

Modern franchise law has its roots in the post-World War II economic period. While franchises for the sale of new vehicles had been common place for over 30 years at that time, the post war economic boom period led to the manufacturer's wide spread use of one sided franchise agreements. The United States Supreme Court has found that the typical franchise agreement is a "contract of adhesion" principally because of the disparity of economic bargaining power. The Court has also recognized the right of a state to regulate these agreements within the state. Manufacturer abuses precipitated the growth of state franchise laws in an attempt to level the playing field. That struggle is still present today as the manufacturers still enjoy a great disparity of economic power. The franchise system and state laws governing the factory conduct have resulted in consumer friendly, orderly and cost efficient way to distribute new vehicles to the general public. Manufacturers have been unduly burdensome in their continued requirements for dealers to spend massive amounts of money on new facilities, special tools, equipment, training of personnel, etc. Additionally, manufacturers have passed the cost of distribution along to dealers by continued reductions in gross profit margins and requiring dealers to absorb costs of special programs, equipment, computers and computer programs essentially control almost every aspect of the distribution system. Yet the system remains the best method of enabling consumer's to negotiate a fair price of a vehicle; and to have warranty and service work performed at competitive rates in convenient locations. The manufacturer could not achieve such a result by direct sales to the public. It would be far too expensive for the manufacturers to duplicate the land and construction costs that dealers now assume. Independent servicing facilities could not afford to invest in required equipment, special tools, maintenance of required parts inventories and, most importantly, the servicing of manufacturer recalls. To suggest otherwise is preposterous and lacks any kind of rudimentary understanding of the industry and its distribution system.

Dealer's welcome warranty work, even at lower than retail rates, because of the volume of the work and the ability to maintain customer relationships. Dealer's often act as a buffer and an advocate for the consumer in assisting the consumer with warranty or consumer incentive claims from the facility. Many years ago there was an independent study done showing that the average customer relationship was worth in excess of \$350,000.00 to a dealership. This included not only new car sales, but potential used car sales, service work, body shop work and parts sales. In over 47 years of representing dealerships I have never seen a situation where a dealer has refused warranty work. Such conduct would be counterintuitive. According to statistics published by the National Automobile Dealers Association the average automobile dealer works from a net profit margin roughly equivalent to that of a grocery store – one to two percent. Warranty work is important to offset operating overhead.

Manufacturer abuses against which dealers have recourse solely via state franchise laws include arbitrary terminations, arbitrary performance standards, arbitrary facility requirements that are often changed at the whim of manufacturers to the cost detriment of the dealers, attempts to force dealers to hire factory approved personnel, exercise of rights of first refusal on contracts of dealership sales and purchases, warranty and incentive audits, coercing dealers to buy from certain third party vendors for operational and facility needs, to name a few.

Historically, manufacturer efforts to engage in direct sales have failed miserably. Some decades ago a short lived attempt by General Motors failed and most recently, about 15 years

ago, an attempt by Ford to create a “Ford Retail Network” failed in the test markets in which it was attempted. Almost a century of history has shown that the current manufacturer/dealer distribution model is the most effective and competitive and consumer friendly method of distribution available. Dealers employ, nationwide, millions of employees providing excellent paying jobs in both large and particularly smaller communities. An attempt to force change in this system by administrative fiat would be both catastrophic and unconstitutional; cause significant negative economic impact and, without a Constitutional act of Congress, would create nothing but litigation.