

Another Problem for Ford Dealers

by : Rich Sox

Just when you thought things were tough enough for Ford dealers, Ford's warranty dispute with Navistar over the 6.0 liter diesel engine is spilling over onto Ford dealers. We are representing eight Ford dealers in Florida, Georgia, Ohio and Texas who have been sent a subpoena by Navistar requesting thousands of pages of warranty documents.

For those of you who are not aware of this dispute, Ford has sued Navistar for failing to reimburse Ford for warranty payments made to dealers for work done on the troubled 6.0 liter diesel engine built by Navistar and put in the F250 and larger trucks. Ford has sought a whopping \$800 million in warranty payment reimbursement from Navistar.

What's the big deal with Ford dealers being asked to produce documents, you ask? To answer that question one need only look as far as the counterclaim filed by Navistar in response to Ford's complaint. Navistar claims that Ford's request for reimbursement is made in bad faith because 1) Ford *dealers* did work on the engine that was unnecessary in order to fix the problem; 2) Ford *dealers* claimed to have done work on the engine that was not actually done; and 3) Ford *dealers* did not follow proper repair procedures. Thus, whether they like it or not, Ford dealers' warranty practices are being put on trial in this lawsuit.

Our main concern is that if the judge in the *Ford v. Navistar* case makes a finding that Navistar does not have to reimburse Ford for the warranty payments made to dealers due to the dealers' inappropriate handling of the work on the 6.0 liter diesel engine, who do you think Ford will turn to for reimbursement of the \$800 million? You got it, the dealers. If dealers produce the year's worth of warranty documents that Navistar is seeking, Ford will have access to warranty records that go well beyond the limitations provided for in many state motor vehicle franchise laws. Massive chargebacks could follow!

Of course, we have to be careful how we object to these subpoenas. It would not go over very well with the judge to argue that the warranty records shouldn't be produced because dealers may have done something wrong. So, we have thus far objected to the subpoenas on other very important grounds. First, dealers should never produce dealership documents to a third party that contain customer information without insuring that confidentiality protections are in place. In the *Ford v. Navistar* case, we were surprised to learn that no confidentiality agreement is in place and, thus, we have told Navistar that no documents can be produced by our Ford dealers until, at a minimum, such protections are in place. Dealers should never expose themselves to Federal and state claims of mishandling customer information.

Another very significant problem with the subpoenas is that Ford has much of the information Navistar is seeking from the dealers. However, Ford's deadline to produce those documents has not arrived as of yet. Thus, we have told Navistar that it is totally inappropriate to inconvenience dealers before they see what Ford has available in the way of warranty records.

Last, but not least, Navistar's request for documents from dealers involves thousands of pages of material. The time and expense involved in gathering those documents is immense. We have objected to Navistar's subpoenas based on the fact that the number of documents requested is so voluminous that it is unfair to ask the dealers to produce them all. We have also made it clear that whatever documents are ultimately produced, Navistar will have to reimburse the dealers for the time and expense of gathering those documents.

Thus far, 24 dealers in California, Florida, Georgia, Ohio, Pennsylvania and Texas have received these

lovely little presents from Navistar. We believe that if Navistar can make hay with any documents ultimately produced by these 24 dealers, Navistar may send out a second wave of subpoenas. If you are in receipt of a Navistar subpoena now or in the future, whatever you do don't put your head in the sand and hope everything will be all right. You should retain experienced franchise counsel to object to the subpoena and protect your dealership. Absolutely nothing good can come out of producing warranty records to Navistar in their dispute with Ford.

On to General Motors...

General Motors' failure to follow through with its plan to combine Pontiac, Buick, and GMC has come home to roost. In past articles we have written extensively about possible claims that Pontiac, Buick and GMC dealers may have if General Motors' plan to narrow the number of models for each linemake and combine the three franchises into one dealership don't pan out. Well, like many dealers out there, we are representing a Buick dealer who despite his best efforts was unable to obtain the local Pontiac and GMC store. In fact, GM had a chance to hand those franchises to our client but chose to give them to another "off-channel" dealer. We explained in our previous articles that based in large part on law established in the Oldsmobile discontinuance cases we handled, a claim for "constructive termination" is a possible avenue of relief for dealers not able to obtain the trifecta of franchises (Pontiac, Buick and GMC). It was important to wait and see how things shook out and whether dealers would truly suffer lost sales as we all predicted.

We have now filed a lawsuit against General Motors on behalf of our Buick client arguing that GM has, by their actions, constructively terminated his Buick franchise and left him with a franchise worth nothing. We contend that General Motors cannot unilaterally reduce the number of model offerings in these linemakes such that each standing alone cannot be viable while, at the same time, not enable those dealers to obtain all three franchises. In this particular dealer's case, GM took further adverse action causing an effective termination by failing to provide him with an available Pontiac, GMC dealership. Our client's sales have dropped dramatically over the last several months since GM began reducing the number of models offered under the Buick nameplate.

The case is currently in the early stages but stay tuned. GM has asked the court to throw the complaint out as having no merit. If the lawsuit proceeds, it could create an effective precedent for similarly situated dealers to obtain relief from GM.

Rich Sox is a lawyer with the firm of Myers & Fuller PA, with offices in Tallahassee, Florida and Raleigh, North Carolina. The firm's sole practice is the representation of automobile dealers in their quest to establish a level playing field when they deal with automobile manufacturers.