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MANUFACTURER RECALLS

As you know, March and April have not been particularly good months for several automobile manufacturers relative to the recall of millions of vehicles for various reasons. The most publicized recall has been with General Motors and the ignition switch problems. The question for you is whether you, as an individual dealer, have any exposure or responsibility for the manufacturers' actions.

Recently, some of this author's clients have received emails from an out-of-state law firm stating that there will be class action lawsuits filed against, not only the manufacturers, but the dealers selling the manufacturers' products and that the dealers should have representation. Obviously, the email was a fishing advertisement by this certain out-of-state law firm. The answer to the question is two-fold - Yes and No.

In Ohio, Revised Code Section 4517.60 - Franchisor to Indemnify and Hold Franchisee Harmless from Expenses Due to Certain Complaints and Suits; Franchisee's Duties - specifically states: "Notwithstanding the terms, conditions or provisions of any franchise, or the date such franchise was executed, each franchisor shall indemnify and hold harmless its franchisees against any losses, including, but not limited to, court costs and attorneys' fees reasonably incurred, or damages arising out of complaints, claims, or suits, whether or not meritorious or relating in whole or in part to claims under Section 1345.72 of the Revised Code or to the manufacture, assembly, or design of motor vehicles, parts, or accessories, due to damage corrected by the franchisor prior to receipt of a motor vehicle by a franchisee, or relating to other functions of the franchisor beyond the control of the franchisee, including, but not limited to, the selection by the franchisor of parts or components for the motor vehicle and any damage to merchandise occurring in transit to the franchisee where the carrier is designated by the franchisor. . . ."

Obviously, under Ohio law, the manufacturer has to indemnify the dealership from the manufacture, design or selection of component parts in a vehicle. Therefore, for any of the situations arising under any of the recent manufacturer recalls in the past two months, the dealership would be indemnified by the manufacturer.

Further, although all franchise agreements are somewhat different, each franchise agreement does contain a provision that the franchisor will indemnify the franchisee for situations as that stated in the recalls.

Now, as stated above, the answer is two-fold - Yes and No. If a manufacturer places the dealerships on notice regarding a specific recall on a vehicle and the dealership fails to repair the recalled vehicle and an accident or some other tragedy occurs, then, in that situation, the dealership could be named as a party/defendant. Obviously, the dealership would have known under these circumstances that it had a duty and responsibility to repair a defective component in a vehicle and for whatever reason the service department failed to run the VIN to determine if any recalls were necessary on that particular vehicle. In this situation, the dealership could be named as a party/defendant for failure to repair.

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As always, these are highlights of the law and are not to be construed as containing the entire law. This is not to be construed or relied upon as a legal opinion. If you are presented with this problem, contact your legal counsel for advice.

Having been a Chevrolet dealer, Robert A. Poklar's business background and experience in the automotive industry aid him in his representation of numerous Ohio automotive dealerships. He also represents after-market service companies, trade organizations, dealers, advertising associations and corporations. Pursuant to certain ethical standards, this may be construed as advertising.