issue. Royal Lincoln Mercury Sales, Inc. v. Wallace, 33 U.C.C. Ref. Serv. 1262, 415 So. 2d 1024 (Miss. 1982).

26. Sadat, 104 Ill. 2d 105, 470 N.E.2d 997. "We disagree and for the reasons to follow, hold that a complaint for injunctive relief under section 110(d)(1) 15 U.S.C. §2310(d)(1) of the Act is insufficient absent the traditional showing of irreparable harm and inadequate remedy at law." Id. at 110, 470 N.E.2d at 1000.


average consumer was virtually unable to obtain injunctive relief, apparently viewing the award of money damages and attorney's fees as satisfactory redress under the Act.\textsuperscript{30}

The Illinois Supreme Court's holding in \textit{Sadat} is incorrect for three reasons. First, the court completely gutted the Act, ignoring legislative intent and the Act's plain language.\textsuperscript{31} Second, the court set dangerous new precedent by disregarding standard principles of statutory construction.\textsuperscript{32} Finally, the decision is unsupported by the cited case law.\textsuperscript{33}

Congressional concern with the inadequacy of existing warranty laws prompted the passage of the Magnuson-Moss Act.\textsuperscript{34} The legislature intended to provide consumers with effective warranties and an efficient means to enforce those warranties.\textsuperscript{35} Section 104 of the Magnuson-Moss Act specifically states that the consumer can obtain replacement of a defective product if the warrantor cannot repair the defects within a reasonable time.\textsuperscript{36} The "warrantor must permit the consumer to elect either a refund for, or replacement without charge of, such [defective] product."\textsuperscript{37} The Illinois Supreme Court disregarded that language and required Sadat to establish irreparable harm and an inadequate remedy at law. To do so, a buyer would have to show that the product was unique or otherwise unobtainable,\textsuperscript{38} an incredible burden in a nation where most products are mass-produced.

The Illinois Supreme Court essentially revoked a remedy the

\textsuperscript{30} \textit{Sadat}, 104 Ill. 2d 105, 470 N.E.2d 997.  
\textsuperscript{31} For a discussion of the legislative intent of the Magnuson-Moss Act see infra notes 34-37 and accompanying text.  
\textsuperscript{32} See infra notes 38-41 and accompanying text for applicable statutory construction rules.  
\textsuperscript{33} For relevant case law see infra notes 42-75 and accompanying text.  
\textsuperscript{35} For a discussion of the purpose of the Magnuson-Moss Act see \textit{supra} note 2.  
\textsuperscript{36} Magnuson-Moss Warranty Act \$104(a)(4), 15 U.S.C. \$2304(a)(4) (1981). In \textit{Pratt v. Winnebago Indus. Inc.}, 463 F. Supp. 709, 713 (W.D. Pa. 1979), the court held that the Magnuson-Moss Act "specifies with utter clarity that a consumer has the right to elect to receive a refund [or replacement] . . . if the product has defects which survive a reasonable number of attempts by the warrantor to repair them."  
\textsuperscript{38} See \textit{Fortner v. Wilson}, 22 Okla. 563, 216 P.2d 299 (1950) (general rule is that automobiles are never considered unique chattel); G. CLARK, PRINCIPLES OF EQUITY \$42 (1948) (while uniqueness is variously defined, the underlying principle is that the chattel cannot be duplicated in the market).
Magnuson-Moss Act specifically provides. This ruling demonstrates the court’s complete disregard for well established principles of statutory construction. A statute should be read as a whole to give effect to every provision, so that no part will be superfluous. In addition, remedial statutes, like Magnuson-Moss, which remedy a defect in the common law or a pre-existing body of statutory law, are to be given a liberal construction.

Furthermore, the decision in Sadat is incorrect because it is unsupported by the cited case law. The Illinois Supreme Court erroneously concluded that the Act was not sufficiently explicit to allow consumers an injunction. In reaching this conclusion, one case the court relied on was Oscar George Electric Company v. Metropolitan

39. 2A A. SUTHERLAND, STATUTORY CONSTRUCTION §46.06 (4th ed. 1973) (an elementary rule of statutory construction is that effect must be given, if possible, to every word, clause and sentence of a statute).

40. Sadat, 104 Ill. 2d at 117, 470 N.E.2d at 1003 (Simon, J., dissenting). "A statute should be read as a whole in order to give effect to its purpose." Id. at 118, 470 N.E.2d at 1003. See Morris v. Broadview, 385 Ill. 228, 231-32, 52 N.E.2d 769, 770 (1944) (statute should be interpreted according to its intent and meaning, so as to accomplish its general objective).

In the appellate court, AMC raised the argument that Congress' use of "and" in the phrase "damages and other equitable relief" in section 110(d)(1) of the Act, indicated that Congress intended damages to be the sole remedy. Brief for Respondent at 19, Sadat v. American Motors Corp., 114 Ill. App. 3d 376, 448 N.E.2d 900 (1983), aff'd, 104 Ill. 2d 105, 470 N.E.2d 997 (1984). AMC conceded that Sadat would be entitled to maintain her action if Congress had used "or" instead of "and" in section 110(d)(1). Brief for Respondent at 19, Sadat v. American Motors Corp., 114 Ill. App. 3d 376, 448 N.E.2d 900 (1983), aff'd, 104 Ill. 2d 105, 470 N.E.2d 997 (1984).

41. E. CRAWFORD, STATUTORY CONSTRUCTION §251 (1940). "Remedial statutes should be given a liberal construction, in order to effectuate the purpose of the legislature, or to advance the remedy intended, or to accomplish the objective sought, and all matters fairly within the scope of the statute should be included." Id. at 493. Remedial legislation is often in derogation of the common law. Id. These statutes receive a liberal construction in order to carry out the purpose of the statute and secure a more effective, speedier, and simpler administration of the law. Id. at 496. See also F. McCAFFERY, STATUTORY CONSTRUCTION §74 (1953) (liberal construction expands the meaning of the law to embrace cases which are clearly within the spirit or reason of the law, or within the evil which it was designed to remedy). In Skelton v. General Motors Corp., 660 F.2d 311 (7th Cir. 1981), the Magnuson-Moss Act was described as "a remedial statute designed to protect consumers..." Id. at 313.

42. Sadat, 104 Ill. 2d 105, 470 N.E.2d 997. The Sadat court looked to prior case law involving other statutes which held that injunctive relief must be expressly authorized in order to forego conventional equity prerequisites. Atchison, Topeka and Santa Fe Ry. Co. v. Lennen, 640 F.2d 255 (10th Cir. 1981) (Revised Interstate Commerce Act, 49 U.S.C. §11503(c) (Supp. IV 1980), was found to expressly authorize injunctions to restrain violations of the Act); People ex rel. Carpenter v. Goers, 10 Ill. 2d 272, 170 N.E.2d 159 (1960) (Motor Vehicle Act, ILL. REV. STAT. ch. 95 1/2, §2-116 (1979), specifically provided for an injunction "to enforce provisions of the Act"); Oscar George Electric Co. v. Metropolitan Fair and Exposition Auth., 104 Ill. App. 3d 957, 433 N.E.2d 958 (1982) (wherein section 25 of the Metropolitan Fair and Exposition Authority Act, ILL. REV. STAT. ch. 85, §1245 (1979), allows bidders who submit bids in compliance with the Act to "bring suit in equity"); People v. Keeven, 68 Ill. App. 3d 91, 385 N.E.2d 804 (1979) (injunctive relief expressly authorized to prevent violations of the Environmental Protection Act, ILL. REV. STAT. ch. 111 1/2, §1042(d) (1983)).
Fair and Exposition Authority. In Oscar George, the plaintiff sought an injunction pursuant to the Metropolitan Fair and Exposition Authority Act. Although the Act did not specifically grant injunctive relief, the court upheld the plaintiff's request for an injunction. The language of the Metropolitan Fair and Exposition Authority Act and the Magnuson-Moss Act are quite similar. The Metropolitan Fair and Exposition Authority Act allows an injured party to "bring suit in equity" to enforce provisions of the statute. Similarly, the Magnuson-Moss Act allows consumers, who have been injured by a warrantor's failure to comply with an obligation under the Act, to "bring suit for . . . equitable relief." The rationale of the Oscar George decision can be extended to Sadat. Oscar George held that when the legislature grants general equitable relief it is impliedly authorizing injunctive relief.

Despite Oscar George, the Illinois Supreme Court in Sadat held that the phrase "equitable relief" did not include injunctive relief because Congress specifically gave injunctive power only to the United States Attorney General and the Federal Trade Commission, according to section 110(d)(1) of the Act. The issue of whether the Magnuson-Moss Act is sufficiently specific to allow a consumer to seek an injunction was decided by a federal court in Lieb v. American Motors Corporation. The Lieb court ruled that the term "eq-

45. Oscar George, 104 Ill. App. 3d at 960, 433 N.E.2d at 961.
46. Section 25 of the Metropolitan Fair and Exposition Authority Act, Ill. Rev. Stat. ch. 85, §1245 (1983), allows bidders who submit bids in compliance with the Act to "bring suit in equity . . . to compel compliance with the provisions of [the] Act relating to the awarding of contracts by the Board."
49. Sadat v. American Motors Corp., 104 Ill. 2d 105, 470 N.E.2d 997 (1984). "Had Congress intended to establish statutory injunctive rights for consumers, to issue solely on a showing of a statutory violation, it would have done so in the express manner of the respective statute described in . . . section 110(d)(1) of the Act." Id. at 110, 470 N.E.2d at 1001.
suitable relief" entailed in section 110(c)(1) of the Act was sufficient to allow consumers injunctive relief. The court held that section 110(d)(1) of the Act should not be read as limiting or imposing restrictions on section 110(c)(1). That court found that Congress used the broad term "equitable relief" when referring to private actions, and a narrower subset of that relief when relating to government prosecuted suits.

The Sadat court held that a private litigant seeking injunctive relief pursuant to a statute must always show conventional equity preconditions. To support this holding, the court relied on the United States Supreme Court decision in Rondeau v. Mosinee Paper Company. Rondeau, however, is inapplicable to the facts in Sadat because Rondeau involved an implied cause of action for injunctive relief, not a statutory right. When dealing with an implied right to equitable relief, traditional equity requirements apply. The opposite is true when dealing with a statute like the Magnuson-Moss Act, which specifically provides for a cause of action and a remedy. Unlike Magnuson-Moss, the statute under which Rondeau was brought does not provide any penalty for violation, nor does it mandate any civil remedies. The Magnuson-Moss Act, however, does expressly provide for a cause of action and specific remedies for violation of the Act.

owners of the rollover danger of Jeeps. Id.

51. Id. In Lieb, AMC argued that the phrase "equitable relief" did not include injunctive relief since the Act expressly provided for an injunction only in section 110(c)(1). Lieb, 538 F. Supp. at 134. AMC contended that Congress meant to limit such relief to government prosecuted suits. Id. The Lieb court rejected this argument stating: "[a]lthough this argument is not without some plausibility, it is inconsistent with the general rule that absent express limitations a statute will not be interpreted to narrow the scope of equitable remedies, including injunctions." Id. at 136. See also Morton v. Mancari, 417 U.S. 535, 551 (1974) (both general and specific provisions of a statute are given effect unless clear Congressional intent to the contrary); E. Crawford, supra note 40, at 265 (where a statute contains both general and specific provisions, the sections must be read in harmony with all other provisions of the act).

52. Lieb v. American Motors Corp., 538 F. Supp. 127 (S.D.N.Y. 1981). "It would be unreasonable to interpret Congress' broad mandate to the consumer more narrowly than its precise authorization to the Attorney General." Id. at 134.


54. See Estate of Presley v. Rossen, 513 F. Supp. 1339 (D.N.J. 1981) (under an implied cause of action for injunctive relief the plaintiff needed to show that he suffered irreparable damage, that the balance of the hardships weighed in his favor, and that the interests of the general public were favored).

55. See supra note 32 and accompanying text for discussion of remedies under Magnuson-Moss.


57. For further discussion of remedies under Magnuson-Moss see supra notes 3-
The Illinois Supreme Court ruled that the only instances in which irreparable harm and an inadequate remedy at law need not be shown is when suit is brought by a governmental agency or a private party acting in the public interest.\textsuperscript{58} This viewpoint is unsupported by the case law cited in \textit{Sadat}. The Illinois Supreme Court did not apply the cases it cited to support Sadat's position that private plaintiffs need not show traditional equity criteria when pleading pursuant to a statute.\textsuperscript{59} The court used these same cases, however, to support its holding that injunctive relief must be expressly authorized before a court will issue an injunction.\textsuperscript{60}

The court in \textit{Sadat} relied on two United States district court cases as authority that conventional equity pleading requirements need not be shown when the plaintiff is litigating on behalf of the public.\textsuperscript{61} The court interpreted the violation of a statute, injurious to the public welfare, as superseding the need for standard equity demands.\textsuperscript{62} A careful examination of those cases, however, demonstrates that the plaintiffs were not acting in support of the public interest, but rather were involved in litigation solely for their own benefit.\textsuperscript{63} The plaintiffs in both cases were trying to vindicate their

\textsuperscript{7 and accompanying text.} 
\textsuperscript{59.} In \textit{Oscar George Electric Co. v. Metropolitan Fair & Exposition Auth.}, 104 Ill. App. 3d 957, 433 N.E.2d 958 (1982), the plaintiff, a private party, obtained a preliminary injunction against both a governmental body and a private party. The \textit{Oscar George} court did not limit the pleading exemption solely to the government body. \textit{Id.} Likewise, in \textit{Atchison, Topeka and Santa Fe Ry. Co. v. Lennen}, 640 F.2d 255 (10th Cir. 1981), a private railway company sought an injunction pursuant to a statutory violation. The court held that the plaintiff did not need to show traditional equity criteria. \textit{Id.} The \textit{Atchison} court specifically denounced a prior decision which held that the rule governing immunity from pleading standard equity requirements was confined to persons acting in the public interest. \textit{Id.} "The rule [regarding the exception to pleading conventional equity requirements] has also been applied to statutes which do not protect the public health." \textit{Id.} at 259.
\textsuperscript{60.} \textit{Sadat}, 104 Ill. 2d at 112, 470 N.E.2d at 1000-01.
\textsuperscript{61.} \textit{Middleton-Kiern v. Stone}, 655 F.2d 609 (5th Cir. 1981) (private litigant sought an injunction against discriminatory employment practices); \textit{Smallwood v. National Can Co.}, 583 F.2d 419 (9th Cir. 1978) (private litigant sought an injunction against discriminatory employment practices).
\textsuperscript{62.} \textit{Sadat}, 104 Ill. 2d 105, 470 N.E.2d 997. "Such an injury necessitates the statutory authorization for equitable pleading requirements." \textit{Id.} at 111, 470 N.E.2d at 1001.
\textsuperscript{63.} Both \textit{Middleton-Kiern} and \textit{Smallwood} involved actions brought pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e (Supp. V 1981). Title VII provides for the issuance of an injunction between private parties when the plaintiff shows that discriminatory employment practices have occurred. 42 U.S.C. §2000e-5 (1981). In both cases, the plaintiffs had obtained "right to sue letters" from the Equal Employment Opportunity Commission. The EEOC issues a "right to sue letter" if, after investigation, it determines that there is not reasonable cause to believe the charge of discrimination is true. 42 U.S.C. §2000e (1981). In \textit{Middleton-Kiern}, 655 F.2d 609 (5th Cir. 1981), and \textit{Smallwood}, 583 F.2d 419 (9th Cir. 1978), the EEOC apparently determined that the plaintiffs' charges of discrimination were not true, and refused to seek an injunction. Consequently, the plaintiffs were not seeking equi-
own private rights in situations where the agency charged with protecting the public concern refused to act. The facts of these cases, therefore, fail to support the court’s opinion that these litigants were protecting public rights.

Justice Simon’s dissent in Sadat noted the impracticalities of the majority’s decision. Simon observed that if a buyer sues a manufacturer for money damages for a defective automobile, the consumer must suffer the added expense of obtaining alternate transportation. The buyer therefore assumes a financial burden that must be endured for several years while a buyer litigates an action for damages. Additionally, a plaintiff may not always be able to recover this expense in the damage award. Therefore, the most effi-

65. Sadat, 104 Ill. 2d at 117, 470 N.E.2d at 1003 (Simon, J., dissenting).
66. Id. The customary measure of damages for a breach of warranty is the difference at the time and place of acceptance between the value of the automobile accepted, and the value it would have had if it had been as warranted. ILL. REV. STAT. ch. 26, §2-714(2) (1979); Annot., 36 A.L.R. 3d 125 (1981). Proving the market price of the defective vehicle at the time of acceptance is difficult. R. Billings, supra note 3, at 158. A court can admit the plaintiff’s testimony as to the fair market value of the vehicle to ease this problem. See Chrysler-Plymouth City, Inc. v. Guerro, 620 S.W.2d 700 (Texas 1981) (testimony as to value of used car); Williams v. Hyatt Chrysler Plymouth, Inc., 48 N.C. App. 308, 269 S.E.2d 184 (1980) (testimony of plaintiff admitted as to new car). The court, instead, may permit the jury to assess damages on evidence as to repair costs. McGrady v. Chrysler Motors Corp., 46 Ill. App. 3d 136, 360 N.E.2d 818 (1977). A court may also accept evidence of the price the plaintiff received upon resale or trade-in as proof of the value of the defective car. ILL. REV. STAT. ch. 26, §2-714(1) (1979); Bayne v. Nall Motors, Inc., 23 U.C.C. REP. SERV. 1137 (Iowa 1973) (price received upon trade-in as proof of value).

Incidental and consequential damages may be awarded in a breach of warranty action. ILL. REV. STAT. ch. 26, §2-715 (1979). Incidental damages include expenses reasonably incurred in the care and custody of the automobile. Id. §2-715(1). Consequential damages include personal losses incurred by the buyer which were proximately caused by the defective automobile. Id. §2-715(2). Incidental damages might include towing or repair charges not reimbursed under warranty. Durfee v. Rod Baxter Imports, Inc., 262 N.W.2d 349 (Minn. 1977). Incidental damages can also include storage charges after the dealer refuses to take back the automobile. Lloyd v. Classic Motor Coaches, Inc., 388 F. Supp. 785 (N.D. Ohio 1974). Consequential damages have been awarded for loss of the use of the automobile resulting from its defective condition. Ford Motors Co. v. Mayes, 575 S.W.2d 480 (Ky. 1978). One court has awarded damages based on wages lost during negotiations with the dealer. Zoss v. Royal Chevrolet, Inc., 11 U.C.C. REP. SERV. 527 (Ind. 1971). See generally Goldstein, Pleading and Proving Special Damages, PROOF OF DAMAGES (IICLE) §1.2 (1981) (discussion of practical problems encountered by practitioners in pleading and proving special damages in Illinois).

The general rule is that punitive damages are not available for breach of warranty. Welken v. Conley, 252 N.W.2d 311 (N.D. 1977). Nevertheless, punitive damages may be recovered if the breach of warranty involves tortious conduct. See Ford Motor Co. v. Mayes, 575 S.W.2d 480 (Ky. 1978) (right to punitive damages for tortious conduct recognized in situations involving deliberate, willful, malicious fraud or wanton and gross negligence).
cient remedy is replacement of the vehicle." This is a remedy Congress intended to give consumers, and a remedy the Illinois Supreme Court denied Sadat.

Since the Sadat case was filed, Illinois enacted legislation aimed at alleviating the burden on consumers associated with damage awards in automobile warranty suits. Illinois' New Car Buyer Protection Act, commonly called a lemon law, provides that a consumer can obtain replacement of a defective automobile during the first year of operation if the warrantor cannot repair the same defects after four attempts or an accumulative total of thirty days in the repair shop. The lemon law, which extends the remedy of re-

67. Sadat, 104 Ill. 2d at 117, 370 N.E.2d at 1003 (Simon, J., dissenting).

The following provisions are characteristic of lemon laws, but not all of them are found in every law:
Mechanical defects that substantially impair the use, market value or safety of the automobile must be repaired in four attempts, or thirty days in the repair shop. The statutory warranty period is one year or 12,000 miles whichever occurs first after delivery of the car. A consumer's rights under the lemon law must be fully disclosed in the manufacturer's warranty or owner's manual. The consumer must use a consumer arbitration which complies with Federal Trade Commission standards, before bringing an action under the lemon law.
70. New Car Buyer Protection Act, ILL. REV. STAT. ch. 121 1/2, §1203(a)(1)(2) (1983). The Act applies to vehicles sold after January 1, 1984. Id. §1208. The Act provides for replacement or refund of a defective automobile. Id. §1204(a). If the consumer brings suit for refund, the warrantor can deduct a reasonable allowance for consumer's use of the car. Id. §1203(c). A reasonable allowance for use of a car is the amount directly attributable to the "wear and tear incurred by the new car as a result of it having been used prior to the first report of a nonconformity to the seller, and during any subsequent period in which it is not out of service by reason of repair." Id.
Before a consumer may bring an action for replacement or refund of a defective car, the consumer must submit to an informal settlement procedure. New Car Buyer Protection Act, ILL. REV. STAT. ch. 121 1/2, §1204(a) (1983). The findings of the arbitra-
placement to vehicles covered by limited warranties, was designed to
cure problems associated with both the Uniform Commercial Code
and Magnuson-Moss. A consumer electing to proceed under the
New Car Buyer Protection Act, however, automatically relinquishes
any rights under the U.C.C..\textsuperscript{71}

The decision in \textit{Sadat} will have a broad impact on Illinois con-
sumers who obtain full written warranties on mass produced pro-
ducts. Consumers can never obtain replacement of a defective prod-
uct because it is virtually impossible to show irreparable harm and
an inadequate remedy at law. The \textit{Sadat} decision, however, will
have a narrow impact on automobile warranty cases brought under
Magnuson-Moss, because the only manufacturer offering a full war-
ranty is American Motors Corporation.\textsuperscript{72} Additionally, Illinois' New
Car Buyer Protection Act supplants the need for practitioners to
bring automobile warranty suits under Magnuson-Moss.\textsuperscript{73}

The Illinois Supreme Court's decision in \textit{Sadat} will have an im-
portant effect on interpretation of the New Car Buyer Protection
Act. Both the New Car Buyer Protection Act and the Magnuson-
Moss Act provide that consumers can obtain replacement of a defec-
tive vehicle, without specifically granting injunctive relief, if the
manufacturer does not comply with the consumer's request for re-
placement. An Illinois court, faced with a manufacturer that refuses
to replace a defective car under the New Car Buyer Protection Act,
will rely on the principles of statutory construction in \textit{Sadat} for its
interpretation of the lemon law. Statutes in pari materia\textsuperscript{74} must be
construed together, and words or phrases interpreted in the same
manner.\textsuperscript{75} Thus, as a result of \textit{Sadat}, purchasers of new automobiles

\begin{itemize}
\item Arbitrators are under no duty to state the reasons for their decision, Mehany v.
\item New Car Buyer Protection Act, ILL. REV. STAT. ch. 121½ §1204 (1983). See also Platt, Lemon Auto Litigation in
Illinois, ILL. B. J. May, 1985 at 508 (admissibility is to encourage judges to dismiss
court actions where the prior arbitral finding goes against consumer).
\item Arbitrators are under no duty to state the reasons for their decision, Mehany v.
\item Id. §1206. The statute of limitations under the Uniform Commercial Code is four
years, ILL. REV. STAT. ch. 26 §2-275 (1983). Consumers waive their code remedies
when proceeding under the lemon law. New Car Buyer Protection Act, ILL. REV. STAT.
ch. 121½ §1205 (1983).
\item See supra note 37 for discussion of manufacturers offering a full warranty.
\item New Car Buyer Protection Act, ILL. REV. STAT. ch. 121½, §§1201-08 (1983),
extends warranty coverage to all new vehicles, including those without manufacturer
warranties. Id. §1207.
\item Statutes are in "pari materia" when they have the same purpose or object or relate to the same person or thing. Matter of Robinson, 665 F.2d 116 (7th Cir. 1981).
\item Jones v. Illinois Dept. of Rehabilitation Servs., 504 F. Supp. 1244 (N.D. Ill.
1981), aff'd, 689 F.2d 724 (7th Cir. 1982) (unless context of statute indicates other-
wise, words or phrases that were used in a prior act pertaining to the same subject
matter will be construed to be used in the same sense).
\end{itemize}
in Illinois are now in the same position they were in before enactment of the New Car Buyer Protection Act, Magnuson-Moss and the Uniform Commercial Code. The Illinois Supreme Court has struck a death knell to consumer protection and has forced buyers to return to the days of caveat emptor.

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