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GBL § 198-a(k): Lemon Law's Alternative Arbitration Mechanism Requiring an Automobile Manufacturer to Submit to Binding Arbitration at the Consumer's Request Is Constitutional

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The New York Court of Appeals has, in effect, directed lower courts to implement more efficient remedies, such as monetary sanctions, to compel compliance with CPLR 3406(a).[40] In light of this directive, attorneys would be wise to abide by the mandatory notice requirement time restraints pursuant to CPLR 3406(a) and avoid possible pecuniary sanctions for failure to comply in a timely manner pursuant to CPLR 3406(a).

Michael S. Re

GENERAL BUSINESS LAW

GBL § 198-a(k): Lemon Law's alternative arbitration mechanism requiring an automobile manufacturer to submit to binding arbitration at the consumer's request is constitutional

The New York State Legislature enacted its first new car "Lemon Law" in 1983.[1] This law, General Business Law section 198-a, was promulgated in response to numerous complaints by consumers, who were dissatisfied with the myriad of confusing regulations and ineffective commercial law remedies available to them.[2] The Lemon Law, as originally adopted, provided the pur-

N.Y. Laws 685 (McKinney); *see also supra* note 3 (discussing purposes of Reform Act).

[40] *Tewari*, 75 N.Y.2d at 10-11, 549 N.E.2d at 1147, 550 N.Y.S.2d at 576; *see* [1986] 22 N.Y.C.R.R. § 202.56(a)(3) (1986); *supra* note 23 and accompanying text (listing other remedies as alternatives to dismissal). Futhermore, "every reported case granting permission for a late filing has imposed the monetary sanctions provided by CPLR 2004 and the rule 202.56(a)(3)." Marte v. Montefiore Medical Center, 142 Misc. 2d 745, 751, 538 N.Y.S.2d 396, 400 (Sup. Ct. Bronx County 1989); *see* Kirck v. Samaan, N.Y.L.J., Feb. 10, 1989, at 26, col. 4 (Sup. Ct. Nassau County) (sanction of $1,500 imposed); Collazo v. Fiasconaro, N.Y.L.J., Jan. 9, 1989, at 25, col. 6 (Sup. Ct. Kings County) ($3,500 sanction imposed).

[1] GBL § 198-a (McKinney 1988 & Supp. 1990). If a new car fails to conform to all express warranties during the first two years or 18,000 miles, whichever is earlier, upon timely notice to the manufacturer, the consumer is entitled to free repairs. *Id.* § 198-a(b)(1). If, after a reasonable number of attempts, the manufacturer is unable to repair a defect that substantially diminishes the value of the car, the manufacturer must either replace the car or refund its purchase price. *Id.* § 198-a(c)(1). For an overview of the development of the Lemon Law in New York, see Abrams, *New York Lemon Law Arbitration Program: Annual Report-1987*, 43 ARB. J. 36, 36-47 (Sept. 1988); Comment, *New York's Used-Car Lemon Law: An Evaluation*, 35 BUFFALO L. REV. 971, 989 (1986).

[2] Abrams, *supra* note 1, at 36-37. Before 1983, the manufacturers' approach to con-

chaser of a defective automobile with two options: i) to sue the manufacturer;[3] or ii) to submit a claim to the manufacturer's informal arbitration[4] program.[5] Responding to consumer complaints about the expense of litigation and the inefficiency of the arbitration programs,[6] the legislature amended the GBL in 1987 to in-

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sumer complaints was a well-concealed farce. *Id.* They would establish consumer-assistance programs, including hot lines, ostensibly to resolve consumer complaints, but, in fact, these systems were designed to insulate the manufacturers and dealers from customer action. *Id.* Consumers, dissatisfied with such procedures, were forced to seek legal redress under Article Two of the Uniform Commercial Code, which governs the sale of goods. *See* Honigman, *The New "Lemon Laws": Expanding UCC Remedies*, 17 U.C.C. L.J. 116, 116-19 (1984). The U.C.C. offers two possible remedies for the car owner: (i) a suit for breach of warranty, or; (ii) a suit for revocation of acceptance. *See* Comment, *Sweetening the Fate of the Lemon Law Owner: California and Connecticut Pass Legislation Dealing with Defective New Cars*, 14 U. TOL. L. REV. 341, 343-44 (1983). U.C.C. section 2-608 provides that a buyer may revoke acceptance of a commercial unit whose non-conformity substantially impairs its value to him. *Id.*; *see also* Merola v. Atlas Lincoln Mercury, Inc., 70 App. Div. 2d 950, 950, 417 N.Y.S.2d 775, 775 (2d Dep't 1979) (action at law to recover purchase price of car following revocation of acceptance); McGregor v. Dimou, 101 Misc. 2d 756, 761, 422 N.Y.S.2d 806, 810 (N.Y.C. Civ. Ct. N.Y. County 1979) (buyer who discovers product does not conform may revoke acceptance). Alternatively, the buyer can sue for breach of the implied warranties of merchantability and fitness for a particular purpose. *See* U.C.C. §§ 2-314, 2-315 (1978); *see also* McCormack v. Lynn Imports, Inc., 114 Misc. 2d 905, 910, 452 N.Y.S.2d 821, 824 (Dist. Ct. Nassau County 1982) (defendant merchant breached implied warranty of merchantability because car could not be safely driven).

[3] See GBL § 198-a(f) (McKinney 1988). The statute provides that "[n]othing in this section shall in any way limit the rights or remedies which are otherwise available to a consumer under any other law." *Id.*

[4] *See id.* § 198-a(g). Historically, arbitration was met with much judicial hostility. *See* Kulukundis Shipping Co., S/A v. Amtorg Trading Corp., 126 F.2d 978, 982-85 (2d Cir. 1942) (generally courts unfriendly to arbitration agreements); Carbonneau, *The Reception Of Arbitration in the United States Law*, 40 ME. L. REV. 263, 266-68 (1988) (United States courts espoused inhospitable view of arbitration); Bruff, *Public Programs, Private Deciders; The Constitutionality of Arbitration in Federal Programs*, 67 TEX. L. REV. 441, 442-47 (1989) (arbitration did not always enjoy judicial favor). However, commercial realities, eventually compelled a reconsideration of arbitration. Carbonneau, *supra*, at 268. New York accepted arbitration by passing the New York Arbitration Law in 1920. *See* Arbitration Law, ch. 275, § 2, [1920] N.Y. Laws 804 (McKinney).

[5] *See* GBL § 198-a(g) (McKinney 1988). The manufacturers' arbitration program must conform to section 198-a(c). *Id.* This section provides that if the manufacturer, during the warranty period, cannot repair a defect that substantially impairs the value of the car, it must replace the vehicle with a comparable model or give a full refund of the purchase price. *See* GBL § 198-a(c) (McKinney 1988 & Supp. 1990).

[6] *See* Abrams, *supra* note 1, at 36-37. Realistically, neither option afforded to consumers was effective. *Id.* The high price of litigation kept this remedy beyond the reach of most consumers. *Id.* Participation in the manufacturers' arbitration program was too often an exercise in futility, resulting in decisions that disregarded Lemon Law standards and, instead, directed further repairs. *Id.*; Governor's Memorandum on Approval of ch. 799, N.Y. Laws (Aug. 2, 1986), *reprinted in* [1986] N.Y. Laws 3202 (McKinney). However, it must be added that the manufacturers' arbitration process was not binding upon the consumer,

clude subsection 198-a(k) ("subsection (k)"),[7] which provides consumers with the additional option of compelling the manufacturer to submit to an alternative arbitration mechanism.[8] The automobile industry opposed the arbitration mechanism vigorously on several constitutional grounds.[9] Recently, however, in *Motor Vehicle Manufacturers Association v. State*,[10] the Court of Appeals upheld the constitutionality of the alternative arbitration mechanism provided for in subsection (k), finding that the manufacturer is not denied a right to jury trial, as the remedy in subsection (k) is equitable and not legal in nature.[11]

In *Manufacturers Association*, the plaintiffs, trade associations representing automobile manufacturers, importers, and distributors, sought a declaratory judgment on the question of whether subsection (k) was in conflict with the New York State Constitution.[12] The state similarly moved for summary judgment on the constitutional question.[13] The plaintiffs alleged that the alternative arbitration mechanism denied the manufacturers their right to a trial by jury,[14] abridged the state supreme court's juris-

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whereas under GBL § 198-a(k) arbitration is binding upon both the consumer and the manufacturer. *See* GBL § 198-a, commentary at 316-17 (McKinney 1988).

[7] GBL § 198-a(k) (McKinney 1988). GBL section 198-a(k) provides, in pertinent part, that: "Each consumer shall have the option of submitting any dispute arising under this section . . . to an alternate arbitration mechanism established . . . by the New York state attorney general." *Id.* "Upon application of the consumer . . . all manufacturers shall submit to such alternate arbitration." *Id.*

[8] *See id.*

[9] *See* Abrams, *supra* note 1, at 46-47. The auto industry has challenged Lemon Laws on due process, equal protection, and first amendment grounds. *See id.*; *see also* General Motors Corp. v. Abrams, 897 F.2d 34, 38-40 (2d Cir. 1990) (claimed Federal Trade Commission preempted Lemon Law); Chrysler Corp. v. Texas Motor Vehicle Comm'n, 755 F.2d 1192, 1200 (5th Cir. 1985) (Lemon Law did not violate due process); Automobile Importers of America, Inc. v. Minn., 681 F. Supp. 1374, 1380 (D. Minn. 1988) (plaintiff claimed Lemon Law amounted to governmental taking of private property without just compensation as required under constitution), *aff'd*, 871 F.2d 717 (8th Cir.), *cert. denied*, 110 S. Ct. 201 (1989); General Motors Corp. v. Martine, 213 Conn. 136, 140-41, 567 A.2d 808, 810 (1989) (Lemon Law did not violate jury rights). *But see* Motor Vehicle Mfrs. Ass'n of United States v. O'Neill, 212 Conn. 83, 93-98, 561 A.2d 917, 922-25 (1989) (Lemon Law violated right of access to courts).

[10] 75 N.Y.2d 175, 550 N.E.2d 919, 551 N.Y.S.2d 470 (1990).

[11] *Id.* at 187, 550 N.E.2d at 925, 551 N.Y.S.2d at 476.

[12] *Id.* at 179, 550 N.E.2d at 921, 551 N.Y.S.2d at 471.

[13] *Id.* at 180, 550 N.E.2d at 921, 551 N.Y.S.2d at 472.

[14] *Id.* The New York Constitution states that "[t]rial by jury in all cases in which it has heretofore been guaranteed by constitutional provision shall remain inviolate forever." N.Y. CONST. art. I, § 2 (McKinney 1987); *see* Matter of Berkovitz v. Arbib & Houlberg, 230 N.Y. 261, 273, 130 N.E. 288, 291 (1921); Chase v. Scalici, 97 App. Div. 2d 25, 27, 468 N.Y.S.2d

diction,[15] was an unconstitutional delegation of authority,[16] and violated the State Administrative Procedure Act.[17] Granting the state's motion, the trial court held that subsection (k) was constitutional.[18] The Appellate Division unanimously affirmed.[19]

365, 367 (2d Dep't 1983). *But see* Penney v. Elmira Professional Communications, 131 App. Div. 2d 938, 939, 516 N.Y.S.2d 533, 534 (3d Dep't 1987) (jury trial permitted upon demand by any party following determination of arbitrators).

[15] *Manufacturers Ass'n*, 75 N.Y.2d at 183, 550 N.E.2d at 923, 551 N.Y.S.2d at 474. The New York Constitution states that "[t]he supreme court shall have general original jurisdiction in law and equity." N.Y. CONST. art. VI, § 7a (McKinney 1987). The plaintiffs argued that when a claim may be brought in a court of law, the state constitution requires that the Supreme Court be permitted to determine that claim in every instance based on its own *de novo* review of the law and the facts. *Manufacturers Ass'n*, 75 N.Y.2d at 183, 550 N.E.2d at 923, 551 N.Y.S.2d at 474; *see also In re* Malloy, 278 N.Y. 429, 432, 17 N.E.2d 108, 109 (1938) (Supreme Court has jurisdiction over matters from Surrogate's Court); Comiskey v. Arlen, 55 App. Div. 2d 304, 314-15, 390 N.Y.S.2d 122, 129-30 (2d Dep't 1976) (medical panel's factual findings not binding upon jury), *aff'd*, 43 N.Y.2d 696 (1977); People v. Darling, 50 App. Div. 2d 1038, 1038, 377 N.Y.S.2d 718, 720-21 (3d Dep't 1975) (Supreme Court has jurisdiction over matters from Criminal Court). Because the Lemon Law limits the Supreme Court's jurisdiction to CPLR article 75 review when a consumer elects compulsory arbitration in the first instance, plaintiffs argued that the Lemon Law provision produced an unconstitutional limitation of the Supreme Court's general original jurisdiction. *Manufacturers Ass'n*, 75 N.Y.2d at 183, 550 N.E.2d at 923, 551 N.Y.S.2d at 474.

[16] *Manufacturers Ass'n*, 75 N.Y.2d at 185, 550 N.E.2d at 924, 551 N.Y.S.2d at 475. The plaintiffs argued that they had a constitutional right to have a court or public officer adjudicate their disputes with consumers and that subsection (k) unconstitutionally delegated sovereign judicial power to private arbitrators. *Id.*; *see also* Boreali v. Axelrod, 71 N.Y.2d 1, 9-11, 517 N.E.2d 1350, 1353-54, 523 N.Y.S.2d 464, 467-69 (1987) (anti-smoking regulations voided); County of Oneida v. Berle, 49 N.Y.2d 515, 523, 404 N.E.2d 133, 137, 427 N.Y.S.2d 407, 412 (1980) (budget director must spend funds as appropriated by legislature); Saxton v. Carey, 44 N.Y.2d 545, 550-51, 378 N.E.2d 95, 98-99, 406 N.Y.S.2d 732, 735 (1978) (courts will not police degree of detail in state's budget).

[17] *Manufacturers Ass'n*, 75 N.Y.2d at 187-88, 550 N.E.2d at 925-26, 551 N.Y.S.2d at 476-77. The plaintiffs argued that the alternative arbitration mechanism established by the Lemon Law violates the State Administrative Act, which requires that an arbitration decision include findings of fact, conclusions of law, or reasons for determination. *See* State Administrative Procedure Act § 302(1) (McKinney Supp. 1990); *see also In re* Field Delivery Serv., 66 N.Y.2d 516, 520, 488 N.E.2d 1223, 1227, 498 N.Y.S.2d 111, 115 (1985) (administrative agency must indicate reason for departure from agency precedent); Gerzof v. Gulotta, 87 Misc. 2d 768, 777, 386 N.Y.S.2d 790, 797 (Sup. Ct. Nassau County 1976) (referee's report contained findings of fact and conclusions), *modified*, 57 App. Div. 2d 821, 395 N.Y.S.2d 26 (1st Dep't 1977).

[18] *Manufacturers Ass'n*, 75 N.Y.2d at 180, 550 N.E.2d at 921, 551 N.Y.S.2d at 472.

[19] Motor Vehicle Mfrs. Ass'n v. State, 146 App. Div. 2d 212, 221, 540 N.Y.S.2d 888, 893 (3d Dep't 1989), *aff'd*, 75 N.Y.2d 175, 550 N.E.2d 919, 551 N.Y.S.2d 470 (1990). While finding the statute free from constitutional infirmity, the Appellate Division declared a portion of the regulations implementing the statute to be invalid. *Id.* at 219-20, 540 N.Y.S.2d at 892. The regulation in question provides that arbitrators "shall not consider evidence that the nonconformity, defect or condition can be corrected through further repairs." [1987] 13 N.Y.C.R.R. § 300.17(c). The court asserted that this regulation had the effect of converting the presumption of reasonableness set forth in GBL § 198-a(d) into a conclusive presump-

Writing for the Court of Appeals, Judge Simons rejected each of the plaintiffs' arguments and upheld the Appellate Division's decision.[20] The court concluded that since the remedies provided by the Lemon Law are equitable in nature, there is no corresponding right to a jury trial under the state constitution.[21] Additionally, the court noted that the state supreme court would not lose jurisdiction since jurisdiction does not attach prior to a consumer's decision to litigate the claim in a court of law.[22] The court reasoned that the legislature "merely created a new cause of action" allowing one of the litigants to select the forum.[23] Finally, after con-

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tion that "a reasonable effort to repair has been made where the vehicle has undergone four repair attempts or remains out of service for 30 days." *Manufacturers Ass'n*, 146 App. Div. at 220, 540 N.Y.S.2d at 892.

[20] *Manufacturers Ass'n*, 75 N.Y.2d at 180, 550 N.E.2d at 921, 551 N.Y.S.2d at 472. Plaintiffs also claimed that the alternative arbitration mechanism violated their right to procedural due process. *Id.* at 188, 550 N.E.2d at 926, 551 N.Y.S.2d at 477. However, the court declined to address this argument since it was raised for the first time in the Appellate Division. *Id. But cf.* Lyeth v. Chrysler Corp., 734 F. Supp. 86, 91 (W.D.N.Y. 1990) (court held that GBL § 198-a(k) is not violative of defendant's due process or equal protection rights).

[21] *Manufacturers Ass'n*, 75 N.Y.2d at 180-83, 550 N.E.2d at 921-23, 551 N.Y.S.2d at 472-74. The court construed the New York Constitution to guarantee plaintiffs a jury trial only in those cases in which the right had existed at common law. *Id.* at 180-81, 550 N.E.2d at 921, 551 N.Y.S.2d at 472. At common law, if the remedy sought was a legal one, the plaintiff would be entitled to a jury trial, whereas if the remedy sought was an equitable one, the case would be tried before a chancellor. *Id.* at 181, 550 N.E.2d at 921, 551 N.Y.S.2d at 472. The court found that the remedies provided by the Lemon Law were analogous to specific performance. *Id.* at 182, 550 N.E.2d at 922, 551 N.Y.S.2d at 473. The Lemon Law, in the court's view, "[w]as designed to produce, as nearly as practicable under the circumstances, the same performance promised under the contract." *Id.* Thus, the court concluded that the Lemon Law was an equitable remedy and, therefore, the plaintiff had no right to a jury trial. *Id.* The Supreme Court of Connecticut ruled similarly on this issue in Motor Vehicle Mfrs. Ass'n v. O'Neill, 212 Conn. 83, 561 A.2d 917 (1989), declaring that the remedies provided under Connecticut's Lemon Law were equitable in nature, thereby not mandating a jury trial. *See id.* at 91, 561 A.2d at 921-22.

[22] *Manufacturers Ass'n*, 75 N.Y.2d at 183-85, 550 N.E.2d at 923-24, 551 N.Y.S.2d at 474-75. The court reasoned that if a consumer chooses to litigate a Lemon Law claim, the Supreme Court has full jurisdiction to adjudicate it. *Id.* at 184, 550 N.E.2d at 923, 551 N.Y.S.2d at 474. If the consumer chooses arbitration, the claim becomes litigable when either party seeks review of the award. *Id.* Further, the Supreme Court is vested with jurisdiction to review the claim in such proceedings by applying the standards of CPLR article 75. *Id.*

[23] *Id.* at 184, 550 N.E.2d at 924, 551 N.Y.S.2d at 475. The court noted that the legislature has been vested with the power to "change or abolish common law causes of action," as well as to "substitute new remedies." *Id.* at 184, 550 N.E.2d at 923, 551 N.Y.S.2d at 474. The legislature's enactment of subsection (k) was viewed by the court as analogous to the legislature's creation of new causes of action in the past. *Id.* at 184, 550 N.E.2d at 923, 551 N.Y.S.2d at 475.

sidering both the statute's detailed standards for selecting and guiding the arbitrators as well as its provision for broad judicial review, the court found the legislature's delegation of authority to the arbitration panel to be consistent with the New York State Constitution.[24]

Dissenting, Judge Titone argued that subsection (k) was unconstitutional in that it places a judicial function in the hands of private arbitrators who cannot be held accountable through either the electoral process[25] or the Public Officers Law.[26] Judge Titone also found subsection (k) to be in violation of the separation of powers doctrine.[27] Allowing the legislature to bypass the judicial process at its discretion, in Judge Titone's view, was the creation of a precedent by the majority which would disrupt "the delicate balance governing the relationship among the various branches of government."[28]

It is submitted that the court was correct in upholding the constitutionality of subsection (k). By enacting subsection (k), the legislature has not created an ad hoc arbitration tribunal whose powers are unlimited by rules of law or evidence.[29] The Lemon Law, and the regulations implementing it,[30] provide specific standards for selecting and directing the arbitrators.[31] Moreover, the arbitrator is limited to awarding either one of two designated rem-

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[24] *Id.* at 185-87, 550 N.E.2d at 924-25, 551 N.Y.S.2d at 475-76. The court noted that its previous holding in Mount St. Mary's Hosp. v. Catherwood, 26 N.Y.2d 493, 260 N.E.2d 508, 311 N.Y.S.2d 863 (1970), stands for the proposition that the Legislature can delegate authority to an arbitration panel as long as adequate procedural safeguards are provided. *See Manufacturer's Ass'n*, 75 N.Y.2d at 186, 550 N.E.2d at 925, 551 N.Y.S.2d at 476.

[25] *Manufacturers Ass'n*, 75 N.Y.2d at 189, 550 N.E.2d at 927, 551 N.Y.S.2d at 478 (Titone, J., dissenting).

[26] *Id.* (Titone, J., dissenting); The New York Public Officers Law regulates the appointments and qualifications of those who work as officers of the state. N.Y. PUB. OFF. LAW. art. II (McKinney 1988 & Supp. 1990).

[27] *Manufacturers Ass'n*, 75 N.Y.2d at 189, 550 N.E.2d at 927, 551 N.Y.S.2d at 478 (Titone, J., dissenting).

[28] *Id.* at 194, 550 N.E.2d at 930, 551 N.Y.S.2d at 481 (Titone, J., dissenting).

[29] *Id.* at 185, 550 N.E.2d at 924, 551 N.Y.S.2d at 475 (citing Mount St. Mary's Hosp. v. Catherwood, 26 N.Y.2d 493, 260 N.E.2d 508, 311 N.Y.S.2d 863 (1970)).

[30] *See* [1987] N.Y.C.R.R. §§ 300.1-300.19.

[31] *See Manufacturers Ass'n*, 75 N.Y.2d at 185, 550 N.E.2d at 924, 551 N.Y.S.2d at 475. Arbitrators acting pursuant to the Lemon Law must first undergo training. [1987] N.Y.C.R.R. § 300.7(e). "This training shall include procedural techniques, the duties and responsibilities of arbitrators under the program, and the substantive provisions of General Business Law, section 198-a." *Id.* Furthermore, "[t]he arbitrator assigned shall not have any bias, any financial or personal interest in the outcome of the hearing, or any current connection to the sale or manufacture of motor vehicles." [1987] N.Y.C.R.R. § 300.7(b).

edies: i) a replacement vehicle of comparable value; or ii) a refund of the full purchase price.[32] This relief can be granted only when the arbitrator has determined that after a reasonable number of attempts the manufacturer has been unable to repair a defect which substantially impairs the value of the motor vehicle.[33] Further, if either party is dissatisfied with the arbitrator's determination, that party can seek judicial review under CPLR article 75.[34]

The goal of the Lemon Law as originally enacted was the "swift and equitable resolution of consumer complaints."[35] Prior to the passage of subsection (k), this objective barely had been reached.[36] Under the original statute, consumers either had to seek redress in the courts or through nonbinding arbitration programs established by the manufacturers.[37] This approach often proved very costly and resulted in long delays and inequitable awards.[38] Subsection (k) represents an attempt by the legislature to achieve a just and equitable solution to a long-standing problem.[39] While the question of whether subsection (k) will achieve this goal remains open, the Court of Appeals undoubtedly was correct in its conclusion that the means by which the legislature has sought to

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[32] *See Manufacturers Ass'n*, 75 N.Y.2d at 186, 550 N.E.2d at 924, 551 N.Y.S.2d at 475; *see also* Lyeth v. Chrysler Corp., 734 F. Supp. 86, 93 (W.D.N.Y. 1990) ("arbitrators are not free to fashion their own awards, regardless of a case's equities, but are restricted to denying or granting a consumer a predictable and limited form of relief"). Consequential damages are not recoverable under the Lemon Law. *See* Volvo North America v. DePaola, 156 App. Div. 2d 40, 43, 554 N.Y.S.2d 835, 837 (1st Dep't 1990). However, section 198-a(l), as amended in 1988, provides that a court may award reasonable attorney's fees "to a consumer who prevails in any judicial action or proceeding arising out of an arbitration proceeding held pursuant to subdivision (k)." GBL § 198-a(l) (McKinney 1988 & Supp. 1990). This section was amended to prevent protracted post-arbitration litigation meant to wear down the consumer. *See* GBL § 198-a, commentary at 25 (McKinney Supp. 1990).

[33] *See Manufacturers Ass'n*, 75 N.Y.2d at 186, 550 N.E.2d at 924, 551 N.Y.S.2d at 475.

[34] *Id.* at 186, 550 N.E.2d at 925, 551 N.Y.S.2d at 476; *Lyeth*, 734 F. Supp. at 91. The arbitrator's decision must be "in accord with due process and supported by adequate evidence in the record." *Manufacturers Ass'n*, 75 N.Y.2d at 186, 550 N.E.2d at 925, 551 N.Y.S.2d at 476. Furthermore, the decision "must be rational and satisfy the arbitrary and capricious standards of CPLR article 78." *Id.*

[35] *See Lyeth*, 734 F. Supp. at 89; Abrams, *supra* note 1, at 36.

[36] *See* Governor's Approval Memorandum (N.Y.S. 8342-A, N.Y.A. 10540, 209th Sess.), *reprinted in* [1986] N.Y.S. LEGIS. ANN. 334, *cited in Lyeth*, 734 F. Supp. at 90; Abrams, *supra* note 1, at 36-39.

[37] *See Manufacturers Ass'n*, 75 N.Y.2d at 179, 550 N.E.2d at 920, 551 N.Y.S.2d at 471.

[38] *Id.*

[39] *See id.* at 179-80, 550 N.E.2d at 920-21, 551 N.Y.S.2d at 471-72; Abrams, *supra* note 1, at 38-39.

achieve its objective is valid under the New York State Constitution.

Matthew Tracy