

**FIRST AFFIRMATIVE DEFENSE**  
**Failure to State a Claim – Count IV**

1. Count IV purports to assert claims: (a) under § 2310(d) of the Magnusson Moss Warranty Act, 15 U.S.C. § 2310(d); (b) under § 2-601 of the Illinois Uniform Commercial Code, 810 ILCS 5/2-601; and (c) under § 2-701 of the Illinois Uniform Commercial Code, 810 ILCS 5/2-701. Count IV fails to state any claim for relief under each of these referenced sections.

2. Section 2310(d) of the Magnusson Moss Act merely provides jurisdictional guidelines and does not grant an independent cause of action. As such, the Amended Complaint fails to state a claim for any alleged violation of the Magnusson Moss Act in Count IV.

3. Section 2-601 of the Illinois Uniform Commercial Code (UCC) provides a buyer's rights when an improper delivery has occurred. Section 2-601 provides that, within a reasonable time, a buyer of goods may (a) reject the whole, (b) accept the whole, or (c) accept any commercial unit or units and reject the rest. 810 ILCS 5/2-601. As alleged in paragraphs 15 and 16 of the Amended Complaint, Plaintiff accepted the whole when she purchased the automobile at issue. Section 2-601 does not provide relief for any later occurring defects. Therefore, the Amended Complaint fails to state a claim for any alleged violation of the UCC in Count IV.

4. Section 2-701 of the Illinois UCC outlines remedies for breaches of collateral contracts. 810 ILCS 5/2-701. There is no private cause of action supported by § 2-701. Accordingly, the Amended Complaint fails to state a claim for any alleged violation of the UCC in Count IV.