

"FAIR MARKET VALUE" DOES NOT MEAN "FAIR MARKET RETAIL VALUE": THE IMPACT OF WILLIAMS AND DELLORUSSO ON REPOSSESSION IN MASSACHUSETTS

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Financial Services Alert

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Under the Massachusetts Motor Vehicle Retail Installment Sales Act (RISA)¹, creditors repossessing automobiles are entitled to recover a deficiency from debtors, so long as the creditors deduct the “fair market value” of the vehicle from the debtor’s unpaid balance. In June 2018, the Massachusetts Supreme Judicial Court (SJC) confirmed that the “fair market value” of repossessed automobiles is “the highest price which a hypothetical willing buyer would pay to a hypothetical willing seller in an assumed free and open market.”² The SJC examined the plain language of RISA to conclude that “fair market value” did not mean “fair market retail value” where the legislature did not use that term in the statute.³

After deciding how to determine the “fair market value” of repossessed vehicles, the SJC next determined whether form UCC notices are sufficient under RISA. The SJC concluded that form UCC notices are never sufficient “where the deficiency is not calculated based on the fair market value of the collateral and the notice fails to accurately describe how the deficiency is calculated.”⁴ The SJC confirmed that all notices must describe the deficiency as the “difference between the fair market value of the collateral and the debtor’s outstanding balance.” Thus, the SJC suggested that creditors use presale notices that contain language such as:

The fair market value of your vehicle will be used to reduce the amount you owe, which is your outstanding balance plus the reasonable costs of repossessing and selling the vehicle. If the fair market value of your vehicle is less than you owe, you (will or will not, as applicable) still owe us the difference. If the fair market value of your vehicle is more than you owe, you will get the extra money, unless we must pay it to someone else.⁵

The SJC also explained that when creditors provide post-sale notices, they should ensure that the notices clearly indicate the “fair market value” of the vehicle that was used in calculating the deficiency.⁶

The presale and post-sale notice requirements outlined in *Williams* were readdressed on 21 July, 2020, by the Massachusetts Appeals Court in *Dellorusso v. PNC Bank, N.A.*⁷ In *Dellorusso*, a plaintiff who defaulted on his automobile loan claimed that the defendant gave him insufficient notice under the *Williams* standard.⁸ The defendant moved to dismiss the case, asserting that the notice requirements under *Williams* applied prospectively, and therefore did not apply to the plaintiff’s account.⁹ The Superior Court agreed with the defendant, finding that *Williams* applied prospectively to notices sent after *Williams* was decided, and dismissed the plaintiff’s complaint.¹⁰ On appeal, the Massachusetts Appeals Court reversed the Superior Court’s decision, finding that *Williams* was to be given retroactive effect.¹¹ In reaching its decision, the Appeals Court explained that

all court decisions “are presumptively given retroactive effect,” unless exceptional circumstances exist.¹² To determine whether exceptional circumstances exist, courts consider “the extent to which a decision creates a novel rule, whether retroactive application will serve the purposes of that rule, and whether hardship or inequity would result from retroactive application.”¹³ However, in situations where decisions do not create novel rules, and instead simply construe statutes, no retroactive or prospective analysis is needed because courts are simply determining the meaning of previously enacted statutes.¹⁴ Here, the Appeals Court explained that *Williams* simply interpreted RISA, as opposed to creating a novel rule, and thus, no exceptional circumstances existed to depart from the presumption of retroactivity.¹⁵

Overall, the SJC's decision in *Williams*, and Appeals Court's decision in *Dellorusso*, provide key guidance to auto lenders about Massachusetts's statutory regime. All automobile finance companies should ensure that they are: (1) determining deficiencies by calculating the “fair market value” of repossessed vehicles; and (2) providing presale and post-sale notices that describe how the deficiencies were calculated.

K&L Gates is well-prepared to assist automobile finance companies as they work to comply with the Massachusetts Motor Vehicle Retail Installment Sales Act and important decisions like *Williams* and *Dellorusso*. More information about K&L Gates' financial institutions and services practice is available on [K&L Gates Hub](#).

FOOTNOTES

¹ G.L. c. 255B, §20B

² See *Williams v. Am. Honda Finance Corp.*, 479 Mass. 656, 661 (2018)

³ See *id.* at 662 (citing to G.L. c. 127, § 67, which mentions “wholesale market price” and G.L. c. 195C, §5A(a), which discusses “retail market value of the goods or services”).

⁴ See *id.* at 668.

⁵ *Id.* at 669.

⁶ See *id.*

⁷ See *Dellorusso v. PNC Bank, N.A.*, No. 19-p-1327, 2020 WL 4119030 (Mass. App. Ct. Jul. 21, 2020).

⁸ See *id.* at *2.

⁹ See *id.* at *1.

¹⁰ See *id.*

¹¹ The Appeals Court clarified that when it stated that *Williams* applies retroactively, it meant that *Williams* applies “to all cases in which a final judgment has not yet entered, an appeal is pending or the appeal period has not yet expired, or that are commenced after the release of [the *Dellorusso*] opinion, regardless of whether the notice was sent before *Williams* was decided.” *Id.* at *1 n.1.

¹² See *id.* at *2.

¹³ *Id.*

¹⁴ See *id.*

¹⁵ See *id.*

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