



NEWSLETTER

www.dealersalliance.org

401 Continental Plaza, Hackensack, N.J. 07601

(201) 342-4542 FAX (201) 342-3997

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WITH MALICE TOWARD NONE

In 1864, in his second inaugural address, Abraham Lincoln closed with these words:

With malice toward none; with charity for all; with firmness in the right, as God gives us to see the right; let us strive on to finish the work we are in...

It is not at all easy to make the decision to sue your own manufacturer; however, it is because of the tremendous courage and fortitude displayed by those dealers who have taken on the battle for all of us that we have been able insure that manufacturers

obey those franchise laws we have all fought so hard to enact. For some of these dealers, it has meant a ten or more year battle, and we owe each of them a great debt of gratitude.

The Alliance has supported many of these battles and has

worked with many of these dealers. The intent was never spawned from ill-will or malice toward our manufacturer but rather as a crusade for achieving fairness for all dealers.

Maine Dealers Prevail On Warranty Issue

In August 1999, the Maine dealers filed a lawsuit against Ford Motor Company in Maine Superior Court claiming that the "warranty parity surcharge" collected on the part's statement violated Maine franchise law. The surcharge had been imposed by Ford Motor Company in response

to the increase in the parts and labor reimbursement to retail levels afforded the Maine dealers by existing franchise law.

Although John Darling of Darling's Bangor Ford was the first to apply for the increase in warranty parts and labor

reimbursement to retail levels in 1993, many of the Maine Ford dealers had since joined him. [Maine is the only state, of which we are aware, whose franchise law allows dealers to use a labor manual of their choice and not necessarily Ford's labor manual].

Earlier that year, Ford informed the dealers that it would impose a “warranty parity surcharge” of \$150 per vehicle with the expectation that it would soon increase the surcharge to \$250. **The surcharge was ultimately increased to a staggering \$500.**

Upon Ford’s request, the Superior Court entered a partial summary judgment concluding that the surcharge did not violate the Maine statute. The dealers appealed to the Maine Supreme Judicial Court.

On June 25, 2002, a decision was rendered by the Court. The decision was a bit confusing, but, in essence, it stated that both prior court decisions were affirmed and because the statute itself was silent with respect to Ford’s ability to impose a surcharge, Ford could recoup its cost.

Ford and Lincoln-Mercury dealers responded to the loss by lobbying the Maine legislature to amend the Maine franchise law. The statute was strengthened by adding the following provision

to the existing franchise law pertaining to warranty parts and labor reimbursement at retail levels, “A franchisor may not otherwise recover its costs for reimbursing a franchisee for parts and labor pursuant to this section.”

In addition to amending its franchise law, Maine established a Motor Vehicle Franchise Board for the purpose of enforcing the provisions.

On September 4, 2003, the Alliance of Automobile Manufacturers [AAM] filed with the U.S. District Court for the District of Maine a Complaint against Maine’s Secretary of State and the Attorney General seeking a declaration that the new statutory provision is unconstitutional. Along with the Complaint, the manufacturers moved for a Preliminary Injunction against the enforcement of the new provision in order to be able to continue surcharging the dealers in the state. **The motion was denied by the Court and the surcharges ceased.**

In addition, the Complaint

challenged the composition of the Motor Vehicle Board, alleging the structure of the board as unconstitutional and the manufacturers will be unable to receive a fair and impartial hearing because three seats of the seven-member Board are reserved for dealers.

On January 25, 2005, U.S. District Judge John Woodcock, Jr., rejected the argument. He stated, “Solely because three members are dealers does not necessarily render the board composition unconstitutional.” Judge Woodcock dismissed the suit by the Alliance of Automobile Manufacturers and **upheld the “no recovery” [no surcharge] portion of the statute, as well.**

Update

The AAM immediately appealed the decision to the U.S. Court of Appeals for the First Circuit. On November 18, 2005, the Court upheld the state law prohibiting manufacturers from imposing a surcharge for the purposes of recouping the cost of complying with

the Maine statute. **The Court stated, "The recoupment bar plugs the loophole that Ford was exploiting with perfect precision and ensures that manufacturers, not the dealers or consumers, will bear the true cost of retail-rate reimbursement."**

Surprisingly, the AAM responded to the loss by filing a Petition to the United States Supreme Court. In mid-May 2006, the **U.S. Supreme Court opted not to consider the Alliance of Manufacturers' request for appeal;** therefore, no further appeals processes

are possible in the State of Maine.

Dealers in the State of Maine are currently reimbursed for both warranty labor and parts at retail levels.

New Jersey Dealers Wins Partial Summary Judgement

In September 2002, The Ford Motor Company was served with a lawsuit filed in the U.S. District Court for the District of New Jersey representing fifty-seven New Jersey Ford and Lincoln-Mercury dealers. The twelve-count lawsuit challenges Ford's defiance of New Jersey franchise law by June 1, 2002, imposition of a \$125 surcharge per retail vehicle. The surcharge was subsequently increased to \$157.

The surcharge, **Ford explained, was necessary as a means to recoup its "additional cost of doing business in the State of New Jersey," as a result of the increase of warranty parts**

reimbursement to its dealers to retail levels. Ford and Lincoln-Mercury dealers, who applied for the increase, had been receiving retail reimbursement on warranty parts beginning in 1998.

The premise of the lawsuit is relatively simple. Ford provides a warranty with the vehicle it manufactures against manufacturing defects. The cost of warranty coverage is collected by Ford in its wholesale price to dealers, as well as the Manufacturer's Suggested Retail Price (MSRP).



In other words, warranties, issued by Ford, run directly from Ford to the purchasers of the motor vehicles.

The Ford dealer is required to make repairs, replacements and adjustments on any vehicle under Ford warranty. In recent years, Ford has acknowledged its obligation to compensate

the dealer for labor on warranty service at approximately each dealer's individual prevailing retail (customer-paid) labor rate. By contrast, however, Ford historically **did not pay its dealers the full retail rate for parts used in warranty**. Instead, Ford deeply "discounted" the amount it would pay dealers for parts. By means of this **enforced "discount,"** Ford has shifted to the dealer a substantial portion of the cost of repairs or replacement parts for manufacturing defects.

Under New Jersey franchise law, manufacturers are required to reimburse their dealers for parts used in warranty at a dealer's retail rate. For approximately three years, and only after a long legal battle won by Liberty Lincoln-Mercury, Ford was forced to obey the law by reimbursing its dealers for parts at retail levels; Ford's subsequent imposition of a surcharge negates the warranty provision under franchise law. **By reimbursing dealers for parts at retail level and consequently taking it back with a surcharge,**

Ford makes a mockery of the retail reimbursement requirements. It is unlawful!

In April 2005, a Motion for Partial Summary Judgment was filed with the U.S. District Court for the District of New Jersey, and the Court granted the motion.

Update

On March 30, 2006, the U.S. District Court granted summary judgment in favor of the New Jersey dealers, ruling that **Ford's practice of surcharging its dealers violated the New Jersey Franchise Practices Act [NJFPA]**. In summary, Judge William Bassler ruled that "The Court finds that Ford is still engaged in the type of 'shell game' that the Third Circuit [Liberty] found was prohibited by the NJFPA.

"We agree with the district court [Liberty] that a construction of NJFPA permitting machinations which ultimately fail to afford the dealer reimbursement for warranty parts at its retail rate would 'fly

in the face of the intent of the New Jersey legislature...and would undermine the purpose of the Act..."

On July 10, 2006, Ford was ordered by the Court to immediately cease surcharging New Jersey Ford and Lincoln-Mercury dealers.

Dealers in the State of New Jersey are currently reimbursed for warranty parts at retail levels.

Ford has appealed the decision to the U.S. Court of Appeals for the Third Circuit.

The battle continues but significant progress has been made. Other-make New Jersey dealers are beginning to address the issue with their own manufacturer. It is important to note that almost thirty states have similar provisions in their franchise laws requiring manufacturers to reimburse dealers for warranty parts at retail levels.