General Motors recently released Option A guidelines within its Service Policies and Procedures Manual that run afoul of some state franchise law requirements relating to warranty reimbursement. The Option A guidelines purport to limit dealers to the following:

- prohibits submission for a change in the dealership's reimbursement rate in November and December of a calendar year;
- requires the dealership to submit their labor rate requests on a designated form;
- requires the dealership to conduct a service pricing survey in their market;
- mandates how the dealership must disclose its labor rate to its customers; and
- requires all labor work (including maintenance and menu items) to be included in the labor rate submission.

Dealers must first remember that most state franchise laws have a specific requirement for seeking changes to the parts and labor rate at which dealers will be reimbursed for warranty work. *The franchise law requirements trump any contrary provisions contained within the manufacturer warranty reimbursement policies and procedures.*

Indeed, the above listed GM procedures appear to be contrary to many state franchise law provisions. For example, most state franchise laws permit a dealership to seek a change in its reimbursement rate at *any time* during a year, despite GM’s purported prohibition on dealers’ seeking changes in November and December.

Similarly, the labor rate submission form required under Option A requests information which goes beyond the calculation of the dealership labor rate submission in most state franchise laws. A prime example of the inconsistencies between the Option A requirements and the provisions of state franchise laws, is GM’s requirement to include information on the results of a service pricing survey to be conducted by the dealership in its market. This survey, per the terms of Option A, must include both franchised and independent outlets. No such pricing survey is required under any state franchise law of which we are aware. GM’s requirement for a pricing survey is onerous, vague and intended to negatively manipulate a dealership’s labor rate submission.

The Option A requirement mandating how the dealer discloses its labor rate to its customers is inappropriate as those requirements are already governed in most state franchise laws and motor vehicle dealer regulations. Altering those state-mandated requirements will only lead to confusion and potential legal liability for dealers.

The Option A guideline purporting to require all labor work, including maintenance and menu items in the labor rate submission is directly contrary to many state franchise law provisions governing warranty reimbursement. Many state franchise laws contain express exclusions from the labor rate calculation for certain types of repairs including parts sold at wholesale, tires, routine maintenance, vehicle reconditioning, and battery replacement. General Motors’ requirement that all labor work be included in the labor rate submission is in direct contravention to those state laws.
The recently issued Option A procedures of the GM Warranty Manual have caused substantial confusion among General Motors dealers around the country. Dealers are not required to follow the Option A procedures where those procedures are contradictory to state motor vehicle franchise laws. Accordingly, dealers should not be discouraged from seeking reimbursement for warranty work at increased rates as dictated by state law.

**American Honda's Marketing Suspensions May Violate Your Rights**

American Honda Motor Co., Inc. has been strictly enforcing marketing guidelines through the Honda (or Acura) Compliance Headquarters, resulting in suspensions and levies of steep penalties against their dealer body.

AHM dealers around the country have been suspended from receiving marketing allowances based upon alleged violations of AHM’s policies (e.g. advertising below invoice or pictures of vehicles showing a different trim than the vehicle advertised). The Honda Dealer Marketing Allowance, and the Acura Carline Marketing Allowance program guidelines threaten suspension upon the “third Type A violation within any twelve-month period” or the “fourth Type B violation within any twelve-month period.”

In some instances, Honda dealers received 3 or 4 violation notices within a year, but the notices themselves show that the violations did not occur within 12-months as required by the program guidelines. So the notices themselves may have been during the 12 month period, but the alleged violations contained in the notices were outside of the period. This alone is a basis to challenge a proposed chargeback and suspension.

Franchise laws in many states regulate such programs and offer protection to dealers sent notices of incentive chargebacks. Some states permit dealers to file a protest of a chargeback or suspension, which then places the burden on the manufacturer to demonstrate the proposed chargeback or suspension is reasonable.

In the cases we’ve seen, dealers have gone to great lengths to follow all applicable policies of AHM. Although there are errors which occur in dealer advertising from time to time, we do not believe that AHM can show that the dealer has fallen short of the standard provided by law in many states.

If you have received a notice of suspension from AHM’s marketing programs, we strongly recommend that you contact experienced motor vehicle franchise counsel to determine your rights under state law.

**Pay Close Attention to New Manufacturer “Announcements”**

Periodically, the manufacturers will send out a rather benign announcement regarding some change in policy or procedure. Any such announcement should raise red flags and cause dealers to sit up and pay attention. Two such recent announcements are excellent examples.

In November, General Motors sent a letter to its dealers reminding them that the five year GM Dealer Sales and Service Agreement will be coming up for renewal next year and providing ownership, successor, and management information to be confirmed by the dealer. First and foremost, it is very important that dealers review this information for accuracy and communicate any necessary changes to General Motors. More broadly, it is important for dealers to remember that the upcoming Dealer Agreement renewal will potentially bring with it certain changes, both in the “standard provisions” and in a performance-related addendum specific to a particular dealership, which could be harmful to the dealership. As the new Dealer Agreement process unfolds over the next several months, dealers should understand that all state franchise laws provide strong protections against a manufacturer forcing a dealer to sign a renewal Dealer Agreement that the dealer finds objectionable.

In the vast majority of states, a Dealer Agreement does not expire on the date listed in the Dealer Agreement but, instead continues in full force and effect until one of two things happen - either the dealer signs a replacement Dealer Agreement or the
must review the terms of their Dealer Agreement to determine if the sales performance measurement being proposed is in fact inconsistent with the Dealer Agreement requirements. If so, dealers should consult with an experienced motor vehicle franchise lawyer regarding the appropriate reply to Audi.

Richard Sox is a lawyer with the firm of Bass Sox Mercer PA (formerly known as 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.

Email: rsox@dealer-communications.com