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New York State Automobile Dealers Association
The NEWS

OEM Gamesmanship To Avoid Warranty Obligations and Upcoming Initiatives To Combat It

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As our dealer members are well aware, pursuant to applicable state statutes, each dealer is entitled to be reimbursed by the manufacturer at the dealer's customary retail market for the cost of the parts that the dealer incurs in performing warranty repairs ("Warranty Parts Markup"). Almost every state motor vehicle dealer franchise statute includes, in some fashion, a formula or procedure pursuant to which a car manufacturer is required to reimburse a dealer its Warranty Parts Markup. Section 465 of the Vehicle and Traffic Law is the state statute that sets forth the procedures pursuant to which a car manufacturer is required to reimburse a New York State dealer for its Warranty Parts Markup. Given the literally billions of dollars that OEMs pay for vehicle warranty repairs (parts and labor), it is not surprising that OEMs parse through each state statute looking for loopholes and gaps which would enable them, to at least try, to circumvent the various state statutory requirements obligating them to reimburse the dealer for their Warranty Parts Markup. This article describes two such gaps or loopholes utilized by OEMs to avoid the state statutory requirements described above.

First, certain manufacturers (as an example, Ford) have a line of parts that are supplied to dealers on an exchange basis (clusters, radios, DVD/CD players, navigation units, as well as extremely high-cost items such as electric vehicle battery assemblies and/or sections). The manufacturer under these programs provides a dealer with the parts for free (with a minimal handling/shipping allowance) instead of selling the part to the dealer for the dealer's use in warranty repair work. In this way, these manufacturers contend that they do not have to provide the dealer with the statutory required warranty parts markup reimbursement. The real purpose of these "exchange programs" is literally to circumvent the various state statutory requirements obligating the manufacturer to reimburse the dealer at its customary retail markup for the cost of the parts that the dealer incurs in performing warranty repairs. The nominal administrative allowance given by a manufacturer (usually something like $200 to $500 for an electric battery assembly) falls far short of compensating the dealer for the statutory retail parts mark-up that they are due. As just one example, consider that an electric battery assembly or section cost ranges from $15,000 to $25,000 and a dealer receiving cost plus 85% (a fair national average retail reimbursement assessment), should be compensated under the applicable state statute approximately $12,750 to $21,250 instead of $500. Considering all exchange components, a dealer could be looking at hundreds of thousands per year in additional gross profit.

Importantly, New York's state law is silent on the issue as to whether an OEM is required to provide the Warranty Parts Markup if the dealer has been provided by the manufacturer with the part at no cost. Certain other states, however, have specific legislation requiring the manufacturer to provide the Warranty Parts Markup even if the dealer has been provided by the manufacturer with the part at no cost. As just one example, Georgia state law (Section 10-1-641)(E)) provides that, if a … manufacturer … furnishes a part or component to a dealer to use in performing repairs under … warranty repair at no cost to the dealer, the … manufacturer …shall compensate the dealer for the authorized repair part or component in the same manner as warranty parts compensation under this Code section by paying the dealer the retail rate markup on the cost for the part or component as listed in the price schedule of the … manufacturer …. less the cost for the part or component.

A further gap in the New York statute occurs when a manufacturer outsources the manufacturing of the part to a third party. Specifically, the New York statute only requires that the "franchisor" (i.e., the OEM) to "compensate each of its franchised motor vehicle dealers for all warranty … parts where applicable in amounts which reflect reasonable compensation for such work." This language opens the door for the OEM to argue that it is not responsible to pay the Warranty Parts Markup because it has not manufactured the part and also allows the third-party parts manufacturer to argue that it is also not required to pay the Warranty Parts Markup because it is not a "franchisor" or vehicle manufacturer.

The above issue has repeatedly arisen with new truck dealers. As just one example, Isuzu truck dealers are required to purchase engines used in warranty work from Cummins Inc. ("Cummins"), however, neither Isuzu nor Cummins will compensate the dealer as required by state statute (i.e., the Warranty Parts Markup. Looking to fix and/or fill the gap in the language of the statute, new legislation was just recently introduced (June 2025) to the New York State Assembly to amend the existing statute (Section 465 of the VTL) to read as follows: "Every franchisor, including its affiliates and subsidiaries shall properly fulfill any warranty agreement and/or franchisor's service contract and shall compensate each of its franchised motor vehicle dealers for warranty parts and labor …"

Our firm is investigating potential class actions that would cover both of the issues raised in this article. If any dealer is aware of manufacturers that are trying to circumvent the New York statutory requirement obligating them to reimburse the dealer at its Warranty Parts Markup in a fashion similar to those mentioned herein, please feel free to contact our firm and let us know.