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SUPREME COURT OF APPEALS  
OF WEST VIRGINIA

Ketchum, J., dissenting:

I agree with Justice Workman’s dissent. I write separately because I believe that there are significant legal and factual questions which – when this case is remanded and over and done – may vitiate the majority’s opinion.

The record is clear that the express replacement warranty did not contain language limiting its availability to an original purchaser. The original purchaser bought the car battery and was given a receipt that contained the following warranty language: “24 MO. FREE REPL 72 MO. PRO.” However, at the bottom of the receipt (approximately ten lines below the above-quoted line) was the following:

Visit us at [www.advanceautoparts.com](http://www.advanceautoparts.com)  
Receipt Required For Returns  
Warranty Information Available

If a person goes to Advance’s internet website, then they might find the limitation on the car battery warranty that the majority opinion relies upon. That limitation says (with emphasis added) that “[y]our warranty begins the day you purchase the battery and expires at the end of the warranty period printed on your original receipt, *or when you sell your vehicle*, whichever comes first.” This warranty limitation was not provided to the original purchaser at the time of the sale and was not set forth in the written receipt.

Advance's position that it may limit a warranty through terms placed on the internet, but not provided to the consumer at the point of purchase, raises a number of issues. For instance, a consumer without internet access would not be able to obtain these warranty limitations.<sup>1</sup> More importantly, because the warranty was on Advance's website, it could modify the warranty on a daily basis without providing notice to the consumer. Counsel for the Plaintiffs raised this issue at a hearing before the circuit court, stating:

We've seen warranty information that's different, substantially different, materially different than what they've presented. And they've not said that that warranty was ever produced to the purchaser, or how it was produced to the purchaser.

There's level after level after level of question, Judge, as to whether that warranty was ever conveyed, how it was conveyed, whether it was meaningfully conveyed, whether there are other warranties.

One issue that was not raised before the circuit court or addressed in the majority opinion is the effect of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301, *et seq.* This Act appears to plainly void Advance's attempt to limit its express warranty contained on the purchaser's receipt. Magnuson-Moss was enacted in 1975 "to improve the adequacy of information available to consumers, prevent deception, and improve competition in the marketing of consumer products." 15 U.S.C. § 2302(a) [1975]. The Act was designed (1)

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<sup>1</sup>While the majority opinion states that this warranty information was also available at the store, there is no evidence in the record that the original purchaser was given this information at the time of the sale or told that it was available.

to promote consumer understanding; (2) to insure basic protection for consumers purchasing consumer products with written warranties; (3) to make it easier for consumers to obtain court enforcement of a warranty by providing for attorney fees and costs; and (4) to stimulate the production of more reliable products by requiring clear disclosures of what the warranty promises. *See Skelton v. Gen. Motors Corp.*, 500 F.Supp. 1181 (N.D. Ill. 1980) *rev'd on other grounds* 660 F.2d 311 (7<sup>th</sup> Cir. 1981).<sup>2</sup>

Magnuson-Moss applies to written warranties covering “consumer products.”

The Act defines “consumer products” as “any tangible personal property which is distributed in commerce and which is normally used for personal, family or household purposes.” 15 U.S.C. § 2301(1).<sup>3</sup> A car battery falls under this definition and Magnuson-Moss is applicable in this case.

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<sup>2</sup> This Court discussed the circumstances that led to the creation of the Magnuson-Moss Act in *Adams v. Nissan Motor Corp.*, 182 W.Va. 234, 237, 387 S.E.2d 288, 291 (1989), stating:

The passage of the Magnuson-Moss Act appears to be the result of extensive study of the numerous problems with consumer warranties, including inadequate coverage and difficulty in obtaining warranty repairs. *See Brickey, The Magnuson-Moss Act - An Analysis of The Efficacy of Federal Warranty Regulation as Consumer Protection Tool*, 18 Santa Clara L.Rev. 73 (1978); *Denicola, The Magnuson-Moss Warranty Act: Making Consumer Product Warranty a Federal Case*, 44 Fordham L.Rev. 273 (1975), *Miller and Kanter, Litigation Under Magnuson-Moss: New Opportunities in Private Action*, 13 U.C.C.L.J. 10 (1980).

<sup>3</sup> The definition includes “property which is intended to be attached to or installed in any real property without regard to whether it is so attached or installed.” 16 C.F.R. § 700.1(a) (1986).

Advance's internet document purporting to limit its express written warranty fails to comply with a number of requirements mandated by Magnuson-Moss. Particularly relevant in the case *sub judice* is Magnuson-Moss's single document requirement, which states that any "written warranty . . . shall clearly and conspicuously disclose in a single document in simple and readily understood language" nine specific items of information.<sup>4</sup> 16 C.F.R. 701.3(a). Magnuson-Moss further requires that "the terms of any written warranty on a consumer product be made available to the consumer (or prospective consumer) prior to the sale of the product[.]" 15 U.S.C. § 2302(b)(1)(A).

In the present case, the warranty information was not contained in a single document. There was no warranty limitation in the written receipt the consumer received at the point of purchase. The limitation was set forth on Advance's website and was not made available to the consumer prior to or at the time of the sale. Advance's position is plainly at odds with Magnuson-Moss's requirements that all warranty disclosures be made in a single

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<sup>4</sup> The nine items that must be disclosed in a written warranty are: (1) the identities of the parties to whom the warranty is extended; (2) a clear description and identification of any parts of the product excluded from the warranty; (3) a statement of what the warrantor will and will not do in case of defect, malfunction or other nonconformity of the product to the warranty; (4) the temporal boundaries of the warranty; (5) a step-by-step description of the procedure for consumers to obtain performance under the warranty; (6) information respecting the availability of any informed dispute settlement mechanism elected by the warrantor; (7) a statement identifying any limitation on the duration of the implied warranties; (8) a statement of exclusions or limitations on relief (such as incidental or consequential damages); and (9) a statement advising the buyer that the warranty confers specific legal rights, and that other rights may be conferred pursuant to state law. 16 C.F.R. 701.3(a)(1) - (9).

document, and that the terms of a written warranty be made available to the consumer prior to the sale.

Magnuson-Moss also states that a written warranty shall “clearly and conspicuously” designate the warranty as “full” or “limited.” 15 U.S.C. § 2303. The receipt Advance gave to the original purchaser did not designate it as either a “full” or “limited” warranty. Because warranties are required to be designated as full or limited by Magnuson-Moss, warranties that fail to make this designation must be interpreted in the manner most favorable to the consumer. *Hughes v. Segal Enterprises, Inc.*, 627 F.Supp. 1231 (W.D.Ark. 1986). In the present case, because the original receipt did not state that the 24-month free replacement period was further “limited”, this warranty term should be construed as a “full” 24-month warranty. Therefore, the warranty on the receipt cannot be limited to the original purchaser.

There are numerous issues remaining for resolution below. Based on all of the foregoing, I respectfully dissent.