

Here is what can happen when an unscrupulous dealer decides to dodge their legal obligations by denial of warranty based on exclusive use of their "special" product.

- The most common example is when a customer of your lubrication change service (automatic transmission, for example) takes their vehicle to the dealer for repair of something on the vehicle and the service writer tries to sell them transmission service. Your customer states they had it performed and the service writer asks to see the receipt. They then inform the customer they have voided their warranty and must change the fluid or their transmission will fail. At that point the confused and worried customer will often go along with the service writers warning and allow an expensive un-necessary fluid change to be done. The dealer then sends the angry customer back to you with the bill in their hand. This is an unfair business practice and should be treated as such by you and by your wronged customer. This could all have been avoided if the customer was aware of their rights under the Magnuson-Moss Act.
- The next most common issue is when there is a problem with the unit you changed the fluid on months and miles down the road. With extended warranties, the OEM's (OEM's from the Far East seem to be the worst about this, although domestic OEM's are also bad) will do almost anything to wiggle out of a warranty if they can convince the customer they are at fault. The unsuspecting customer will take their vehicle to the dealer with a real problem within the mileage or time period covered by the warranty. Instead of determining what caused the failure and a course of action the service writer starts asking for all maintenance records and receipts. If they can find any way to deny warranty based on failure to perform maintenance then they will (the practice of extending oil drain intervals does not void warranties). If they can claim you did not use the "specified" lubricant (in this case the ATF, based on **your** records) they will deny your warranty based on this flimsy illegal pretext. The next step again is an angry customer at your shop demanding your help with his warranty issue with the dealer. The problem is that the customer has the legal right to take the dealer for his illegal and immoral actions to court, you do not. This is where knowing the proper steps to advise your customer to his or her rights as a wronged consumer with a written warranty comes in.

Under the Magnuson-Moss Act you can't offer a warranty that appears to provide coverage but, in fact provides none. A warranty that promised service that the warrantor had no intention of providing would be deceptive and unlawful. Even though the Magnuson-Moss Act makes it easier to bring a consumer lawsuit for breach of warranty its goal was not to promote more warranty litigation. The Act encourages companies to use informal dispute resolution to settle warranty disputes with their customers. An informal dispute resolution system is often part of the warranty and if included must meet the requirements of the FTC. Briefly, the Rule (FTC's Dispute Resolution Rule) requires:

- Adequate funds and staff to resolve disputes quickly.
- No cost to consumer.
- Ability to settle disputes without influence from parties involved.
- Written procedures followed.
- Informing both parties of disputes.
- Investigate, gather, and organize all information to quickly and fairly settle disputes.

- Allow each party to present its side, submit supporting materials, and to rebut points made by the other party.
- Inform both parties of the decision and supporting reasons within 40 days of receiving notice of the dispute.
- Issue non-binding decisions. Either party must be free to take the dispute to court.
- Keep complete records of the dispute.
- Be audited annually for Rule compliance.

It is fairly clear that informal dispute resolution mechanisms are not “informal” from the standpoint of being unstructured. They are informal because they do not involve the technical rules that a court of law must use. If you do not require consumers to use a dispute resolution mechanism in your warranty the warranty resolution process may not meet the standards of the Dispute Resolution Rule. The consumer also has no obligation to use the resolution mechanism and can take their claim straight to the courts.

Do not let any seller or manufacturer (OEM) tell you the FAA (Federal Arbitration Act) gives them the right to make the consumer submit to arbitration. If the seller or OEM tries to slip a binding arbitration clause into the warranty and/or contract when the consumer buys the vehicle the consumer forfeits the right to sue in court for breach of warranty. They must submit to binding arbitration using an arbitrator selected by the dealer or OEM. If the arbitrator wants repeat business, providing a favorable ruling to the dealer or OEM that hired them is in their best interest. When this occurs the consumer is often left with an unsatisfactory ruling with no right to appeal. Under the Magnuson –Moss Act a consumer cannot be compelled to submit a claim to binding arbitration when the consumer purchases a product covered by written manufacturer and retailer warranty (the Act also applies to non-OEM warranty contracts). What this means is binding arbitration clauses in written warranties for consumer products (vehicles) are unenforceable.

There is one other down side for the retailer or OEM providing the warranty if they fail to comply with their obligation under Magnuson-Moss Act. If the plaintiff (wronged consumer) prevails and wins the case “he may be allowed by the court to recover as part of the judgment a sum equal to the aggregate amount of costs and expenses (including attorney fees) determined by the court to have been reasonably incurred by the plaintiff”. The end result allows an award of attorney’s fees to benefit a successful plaintiff, but successful defendants do not get the same option. The bottom line is that the seller or OEM has the potential to incur a big financial loss should they choose to take the warranty claim to court and lose. If they win they still lose because they will not be able to recover the legal costs of going to court from the plaintiff.

Should you have a customer who has had a vehicle warranty claim denied as a result of using an aftermarket product or service it will be necessary for you to educate them and send them back to the dealer or OEM involved armed with the steps necessary to fight unlawful warranty denial.

**I have included a list of actions the consumer can take to resolve the warranty issues caused by aftermarket products and service. It may not be necessary to pursue all of these actions, as often the dispute can be resolved at an early stage when the dealer / OEM realize you are aware of**

## **your warranty rights and the protection afforded you by the Magnuson-Moss Act.**

1. Carefully read the warranty. Determine what the warranty says, not what you think it should say. If it confuses you, get help understanding what it really means. Make sure your problem is covered by the warranty. Look for dispute resolution processes in the warranty.
2. With regards to aftermarket parts and products, the law does not allow warranty denial simply because these parts and products are present on or in the vehicle. Warranty coverage can only be denied if the aftermarket part or product caused the malfunction or damage for which warranty coverage is sought. Disputes in this area quickly result in arguments over technical opinions, not facts. Technicians and service writers are fond of producing TSB's that demand the use of their special products but are unable to produce the "waiver" that the law requires for that exclusive use requirement tied to the warranty.
3. Check the vehicle repair history for that model. Often there is a failure that is recognized as common to that model of vehicle. It may be a defect that has resulted in a recall of that vehicle type and model. You can also check with the dealer or an independent service provider to see if any TSB's (technical service bulletins) or other service related information is available for your vehicle that would indicate that your problem is a common one. Some good sources for this information are:

NHTSA (national Traffic Safety Administration) --- 800.424.9393

Motor Publications --- 800.426.6897 ([www.motor.com](http://www.motor.com))

Chiltons --- 610.964.4600 ([www.chiltonsonline.com](http://www.chiltonsonline.com))

Alldata --- 916.684.5200 ([www.alldata.com/recalls](http://www.alldata.com/recalls))

4. It is necessary to determine the real cause of the problem Often; it becomes necessary to independently determine the accuracy of the claims made by the dealership denying warranty. If it is clear the aftermarket product or service is not the cause of the problem you should gather as much information as possible to support your claim. This could be everything from photos to repair records or even written opinions of qualified or accredited third party individuals.
5. Try to work it out with the dealer first. Present your facts to the dealer service manager with your supporting information. Keep the discussion civil and objective, anger only makes things difficult. Take notes on all you are told and get written explanations if you do not understand what you are being told. If talking to the service manager does not yield results to your liking, go to the owner. If there is a know problem or TSB bring it to the attention of the owner as he can get reimbursement from the OEM under certain circumstances. If they still persist in denying your warranty but evidence exists that challenges the dealer conclusions be sure and make them aware of your evidence. It is also a good time to explain to them you are aware of your legal rights under the Magnuson-Moss Act. Sometimes it is wise to suggest a compromise with the dealer at this point. If you have done your homework and have made your appeal with a good technical approach, that and a basic understanding of the law, often will persuade the dealer to take care of you.

6. Get everything from the dealer in writing. If the dealer denies your warranty they should be willing to do it in writing. Have the dealer document the failure and why they believe the aftermarket product or service caused the problem. Keep accurate records of all communications and correspondence that applies to the warranty denial.
7. Contact the OEM local or Zone Manager if you continue to have problems with the dealer. The local or Zone manager has the ability to adjust and/or make a decision about warranty or service to satisfy customer complaints. The procedure for contacting the local or Zone Manager can usually be found in the owner's manual or is available from the dealer. Present your case to the representative making sure to indicate how you were treated by the dealer involved. Make sure you request any information or actions that are promised by the OEM representative be confirmed by a letter or fax.
8. If contacting the local or Zone representative does not give you satisfaction you will need to contact the OEM directly. Most OEM's have an office or department for the express purpose of dealing with warranty issues. Use all the information you have gathered and anything else you may have that helps support your position and forward a letter with this information directly to the OEM customer service office. Explain your situation with as many details as you can about your contacts and interaction with the dealer and OEM representatives. If you were not treated well be sure and state that. The OEM will usually respond with a letter. Make sure you save all correspondence in case you need it latter. If they request additional information make sure you keep a record of everything you send them. If the OEM decides against your warranty claim make sure their refusal is documented in a letter that provides a detailed explanation of why they feel the aftermarket product or service caused the product. Most OEM's want to keep your loyalty and will make an effort to resolve the issue.
9. If at this point in the process you have gotten no satisfaction a local approach can be pursued. If you bought the vehicle from a franchised dealer you may be able to get help from the Automotive Consumer Action Program (AUTOCAP). AUTOCAP is a dispute resolution program coordinated nationally by the National Automobile Dealers Association (NADA / 800.252.6232) and sponsored by state and local dealer associations in many areas of the country. Many areas have state and city offices that are willing to participate on behalf of consumers to resole warranty complaints. Some of these are:
  - Better Business Bureau
  - State Attorney General
  - Bureau of Auto Repair
  - State Consumer Protection Agency
10. On the Federal level there are several options open to the wronged consumer. Some of these options are:
  - FTC (Federal Trade Commission) maintains regional offices to field complaints. The agency will not act to resolve individual problems, but can act when it sees a pattern of possible violations of the law. ([www.FTC.gov](http://www.FTC.gov) or call 202.326.3128)
  - Bureau of Consumer Protection (call 202.326.3650)

11. Obviously, we have now come to the final step you can take. This is to pursue litigation. Litigation will involve expenditures of time and money but in many cases will encourage the settlement of the warranty issue when the dealer or OEM is faced with the cost of losing in court. Once you have filed the lawsuit or claim against the dealer or OEM the vehicle and all documentation will become evidence and will be presented in court. This is why good record keeping is essential to proving your case and winning the dispute. No matter what you decide to do, always act in a professional and calm manner. Your best strategy is to stay calm, focused and knowledgeable about your rights and the legal options available to you under the law. If you follow these steps it is usually not necessary to go through the whole process. Very often the situation can be resolved to the satisfaction of all parties if you have properly documented and presented your case in a calm, non-confrontational manner.

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