

Comments for Magnuson-Moss Warranty Rule Review, 16 CFR 700, P114406

October 24, 2011

The Commission's warranty-related Rules and Guides continue to play an important role as warranties come into play with many of today's sophisticated consumer products. While the Rules and Guides have generally worked well, some changes and additions are appropriate. Increased monitoring of compliance and enforcement against noncompliance is called for, as well.

The Guides for the Advertising of Warranties and Guarantees Should be Amended to Better Deal with Advertising the Warranty of Some Components or Systems of a Consumer Product

It is common for consumer products, particularly more complex ones, to carry warranties of varying durations for components or systems of components of the product. Automobiles are prime examples of this, with many new automobiles being sold with "powertrain" or other system warranties longer than the "bumper-to-bumper" warranties covering most of the remainder of the vehicle. The longer warranties on some systems are often featured in ads. The pervasiveness of such ads calls for more guidance in dealing with the issues they present than the current Guides' stipulation that the ad disclose the specifics of the pre-sale availability of the warranty for inspection.

At least three stipulations need to be added to the Guides to deal with such ads.

- 1) The identification of the covered component(s) or system(s) needs to be made contiguously with each use of the word "warranty" in the ad.
- 2) The identification of the covered components or systems should be specific enough so consumers understand what is covered. In the case of automobiles, the Guide should reference the Commission's Used Motor Vehicle Trade Regulation Rule, 16 CFR 455, which imposes a similar requirement on used car dealers summarizing their warranties on the Buyers Guide window stickers, and gives examples to assist the disclosures.
- 3) The ads should also clearly and conspicuously disclose the duration of the warranty applicable to most of the remainder of the product, or that there is no written warranty covering the remainder of the product. For example, when General Motors advertises its 5 year/100,000 mile "powertrain" warranty, it should also disclose that its "bumper-to-bumper" warranty is 3 years/36,000 miles.

The main reason for number 1 above is that failure to do so may mislead consumers into believing the emphasized portion of the warranty applies to the entire product. While many ads already adhere to number 1, General Motors did not rigorously adhere to it in both the audio and video portion of at least some of its television ads when it first introduced its 5 year/100,000 miles warranties in 2007.

Attachment 1 to these comments also contains a dealer warranty ad highlighting a lifetime warranty on a

vehicle without qualifying what components it covered.¹ Further checking showed it only covered "powertrain" components.

Number 2 above is needed because consumer need ads to convey the specific coverage of the highlighted warranty if they are to fully and accurately understand the benefits of the warranty. We note that the Used Car Rule directs dealers to list the specific systems covered and prohibits them from using shorthand such as "drive train" or "power train," which don't have clear meaning for many consumers. Of course, in addition to General Motors several other manufacturers advertise their "powertrain" warranties. There is no reason why a manufacturer advertising to millions of consumers should be referring to a "powertrain" warranty when a corner car lot is prohibited from using that unspecific term on its window sticker warranty summaries.

Number 3 is needed so consumers understand how the warranty on the highlighted portion differs from that on the remainder of the vehicle. This also benefits warrantors by preventing consumers from concluding that the remainder of the vehicle is not warranted when it actually is.

The Pre-Sale Availability Rule Should be Amended so that Online Provision of Warranties Supplements not Replaces the Current Rule's Methods.

Pre-sale availability of warranties continues to be very important to consumers. Consumers are very aware of warranties and use warranty differences as a basis for choosing a product. The current rule is a reasonable and cost-effective approach to providing the information. Compliance with the Rule has been less than perfect but that reflects more on the involved merchants than on the Rule itself. As with other requirements, enforcement is a key to attaining compliance.

Certainly the internet has made it easier for consumers to obtain pre-sale warranty information at their homes. Internet availability, however, is not a substitute for availability as specified in Rule 702 because many consumers make little or no use of the internet, while those who do still need the information at the point of sale as a fallback for when they haven't obtained the information online or when they want to verify that their online information is accurate.

The major needed change in 702 is to adapt it specifically to e-tailers. They should be required to make the warranties available online with an easy and conspicuous link from the product description page. Those e-tailers that also sell through catalogs should also be required to accept and respond to requests for

¹The ad also raises issue over its use of "lifetime."

warranty information. It is outrageous in this day and age that one cannot obtain copies of warranties from Amazon.com, with the notable exception of Kindles. After searching in vain for the information in conjunction with the products, one might find the Warranties entry in the Help menu, which directs you to contact the manufacturer or visit its website for a copy.

RULE 703

Perhaps the most important point to note on Rule 703 is that there are now more than just a few warrantors requiring prior resort to a claimed 703 program. In the 2011 model year there were more than ten auto manufacturers, several with multiple brands, doing so, including Ford, General Motors, and Toyota. The number might be even higher in model year 2012. Thus, Rule 703 is no longer only relevant because state lemon laws incorporate it. The Rule should be actively monitored, enforced, and considered for changes in the course of this review.

The Commission Should Amend Rule 703 or Rule 700 to More Formally State its Interpretation that the Act and the Rule Prohibit Requiring Mandatory Arbitration of Warranty Disputes

The Commission has been consistent in its position on binding arbitration of warranty disputes over the years. After discussing the issue in its 1999 Final Notice of the previous warranty rules review, the Commission stated, "[r]ule 703 will continue to prohibit warrantors from including binding arbitration clauses in their contracts with consumers that would require consumers to submit warranty disputes to binding arbitration." 64 Fed Reg 19700, at 19708-09. There has been considerable litigation of this issue since then, with not all courts agreeing with the Commission's interpretation. Recently the Ninth Circuit agreed with the Commission position in *Kolev v. Euromotors West*, No. 09-55963, September 20, 2011, invalidating a clause in a sales contract purporting to require binding arbitration of warranty disputes with the seller. It is time that the Commission make this position more conspicuous than in a twelve year old Federal Register notice. It deserves a prominent place in the CFR. This is especially important since Hyundai for the last several model years has incorporated in its written warranties both Rule 703 prior resort language and mandatory binding arbitration language. See Attachment 2.

The Commission Should Restrict the Featuring of non-703 Informal Dispute Settlement Procedures in Written Warranties

Contrary to what is often stated, Rule 703 does not apply only to informal dispute settlement procedures to which the warranty requires prior resort before filing under the Magnusson-Moss Act; instead, it

applies to any such procedure "incorporated into the terms of a written warranty . . ." 16 CFR 703.1(e). One could interpret this to prohibit the description of an informal dispute settlement procedure in a written warranty unless it complies with rule 703, regardless of whether prior resort is required. A reason for this interpretation is that describing a procedure in a warranty may give it a status approaching de facto prior resort status. On the other hand, 16 CFR 703.2(a) says that it does not prohibit the incorporation into a warranty of the step-by-step procedure the consumer should take to obtain performance under the warranty. Warrantors have interpreted this provision to allow them to describe non-703 informal dispute settlement procedures in their warranties. Thus, Honda describes the Better Business Bureau program in its warranty, although it does not impose a prior resort requirement and may say, if pressed, that it is not claiming its version of the program complies with Rule 703. If the Commission takes the position that non-703 programs may be described in warranties, we suggest the description of such programs be required to state affirmatively that prior resort to the program is not required.

The Commission Should Consider Exercising Its Rulemaking Authority Over the Terms of Service Contracts

Service contracts have been a huge source of consumer complaints, as the Commission well knows. Many of those complaints concern marketing but many also arise from the unclear wording and structure of the contracts. The voluntary Vehicle Protection Association certifies service contract companies but it has only a brief, general standard for the wording of contracts. Now may be the time for the Commission to exercise its given rulemaking authority so that contracts make full, clear and conspicuous disclosures of terms and conditions.

Respectfully submitted,

Evan W. Johnson
Consumer Protection Consultant²

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² Mr. Johnson was formerly a Staff Attorney with the Center for Auto Safety and Administrator with the Montgomery County, Maryland Office of Consumer Protection. In the former position he was a representative in the Regulatory Negotiation on Rule 703.

Attachment 1

MARK JACOBSON TOYOTA

4516 Durham Chapel Hill Blvd
 Durham, NC 27707
 Phone: 1-800-643-6236
 Fax: 919-493-7289

SCHEDULE A TEST DRIVE

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ALL NEW **LIFETIME LIMITED WARRANTY** AVAILABLE ON SELECT PRE-OWNED VEHICLES!

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Honda
 Infiniti
 Kia

Nissan
 Subaru
 Hyundai

Lexus
 Suzuki
 Mitsubishi

Year Make Model Trim Reset

36 Records Found

Change Layout :

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Sort by...

Year

Make

Model

Exterior Color

Stock #

Internet Price

Certification

**2011 Toyota Sienna SE**

Year: 2011
 Make: Toyota
 Model: Sienna
 Trim: SE
 Exterior Color: BLACK
 Stock #: 34925A
 Internet Price: \$32,580.00

Internet Price:
\$32,580.00

LIFETIME LIMITED WARRANTY**2010 Mazda Mazda5 Grand Touring**

Year: 2010
 Make: Mazda
 Model: Mazda5
 Trim: Grand Touring
 Exterior Color: SILVER
 Stock #: P7919
 Internet Price: \$16,980.00

Internet Price:
\$16,980.00

LIFETIME LIMITED WARRANTY**2008 Toyota Tacoma PreRunner**

Year: 2008
 Make: Toyota
 Model: Tacoma
 Trim: PreRunner
 Exterior Color: RED
 Stock #: 36407A
 Internet Price: \$21,980.00

Internet Price:
\$21,980.00

LIFETIME LIMITED WARRANTY**2010 Kia Sedona Basic**

Year: 2010
 Make: Kia
 Model: Sedona
 Trim: Basic
 Exterior Color: CHARCOAL
 Stock #: P7909
 Internet Price: \$17,980.00

Internet Price:
\$17,980.00

LIFETIME LIMITED WARRANTY**2009 Honda Accord Sdn EX-L**

Year: 2009
 Make: Honda
 Model: Accord Sdn
 Trim: EX-L
 Exterior Color: GRAY
 Stock #: 36462A
 Internet Price: \$19,980.00

Internet Price:
\$19,980.00

LIFETIME LIMITED WARRANTY**2009 Toyota Tacoma Basic**

Year: 2009
 Make: Toyota
 Model: Tacoma
 Trim: Basic
 Exterior Color: GREEN
 Stock #: 35986B
 Internet Price: \$26,980.00

Internet Price:
\$26,980.00

LIFETIME LIMITED WARRANTY**2010 Toyota Corolla S**

Year: 2010
 Make: Toyota
 Model: Corolla
 Trim: S
 Exterior Color: SILVER
 Stock #: P7934
 Internet Price: \$16,480.00

Internet Price:
\$16,480.00

LIFETIME LIMITED WARRANTY**2008 Toyota Camry Basic**

Year: 2008
 Make: Toyota
 Model: Camry
 Trim: Basic
 Exterior Color: GREEN
 Stock #: 36067AA
 Internet Price: \$16,980.00

Internet Price:
\$16,980.00

LIFETIME LIMITED WARRANTY**2009 Toyota Avalon Limited**

Year: 2009
 Make: Toyota
 Model: Avalon
 Trim: Limited
 Exterior Color: BURGUNDY






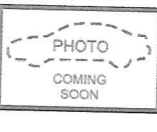




Internet Price:
\$23,980.00

LIFETIME LIMITED WARRANTY**2010 Toyota Corolla LE**

Year: 2010
 Make: Toyota
 Model: Corolla
 Trim: LE
 Exterior Color: GOLD

Internet Price:
\$16,480.00

LIFETIME LIMITED WARRANTY

Actual Photo	Stock #: P7932 Internet Price: \$23,980.00	Actual Photo	Stock #: P7946 Internet Price: \$16,480.00
 Actual Photo	2010 Toyota Corolla LE Year: 2010 Make: Toyota Model: Corolla Trim: LE Exterior Color: GOLD Stock #: P7943 Internet Price: \$15,980.00 Internet Price: \$15,980.00 LIFETIME LIMITED WARRANTY	 Actual Photo	2010 Hyundai Accent GLS Year: 2010 Make: Hyundai Model: Accent Trim: GLS Exterior Color: BLUE Stock #: P7947 Internet Price: \$13,480.00 Internet Price: \$13,480.00 LIFETIME LIMITED WARRANTY
 Actual Photo	2010 Toyota Corolla LE Year: 2010 Make: Toyota Model: Corolla Trim: LE Exterior Color: RED Stock #: P7950 Internet Price: \$15,980.00 Internet Price: \$15,980.00 LIFETIME LIMITED WARRANTY	 Actual Photo	2010 Toyota Corolla LE Year: 2010 Make: Toyota Model: Corolla Trim: LE Exterior Color: RED Stock #: P7953 Internet Price: \$15,980.00 Internet Price: \$15,980.00 LIFETIME LIMITED WARRANTY
 Actual Photo	2011 Toyota Camry LE Year: 2011 Make: Toyota Model: Camry Trim: LE Exterior Color: WHITE Stock #: P7951 Internet Price: \$18,480.00 Internet Price: \$18,480.00 LIFETIME LIMITED WARRANTY	 Actual Photo	2010 Toyota Corolla S Year: 2010 Make: Toyota Model: Corolla Trim: S Exterior Color: SILVER Stock #: 36596A Internet Price: \$17,380.00 Internet Price: \$17,380.00 LIFETIME LIMITED WARRANTY
 Actual Photo	2010 Toyota Highlander Limited Year: 2010 Make: Toyota Model: Highlander Trim: Limited Exterior Color: BLACK Stock #: 36607A Internet Price: \$32,680.00 Internet Price: \$32,680.00 LIFETIME LIMITED WARRANTY	 Actual Photo	2011 Hyundai Sonata GLS Year: 2011 Make: Hyundai Model: Sonata Trim: GLS Exterior Color: PHAN BLACK Stock #: P7957 Internet Price: \$20,980.00 Internet Price: \$20,980.00 LIFETIME LIMITED WARRANTY
 Actual Photo	2010 Kia Sportage LX Year: 2010 Make: Kia Model: Sportage Trim: LX Exterior Color: WHITE Stock #: P7959 Internet Price: \$19,980.00 Internet Price: \$19,980.00 LIFETIME LIMITED WARRANTY	 Actual Photo	2008 Toyota Avalon XLS Year: 2008 Make: Toyota Model: Avalon Trim: XLS Exterior Color: BEIGE Stock #: 36170A Internet Price: \$24,480.00 Internet Price: \$24,480.00 LIFETIME LIMITED WARRANTY

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Attachment 2

SECTION 5**HYUNDAI NEW VEHICLE LIMITED WARRANTY****WARRANTOR**

Hyundai Motor America (HMA) warrants your new 2011 Hyundai vehicle pursuant to the limited warranties described in this Owner's Handbook.

LIMITATIONS

Any implied warranty of merchantability or fitness for a particular purpose is limited to the duration of these written warranties. Some states do not allow limitations on how long an implied warranty lasts, so the above limitation may not apply to you.

These stated warranties give you specific legal rights. You may have other rights, which vary from state to state depending upon applicable state law. **INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION, LOSS OF TIME, INCONVENIENCE, LOSS OF USE OF THE VEHICLE, OR COMMERCIAL LOSS ARE NOT COVERED UNDER THIS WARRANTY.** Some states do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to you.

ALTERNATIVE DISPUTE RESOLUTION

If a dispute arises regarding your warranty coverage, please follow the steps described under the "Consumer Information" section of this handbook. To ensure that you have had an opportunity to have your concern fully reviewed, Hyundai pro-

vides an Alternative Dispute Resolution (arbitration) program that is offered through:

BBB AUTO LINE

Alternative Dispute Resolution Division
Council of Better Business Bureaus, Inc.
4200 Wilson Boulevard, Suite 800
Arlington, VA 22203
1-800-955-5100

Important: You must use BBB AUTO LINE prior to seeking remedies through a court action pursuant to the Magnuson-Moss Warranty Act ("the Act"). However, if you choose to seek remedies that are not created by the Act, you are not required to use BBB AUTO LINE, although that option is still available to you. You must also use BBB AUTO LINE if you are seeking remedies under the "Lemon Laws" of your state if your state statute requires you to do so. Please consult the Consumer Information section of this handbook and the Owner's Handbook Supplement for more information about the BBB AUTO LINE program. Time and mileage limitations may apply. Please refer to the Owner's Handbook Supplement for additional information regarding eligibility requirements in your state.

Note: The BBB AUTO LINE alternative dispute resolution process referenced above is a separate procedure from the **BINDING ARBITRATION** program referenced below.

SECTION 5

HYUNDAI NEW VEHICLE LIMITED WARRANTY

BINDING ARBITRATION

Any claim or dispute you may have related to your vehicle's warranty or the duties contemplated under the warranty, including claims related to the refund or partial refund of your vehicle's purchase price (excluding personal injury or product liability claims), shall be resolved by binding arbitration. Binding arbitration shall be administered by and through the National Arbitration Forum (NAF) or the American Arbitration Association (AAA), under the Code of Procedure of the entity you select.

You will not be responsible for paying filing and hearing fees above \$275.00. All other arbitration costs shall be borne by Hyundai Motor America. You are not responsible to pay any of the costs Hyundai incurs.

This Binding Arbitration Agreement shall not deprive you of any remedies available to you under applicable law. The parties are waiving their right to seek remedies in court, including the right to a jury trial.

This Binding Arbitration Agreement shall be governed by and interpreted under the Federal Arbitration Act, 9 U.S.C. sections 1-16. Judgment upon any award may be entered in any court having jurisdiction.

You may revoke this Arbitration Agreement by (1) written notice or (2) electronic notice. Written notice must be delivered (via certified mail) to Hyundai Motor America, Attn: Consumer Affairs, 10550 Talbert Avenue, P.O. Box 20849, Fountain Valley, CA 92728-0849.

If providing written notice by certified mail, please be sure to identify your VIN (Vehicle Identification Number).

Electronic notice must be submitted at the following website address: <http://warranty-arbitration.hyundaiUSA.com>. **Notice must be received within 90 days after you purchase your vehicle.**

WARRANTY TRANSFERABILITY

The New Vehicle Limited, Anti-Perforation Limited, Emissions Performance, Emissions Design and Defect, Emissions Control Systems, and Replacement Parts and Accessories Limited warranty coverage described in this handbook apply to the vehicle regardless of a change in ownership, and are transferable to subsequent owners.

The 10-year/100,000 mile Powertrain Limited Warranty is not transferable and applies only to the original owner, as defined under "Original Owner" included in the Powertrain Limited Warranty (Original Owner) section of this Owner's Handbook.