

SECOND AFFIRMATIVE DEFENSE
No Reasonable Opportunity to Repair any Alleged Defect
Magnusson Moss, 29 U.S.C. § 2310(d)(1); Uniform Commercial Code

5. In order to prevail on a breach of warranty claim, Plaintiff must prove that Plaintiff afforded Napleton a reasonable opportunity to repair any alleged defect. *Pearson v. Daimler Chrysler Corp.*, 349 Ill.App.3d 688, 696, 813 N.E.2d 230 (1st Dist. 2004). The allegations of the Amended Complaint provide that Plaintiff withheld the keys to the automobile after it was towed to Napleton and that Plaintiff never authorized nor gave permission to Napleton to repair the automobile. As such, Plaintiff did not provide Napleton with a reasonable opportunity to repair any alleged defect(s) and to perform on any applicable warranty. Therefore, Plaintiff cannot prevail on a breach of warranty claim under the Magnusson Moss Act, and under the Illinois UCC.

THIRD AFFIRMATIVE DEFENSE
Limitation of Remedy

6. Section 2-719 of the Illinois UCC provides: “Under this section parties are left free to shape their remedies to their particular requirements and reasonable agreements limiting or modifying remedies are to be given effect.” 810 ILCS 5/2-719. Per the express limited warranty attached as Exhibit B to the Amended Complaint, Plaintiff is limited to the remedy of repair as detailed in the express limited warranty in Exhibit B. As such, Plaintiff’s ad damnum requests for a full refund, for insurance premiums, for car rental fees, for emotional distress damages, for legal fees and for pre-judgment interest are improper.

FOURTH AFFIRMATIVE DEFENSE
Disclaimer of Implied Warranty

7. All implied warranties on the automobile at issue in the instant matter were conspicuously disclaimed by Napleton. Under § 2-314 of the UCC, “*Unless excluded or*