

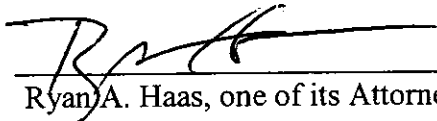
*modified* (Section 2-316), a warranty that the goods shall be merchantable is implied in a contract for their sale.” 810 ILCS 5/2-314. *See also* 810 ILCS 5/2-316 (discussing disclaimers and exclusions of implied warranties). Any warranties not expressed in the limited express warranty were disclaimed and excluded. As such, claims in the Amended Complaint based on alleged breach of any implied warranty are improper.

**FIFTH AFFIRMATIVE DEFENSE**  
**Misuse**

8. Plaintiff cannot recover damages proximately caused by her own misuse of the automobile at issue herein. Plaintiff misused the automobile and her misuse proximately caused the alleged failure(s) of the automobile. As such, Napleton is not liable on any of the counts alleged in the Amended Complaint.

Respectfully submitted,

**NAPLETON BUICK, INC.**

By:   
Ryan A. Haas, one of its Attorneys

Elaine S. Vorberg  
Ryan A. Haas  
Childress Duffy Goldblatt, Ltd.  
515 N. State Street, Suite 2200  
Chicago, IL 60610  
(312) 494-0200  
Atty. No. 41154