

BLOGS

State Franchise and Dealer Laws

"Warranty Cost Recovery Charge" Violates Illinois Act

The Illinois Court of Appeals recently held that the "Warranty Supplemental Cost Recovery" charge that Nissan imposed on its Illinois Infiniti dealers violated the Illinois Motor Vehicle Franchise Act. *Nissan N. Am., Inc. v. Motor Vehicle Review Bd.*, 2014 Ill. App. LEXIS 93 (Ill. App. Ct. Feb. 20, 2014). Two dealers sued after Nissan sought to recover a portion of the warranty payments made to dealers by imposing a "Warranty Supplemental Cost Recovery" surcharge on each Infinity vehicle sold to each dealer.

Section 6 of the Act describes the process by which dealers may be reimbursed for providing warranty services on behalf of the auto manufacturers. The Act also provides a mechanism by which a motor vehicle franchisor may lower the warranty reimbursement, if a majority of Illinois dealers contractually agree to the lower rate. There was no such agreement with the dealers. Nissan argued that the Act does not prohibit a "warranty supplemental cost recovery" charge. Nissan further argued that, because section 6(g)(4) of the Act provides that if a franchisor and its franchisees do not reach such an agreement then "subsection (g) shall have no effect whatsoever," Nissan was not bound by the other procedures regarding warranty reimbursement. The court disagreed with Nissan's interpretation, and found that a franchisor may only reduce its warranty reimbursement obligations to dealers through negotiated contract.

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