No. S266034

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

LISA NIEDERMEIER,

Plaintiff and Respondent,

v.

FCA US LLC,

Defendant and Appellant.

California Court of Appeal, Second District, Division One
Civil No. B293960
Appeal from Los Angeles County Superior Court
Case No. BC638010
Honorable Daniel Murphy

EXHIBITS TO MOTION FOR JUDICIAL NOTICE
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CHAIRMAN SONG: I would say that is tantamount to refusal.

MRS. GOLDINGER: So they called someone in an adjacent area which in this case was San Fernando Valley, and three months later someone did service it which is a long time to be without a doorbell.

CHAIRMAN SONG: I would say so, yes.

MRS. GOLDINGER: I have here a five-year warranty for an air conditioner-heater system which I put in during June of this year. In reading the fine print I find out the warranty is only for the original purchaser. If I were to sell my house within this year's period, I could not pass this warranty along to the purchaser of my house. Now, I can't take the air conditioning out either. It's a house air conditioner, not a room air conditioner. It would seem to me that person would be entitled to have the same kind of warranty that I want on the air conditioner. And to show you that these things --

CHAIRMAN SONG: Incidentally, what is the name of the manufacturer?

MRS. GOLDINGER: This is called the Trane, T-r-a-n-e. And it says, "The term 'original purchaser' as used in this warranty shall mean the person, firm or association for whom it was originally installed." And that doesn't seem to me to be a very fair thing to do to a housewife either. As an example of having something that is a good warranty, I purchased an Amana refrigerator-freezer and this has very very clearly in simple language a printed warranty for five year total appliance warranty. That takes care of this deceptive practice because it says, "This product warranty is transferrable in a resale."

So it definitely answers this problem. And they tell you what to do in very simple language to make sure that whoever you resell this appliance to will be covered in the same way you are.

SENATOR WALSH: Mr. Chairman, may I ask a question?

CHAIRMAN SONG: Senator Walsh.

SENATOR WALSH: That is printed by the manufacturer?

MRS. GOLDINGER: Yes, it is.

SENATOR WALSH: And you bought it from a dealer?

MRS. GOLDINGER: Right.

SENATOR WALSH: And the dealer informed you of the warranty and explained the warranty to you as you purchased it?

MRS. GOLDINGER: No, I have yet to find a dealer who would take the time to explain a warranty to me ever. This is something I find, I rummage around in the box and in the packing case until I find it. I pull it out and I sit down and read it. But no, no dealer that I have ever bought an appliance from ever ever explained the warranty to me.

SENATOR WALSH: In other words, they stipulate that it has a factory warranty or it has a warranty?

MRS. GOLDINGER: Right, but no one ever takes it any further than that, no one. I would love to be able to find a dealer who would take the time to explain a warranty to me.

SENATOR WALSH: May I make a point on some of the items she has mentioned here?

CHAIRMAN SONG: Surely.

SENATOR WALSH: While I have the time. I have to leave in a few minutes. On a transferrable warranty such as this, in other words, we do have them -- we transfer licenses with motor

vehicles. You don't have to pay for a license plate, for instance. You pay your taxes which is a use tax when you transfer a vehicle, but as far as the license to operate the vehicle, that's transferrable. You take in several instances as far as a business is concerned, and I just want to leave the one point here and I won't elaborate on it, the city by city ordinance and municipalities and counties all the states, they don't care what you sell. If you operate a business, you pay a certain license fee and whatever you sell or however you back it up is of no concern of theirs, and if you don't pay it, then they turn around and do not allow you to sell, and this brings me to one point and that's the fact that I don't think enough responsibility is placed upon the dealers. If they have a problem with their manufacturers backing them up, I think it is between the dealer that handles the product and the manufacturer because your manufacturers are all over the United States and in a lot of cases you have foreign manufacturers. So when you have a product in here that you're going to handle and represent and sell to the general public, I think that the dealers that handle the product should provide the most responsibility, and if they are going to handle this product, it's their problem with the manufacturer, and I think that is the sum and substance of this whole hearing concerning warranties, whether we have clear definitions to the general public, whether or not the dealer is responsible or not, and if the dealer is going to try to circumvent warranties or explanations of warranties and put the public on the spot who is not educated to the product, he's educated to the product's performance and what it will do and

not the mechanics of it or how it is going to be handled, and this is in the form of a statement, Mr. Chairman, I think that maybe our problem does not lie within what laws we can pass between manufacturers and products, but with a dealer handling a product and saying, "I'm going to stand behind this product and I'm going to make my arrangements and my cost of operations to have them overcome by the people whose product I represent, and I feel in my own line of thinking that the general public is the one that takes the blunt end of this and that any dealer that handles any product should make provisions for explanations of warranties or even provide the fulfillment of those warranties within his own establishment and work his own problems out with the manufacturer. If we initiate a law in the State of California concerning manufacturers, we'll probably encompass the entire United States plus any place in the world on certain restrictions that we'll have to have every dealer overcome by way of notifying the manufacturer he cannot sell his product through any dealer in the State of California because unless he complies with certain restrictions and laws that the State of California puts forth, and I feel this is a problem that should be worked out between the dealers and if the dealer figures he has a turkey and he has to sell it five times to get his money out of it, then he shouldn't be handling that product unless he has made arrangements to back it up with the company on his own. That's all I have to say.

CHAIRMAN SONG: Thank you, Senator. Mrs. Goldinger.

MRS. GOLDINGER: Thank you. I think it would help the housewife if she knew where the responsibility was. I think

this would help a great deal. Just one more word on this particular warranty. The Amana people give a food freezer warranty against food spoilage and I think that is a marvelous thing, and I think it is one that perhaps you would not find many other places, so in criticizing some of these warranties, I want you to know there are some that are awfully good, too, that some people really try to help the people who buy their appliances and really care about them.

Now, this is a warranty for a vaporizer that's used for little children when they get a bad croupy cough or something like that and the doctor recommends running a vaporizer in a child's room. The guarantee on this says, "In the event of unsatisfactory operation, do not return the vaporizer to us. Just write to us and we will write back and tell you what to do with it. This will save you the inconvenience and cost of returning it."

Now, let me tell you, with a sick child, no one is going to sit down and write a letter and say, "How do I get this thing to work?" And this is absolutely nonsense. If you have a sick child and your vaporizer breaks down, you darn well should be able to take it someplace very close by. This is a health hazard. If you can't get this repaired quickly and back into your nursery or child's bedroom to use -- this is something where health is concerned. A warranty should be something that's more useful than writing a letter to get a set of instructions on how to fix it. This is just ridiculous.

I, too, was floored when I read the warranty on my RCA television set that said that RCA can put rebuilt parts into

my brand new set. I think that a brand new set deserves something better under the warranty than having rebuilt parts put into it that would probably go out just after the warranty expired.

I have here a warranty for an electric fry pan that I received as a gift one Christmas, and the guarantee is on the bottom of the little cookbook and it says it will give you a year's service for repair and replacement of defective parts. To obtain the replacement this appliance should be returned freight prepaid to, and a great big blank space. There isn't anything on this guarantee that tells you where to have it serviced, who will service it, who will repair the parts, so the year's guarantee is worthless, absolutely worthless.

CHAIRMAN SONG: It was probably purchased at a discount store. The name of the service facility probably was not noted on that form. I imagine that that was what it was intended to be used for.

MRS. GOLDINGER: Well, I wonder about how many people get appliances for wedding presents or for Christmas presents and there is nothing on the package that tells where they can take it to have it serviced, whether it's in warranty, something they don't have to pay for, or something that they do. I wonder, too, about things that have continuing defective parts.

I'm very much concerned with what I hear on the radio or the television or read in the paper about colored TV sets that burst into flames. I think that if there is one part that's continually defective perhaps in an appliance, it should be called back to the factory like automobiles are, because I don't think you should have to pull the plug out on your television

set when you go to bed, which is now what they are recommending, so that it will not burst into flames at night while you are sleeping. I think -- you know they talk about crime on the streets, but boy if that isn't a criminal thing in your own home to go to bed at night and thinking maybe something is building up, something inside the machine, and this can smoulder or catch on fire, and this is what we're hearing about now.

The other thing you hear about color television sets that people shouldn't sit, or you have government agencies recommending you shouldn't sit closer than six to ten feet because of rays that are coming out of the set. Well, I want to know what mother can stay with her children every minute of the day and make sure that they don't get any closer to a color television set than six to ten feet away and I don't think that burden of responsibility belongs on us as mothers and housewives. I think that something should be done by the manufacturer to make sure that there aren't any harmful rays that come out of those sets. And so I think that all of these things are definite problems. I think that something like this perhaps should be in the warranty or somewhere in the instructions in the set. I'm not sure where it should be, but if this is so, then they should tell you or post a sign on your television, your color television set that says, "Keep children, or children, adults or persons, maybe even dogs, no closer than six to ten feet from your set."

CHAIRMAN SONG: I doubt they would want to advertise that the television sets they manufacturer constitute an inherent hazard to the health of others.

MRS. GOLDINGER: I think so, too, but I think housewives

deserve this type of protection.

CHAIRMAN SONG: I don't think only housewives, I think everyone does.

MRS. GOLDINGER: I think so, too, but since the housewife is in charge of things in her household, and I figuredit out warranties cover $3,000.00 to $5,000.00 worth of consumer goods in your house exclusive of your automobile, so this is really big business. It's really something that deserves looking into and I commend the committee for this action and the interim study you are doing.

CHAIRMAN SONG: Thank you very much. Senator Marks.

SENATOR MARKS: The language in the warranties that you are talking about would not have been discovered unless you had read the warranty? They weren't told to you by the dealer, were they?

MRS. GOLDINGER: Right, they were just read by me.

SENATOR MARKS: I think you should read the warranty, but it doesn't solve the problem of what happens at the time of the sale.

MRS. GOLDINGER: Right.

SENATOR MARKS: In other words, don't you agree that the dealer should tell you what the warranties are and tell you what is or is not covered?

MRS. GOLDINGER: Yes, I agree that another way to handle this is to have a very very simply understood warranty. This is the warranty that came with my Kenmore drier and if you will look at it, it tells what is covered, how long it is guaranteed, what the operations are, and whether the parts will be installed, repaired or replaced, and for how long.

SENATOR MARKS: Were you given that at the time you purchased it or did you find it in the box?

MRS. GOLDINGER: No, again I found it in the case.

SENATOR MARKS: So nobody told you about this?

MRS. GOLDINGER: No -- yes, these benefits were pointed out to me when the item was sold, yes, in this instance they were, that this would be the procedure that would be followed.

SENATOR MARKS: But you advocate that this be told to you at the time of the sale, or do you think the problem would be solved sufficiently if you had easily understood simple language in the warranty which you would discover after you purchased it?

MRS. GOLDINGER: I advocate using every method possible to make you aware of what your rights are as far as your warranty is concerned.

CHAIRMAN SONG: Of course that was sold by Sears, was it not, to you?

MRS. GOLDINGER: Yes.

CHAIRMAN SONG: Obviously there are a variety of problems, Mrs. Goldinger, and certainly a warranty should be spelled out clearly and simply such as you have indicated in the Amana case, but the second problem that flows from that of course is assuming that the warranty is clearly defined and understandable, will the company still back it up? How do you compel the manufacturer to perform? The other weasel-worded warranties obviously don't mean anything and I think the intent of the manufacturer is undeniably evident in those cases.

SENATOR MARKS: Do you think there should be some legislation passed requiring the manufacturer to establish somewhere

in the State of California a parts or repairing service or something to that effect so that if you buy something that's made in Pennsylvania, you can have it repaired in the State of California?

MRS. GOLDINGER: I think that would be excellent, yes, I really do. The other thing that someone mentioned before me is that many times you will call for service and there will be a lady with a washing machine and the washing machine is overflowing or a dishwasher overflowed twice and perhaps you won't be able to get service for a couple of days, so I think that service should be readily available, particularly in emergency situations.

SENATOR MARKS: Do you think there should also be a provision that if the product is defective or something happens during the period of the warranty that the person who may have to send the product by mail to some place to have it fixed should be reimbursed for the cost of the mailing if in fact the product is defective during the period of the warranty?

MRS. GOLDINGER: Yes. I think that should be so, but I would like better than mailing it to go back to what you said before, I would like to be able to either, if it is a small part or a small thing like an electric blanket, then perhaps I can take it to someplace where I can get service close by and if you don't have an authorized place close by then they should authorize you to take it to someplace close by where they in turn would be reimbursed.

SENATOR MARKS: I live in San Francisco and I purchased something and the only people -- I have nothing against

Los Angeles, but the only place I have to get it fixed is to send it to Los Angeles.

MRS. GOLDINGER: I think that's unfair.

SENATOR MARKS: At my expense.

MRS. GOLDINGER: I think that's very unfair.

CHAIRMAN SONG: Mrs. Goldinger, you say you are a housewife. What does Mr. Goldinger do?

MRS. GOLDINGER: Mr. Goldinger is in textiles.

CHAIRMAN SONG: Textiles. Just curiousity momentarily. Anything else?

MRS. GOLDINGER: No. I certainly appreciate the time the committee has given me to present this and I feel very strongly that we really do need help and thank you for trying.

CHAIRMAN SONG: I surely think that something should be done. In the interim may I suggest you mail those cards in?

MRS. GOLDINGER: Thank you.

CHAIRMAN SONG: Is Dick Elbrecht here?

MR. ELBRECHT: Yes.

CHAIRMAN SONG: State your name and identify the organization you represent, please.

MR. ELBRECHT: Mr. Chairman, my name is Richard Elbrecht and I am appearing at the request and for the Association of California Consumers. The question of warranty is basically one of fair dealing with the consumer. The problem of warranty is essentially that it has been used as an instrument of unfair dealing with the consumer. The present use of the warranty results first in the loss to the consumer of the basic protections which the law strives to accord to all purchasers of all

new and used merchandise. The basic law-imposed protections include mainly the basic warranty of merchant ability and fitness. The law imposes on the merchant the obligation to supply goods whose quality meets certain minimum standards of acceptability.

But there's a loophole in this law which almost all sellers now use. By the use of printed clauses in form pad contracts which the printing companies that supply the contracts routinely insert, the sellers routinely exercise the power which this loophole gives sellers to effectively eliminate the basic law-imposed warranties, sometimes called "implied warranties." The loophole consists Section 2316 of the California Commercial Code which allows the seller to disclaim the warranty obligations imposed by law. Therefore the Association of California Consumers recommends the following first step in eliminating present abuses in warranties in California. The proposal is to abolish completely the power of the seller to disclaim the minimum protections which the law accords to the consumer. The amendment would take the form of the addition of the following language at the end of Paragraph 1 of Section 2316 of the Commercial Code, and I'm quoting.

"Notwithstanding any other provision of this Section and division, negation or limitation of warranties is inoperative in sales of consumer goods to consumers and other buyers."

That is our first suggestion, Mr. Chairman. The present use of the warranty results second in the unenforceability by the consumer of many of the express warranties made by the seller and the manufacturer in his television, radio, magazine

and newspaper advertising, in his sales brochures and in the oral communications of the salesman during negotiations, all of which usually form the real basis of the sale to the consumer. The cause again is another loophole in the law. Virtually all sellers insert in their form pad contract instruments a clause which reads something like this: "The parties acknowledge and agree that there are no warranties or representations concerning the merchandise except those which are included herein." This statement of course is usually false because in almost all cases the real cause of the sale does rest in a series of written and oral representations which were made by the seller or the manufacturer with the intention and for the purpose of selling the merchandise to the consumer. Few of such representations, however, are included as part of the form pad contract. The printed clause, usually a fine print printed clause states falsely that there were no such representations. Unfortunately the existing law gives this clause legal effect. Existing law allows a clause of this kind to shield the seller from the moral duty to fulfill his express warranties.

The Association of California Consumers therefore recommends that in determining what warranties were formed at the time of the sale a court should be entitled to admit as evidence and consider and enforce all oral and written representations made by the seller concerning the merchandise. The amendment would take the same form as the amendment which I previously described which would eliminate the power of the seller to disclaim his warranties merely by the use of a clause in a form contract.

CHAIRMAN SONG: Let me ask you this. You are proposing pretty drastic changes in the rules of evidence here. Are you an attorney by profession?

MR. ELBRECHT: Excuse me, Mr. Chairman, I omitted to state I am an attorney professionally. I am on the staff of the Legal Aid Society of the Santa Clara County.

CHAIRMAN SONG: I just wondered about amending our Evidence Code to provide cases like this, the admission of oral representations. You know there's no bounds there, of course. I would think that an unhappy customer would honestly or otherwise have no hesitancy to go into court and say, "This man promised me the moon orally." As I see this problem, also basically it is a matter of balancing the equities. We can't make it possible for the manufacturer to be stuck ad infinitum as well while protecting the customer of course.

MR. ELBRECHT: Mr. Chairman, the way the things are now, even the manufacturer's written brochures and newspaper and magazine and TV advertising is not admissible. Now, it may be --

CHAIRMAN SONG: That part should be.

MR. ELBRECHT: In balancing the equities it might be that the written evidence that was extrinsic from the sales contract might be admissible. In any event it would be up to the judge, the trial court or the jury, if it was a jury case, to decide upon the truth, what really made up the basis of the bargain between the parties, and the question that you have posed is a question basically of perjury, and your comments are appropriate. I would agree this would be a matter of weighing the equities

involved in the circumstances.

CHAIRMAN SONG: I trust that you'll proceed with the other recommendations which don't necessarily involve litigation. The one who purchases a small television set for $200.00 can hardly afford an attorney for the purpose of filing a lawsuit.

MR. ELBRECHT: Mr. Chairman, it's my own view from my own experience that very frequently the parties to a sale transaction, be it a consumer sales transaction or any other contract, will respond more or less in accordance with what they believe would probably happen in the event the matter were litigated. Only a very small proportion of the disputes are actually litigated, and it's my personal belief and from the experience that I have had that the rules of law establish a certain standard, even if it is framed in terms of what would happen in the event of litigation, that standard slowly but surely over the years and decades becomes part of the fabric of how businessmen deal with consumers and how businessmen deal with each other.

CHAIRMAN SONG: I agree, but businessmen at the same time I think are undeniably pragmatic. They can tell more or less whether or not someone can afford to go and see an attorney for the purpose of filing a lawsuit, but I do agree with you in principle. Proceed.

MR. ELBRECHT: O.K. The third proposal involves basically under the present rule except in the area of personal injury claims, it's difficult, if not impossible, for the consumer to bring a claim for economic loss against a manufacturer; and the third proposal would be to simply extend the range of liable

parties for breach of warranty to include the manufacturers as well as the retailer. Right now there's a considerable degree of uncertainty in California law regarding liability of the manufacturer for economic loss, and in the prepared statement that I have submitted, I have again set out detailed language of a possible statute that would eliminate that uncertainty.

SENATOR MARKS: May I ask a question?

CHAIRMAN SONG: Senator Marks.

SENATOR MARKS: You are talking about the cost of the prospective litigant filing a suit. Most conditional sales contracts have a provision in there that if a party who purchased the property failed to comply with the terms of the purchase he is required to pay reasonable attorney's fees to the party who was suing him for failing to live up to the contract. Do you think conversely there should be something in the contract which would provide that if the manufacturer or dealer or whoever it may be sells something where the warranty is either not complied with or it is defective, that the person who sells it should also be required to pay the cost of litigation?

MR. ELBRECHT: I very definitely do.

SENATOR MARKS: I'm sure that would be a very easy bill to get through.

MR. ELBRECHT: That is correct. I do definitely feel it would be appropriate. We do have the provision for awards of attorney's fees in credit transactions, but there is a gap at the point that you have just mentioned, Senator Marks.

SENATOR MARKS: Let me ask you a question on an entirely different subject. I don't want to get into a dispute I hope

between Kay Valory and Helen Nelson, but do you think the Consumer Counsel should play some part in this, or has the Consumer Counsel as an office played any part in this problem?

MR. ELBRECHT: I very definitely believe the office of Consumer Counsel could play a very major part primarily in the matter of proposing legislation, offering testimony at legislative hearings such as this, and in the area of active consumer education. I think there is much that can be done by a Consumer Counsel, I think there's a tremendous potentiality there that is not being fully exercised.

CHAIRMAN SONG: Mr. Livingston of the Governor's staff will be testifying after lunch. Go ahead.

MR. ELBRECHT: The next proposal involves a similar question of disclaimer of remedies for breach. At present the seller again can use in his form pad contract a clause which disclaims the applied remedies for breach of warranty and I'm thinking mainly of the right of the consumer to reject goods that don't comply. The basic rule under the Commercial Code is that the buyer of goods that fail to conform with the contract can reject the goods, but there's another provision in the Commercial Code that allows the seller to disclaim this law-imposed remedy, and the position of the Association of California Consumers is that this likewise should not be. The right of the seller to modify or limit the law-imposed remedies should not exist. This would mean that in the event that the goods failed to conform to the contract, the buyer among other rights would have the right to reject after the seller was given a reasonable opportunity to cure, but right now in most of the warranties

that Mrs. Goldinger has submitted, for example, you will find built into those clauses a statement that the buyer does not have the right to reject the goods. That right should exist in all consumer sale transactions provided, however, that the seller does have the right to cure promptly within a reasonable time.

The next proposal which is again outlined in greater detail in the written statement that we will submit, is a proposal that the definition of merchantability be expanded to include the requirements that goods to be merchantable must conform with government-set safety and quality standards. Right now there is a serious question, a vast uncertainty in fact, as to whether an agency of the government sets a quality or safety standard in a consumer item, that the law ought to be set out in such a way that this failure of the supplier to supply goods that conform with the government-set standards is an item going to make up the merchantability and that failure to conform with that requirement would give the buyer the same rights he would have for the failure of the goods to be merchantable or to conform with an express warranty.

SENATOR MARKS: Are you suggesting that the government test everything?

MR. ELBRECHT: This provision would in effect give teeth to any government-set regulations. I do definitely believe that the government should conduct tests and should promulgate the results of the tests. The recommendation here would be that where the government did set a standard that violation of that standard would give the individual consumer the private remedy that he would have for any breach of contract, including

rejection of the goods, and damages.

The next and the second from the last proposal would be as we have outlined in detail in the written statement. It is proposed that the Business and Professions Code be amended to include provisions governing and defining deceptive advertising of guarantees and with requirements similar to some of those that Senator Marks referred to here today requiring that the written warranty or guarantee be very specific as to the nature and extent of the guarantee, the manner in which the guarantor will perform, and the identity of the guarantor, and in our written statement we have suggested that this committee might consider what the Federal Trade Commission has promulgated under the same title of deceptive advertising of guarantees, which is located at 16 Code of Federal Regulations, Par. 239.

And finally it is proposed that in the case of all written guarantees and warranties with respect to goods sold in California, the manufacturer, retailer or distributor should be required to submit to the Attorney General or some other enforcing agency a certified copy of every warranty or guarantee that's offered to the consumer. The proposal here is similar to a statute presently in effect in Massachusetts which evidently is working well. The Attorney General or other enforcing agency then will make these warranties and guarantees available for research and consumer education. Also undoubtedly --

CHAIRMAN SONG: It wouldn't be subject to approval of the enforcement agency though, would it?

MR. ELBRECHT: It would not be subject to approval of the enforcement agency, that's correct. This would be a repository

of information so as to make it public. Then of course if there were violations of any of the State's laws against false or deceptive advertising, the Attorney General of course, or other enforcing agency, would have this material close at hand ready to use. And this seems to be a very wise type of legislation to adopt.

CHAIRMAN SONG: It might well have a deterring effect I would think.

MR. ELBRECHT: One more item, to the extent that any of the present law allowing sellers of merchandise to include disclaimers in their form contracts, to the extent that any such legislation is adopted, legislation should also be adopted actually prohibiting the use of the clause in the warranty or contract because if the clause is there, it is in effect a misstatement of the legal rights of the parties and the consumer can be deceived as to his legal rights, so the final recommendation would be a provision that would prohibit the use of any deceptive or false clause or statement of law or legal effect in the warranty or guarantee or in a contract which contained the warranty or guarantee.

Mr. Chairman, that basically is the series of proposals which I have made today on behalf of the Association of California Consumers.

CHAIRMAN SONG: Thank you. For the record, tell us something about your association, please?

MR. ELBRECHT: I have appeared on behalf of the Association of California Consumers on a number of occasions.

CHAIRMAN SONG: What is this Association?

MR. ELBRECHT: Oh, it's a coalition --

CHAIRMAN SONG: How was it formed, how is it supported?

MR. ELBRECHT: It is a coalition -- my information is that it is a coalition of somewhat more than 100 local consumer and labor organizations. Maybe Mrs. Goldinger, who I understand is associated with the Southern California branch, could give you more detailed information, but it is California's largest and most active consumer organization.

CHAIRMAN SONG: Where does your funding come from?

MR. ELBRECHT: The funding comes from, according to my best understanding, Mr. Chairman, from the individual subscriptions of the member organizations.

CHAIRMAN SONG: You are being paid, I would assume?

MR. ELBRECHT: I'm not being paid.

CHAIRMAN SONG: You are strictly a volunteer witness?

MR. ELBRECHT: Strictly a volunteer witness. I have appeared on behalf of them on a number of occasions and I'm appearing again today at their specific request.

CHAIRMAN SONG: I would assume Mrs. Goldinger, likewise, is appearing as a voluntary witness?

MRS. GOLDINGER: We are a voluntary organization.

MR. ELBRECHT: I might add also, Mr. Chairman, that in matters such as this, the interest of my low income clientele -- we are an OEO legal services program and I am professionally employed there -- the interests coincide perfectly so that I could as well represent that, but I am now appearing on behalf of the low income clientele.

CHAIRMAN SONG: Fine. Just as an interesting aside, what

if you were offered a job as general counsel by Norge Refrigeration Company?

MR. ELBRECHT: I don't expect that I would be. I do believe that the rules that are proposed here would be very workable. They are significant departures from our existing law.

CHAIRMAN SONG: Thank you. You are sending in a written detailed recommendation to this committee?

MR. ELBRECHT: Yes.

CHAIRMAN SONG: Thank you.

SENATOR MARKS: I'm looking at one of them the staff prepared and maybe ten years ago I could have read this, but I can't now. Should the type be larger?

CHAIRMAN SONG: I think it should be legible anyway. We had a similar problem with the latest edition of the State telephone directory.

MR. ELBRECHT: The question of type size and so on is a very difficult one. The Consumer Credit Code has no provision requiring minimum type size and our existing Unruh Act and other acts, of course, do. I think that there should be a requirement for minimum size type.

CHAIRMAN SONG: I certainly agree that I should be able to read them with my bifocals I would say, anyway. Thank you very much. Mr. Elkins, you have something else you wish to say?

MR. ELKINS: One comment in regard to Senator Marks, before. Civil Code, I think it's 1717, now provides that in any contract in which attorneys' fees are given to one party, they are automatically given to the other party if he wins. Senator Lagomarsino introduced that bill about two years ago. It's so

hidden in the indices that you can't find it, but it is there. There might be an extension of that indicating that in a contract if there is going to be a provision written in the contract, and since this is the law anyway, providing attorney fees to one side, it should spell out the other side would have that right, so he would know about it because he certainly doesn't know it now.

SENATOR MARKS: I'm referring to the present everyday conditional sales contract which says that the person agrees that on failure to comply with the terms of the contract, he agrees that reasonable attorneys' fees may be charged. This is on the part of the seller.

MR. ELBRECHT: That is right. Under the present law whenever that appears in a contract, the buyer automatically has the right to attorneys' fees if he wins in the lawsuit or, or if he brings a lawsuit. That is the present law, but of course the buyer doesn't know that because he doesn't see it on the contract, and perhaps that may be a worthwhile extension.

CHAIRMAN SONG: Thank you. This committee is going to recess for lunch and reconvene promptly at 1:45. We will stand in recess.

(The noon recess was taken.)

MONDAY, NOVEMBER 3, 1969, 1:45 O'CLOCK P.M.

CHAIRMAN SONG: The committee will come to order. The hearing is again resumed. At this time I would like to call on the chief of the recently created Division of Consumer Affairs, Department of Professional and Vocational Standards, Mr. Don Livingston. Will you come forward, please?

MR. LIVINGSTON: Senator and Senator Marks, my remarks will be brief today. I am pleased with your invitation. We do not have any formal remarks to make, but I do have some informal comments which I would hope you would take into consideration in your study of this very significant problem.

As Senator Song mentioned, I'm here representing the Division of Consumer Affairs in the Department of Professional and Vocational Standards. For your information this Division consists of five bureaus, the Bureau of Electronic Repair Dealer Registration, the Bureau of Furniture and Bedding Inspection, the Bureau of Employment Agencies, the Bureau of Collection Agencies, and the Bureau of Private Investigators and Adjustors.

In addition we have in our Division the Office of the Consumer Counsel. I will not dwell on the organization and the status and the intention of our Division at this meeting, since I know that you have scheduled an interim hearing on the creation of the new Division for November 17, I believe in this room, in Los Angeles, and so at that time we can in greater depth explore the intention of that Division in the consumer affairs field.

My major point in regard to the Division, however, is to bring to you the fact that we intend that this Division will be the focal point for consumer protection activities of this administration, and therefore we intend that the Division will speak out not only in those areas in which it is active in the regulatory process, but we will represent the administration's thinking and proposals in other areas in which we do not regulate.

It's with that in mind today I address you on the subject of warranties. First may I speak to what our Division and the sub-units in that Division are doing on the subject. The Bureau of Electronic Repair Dealer Registration in January of this year adopted regulations on the subject of warranties, and I would like very briefly to comment on those regulations.

I might say that in the original creation of the Electronic Repair Dealer Registration Act there was a statement in that Act that the Bureau shall adopt regulations about warranties. Until this year in January that was not done. We did adopt them earlier this year on January 11th, 1969. Under Section 2723, advertising by a service dealer, we comment on advertising which shall be deemed untrue or misleading includes, but is not limited to advertising which fails to conform to the following specifications:

A. Advertisements for television, radio and phonograph equipment service shall contain all of the following information as a protection to those persons answering the advertisement:

(1) The firm name of the business enterprise as shown on the city or county business license, and/or the

State sales tax certificate.

(2) The address where such servicing operations are regularly conducted as evidenced by the address shown on the city or county business license, and/or the State sales tax certificate.

(3) The business telephone number as listed in the local telephone directory.

Now, more closely to the point of this hearing, "B" of that Section says, "The use of words such as 'guarantee', 'guaranteed,' 'no fix no pay,' or words of like import and prohibited unless the terms or qualifications are clearly and completely stated, including the disclosure of,

"(1) The nature and the extent of the guarantee as to time, parts and/or labor, and

"(2) The identity of the guarantor, for example, clearly identifying whether the service dealer, the manufacturer, the retailer or any combination thereof is the guarantor.

"If such terms as 'repaired in the home' are included in an advertisement, it shall also be stated therein, and that there will be a charge if repairs cannot be completed in the home, if such is the case."

There are more comments on this. I don't want to belabor the discussion, but I do think a couple of other comments are necessary for your interest, and under "D" of that Section we say, "If the price for a picture tube is quoted in an advertisement, the advertisement shall disclose the following:

"1. Whether the price quoted includes installation, and

"2. Whether the picture tube offered is new, used, rebuilt or rejuvenated."

And we commented on the word, the use of the word "free." We comment on the terms such as "twenty-four hour" and "day and night" and what they should or should not include. We also comment in these regulations on such phrases as "factory trained," "factory specialist," "factory authorized" and so forth. I believe that these regulations as recently adopted will go a long way to bring into line some of the practices in terms of the television repair industry and their use of "warranty" and "guarantee."

SENATOR MARKS: May I ask a question?

CHAIRMAN SONG: Senator Marks.

SENATOR MARKS: These have already been promulgated?

MR. LIVINGSTON: They were promulgated in January of this year.

SENATOR MARKS: This applies to advertising?

MR. LIVINGSTON: Yes.

SENATOR MARKS: And this has been brought to the attention of all television people in the television industry?

MR. LIVINGSTON: Yes. There were hearings about this time last year and they were finally adopted in January of 1969.

SENATOR MARKS: This applied you say to advertising?

MR. LIVINGSTON: Yes, the advertising of guarantees. I'll speak later on our philosophy concerning that particular concern in warranties and guarantees. I wanted to bring this to your attention because we feel that in this area, in the areas in which the State regulates now, that this perhaps is the way that

we should go in terms of regulation and in new laws.

SENATOR MARKS: What are you doing to let the public know of, first, the regulations that you put into effect, and also the establishment of your Division, so that they will know what recourse they may have?

MR. LIVINGSTON: Well, in the Television Repair Bureau, the Electronic Repair Dealer Registration is the formal title, probably it is one of our best known regulatory agencies. Earlier last month TV Guide did its fifth article on a nation-wide deal on that particular Bureau and how it protects California consumers. The Electronic Repair Dealer Registration Act has been one of the most famous and one of the most well publicized, in fact I had a complaint from my assistant chief on Friday that they were so well publicized that we were hardly able to keep up with the work load of complaints. I do believe that the public is generally aware of the activities of this particular agency, and especially those actions in which they are benefitted.

SENATOR MARKS: Maybe you are going to come to this, but I think to bring it down to a practical point, if somebody had a problem say with a refrigerator, what would they do so far as your Division is concerned?

MR. LIVINGSTON: In the recent session of the Legislature, the Electronic Repair Dealer Registration Act was amended to include phonographs and tape recorders. Previous to that it primarily dealt with television. There have been various suggestions, and I would hope that this committee would take note of those suggestions, that appliances, home appliances, be included under this agency. They are not now included.

SENATOR MARKS: So if someone has a problem with home appliances, they would not come to your agency as it is now constituted?

MR. LIVINGSTON: Right. I'm talking about electric fry pans, electric blankets -- they are not under this particular agency. We have just expanded this agency in the role of tape recorders and phonographs, so that in those particular areas there is good regulation, but there are still areas in which the consumers I think are concerned and feel that perhaps repair services generally should be included under the regulatory process.

SENATOR MARKS: If you find there's a problem under say television or those matters over which you now have jurisdiction, do you turn such matters over to the Attorney General, or what do you do about them?

MR. LIVINGSTON: In the Electronic Repair Dealer Registration it's my understanding that the agency has worked closely with the Attorney General. However, primarily we have gone the hearing route in which of course the Attorney General represents us, but the cases are disciplinary matters in which we go after the licensee. There has been, I think Herschel can comment on this -- I don't think in advertising there has been a great deal of work so far.

CHAIRMAN SONG: Mr. Elkins.

MR. ELKINS: The Electronic Repair Dealer Registration Bureau really has two things they do. Number one, they bring licensing actions against the licensee, in which our office represents them. In addition to that, it's made a misdemeanor and they take these matters over to the District Attorney. And

since they do have the experts within the Division and can present these cases to the District Attorney and provide the necessary expertise, the District Attorney has brought criminal actions in a number of cases and this has been quite successful, and these have been the two devices that have been used.

CHAIRMAN SONG: Mr. Livingston, what recourse, if any, does your Division have against a manufacturer at the present time under existing State law?

MR. LIVINGSTON: It's my understanding that the Bureau within the Division does not regulate the manufacturer. Our primary concern is the repair dealer and he's the one that is registered with the State.

CHAIRMAN SONG: Well, what if someone buys a defective television set, for example? Is it necessarily and naturally the responsibility of the repair man, for example? He buys a new color set and within a week the picture tube goes out, at which point as far as any consumer complaints are concerned, they would be directed to the dealer, would they not?

MR. LIVINGSTON: Yes, they would, and the dealer is responsible under warranty provisions such as those that I read to you, and so therefore there is a relationship that is drawn because of the responsibility of the dealer in performing the warranty work.

CHAIRMAN SONG: In your opinion would you consider it desirable to have legislation in this State which would make the manufacturer accessible so to speak to you?

MR. LIVINGSTON: Could I comment on that in my later comments?

CHAIRMAN SONG: Surely.

MR. LIVINGSTON: The other agency that the Division has responsibility for and I think that we want to comment on in terms of your interest today is the area, although I suppose it's laughingly referred to as the "bedding agency", the most famous guarantees are in bedding products. I assume that the majority of the people here today are sleeping on mattresses that were guaranteed for at least twenty years, maybe ten, maybe five. Earlier this year our agency, the Bureau of Furniture and Bedding Inspection, further clarified Article XI, "False and misleading advertising" in terms of our own Act and proposed guidelines which the industry must use in terms of the advertised guarantee.

We state that the requirements shall be that the manufacturer and the dealer must state the nature and extent of the guarantee, the manner in which the guarantor will perform, the guarantor's identity, and also how they will perform in terms of whether or not it is pro rata charge based over a period of time, and also a strong comment on such claims as "Satisfaction or your money back," or "Ten day free trial," "Lifetime," and similar guarantees which are also covered. Our general conclusion in this area is, and our general conclusion in terms of your discussion today, that we feel very strongly about, is that the primary concern of our agency, and we feel of State government, is that the consumer not be misled fraudulently in terms of what are their rights, and my comments are related in terms of advertising, but also in terms of the kind of material which appears on the product. Now I believe very strongly that

the language should be clarified.

There were several people here that commented this morning and I think this is a step in the right direction. I think also, as we have already indicated in the two areas that we have responsibility for, we do insist that the manufacturer or that person who is making the guarantee, explain in depth what the warranty or guarantee is so that the consumer has no misunderstanding in terms of their rights.

CHAIRMAN SONG: What happens if the manufacturer fails to abide by your requirement that the explanation be met in that manner?

MR. LIVINGSTON: Now, in the Bureau of Furniture and Bedding Inspection these guidelines went out to the industry about two months ago and we set a date for full compliance. That is not only in advertising, but in the corner stickers that are on bedding and furniture products in terms of they cannot any longer say "Twenty years guarantee" with no other explanation because there always are a list of very clearly set out changes or declinations that they will make in terms of that guarantee.

CHAIRMAN SONG: And if they fail to comply their license could possibly be in jeopardy?

MR. LIVINGSTON: That is right.

CHAIRMAN SONG: You are suggesting another approach I think necessarily, Mr. Livingston. What if every manufacturer in the State of California or one that does business in this State would be subject to a licensing procedure? Wouldn't any kind of warranty then become more easily enforceable administratively

through a Division such as yours?

MR. LIVINGSTON: Well, I think that's one approach. The main thing that I want to leave you with is that we feel that the State's role is primarily in the area of fraud and misrepresentation. That is, that a manufacturer or a dealer who makes the statement either in advertising matter or attached to the product who is misrepresenting what they intend to do, we do believe that the State should move in this area.

CHAIRMAN SONG: What if the person making the representation makes a clear and unequivocal representation and fails to perform? Does that in your opinion constitute fraud?

MR. LIVINGSTON: Yes. And I also believe that that representation, and we have used this in our relationship with the consumer fraud unit of the Attorney General's Office, we do believe that that is the place in which any kind of fraudulent representation should be litigated.

CHAIRMAN SONG: I would think from the point of view of the general buying public one of the biggest problems apart from deciphering some of these warranties would be the enforcement of some of the provisions, and if they could be done administratively such as you can do today with your bedding industry, I would think that it would be doing a great service to the general public.

MR. LIVINGSTON: I think the one caution that I also want to leave with you, and that is something that I feel very strongly about, it's obvious that warranties and guarantees have over the years been used as advertising gimmicks, have been used as promotional matters in order to garner business. I

think there's a fear if the legislation which is adopted is too extreme that the consumer will ultimately be harmed because the manufacturer or the dealer will withdraw from the competitive circle and say, "We won't give a warranty or a guarantee any longer if we are going to have the government through the Attorney General or through the regulatory process after us for making these offers to perform." So I would caution the committee in the development of the legislation that the industry, and I personally, am not in favor of blanket indictments of industry groups for non-performance. I think there are a great many industries who are doing a good job. Perhaps they are not clear enough in terms of their warranties, but I think we have to be very careful with the testimony that you are receiving and I think this hearing is a good step in that direction, to find out where the problems lie, but I do feel that we have to be very careful in terms of legislation so that you don't blanketly indite whole manufacturing industries for the problems of some few who may be harming the public.

CHAIRMAN SONG: Your statement is well taken. It would seem to me that the prevailing consideration as far as any person in business would be to make a decent profit. If you make the warranty provisions too onerous, of course, that factor would undoubtedly be affected and could very well drive a person out of business.

MR. LIVINGSTON: I would hope that as you develop your legislative proposals that you would be concerned with the area that we suggest and the area that we're working in which is misrepresentation and fraud, and I believe that these are the

two areas in which you can accomplish significant work because the person that we're most concerned about and that we have had disciplinary and legal action against is that person who has no intention of performing or so confuses in terms of his warranty that it would be impossible to determine how he would perform.

CHAIRMAN SONG: Senator Marks.

SENATOR MARKS: Well, in the television repair field what authority do you have when you find a dealer who misrepresents? What authority do you have?

MR. LIVINGSTON: Well, we can go, as Herschel Elkins explained, we can go after the license or we can go criminally through the District Attorney's office.

SENATOR MARKS: Have you gone after any licenses?

MR. LIVINGSTON: Oh, yes. The Electronic Repair Dealer Registration Agency has I would say an average of forty or fifty cases a month under investigation, many of which go that way. I can cite one example which I think was publicized fairly recently. I'm sorry I don't remember the man's name, but he was acting fraudulently and his license had been suspended and he was subsequently found to be still operating as a repair dealer. He's now serving 180 days in jail in the County of Los Angeles.

SENATOR MARKS: On another subject, talking about television, does your agency have anything to do with testing television sets and determining whether or not they do or do not cause radiation?

MR. LIVINGSTON: No.

SENATOR MARKS: Does anybody in State government do that?

MR. LIVINGSTON: There is no agency in State government

that does that.

SENATOR MARKS: There's no way of knowing whether or not a television set which might be sold may be harmful to the public?

MR. LIVINGSTON: Not to my knowledge.

SENATOR MARKS: Do you think it would be a good idea to have that?

MR. LIVINGSTON: I think it's a possibility. I just can't comment. I don't know how extensive those tests have been and I don't really understand those tests very frankly. We do test, as I'm sure you are aware, and have good laboratory facilities both here and in Sacramento for the fraudulent repairing of television sets. If the Legislature determined that that would be an extension of the responsibility of the agency, obviously it would be something that we would have to look into.

SENATOR MARKS: To what extent is the Consumer Counsel independent of your agency or independent of any other source of government? Is she independent? I know she's under your office, but does she have the authority to go and investigate on her own? What are the limitations?

MR. LIVINGSTON: Well, there are two limitations that I see and I don't have a copy of the Act here. I thought we would probably get into this on November 17. The Act that created the Consumer Counsel has been interpreted by this administration differently than our predecessors. We see the Consumer Counsel as being an independent voice, a receiver of consumer complaints, and also her primary interest in the field of consumer education. We do not see her as a public regulator. We feel that the regulatory agency established by the Legislature has that

responsibility and that if there is additional law enforcement or regulatory work to be done that it should be under the auspices of a regulatory agency. The Consumer Counsel has no power, no law enforcement powers, nor do we seek it.

CHAIRMAN SONG: Thank you very much, Mr. Livingston. Is Mr. Stanley Boriss of the Singer Company here? Is Mr. John Margo of Gaffers and Sattler here?

MR. MARGO: Mr. Chairman, first of all for the record, I noticed that the agenda had the name of Mr. R. A. Wyman for Gaffers and Sattler. I found out this morning that Mr. Wyman is the worthy president of our competitor, O'Keefe and Merritt, and since I was here I decided to speak for my own company.

CHAIRMAN SONG: You represent Gaffers and Sattler?

MR. MARGO: Gaffers and Sattler. My name is John Margo and I'm the National Service Manager for Gaffers and Sattler.

CHAIRMAN SONG: Very well, proceed, please.

MR. MARGO: First of all, I will speak on the language of the bill as proposed, and I disagree with the language of the bill. From the discussion of the witnesses before this committee today, it does appear that one of the main concerns should be whether or not the warranties are written in crystal clear language, and I could not speak for all of the manufacturers, but speaking only for my company, we have for quite some time engaged precisely in doing that.

I have here with me samples of our warranty on ranges, warranty on water heaters and they are in the form of a letter to the customer in very precise and very simple language.

The warranty letter starts "Dear Customer," and is printed

all in the same sized type with one exception, that the exclusions are in larger type and not in smaller type, and we say, for instance, "We will under this warranty replace any defective part at no cost to you except for the labor involved in the removal of the defective part and the installation of the replacement." We feel that this language is very clear. We are aware of the fact that customers do not read these warranties. For some time these warranties were on the back page of the owner's manual. We have removed them from the owner's manual and for some time we are using this letter form and packaging it with the appliance, and we are now engaged in an additional step and that is of putting a firmly attached tag which says, "Dear Customer, Read your warranty. Have your dealer explain the terms of the warranty." And I don't think that we can really legislate against a manufacturer with punitive damages and encourage really litigation when the manufacturer is taking these steps to make the customer aware of his rights.

CHAIRMAN SONG: We are concerned, of course, Mr. Margo, with manufacturers who do not fairly assume this responsibility, and you will concede that there are some?

MR. MARGO: Yes. As I say, I only speak for a medium-sized manufacturer that makes a very modest profit and is taking all the steps that it can to make the customer aware of his rights, and only of that which we decide to make part of our contract with the customer.

CHAIRMAN SONG: Certainly. Let me ask you this, Mr. Margo, with reference to the letter warranty you just referred to, is there a time limitation there?

MR. MARGO: No. Although, perhaps based on the fact that there is an implied warranty, or merchantability, or that it will do what it is supposed to do, the net effect of it is that we do give service, labor, in the first year, although our written warranty does not include it.

CHAIRMAN SONG: Labor is included in the first year?

MR. MARGO: Labor is included in the first year of our ranges and also for water heaters. Now, the way --

CHAIRMAN SONG: Just a minute, Senator Marks has a question.

SENATOR MARKS: I thing your warranty sounds like it is very fair. The only question I wonder about, if a man buys a product which is in good working order, everything is perfectly proper about it, he pays for the labor as part of the cost of the product. If during the period of warranty, he finds that part of the product is defective, why should he pay for the labor?

MR. MARGO: Well, Senator Marks, there are no free dinners even when they are cooked on our excellent ranges.

SENATOR MARKS: True enough, but if they are done right why should he pay for the labor? I understand it costs you something, but if he buys the product -- I'm not talking about you, I'm talking about anybody -- if he buys the product which is in good working order, nothing defective about it, as part of the cost of the product initially labor is obviously included in the total cost. If when he buys it the labor was done improperly, therefore he has a defective part in the product, why should he pay, why should he have an extra cost for the labor in the defective part which is not his fault?

MR. MARGO: He shouldn't. On the other hand, the manufacturer assembles the product. He buys component parts from specialists in the field and a reputable manufacturer will choose the best available specialists in the field, puts the product together, checks it, gives it actual running tests, cooking tests, fire checks, and puts it out on the market for a certain price, and the warranty that he issues and the terms therein are also part of the cost of the total purchase price which the customer pays, and it is only within those --

CHAIRMAN SONG: Perhaps I misunderstood you. It was my understanding that you stated that within the period of one year you would provide labor and parts, was that not true?

MR. MARGO: We provide -- under our written warranty we specify parts only, but there are certain varying customs in the industry according to the product. In the case of ranges, we provide labor, although it is not spelled out in the written warranty. We do provide it in addition to the written warranty.

CHAIRMAN SONG: For a period of one year?

MR. MARGO: For a period of one year. On other products we do not. In the case of our water heater, for instance, a water heater, no matter how well you make it, is subject to finally some day to corroding and to failing, and we say we will furnish a water heater f.o.b. our factory, and the cost of installing the water heater is not part of the warranty and it is specifically spelled out. Although a replacement for a defective heater or part under this warranty is furnished to you at no cost, you will be responsible for the cost of transportation and installation of the item.

SENATOR MARKS: I see a difference between the normal wear and tear of something that wears out and I can understand why you would charge to have that repaired, and something which was not put in properly in the first instance. I don't see why the party who gets a piece of, I'm not referring to you specifically, you just happen to be here, why that party should have to pay for something that was defective when it got to him.

MR. MARGO: No, in any case, even under certain products where we do not give any labor, even without being bound by the warranty, if the product fails to start up right away, then we still take care of it under the assumption that there could be a defect in the product, it could be a defect in the installation as well.

SENATOR MARKS: I don't want to belabor this issue, but to me it doesn't seem right that the customer should have to pay for anything that is defective.

MR. MARGO: No, of course not. Also the manufacturer, I feel, if he is a reputable manufacturer, takes all the possible steps within the economic framework. Now, if the bill were passed the way it is written so that the labor and loss of use, damages and so on, they should all be figured in the original price of the article, that will have to be figured because at the present time, speaking for my company, we do make a very modest profit on our products.

SENATOR MARKS: I don't think it is fair either to charge the customer -- if you sell a million ranges and ten of them go wrong, that all the 999,990 should pay for the ten that go wrong. Why should they?

CHAIRMAN SONG: Well it appears, Senator Marks, that Mr. Margo has indicated that for a period of one year as far as ranges are concerned, your company will provide both the labor and the parts without cost to the consumer, isn't that correct?

MR. MARGO: Right.

CHAIRMAN SONG: You would generally agree of course, then, I would assume with the principle that the manufacturer should be ultimately responsible for any appliance he manufactures and sells?

MR. MARGO: Yes, in principle there's no question about that. It's the implementation and whether or not we can legislate against all possibilities. In the matter, for instance, of loss of use, that can be a very difficult problem, too, which could penalize actually the customer by having the customer to pay for this loss of use even though he may put up with the loss of use. We must not give the customer the idea that they are going to get something for nothing.

CHAIRMAN SONG: I agree the cost eventually would be passed to the consumer. It's my feeling that Senator Marks' statement is well taken and I'm sure you agree. Why should a person who goes out and buys a range or water heater, whatever it may be, has it installed, and within a few days finds it doesn't work, why should he then have to pay for labor costs. Something isn't fair from the point of view of equity, and I believe that you would agree with the statement?

MR. MARGO: Yes, I do, and the practice is to take care of these matters. What I'm concerned about is to go overboard and to legislate to make the customer first of all read the warranty

so that he's aware of what he has paid for and if he is aware of what he has paid for and if the customer used no ambiguous language, then he does get a dollar's worth for the dollar paid and we cannot legislate against this carelessness on the part of the customer as well.

SENATOR MARKS: I agree you can't force anybody to read a publication that's given to him,but you can make it clear so he has an opportunity to read it.

MR. MARGO: Right, this is why we are taking these steps, and I would like to leave these samples with your committee, and we are going a step further and putting a tag on the appliance saying, "Please read your warranty. Your warranty is as is."

CHAIRMAN SONG: I believe Gaffers and Sattler are to be commended. May I introduce Senator James Whetmore of Orange County. Our next witness will be Mr. Ray Burch of Schwinn Bicycle Company. Is he present? Come forward, please.

MR. BURCH: Thank you, Mr. Chairman. Mr. Schwinn had hoped to be here, but we both have colds and he's still in Chicago. My name is Ray Burch and I am vice president of marketing for Schwinn Bicycle Company of Chicago, manufacturers of Schwinn Bicycles.

CHAIRMAN SONG: Mr. Burch, may I interrupt just briefly at this point. We have your written statement. May I suggest you touch on the highlights and we'll incorporate the entire statement in our transcript.

(See Appendix B.)

MR. BURCH: Fine. I would like to introduce also Al Fritz,

vice president of research and design for Schwinn Bicycle Company.

Mr. Chairman, some of the points that have been raised today about the division of responsibility between the manufacturer and the retailer are touched on in the body of our statement, and we feel in our company that there is no other way to please the consumer, to satisfy the consumer, than to have the retailer assume and accept a portion of the responsibility for satisfying the consumer, for carrying out the terms of the warranty, and in our arrangements with our franchised dealerships, we place that responsibility on the retailers. We are able to do this because we have a rather limited number of retailers franchised. It is part of our franchise agreement with the retailer that he will explain the warranty on our product to each purchaser of it; also that he will provide the service to replace defective parts. We have no time limit in our warranty. Our warranty says, and it's in the manual that I have here, says that we will replace defective parts without any time limit. And as a matter of fact, although we do not ourselves say that we will assume the responsibility for the cost of labor or for transportation, these are functions which our dealer performs.

The truth of the matter is that many years ago when we had mass distribution and we sold through many thousands of accounts, about 15,000 altogether, none of them really assumed any responsibility for taking care of our customers. We changed that system in 1952 and we have cut down our number of dealerships now to about 2,300, but each dealer has an area for which he is responsible and he has a sufficient interest in protecting the good name of our product in that area, so that he performs the

warranty service. And the proof of the pudding is that we get almost no complaints at the factory from the consumer.

I would like to call your attention --

SENATOR MARKS: May I ask a question, Mr. Chairman, to clarify this?

CHAIRMAN SONG: Senator Marks.

SENATOR MARKS: If you have a bicycle and something goes wrong with it, who pays the labor cost?

MR. BURCH: The dealer. Perhaps we are fortunate in one way, Senator. The cost of labor in doing a repair job to a bicycle is usually fairly nominal and the dealer assumes this cost in our set-up. There is one exception, if the whole frame has to be replaced, we replace broken frames almost without time limit and without being very picky about whether it is a defect or whether it was caused by an accident, and in that instance the factory does reimburse the dealer. We have a sliding scale that's $4.00 for a coaster brake model, $6.00 for three speed and so on. But if I may call your attention to the number of complaints -- on page 8 of our statement we received last year a total of consumer letters, and these are letters received at the Schwinn factory in Chicago, a total of 3,075 letters from consumers in all of 1968, and 3,078 for the first nine months of this year, out of which complaints about product constituted 243 letters last year and complaints about dealers only 98 for all of last year. The other correspondence related to stolen bicycles and requests for information about sales questionnaire cards, complementary letters, and all other types of correspondence.

SENATOR WHETMORE: Mr. Chairman.

CHAIRMAN SONG: Senator Whetmore.

SENATOR WHETMORE: How many sales did you make -- I'm trying to find out what percentage this is.

MR. BURCH: Last year we sold 1,032,000 bicycles and we had about 7,000,000 on the streets.

SENATOR WHETMORE: Great heavens, and you only had 243 complaints about the product?

MR. BURCH: That's true.

MR. FRITZ: These are received at the factory.

SENATOR WHETMORE: And only about 98 about the dealers received in the factory?

MR. BURCH: Yes. We thought that was remarkable. He does a splendid job in taking care of the customers and he does so because his business in his community depends on the reputation of our product and he knows that.

SENATOR WHETMORE: Do your dealers sell other bicycles, or is Schwinn the only one?

MR. BURCH: We have some that sell only Schwinn, but others --

SENATOR WHETMORE: In the smaller communities they sell others, but in the larger communities they sell only yours?

MR. BURCH: No, it depends on the dealer. This is an option of the dealer. We have dealers who are enthusiastic about our product so that they don't sell anything else and of course we appreciate that, but we can't require them to limit their sales to Schwinn.

SENATOR WHETMORE: You do not require that they limit their sales to Schwinn?

MR. BURCH: No, we can't. We are permitted only to ask them to give us at least equal representation. We also analyzed on page 9 complaints from California -- I thought you might be especially interested in the State of California -- for last year. We only received ten complaints about product from California and 19 complaints about dealers.

SENATOR WHETMORE: Mr. Chairman.

CHAIRMAN SONG: Senator Whetmore.

SENATOR WHETMORE: I notice that the complaints about the product have decreased considerably since last year according to your figures here.

MR. BURCH: No, I wish you were right.

SENATOR WHETMORE: No, they have increased considerably.

MR. BURCH: There were more complaints about product this year for nine months.

SENATOR WHETMORE: But the complaints about dealers have decreased considerably. How do you account for this?

MR. BURCH: About dealers?

SENATOR WHETMORE: Your complaints about dealers have decreased from 19 to 9 and your complaints about the product increased from 10 to 32.

MR. BURCH: Frankly I think, Senator, both of these figures are so small that they are not really significant figures.

SENATOR WHETMORE: Certainly small compared to your sales.

MR. BURCH: I don't think they represent a trend.

SENATOR WHETMORE: Thank you.

MR. BURCH: I might direct your attention also to the fact that Schwinn bicycles are assembled by the dealer. They come to

the dealer unassembled in a carton, and each bicycle carton has a card like the one attached to your page 12 wherein the dealer can report to the factory at the time of the assembly of the bicycle if there is a shortage, if there is a part missing or if there is a defect of some kind, and on the next page you will see that for last year we received a total number of shortages reported of 2,268, mechanical defects of 1,295, painting defects of 76, and other complaints, altogether of 466, a total of 4,000 complaints. Now, these are from the dealers, and I think that it must be obvious that many of the shortcomings of a new product when it leaves the factory in our case are caught by the dealer and do not reach the consumer, and therefore we head off I'm quite sure many that might otherwise turn out to be complaints.

If I can skip now to our recommendations on page 16, we make six recommendations for the consideration of this committee. The first has been made here before today, give the consumer a simple, easy-to-understand warranty, and in that connection I would like to draw attention to the fact that our warranty, which is in the back of our owner's manual, on the inside of the last page, is very very simple. I think even a child can understand it and it also says at the bottom of it, "See your Schwinn dealer for service under the Schwinn guarantee, or write for assistance to the Customer's Service Department, Schwinn Bicycle Company," and gives our address in Chicago. So that if the customer fails to get satisfaction from his local dealer, he knows where to direct his complaint.

Additionally, inside the front cover is a personal message from the president of our company and his picture, Mr. Frank

Schwinn, and so again the consumer has a court of last resort. If he still isn't satisfied, then Mr. Schwinn answers quite a number of letters from customers, a few that we do get, himself.

Secondly, our recommendation is that the manufacturers sell products that require service, assembly, or installation, only through retailers who are equipped to provide factory trained service. We make that recommendation because of our own experience. Years ago when we sold through all manner of accounts, many of them who did not have service, we had the same problems that this committee has been hearing about today. Today we only sell through service dealers. We believe the consumer will never be happy when he buys a product from one place and has to go somewhere else, no matter if it is a factory branch, to try to get service. He's caught in the middle. He doesn't know who to hold responsible, and often, though all three parties sometimes are people of good will, the consumer is still stuck with a problem he can't solve.

Third, we believe it's important that the manufacturer select the proper number of local sales and service dealers, properly located to serve each local market so that each dealer has an incentive to provide proper service. When products are sold through all kinds of stores and gas stations, drugstores and discount houses, none of them assume any responsibility and I believe that the consumer loses in that kind of arrangement. That destroys any dealer's incentive to try to take care of the product.

Fourth, we believe that every factory, every manufacturer, should provide factory training and other factory assistance to

maintain an adequate standard of service, and we are very interested -- in our own company we run training schools even for bicycles, that travel all around the country, service training and also store management schools, to help our dealers do a job that will satisfy the consumer. I know there are training schools in some fields, and in some there are not.

CHAIRMAN SONG: Just a moment, please. Senator Whetmore.

SENATOR WHETMORE: Just to clarify in my own mind, about what do you spend each year in training dealers and so on to handle your product? Have you any idea?

MR. BURCH: We spend about -- well, we have two traveling service schools that cost about $40,000 to $50,000, and we spend about another $20,000 to $25,000 on the sales and store management schools.

SENATOR WHETMORE: About $125,000 a year?

MR. BURCH: No, I misstated that. It would be about $65,000 to $70,000 for all three schools.

SENATOR WHETMORE: I see, and how many bicycles did you sell?

MR. BURCH: This is on a million bicycles.

SENATOR WHETMORE: On a millior bicycles.

MR. BURCH: With total sales of about $45,000,000.

SENATOR WHETMORE: I'm trying to find out about what cost you had for each bicycle for this.

MR. BURCH: Those figures are in here. I had hoped to be able to present the whole statement because it holds together better.

SENATOR WHETMORE: It doesn't seem to be too much.

MR. BURCH: That's right. We are just producing, by the

way, a new service manual which will be a reference book for the new mechanics that come into dealers' stores. The bicycle industry has never had a book like this before. We have undertaken to produce one. This is the first volume that's just coming off the press in this month of November. The second volume will come out in the late spring, but it will be two books this size. The total cost of research and make-up on this is somewhere around $250,000, and this is a job that hasn't been undertaken before.

MR. FRITZ: Senator, I think one point should be clear, that in our service schools and in this manual, we treat not only Schwinn bicycles, we touch on all brands of bicycles as well. All parts supplied on bicycles sold in this market are covered in our service school as well as in this service manual.

SENATOR WHETMORE: Other than Schwinn, in other words?

MR. FRITZ: Yes, sir, every make of bicycle and every part manufactured anywhere in the world which is treated by our servicing dealers here, foreign bicycles, all domestic brands of bicycles as well.

SENATOR WHETMORE: This is covered for about twenty-five cents a bicycle in your manual plus a nickel a bicycle or seven cents a bicycle or whatever it costs you for your training schools and that's about it.

MR. BURCH: That is right.

CHAIRMAN SONG: Well, Schwinn obviously enjoys many advantages not enjoyed by General Motors or Chrysler or Ford. Go ahead, you were talking about recommendation number four.

MR. BURCH: Recommendation number five is that the manufacturer hold the local sales and service dealer fully

responsible for satisfying the consumer. This may sound like a restriction or restraint on our dealer, but in our instance the dealer doesn't look at it that way. That's part of his job. His job is to keep the customers happy and he accepts that responsibility. In many chains of distribution today, I'm not sure that's the case at all.

Number six, give the consumer the name and address of the person at the factory who has the authority to settle disputes or misunderstandings that may arise with the local sales and service dealer.

In conclusion we believe warranty service can be handled in a manner which will be entirely satisfactory to the consumer, fair to the dealer, and practical for the manufacturer simply through better organization of the retail sales and service function by reputable manufacturers. This implies of course that the manufacturer must have a clear legal right to select his own sales and service retailers in the locations where they are needed, and a clear legal right to refuse to sell to others.

We do not believe the proposed legislation is necessary or desirable to accomplish that objective.

CHAIRMAN SONG: Mr. Burch, I'm sure during the course of your life you have bought many an automobile, have you not?

MR. BURCH: Yes.

CHAIRMAN SONG: Do you believe that the problems of an automobile dealer versus the problems of a Schwinn bicycle dealer would be comparable?

MR. BURCH: I think they are, yes, because the automobile dealer is selected by the factory the same as the Schwinn dealer.

I think there perhaps is another difference, though. In our instance we do not lose our influence with the dealer through pushing him so hard on sales. We realize that he's a small man in business and he has to exist also, so we don't push him too hard. We help him try to do a better job and serve the consumer. On the other hand, we insist that he take care of the consumer and we set in the first place a very high standard of satisfying people. Our standard is very simple, the customer is always right. If you can explain to him that he is wrong so he understands it and will accept it, fine. If you can't, then he's right.

CHAIRMAN SONG: The consumer, I'm sure would like that, particularly when he's told he's always right, but I imagine with an automobile, particularly today's variety, there are probably a thousand or more moving parts more than we find in an ordinary bicycle. Isn't this a problem?

MR. BURCH: I think it is, but I also feel myself, and this is a personal opinion, and I have had my share of automobile troubles as everyone else has, I believe that the manufacturer has a right to expect better performance in many cases, from the retailer, from the dealer and one thing that militates against proper service, it seems to me, is the fact that the mechanics are paid on a commission basis a part of the labor cost, and their principal objective is to get a job done as quick as they can and get on to the next one. They have a flat rate scale I understand in their business. The availability of mechanics is just as big a problem I think in the bicycle business as it is in the automobile business, but the dealers themselves in our

business do a great deal of the work and they work long hours.

CHAIRMAN SONG: So your general recommendation as a general rule is that the dealer should be ultimately responsible for performing the warranty that accomplishes the sale of the particular item?

MR. BURCH: It has been our experience that's what the consumer wants.

CHAIRMAN SONG: This is what you recommend as well, is that right?

MR. BURCH: That's right.

CHAIRMAN SONG: Any other questions? Thank you very much, Mr. Burch.

MR. BURCH: Thank you.

CHAIRMAN SONG: Is Mr. Patrick Hillings or his representative, Ford Motor Company, present? Is Lydia Rodriguez here? Will you come forward, please? Will you introduce yourself and tell us about the organization you represent?

MR. LOPEZ: My name is Fred Lopez and I am director of East Los Angeles Consumer Action Council.

MISS RODRIGUEZ: My name is Lydia Rodriguez and I am the board chairman for the Consumer Action Council and I am employed by the Legal Defense Fund here in Los Angeles.

CHAIRMAN SONG: All right, why don't you lead off, Miss Rodriguez?

MISS RODRIGUEZ: We are here representing East Los Angeles, more commonly known as a dumping ground for off-brand appliances and merchandise with warranties so vague that repair for these warranties is almost impossible, complicated by the fact that in

our community we have mostly what you call the low income consumer, the poor. And for them to take that warranty, as vague as it is, to have some servicing done on it by merchants who for the most part are the greatest exploiters of our people is a very complicated process to say the least. We find that if, as has been said here earlier, if the middle class consumer is victimized by the warranties and the lack of servicing and all of these problems, then the problem of the low income consumer is even more devastating.

Now, what we suggest is that there should be some legislation that meets the needs of the poor. As things are now, most of the legislation that's on the books is geared for the middle class consumer. Therefore we find that there's no justice for the consumer in East Los Angeles.

We have some recommendations to put it nicely, that we feel would be good starting points for meeting some of these needs in East Los Angeles, and there are six altogether and here they are.

One. That all warranties be written in layman's language in English and in Spanish.

That legal services for the low income person be extended.

That some mechanism be established to insure the manufacturer or seller will continue to be responsible for the fulfillment of the warranty in cases where the product is discontinued or the manufacturer or seller goes out of business. That instruction material attached to appliances be written in layman's language in English and in Spanish.

That all warranties include free labor, and parts, service calls, pick-up and delivery and postage.

That in cases where the product is an off brand name and service and parts difficult to obtain, that the seller be responsible for compliance with the warranty.

All of this has been written by the Consumer Action Council with our own constituency in mind, that is the low income consumer, mostly the Spanish speaking which is the largest ethnic minority in the Southwest, and we feel that if there is to be some kind of justice, not only in the Civil Rights field, there also has to be some kind of justice in the field of economy, so that our people can feel that they have a voice in this place, too.

CHAIRMAN SONG: Very good.

MR. LOPEZ: Very briefly, I would like to speak to the issue of used cars, used automobiles. A few things have been mentioned earlier about new cars. There are two specific points I wanted to bring out. One was in relation to the fact that when used cars are purchased, usually you will receive a thirty-day fifty-fifty warranty; that is, within that period, thirty days, any defects or anything that is wrong, take it back to the seller and he will repair it and charge you half price. He will put in half the cost and you will put in the other half.

Just this past month we received a complaint, to give you an example, from a young man who purchased a 1963 Ford Falcon. This was a used automobile. When he purchased the car he received this warranty. The car broke down a week after he purchased it. In order to take the car back to the seller he had to put in $52.00 of his own money. Now, when he returned, finally got the car going and returned it to the seller, he was

was told he would not be reimbursed for his $52.00 or he would receive no part of that $52.00 because the work done was not done at the seller's place of business. In other words, he had to take the car back there. This is one of the stipulations. But the seller agreed to repair the car. So the car was repaired. The young man came back and took his car. The car again broke down a week later.

He took the car back once more and this time they fixed it and they told him this would stay fixed permanently. The car broke down approximately two weeks later. By this time the thirty-day guarantee was up or the thirty-day warranty was up. He took the car back. He was told he would need a new transmission, new brakes, either that or a linkage adjustment, something amounting to close to $100.00 or a little over, and he would have to pay the full amount in cash. This is a typical example of many of the schemes employed by used car dealers in letting the thirty-day warranty expire.

Another one was mentioned earlier by Mr. Elkins, that is automobile dealers who raise the cost of repairs of cars over what another automobile dealer would normally charge, whereas to repair your brakes, for instance, might cost you $20.00 if you took it any place else. If you take it back to the place in which it was purchased, the automobile dealer will charge you $40.00 or more depending on how much he wants to make. In East Los Angeles since it's a low income community, the people are forced by their economic status to purchase used automobiles and there is no legislation no presently which protects the low income consumer or the Spanish speaking consumer from being

victimized by these merchants and this is the point on which we are particularly concerned, is the fact that having legislation which protects the Spanish speaking consumer.

In the past legislation has been proposed but this legislation does not require that if we do have contracts or warranties in Spanish that they will be in layman's language. We feel that it is of no use to have warranties or contracts in Spanish if they are not going to be in layman's language.

CHAIRMAN SONG: I certainly agree with you, but let's refer to this particular instance involving the Falcon. Did the purchaser understand, read and understand the English language?

MR. LOPEZ: Yes, he did.

CHAIRMAN SONG: So the fact it was not in Spanish would have been of no particular help to him?

MR. LOPEZ: No.

CHAIRMAN SONG: You know, much of this is so difficult when you talk about legislation and so forth and so on, to come up with something that is meaningful and equitable from everyone's point of view. Certainly I think you would agree that used car dealers are entitled to make a fair profit, but the purchaser should receive what he thinks he's buying. I think this should be pretty basic. I would certainly have no objection to the imposition of the Spanish language requirement, but obviously that was not a factor in the case you just mentioned.

MR. LOPEZ: Not in this particular case, but the majority of the complaints we do receive are from non-English speaking people.

CHAIRMAN SONG: You just buy a lemon -- obviously this is

what happens. Anything else?

MR. LOPEZ: No, that's all.

MISS RODRIGUEZ: Just one thing I wanted to point out and that is in regard to our darling, what is he, Governor, our darling Governor and his --

CHAIRMAN SONG: How did you refer to him?

MISS RODRIGUEZ: Bastard. No, I said "darling," and I'm using that with all the satire possible.

CHAIRMAN SONG: Well, freedom of speech. Go ahead.

MISS RODRIGUEZ: I wanted to talk about legal services for the poor, and the recent thing that he came out with which might limit this in some way, and I appeal to you to do whatever you can as a person up in Sacramento to see that the poor are represented in the courts. As a rule the poor cannot afford lawyers and things like that, so they can't go through the court process which is mostly a middle class thing. We have received a great amount of help from Herschel Elkins in his office in our work with the Consumer Action Council. We have received help from other OEO agencies like legal aid, but if the current thinking by Murphy and Reagan and some of the other boys continues, these services will be greatly curtailed and this means that it will be an added hardship on the poor since these men are not really thinking of the poor in any way. So do whatever you can in your job to see that legal services for the poor are extended or continued. They are needed.

CHAIRMAN SONG: Thank you very much for coming. Is there a Mr. Matiland here? Is Mr. Lorenzo Foster here?

MR. FOSTER: Senator, my name is Lorenzo Foster and I'm the

secretary to the local Association of California Consumers. I spent most of my time here waiting so I do not have time to make a presentation other than some written complaints here that we have received in reference to the automobile dealers' repairs, and these are new car dealers, warranties, rather, that we have here in our possession that we would like to leave with the committee.

CHAIRMAN SONG: Very well. Can you tell us briefly about some of the complaints, what kind of complaints are you receiving?

MR. FOSTER: These are complaints about -- here is a Chrysler dealer here in the local area. There was a car purchased and there was a gasket head torn at the installation of the automobile. There was a sixty-five mile an hour rumble that was very severe in the rear at the beginning of the car. He goes in, and then he has a tire complaint. This is the same automobile. There is an imbalance of the automobile and he has to pay so much per hour for the rumble and he gets the car from the repair shop and he still has the rumble. The dealer blames this on the front wheel bearing. And he takes it in and winds up with -- here we have approximately eleven complaints on this one automobile dealer relative to the warranty on a new automobile, and this went on for approximately two years, and all of these complaints eventually wind up with the purchaser of the car having to pay the service charge, I mean for the labor, and in many cases for the rental of a car where the car was held more than one day, and these expenses went on, but no satisfaction from the dealer or from the manufacturer.

Now, we've another local dealer here with the purchase of

a Fairlane 500 in the Valley here. There were many malfunctions of the automobile and there was never any satisfaction given to the purchaser by the dealer or the manufacturer. And on and on and they are listed here beginning with the complaints from November 26, 1964, and continued on until August 2, 1966.

CHAIRMAN SONG: How many complaints did you receive approximately during that period of time?

MR. FOSTER: This is just the one. Along in this time we had I would say at least 100 in our local organization.

CHAIRMAN SONG: Yours is a federally funded organization?

MR. FOSTER: No, sir, I wanted to get that in. We are a volunteer group. Our organization is made up of membership of Unions, interested community groups, some help from the University of California, and the extension schools, the industrial relations, but we have no paid staff. It's all one of love and interest.

CHAIRMAN SONG: Well, something obviously is going to have to be done, Mr. Foster. Just how, when and in what manner remains to be seen.

MR. FOSTER: We feel it's very necessary.

CHAIRMAN SONG: Thank you very much. Any questions from Mr. Foster? Is Gerald Silver here? We passed you up this morning, Mr. Silver, and we have just been supplied with your written statement here, so if you would just like to give us the highlights of it. Obviously you have had a somewhat unhappy experience with your Chevrolet.

MR. SILVER: Good afternoon, and thank you for the opportunity of appearing before you, gentlemen and ladies. I wish that I had bought a Schwinn bicycle instead of a General Motors

product. I honestly think I might have received a little better service. Schwinn is representative I think of the type of organization I wish General Motors was.

CHAIRMAN SONG: Well, I think it's much easier without any debate here to warranty a bicycle than a car. We have to recognize that.

MR. SILVER: By the way, let me introduce myself. I teach business administration in Los Angeles City College and I have been in the commercial printing business prior to that for several years, and have bought a good deal of commercial equipment besides motor vehicles. I have purchased three brand new Chevrolets over the last decade and the difficulty I am having with this one vehicle I hope will be of some help in your framing of legislation.

Now, just very briefly, I purchased this last vehicle in 1965 at the very beginning of the model year, and at the time of the purchase I relied upon several statements that were given to me in hand by the salesman. One of them is in front of me here. It says, "Your new Chevrolet was designed and built to give the utmost in quality and reliability and is backed by Chevrolet's twenty-four month or 24,000-mile warranty."

That's in large type. Unfortunately I didn't read the back in smaller type in which it was suggested there's a "whichever occurs first" clause. In any event, I also received -- well, based upon that and statements made by the salesman, I purchased the vehicle. I assumed that I was buying a vehicle with the usual implied warranty, the fitness for use, merchantability, that the car would run, and that it was reasonably safe. That's implied. And certainly the statements on my owner's protection

booklet indicated the same thing.

Well, briefly, and I'm not going to go through all the details here, you can read them, I'm sure. I had one failure after another, everything from squeaky radio to water pump, radiator, transmission, carburetor, plastic parts and so on failed. A number of them failed within the twenty-four month period and I would like to cite a specific problem that I think we need to address ourselves to.

At approximately fifteen thousand miles out the radiator failed. I brought it in to Warren Biggs and since it was under warranty they said, "We'll take care of it." I got no paper work at the time I picked up the vehicle the next day and assumed the radiator had been replaced. I think all that happened was they had removed the radiator, soldered it and put a Band Aid on it, sprayed it black, put it back on the car and delivered it to me. Well, that radiator has subsequently failed just out of warranty unfortunately. Now, it's my problem. The documentation you have in front of you details the problem I'm having getting him to live up to not only their implied but stated warranty.

I had another problem with the transmission. The transmission failed at 22,000 miles. I had my family in the car, the vehicle stopped on the freeway, a loss of power, my life was jeopardized and others. I don't know if you have had that experience -- the fast lane, the car came to a stop.

I brought it back to the dealer and he repaired it. I assumed it would be under warranty. They decided it wasn't. Well, if you can't get satisfaction from the dealer they say,

"Talk to Zone." Now, in the zone I got what I call the boiler-room treatment. There's a telephone over there, you could easily call up G.M. over here on Wilshire Boulevard and you can get what I call the boiler room treatment. There are three or four service managers that are very busy and harried. They have no time to talk on the phone. They are very brusque and rather rude. They don't look at the details of the problem, at least I don't think so. They use a remote amplifier on the telephone. There's none of the personal feeling you would get addressing your problem to let's say either a dealer or someone on the phone that was talking to you personally.

Well, I got no satisfaction on this list of complaints from them. Subsequently I corresponded with General Motors. I have here an envelope returned from Mr. J. M. Roche, president of G.M., which is unopened, a registered letter, a notation he was out during business hours. In pursuing my difficulties I did get a response from one of the gentlemen at G.M., who indicated in rather brief terms that there was very little more that G.M. could do for me.

Now, I don't believe they are living up to that warranty, either implied or stated warranty.

CHAIRMAN SONG: Why don't you sue them on your transmission problem?

MR. SILVER: Well, one moment. I had intended to. They were going to sue me. I was very willing to go to court and bring the evidence in.

CHAIRMAN SONG: On what basis were they going to file suit against you?

MR. SILVER: Because I failed to pay. There was a question whether it was under warranty, so I was very happy and willing for them to start the action. Unfortunately after they had dunned me, threatened to send out the collection agency -- first I got the collection agency treatment.

CHAIRMAN SONG: Let's consider this chronologically. You had your transmission repaired and that was after 22,000 miles?

MR. SILVER: At 22,500, correct.

CHAIRMAN SONG: Then you proceeded to have it repaired?

MR. SILVER: No, they repaired it and then proceeded to bill me.

CHAIRMAN SONG: You had it repaired -- they repaired it, I think we are saying the same thing.

MR. SILVER: I would have been very pleased at that point if they had smiled and said, "Yes, this is our responsibility."

CHAIRMAN SONG: Before you had them commence work did you discuss the warranty?

MR. SILVER: No, I just assumed when I drove the car in that since I had my twenty-four thousand miles warranty that it would be covered.

CHAIRMAN SONG: All right. So they proceeded to and did repair it?

MR. SILVER: Right. I signed for it and drove the car out.

CHAIRMAN SONG: What did you sign?

MR. SILVER: Well, I signed their work order which is standard procedure.

CHAIRMAN SONG: You said you signed and drove your car out -- was it after the completion of the job?

MR. SILVER: I signed it when I brought the car in. A day or two later I picked it up.

CHAIRMAN SONG: In other words, you signed a work order authorizing the work to be done?

MR. SILVER: Right.

CHAIRMAN SONG: Which probably included a promise to pay for service?

MR. SILVER: Oh, I think it may have. It's the same work order, may I suggest, that they use when they cover warranty items, which had been given to me prior to that. In other words, this is no new form to me. I have signed it on previous occasions on items that have been covered under warranty.

CHAIRMAN SONG: At that time, of course, there would have been an endorsement added onto the work order that this was covered by a warranty, but there was nothing like that?

MR. SILVER: There was nothing said and I assumed the work was covered, but it wasn't.

CHAIRMAN SONG: O.K., so they thereafter dunned you for payment?

MR. SILVER: That is correct, and I suggested I felt that I had occasion in law against them and would be happy to respond to any action that they would proceed with.

CHAIRMAN SONG: Why didn't you?

MR. SILVER: Well, because after they threatened to send out the processor I said, "Well, have them come out to my office and I'll be glad to receive it." They haven't done so. They have backed off. Now, let me suggest that --

CHAIRMAN SONG: Let's conclude this, so you proceeded to

pay?

MR. SILVER: I did not pay them. They dropped it.

SENATOR MARKS: You haven't paid it yet?

MR. SILVER: No.

CHAIRMAN SONG: Then you got satisfaction as far as the transmission was concerned?

MR. SILVER: That is correct, until my radiator went out. That's the radiator that failed at 15,000. Now, I just get over my twenty-four months --

CHAIRMAN SONG: As far as the warranty is concerned, though, Mr. Silver, I don't know whether or not the warranty provides in express terms they're going to give you a new radiator. I would assume repairing it would fulfill the terms of the warranty as well.

MR. SILVER: But I'm suggesting there was a latent defect in that radiator when I purchased, that when I purchased it, the first week out, it was never properly put together and should have been replaced with a new one.

CHAIRMAN SONG: It is a matter of proof of course.

MR. SILVER: But they don't give you the documentation to support their work. All he said is, "Fine, your car is ready, pick it up."

CHAIRMAN SONG: Well, if you still have the radiator, if you think there was a latent defect, you could still prevail, yank it out and have an expert look at it.

MR. SILVER: So this is what I did. It was yanked out and an expert did look at it out at Crossroads Chevrolet and he called up Zone and said the thing was completely falling apart

and it was a defective radiator. I paid Crossroads to replace it. That was an authorized dealership at that time, hoping that G.M. would recognize this. So the service manager completed a form which the dealers use which is called a request for authorization of policy adjustment to be sent in to G.M. so that I could be reimbursed for this payment, because I'm not in the habit of not paying for services. Three months later I find after calling G.M. they haven't heard about this form. It was lost. Then I called back the dealership. Well, by this time they had changed the service manager and I have to start all over again. And of course I have the ability to communicate and you know I spend many hours on the phone, and I believe there's many things that are unreasonable in this, but let me just sum it up because I don't want to take too long. It seems to me that if the dealership has the responsibility for the warranty so that I don't get shoved off to Zone or to the boiler room treatment or to General Motors in Detroit -- I can't get a phone call in to them. This is what I think we need, to place that kind of pressure on the dealer. It's the same thing if a newspaper prints a libel statement everyone along the line is responsible for it, the one that wrote it, the Associated Press, it goes all the way back. I think we need a similar situation here. If a merchant is in business to make a profit and he puts his vehicle on the line and says, "You buy it," then he has to stand responsible for that. He can't pass it beyond.

Let me conclude with this remark. I tried to use other means through corresponding with Kay Valory, our consumer council, I have addressed letters to the Attorney General --

CHAIRMAN SONG: Maybe you should write to Assemblyman John Burton.

MR. SILVER: Well, that one I haven't. Let me tell you what the net result is. The Federal Trade Commission and the Attorney General, I'm fighting G.M. and their point is, "Well, help us get a general case against them. We are not going to help you with your problems." Mrs. Kay Valory was very polite in providing a six cent stamp because what she did was take my complaint and route it on to G.M., which I could have done. I don't see that the Consumer Council is doing the job that needs to be done. I think Helen Nelson, I have never met the gal, I think that philosophy is the kind of thing we need today. That sums up the substance of my remarks. I am still having problems with the car. They are all detailed in the statement.

CHAIRMAN SONG: I think that you have made a good suggestion certainly. Perhaps the solution is to bring the dealer more into direct play legally. Any questions?

SENATOR MARKS: Not a question, but just a comment, Mr. Chairman. I don't know whether or not this committee has requested representatives of the various automobile companies to appear here. I know we had one from Ford. They should be here and they should be here, if not at this meeting, at a subsequent meeting, so they would have a chance to have their day in court and express their viewpoint. I think the committee is entitled to hear from the automobile companies as well as representatives of automobile dealers.

CHAIRMAN SONG: Mr. Cathcart, were any dealers invited to testify?

MR. CATHCART: Yes, they were.

CHAIRMAN SONG: None accepted?

MR. CATHCART: Well, Mr. Hillings of Ford Motor accepted, but he has not appeared.

CHAIRMAN SONG: I asked whether dealers were invited.

MR. CATHCART: Yes, their association at the State level were invited and they did not respond.

CHAIRMAN SONG: I wish I had known because certainly it is imperative we get some of their --

MR. CATHCART: May I suggest Mr. Clyde Bradford of G.M. is here.

CHAIRMAN SONG: We have a written statement from G.M. as well. I'm talking about a dealer. He's the man who actually has the contact with the buying public. Thank you very much, Mr. Silver. Mr. Marsh, do you wish to be heard?

MR. MARSH: Not really heard, I'm here representing Kent Redwine who was the registered representative for the car dealers north and south and my instructions were to observe, listen and report. I'm sure we will be part of your action in the future.

CHAIRMAN SONG: Will you be in touch with him this evening?

MR. MARSH: Yes.

CHAIRMAN SONG: Will you tell him if he can find time to come here tomorrow, it might be of interest? I think perhaps the committee members might want to question him relative to the policies of the new car dealers. Thank you. Any others in the audience that would like to be heard? Come forward, please.

MR. MARTINEZ: My name is Armando Martinez. I'm from the Consumer Action Council in East Los Angeles. I just want to bring out a few things here about the merchants abusing the people in East Los Angeles. I'm pretty sure that you people in your office are aware of this, especially in the poverty areas of East Los Angeles. Some of these abuses are that some type of merchants are selling items which are not even in stock, which are not even known, making out contracts, promising the customer that they will definitely get the item that was bought by catalog, for instance, which three, four months, goes by. The merchandise never comes in. The customer comes to us complaining about these incidents. So we go out to the merchant and explain to him what is the reason for abuse. The man tells the customer, "Well, look, I'll put it this way. You pick up whatever you wish from this building at the amount of the contract. It is all yours plus you can pay out the difference to the finance company which the contract was given to." So the whole point comes around that the lady never received the merchandise that was originally purchased. The merchandise that she picked out from the merchant was damaged merchandise. The merchandise turned out to be damaged which there were no warranties or guarantees or anything. A TV set and record player was also picked up. When the customer went complaining about the damaged parts of the record player they said, "We do not have a warranty, you will have to fix it yourself." The merchant says, "I never got it. They never gave it to me." He says, "I can't help you on that."

This is some of the things that are happening up in East Los Angeles. Also I wanted to bring out the language barrier of

a contract, the warranty or guarantee. Earlier today it was brought out in some of the suggestions, the first one was that all warranties be written in layman's language and in English and Spanish. This should be done. The second was that legal services for the low income person be extended. This is definitely needed very much.

CHAIRMAN SONG: Senator Marks has a question.

SENATOR MARKS: I'm sure that the low income people do probably have a problem in this. Who do you think should provide the legal services?

MR. MARTINEZ: Who should provide the legal services?

SENATOR MARKS: Should it be the State, the municipality, who should provide the legal service?

MR. MARTINEZ: I would suggest like the Legal Aid Foundation, the OEO, EYA, government money, government funds.

SENATOR MARKS: Well, if the person of low income has the problem and they go to the Legal Aid Society, I presume you have one here, I know we have one in San Francisco, or the neighborhood Legal Assistance Foundation, something of that nature, will they or will they not provide legal service?

MR. MARTINEZ: They will provide legal service, but the thing is that the people in that area cannot afford to take off time, you know, to take care of these problems.

SENATOR MARKS: I recognize that's a problem, too. How do you think that it could be done because obviously if they are going to have legal services, and I think people should be able to get legal services, they would have to be able to talk to the lawyer or the lawyer has to talk to them. Somebody has to talk

to somebody.

MR. MARTINEZ: Right.

CHAIRMAN SONG: I think you will stipulate to that. You've got to talk to somebody. Incidentally, Mr. Martinez, you don't intend to reiterate and read again what's in the record, these six recommendations?

MR. MARTINEZ: No.

CHAIRMAN SONG: Because it's in the record.

MR. MARTINEZ: O.K.

CHAIRMAN SONG: Go ahead.

MR. MARTINEZ: All right. There are so many things to say, I don't know where to start. Another incident is like when a person buys say an insurance policy, it states what it covers, A, B, C and D, like for collision and bodily injury and so forth and so on. Some of these contracts are explained wrongfully to the people who buy the contracts which do not understand the contract.

CHAIRMAN SONG: I understand, but that's actually out of the scope of this hearing. We are talking about consumer warranties and so forth.

MR. MARTINEZ: All right.

CHAIRMAN SONG: That's also a shoddy practice which I'm aware of and particularly perpetrated in districts like East Los Angeles. They call it "soft shoe operators" who go in and out, make a fast buck, and the poor people are the victims; but the subject under consideration today is the subject of warranties.

MR. MARTINEZ: All right.

CHAIRMAN SONG: We'll be having a hearing on that subject shortly which I think your group should attend and take part in.

MR. MARTINEZ: All right.

CHAIRMAN SONG: Anything else?

MR. MARTINEZ: No, that's it.

CHAIRMAN SONG: Very well. Thank you very much, Mr. Martinez. Is there anyone else? Yes, come forward, please.

MR. GANDARA: My name is Bob Gandara. I'm from the Consumer Action Council. I have been here since this morning, and I noticed the worthless buck being passed from one to another. Responsibility should be with the dealers and the manufacturers only. This is a lot of jive of one passing the buck to the other. The dealer is responsible and so is the manufacturer. They both are. If the manufacturer wants to do a good thing, like he comes out with his services and says, "My product is the best," he should back it up. He should put pressure on the dealer and the distributor to see that services are rendered correctly and that this doesn't go on. If one won't do it, they other should.

Now, I used to sell. I was a switch pitcher and I enjoyed it.

CHAIRMAN SONG: What did you sell?

MR. GANDARA: Sewing machines and vacuum cleaners, and I'm very good at it. Now, I used to read the warranty. That way you make a very comfortable and more secure sale, but the warranty is nothing. It is a big deal, so you read it. It means nothing. Your parts are guaranteed for life. The parts you can get free anyway, so you get them for a service charge.

On these warranties, they can get out of it. Warranties are nothing. The way they are stated --

CHAIRMAN SONG: Some are apparently on the basis of what I have personally inspected, some are fairly decent, like Kenmore and Amana.

MR. GANDARA: Kenmore Sewing Machine has a certain model that's unrepairable. You sell it at a switch pitch price for $35.00. Forget it.

SENATOR MARKS: Could I interrupt for a moment, please? Our purpose as a legislative committee is to determine whether or not legislation of any kind is necessary, and when we hear of complaints obviously it is helpful to us. Can you give us some specific areas where you think some legislation should be carried on or is there a necessity for additional legislation in your opinion?

MR. GANDARA: There is. Would you break that down --

CHAIRMAN SONG: You have already recommended both the dealers and manufacturers should be equally responsible. So this is one of your recommendations, is it not?

MR. GANDARA: Right. When you have salesmen, there's a lot of salesmen who have relatives all over. They find out where you are from, what State you're from, what town, and maybe their wife is from there, their cousin. You have all kinds of ways of selling. You have to warn the public on those types of sales. This happens in your department stores as well, all the way from your auto dealers to your door to door salesman and your good old switch pitcher.

SENATOR MARKS: The only thing that concerns me, is how do

protect the public? If you read the person the warranty and the warranty we'll say is in clear language and maybe it is in Spanish, we'll say, and the people can only read Spanish, and it is explained to them and then they enter into the contract and it says in so many words what the warranty consists of, so it is quite clear what it does consist of, and then they sign it, how can they be protected further, or do you think the legislature should protect them any further than that so long as they understand what the product is warranted for?

MR. GANDARA: The legislature should be very heavy, and I mean real heavy, on the manufacturer and the dealer. If a private citizen breaks the law, the cops grab him.

CHAIRMAN SONG: It's not breaking the law.

MR. GANDARA: Yes, it is, when it comes to false advertising and it comes to them not taking care and not servicing correctly.

CHAIRMAN SONG: All right, we won't argue the law. Let me just find out my way. Supposing you bought a refrigerator. Now to what extent and for what period of time do you think the manufacturer and the dealer should be liable?

MR. GANDARA: A year.

CHAIRMAN SONG: Unconditionally?

MR. GANDARA: Unconditionally.

CHAIRMAN SONG: And after the year?

MR. GANDARA: After the year then it is up to the consumer.

CHAIRMAN SONG: That's very explicit.

MR. GANDARA: By unconditionally I mean pick-up and delivery and I don't care how many times it has to be picked up.

CHAIRMAN SONG: The refrigerator should work?

MR. GANDARA: Right. You're talking about a lot of money. A dollar is not worth a dollar any more. Let's face it. It's a fact.

CHAIRMAN SONG: You are advocating unconditional guarantee for a period of one year?

MR. GANDARA: Right, labor, parts, service, pick-up and delivery, the whole stick.

CHAIRMAN SONG: Very good.

MR. GANDARA: Now, let me explain my part of the Consumer Action Council. We utilize some attorneys that we have on the Poverty Programs. There aren't enough attorneys and we are up to here with cases. Well, part I love because I get people and I boycott.

SENATOR MARKS: You do what?

MR. GANDARA: Boycott. I pour people into the stores and markets or whatever. Now, I'm in the process of putting a nice project together where I have the addresses of the owners, of the merchants in East Los Angeles. And if boycotting their market don't work, I'll go in front of their house with people. We have been waiting and waiting and waiting for the legislature to start working for the people. We are tired. I am. From now on I hit the streets with people. We've been working good this way. Some things have been changed, but not everyone, and I want this on record, merchants, we'll go to your home. Thank you.

CHAIRMAN SONG: Thank you. Anybody else? Miss Reporter, I have several written statements here. I am marking as Exhibit C a letter and statement from the General Motors Corporation;

As Exhibit D, a statement by Guenther Baumgart, president of the Association of Home Appliance Manufacturers, and will you incorporate all of these statements in the record? There being no further testimony, we'll stand in recess until 10:00 o'clock tomorrow morning.

TUESDAY, NOVEMBER 4, 1969, 1:30 O'CLOCK P.M.

CHAIRMAN SONG: The hearing is again in order. We'll finish with the viewpoints of the contractors. We'll call on Mr. Ernie Kramm at this time to make a brief presentation.

MR. KRAMM: My name is Ernest G. Kramm. I represent the Ninth District Council of the National Electrical Contractors Association.

I would like to clarify for the benefit of all persons what the contractors' license law does in fact say about guarantee of work. There is no requirement that a contractor guarantee his work. There is a statute of limitations under Section 7091 that says, "All accusations against licensees shall be filed within three years after the act or omission alleged as the ground for disciplinary action." Then it goes on and it makes an exception for fraud situations.

CHAIRMAN SONG: There is no administrative regulation requiring the one-year performance Mr. Cruse mentioned?

MR. KRAMM: No. Then there's a significant section, Section 7109, "Willful departure from, or disregard of, plans or specifications, or in the absence of specific requirements within the plans or specifications of accepted trade standards for good and workmanlike construction in any material respect and prejudicial to another without consent of the owner or his duly authorized representative, and without consent of the person entitled to have the particular construction project or operation completed in accord with such plans and specifications, constitutes a cause for disciplinary action."

Then under Section 7109.5 you have, "Violation of any safety provision," and as you know the State of California has a very extensive construction safety order, electrical safety orders which are in themselves almost complete codes. "Violation of any safety provision in or authorized by Division 5 commencing with Section 6300 of the Labor Code resulting in death or serious injury to an employee constitutes a cause for disciplinary action."

Then you have under Section 7110 having to do with violation of State laws and so forth, "Willful or deliberate disregard and violation of the building laws of the State or of any political subdivision thereof, or of the safety laws or labor laws or compensation insurance laws," and so forth, "constitutes a cause for disciplinary action."

And then you have violations of the Labor Code. Now, the contractor, however, because of the disciplinary requirements under the contractors' license law does have to be very sure that his installations do comply with the local codes, applicable codes whatever they may be, city, county or state, and his work is inspected. However, the equipment which he puts in, which we are talking about here, as a rule isn't inspected. We are inspecting its installation and the contractor, however, has to make an installation which does meet the specifications and does perform and all of that. He must comply with plans and specifications. Well, so much for that. Then you have this other provision that the bond imposed upon the contractor is for the benefit of any person damaged by reason of the violation of this contractors' license law and certain other things. So

if the man does in fact fail to put in this job in a proper manner spelled out here in the law, then there can be a disciplinary hearing by a hearing officer, and of course you have hundreds of decisions of hearing officers which indicate how they do in fact interpret this. So this is not a simple matter. Now, the one other thing I want to call to your attention is the specification data sheets which manufacturers put out for the benefit of specification writers, architects, contractors, whoever wants to know what their product will do.

In the typical data sheet the manufacturers go to great lengths under article headings of product description, technical data, installation, and he has listed in tables the composition, characteristics, procedures and precautions for the use of his product. However, in most of these situations, they have a sentence which precedes all of this which wipes out whatever implied guarantee there is in this specification data sheet. And here is such a clause which I have picked up here in the Description Specifier published by the Construction Specification Institute. It happens to be written by a well known authority, Robert L. Peterson, and I'll give a copy to your staff. It reads:

"All recommendations, statements and technical data contained herein are based on tests we believe to be reliable and correct, but accuracy and completeness of said tests are not guaranteed and are not to be construed as a warranty either express or implied. User shall rely on his own information and tests to determine suitability of the product for the intended use, and user assumes all risk and liability resulting

from the use of this product. Sellers' and manufacturers' sole responsibility shall be to replace that portion of the product of this manufacturer that proves to be defective. Neither seller nor manufacturer shall be liable to the buyer or to any third person for any injury, loss or damage, direct or indirect, resulting from the use of, or inability to use, the product. Recommendations or statements other than those contained in a written agreement signed by an officer of the manufacturer shall not be binding upon the manufacturer or seller."

CHAIRMAN SONG: Who is the seller in that case, the installing contractor?

MR. KRAMM: The seller would be, in this case they are thinking of the distributor who is selling to the contractor or in turn it might be the contractor buys directly from the manufacturer and includes this in his installation.

CHAIRMAN SONG: Now, Mr. Kramm, I don't know whether at the inception of your testimony you indicated what your title was. Who do you represent?

MR. KRAMM: I represent the Ninth District Council of the National Electrical Contractors' Association.

CHAIRMAN SONG: You listened to Mr. Cruse, the heating contractor testify, did you not?

MR. KRAMM: Yes.

CHAIRMAN SONG: I believe he said, and I'm of course paraphrasing, that after he installs say a heating or air conditioning unit, at the time the thing is started, the manufacturer is no longer liable for labor for whatever the reason, that he as a contractor proceeds at his own cost to rectify

any problems that may exist or that may arise, and he also made a statement that he was required to do so by virtue of certain State laws as administered by the State Contractors' License Board. You are obviously contradicting him.

MR. KRAMM: I'm qualifying I would presume what he has said. I have quoted from the law. There is no required one-year guarantee in the Contractors' License Law. There is a statute of limitations. A contractor is held liable for putting in work in a proper manner and as I have read.

CHAIRMAN SONG: Well, you're not qualifying him, you're directly contradicting his statement.

MR. KRAMM: This could be construed this way.

CHAIRMAN SONG: Do you have an opinion as to why a contractor would proceed at his own cost with repairs that may be attributable really to faulty manufacture?

MR. KRAMM: If he wants to be in business he has to guarantee his work. The National Electrical Contractors Association recommends to all of its members that they have in effect a guarantee of their own which is a standard form, a one-year guarantee that the contractor, and there are of course in that warranty certain exemptions as they must do, too, with respect to the equipment which they use which is covered by a manufacturer's warranty. We get into a tremendous gray area here. Actually, though, Mr. Chairman, we concur in principle with what the people of the heating and ventilating contracting industry has said. We did want to clarify exactly what the guarantee provisions of the Contractors' License Law is, and the thing we must emphasize is that the contractor's work has

to meet inspection, city, county, state, whatever it is, and he is held responsible for this thing.

CHAIRMAN SONG: You are referring of course to installation?

MR. KRAMM: That's right, his installation. Right now the contractor, when he enters into a contract, signs also in this contract a clause that says that this thing will work. He agrees that the thing will function.

CHAIRMAN SONG: I think it is implied, certainly. If I buy a home with air conditioning I expect the unit to function.

MR. KRAMM: That's right.

CHAIRMAN SONG: Well, I gather then this is the gist of the testimony of the contractors today, that because of public relations, their desire to continue in business, and this is an understandable motive, they have necessarily assumed the responsibility even in instances where they defect or the deficiency in the unit is caused by faulty manufacture, simply because of the contractor's desire to continue in business, and what they are seeking, of course, is legislation to relieve themselves of some of the load and to place it where they probably consider it to be and that is on the shoulders of the manufacturer?

MR. KRAMM: In a fair and equitable manner. As the people from the heating and ventilating industry stated, we have good relations with the manufacturers and we do wish, we do feel that the more responsible manufacturers stand behind their product, and we do appreciate any help we can get though to clarify this thing.

CHAIRMAN SONG: Very well. Thank you very much, Mr. Kramm.

The chair would like to announce that Mr. Kent Redwine who is the legislative advocate for the new car dealers in the State of California and in this capacity, of course, spends a great deal of time in Sacramento and in Washington, D.C., is present here, and I thought he would be able to testify on some of the problems we discussed yesterday and that is about the purchasers of new cars who find that they have difficulties and they go to a dealer and they have complained that they received no satisfaction, and they attempt to communicate with the manufacturer who is somewhat removed geographically and receive no satisfaction, and eventually find that they are running around in circles so to speak, and I thought perhaps Mr. Kent Redwine might shed some light on it, but I do realize after discussing this with him that this would be placing a somewhat unfair burden on him. He is really in no position to give us the answers, so for that reason I'm not going to call on Mr. Redwine who is present here today at my request. We do contemplate another hearing at which time we will, if necessary, subpoena two or more automobile dealers and perhaps a couple or more of leading automobile manufacturers, and perhaps find out why some of the purchasers of automobiles are suffering from so much frustration. So we'll simply have to pass over the problem of automobiles at this time. Is Mr. Addison Mueller present?

MR. MUELLER: Yes.

CHAIRMAN SONG: Will you come forward, please? While you're taking your seat, Mr. Mueller, I might note for the public here that you are a professor of law at the University of California at Los Angeles?

MR. MUELLER: Right.

CHAIRMAN SONG: Will you be seated, please.

MR. MUELLER: Mr. Song, I am at your disposal. I do not have a prepared statement. I came to give what information I could and to be of what help I could. If you will point me in the direction you would like to have me go in this particular area, I will try to get there. This is a subject in which I have been very much interested for the last few years. I have done some writing in the field. Your files have a copy of my latest article on the subject. It's a very complex subject, a very large subject, and so as not to waste your time, would you tell me what you would like to have me tell you.

CHAIRMAN SONG: Very well. I certainly appreciate your approach. You know when I was in law school over twenty years ago, I bought a canned brief or whatever you call it of notes and I think it was a course in corporations, and the professor must have memorized it himself. I got it verbatim.

MR. MUELLER: He may have written it.

CHAIRMAN SONG: I'm impressed with these facts and these are some of my tentative conclusions, Professor, and that is that the consumer has to be protected. He buys a car with an air conditioning unit, a television set, whatever it may be, fully expecting, and I think he is reasonably entitled to expect this, that whatever he buys will perform the expected function. He finds shortly thereafter that something is wrong. The color in the television set keeps disappearing or the car won't operate, and then he finds himself in sort of a quandry. He doesn't know where to go. The logical place is the place

he bought the item from and frequently he finds no satisfaction at all. He is shunted off from place to place. Everywhere he goes there is a denial of responsibility or some kind of equivocal evasion. He doesn't know what to do. So our problem in the legislature is this, recognizing there is a problem in our society today, and that consumer goods and consumer purchases, of course, I would imagine dominate of occupy a dominant role in our economic life, now what can we as a lawmaking body do to do equity? We certainly recognize the fact that the manufacturer, the distributor, the retailer, the dealer, whoever he may be under our scheme of things is entitled to make a fair profit. On the other hand the consumer is entitled to get what he thinks he bought and paid fair value for, and when he finds himself in a position where he's continuing to pay for an item that he's receiving no satisfaction from, I think at this time it's necessary for the legislature to come in with some kind of reasonable legislation.

As you have indicated, Professor, it is a highly complex field. We recognize this. The question, the nature and extent of the warranty, the coverage, who should be responsible, and the apportionment thereof. All of these things are problems. So let me ask you this, it's sort of an open-end question, how would you recommend that we in the legislature approach this very problem?

MR. MUELLER: I think the basic difficulty in this area as in some other areas of the law is that our law is not equipped, particularly our judicial machinery, is not equipped to handle the kind of complaints that come from the average consumer when

the only complaint is that the product does not work. I think you realize, and I won't go into it for that reason, that if the product bites the consumer or poisons him or electrocutes him, that matter is now pretty largely handled both by statute and by judicial gloss on the statute. In other words, manufacturers and dealers are held pretty strictly liable for personal injury resulting from a defective product. The area of considerable concern I'm sure to many consumers is this case where after paying his money and getting delivery of a particular product, he finds it's defective, and one of the facts of life today is that an increasing number of such products seem to have defects. Now, in almost every case, there is a warranty attached to that particular product. That warranty, however, is a very limited warranty. You realize that under 2718 and 2719 of the Uniform Commercial Code, disclaimers of warranty are possible. They are honored unless they are unreasonable. If the disclaimer goes to what we call commercial damage, the burden of proving the unreasonableness is on the consumer. That could present a problem except that most manufacturers achieve what amounts to a disclaimer by another device and that is they limit their liability to repair or replacement. Now, the repair or replacement clause you see reads not as a disclaimer, but as a guarantee, and there is nothing wrong with such a guarantee except that practically speaking in too many cases it works like this. You discover that your television set does not work properly and you call the dealer who sold it and he says to either bring it in or perhaps if he is generous he will call for it and take it. After four or five days the set is returned and the difficulty

remains. You call him again and he says, "Well, we'll see what we can do. We'll try it again." This isn't just television, this is radio, stereo equipment, automobiles, dishwashers, you name it. The result is that the consumer finds himself in what you described earlier as a sort of run-around. What can he do under those circumstances?

Well, the repair or replacement only warranty is not open ended in the sense that the dealer can continue to insist on repairing forever. At some point it would be held that he had in fact breached that repair or replacement guarantee. Suppose he has. The problem of the consumer then is how does he enforce the rights that the law gives him under those circumstances as against that dealer? The dealer's position is, I think, very frequently required from an economic sense by the fact that he in turn in the chain of distribution cannot go back to his supplier, whether that be a distributor or whether it be directly from the manufacturer, but in any event these limitations go right down the line and there is a reluctance on the part of anyone in the chain to take back a product that has been demonstrated to be defective and that has been used to some extent. This is designed to explain why it is that the dealers who normally would be expected to lean over backwards to satisfy customers, do not lean over backwards to satisfy customers.

But now we have our consumer in a position where he could go to law under the present law without too much difficulty I think and bring an action against that dealer.

CHAIRMAN SONG: On the theory of implied warranty?

MR. MUELLER: Theory of implied warranty fitness, applied warranty of merchantability. It doesn't really matter. If you want to put it this way, you can say it is simply a breach of contract on the part of the dealer because his original contract clearly, unless it's an as is sale which is rarely the case in the problems you are worrying about, the dealer has agreed to deliver a television set and by definition a television set is something that will show a picture on the screen and not just a cabinet with a glass eye that won't work.

CHAIRMAN SONG: The obvious problem, of course, is when the average citizen purchases a set $300.00 and the set doesn't work, he can't very well hire an attorney.

MR. MUELLER: That's precisely right. He can hire an attorney, but the point is (1) he is instictively suspicious of the whole legal process. He doesn't know an attorney probably, he doesn't know where to go to get one. If he does know where to go to get one, he discovers in a hurry that the cost of the litigation which not be recoverable in terms of his attorney's fees and his own time, would probably outstrip any damage claim that he would have. Without getting into the arithmetic of these cases, I think it's fairly clear. The smaller the appliance of course the more obvious it becomes that litigation is just not a proper solution.

CHAIRMAN SONG: I would imagine the solution would be, and this is easy enough to say, to make more readily available to the consumer some easy recourse against either the dealer or the manufacturer, but how can it be done?

MR. MUELLER: I think the way it can be done is through

re-examination of our judicial machinery and may I say this is a gratuitous remark, not directly related to the inquiry here, that this is, I think, one of the important jobs that the law has to do at the present time. The whole field of commercial law is not designed to handle the problems of the little buyer. It's designed to handle commercial problems as between businessmen and for a variety of reasons it works well, but when you are talking about a little consumer who has purchased something for let's say $110.00, and it won't work, and it doesn't work, there is nowhere that he can go except in theoretical sense that if he is willing to spend the money and is willing to take the trouble and knows how to go about it, he could get legal relief in the sense it would give him his money back. I can't see any reason why it would not be possible to establish tribunals that would be designed to handle problems of the little man, whether they be in the field of commercial law or in other areas, but let's confine ourselves to commercial law, and when I make these suggestions I can see that I am flying in the face of legal tradition.

The normal remedy for a breach of contract, whether it be non-delivery or whether it be delivery of a defective product, or what it is, is an action for damages. If within that action you get a judgment, you then have to collect on that judgment which is another step in the operation. Specific performance which orders a particular individual to make restitution of the price or to substitute a new commodity for the commodity that proved defective, is generally regarded as not available because theoretically the remedy at law is adequate. The reason why the

remedy at law is adequate is that your relief is normally thought of in terms of money or can be translated into money, and money is not unique, and therefore why should you not be remitted to your action at law. This isn't the kind of thing that the consumer who is troubled by a faulty product is interested in. What he wants is action and he wants it speedily, and he wants it inexpensively and he wants it available in a tribunal that's not afraid to approach.

CHAIRMAN SONG: I might add he is entitled to it.

MR. MUELLER: I think he is. My solution, and -- it isn't a solution, but my suggestion toward a solution is the creation of tribunals that would handle matters or problems like this in this fashion. The burden should be placed on the consumer to indicate that the defect is in fact in the product and isn't the result of his kids having kicked it to death or his having dropped it or misused it in any particular way. Actually that isn't such a very great problem. And I think that the dealer is entitled to at least one bite. The whole thrust of commercial law today is in terms of not encouraging immediate litigation. It's in terms of giving a dealer a fair opportunity to cure, and the Uniform Commercial Code builds that into the law.

But if after a reasonable effort has been made by the dealer he can't cure the defect, then it seems to me it's time to give the consumer a remedy other than a formal lawsuit. If he could then go before that tribunal, and this could be some individual who could sit almost as an arbitrator, and he ought to be knowledgeable in the field of commerce, and he probably ought to have some knowledge of the law, and I'm not sure he

ought to be a lawyer, because all that would be involved here would be a simple factfinding process. If he concluded that this was in fact a defective product, he would then order the dealer to refund the money. He could give the consumer the option of replacement if he wanted replacement, but my own feeling is that this would be a mistake because by that time relations between the dealer and the customer would probably have deteriorated and they ought to be concluded. If on the other hand the customer does not make his case, then the case is dismissed and now that's a remarkably uncomplicated process. It's so uncomplicated that it doesn't fit very neatly into any of the doctrines of commercial law or remedies that we have now on the books.

CHAIRMAN SONG: At the point that this hearing officer, if I may so refer to him, finds the product was defective and orders a replacement, so the dealer has to replace it, I assume at that point we need some kind of legislation which would make it possible for the dealer to obtain redress from his manufacturer, wouldn't we?

MR. MUELLER: Yes, except that I think that if you once put the dealer in the position where he regularly has to replace or refund, that the commercial pressure that he would put on his supplier in most cases might take care of that situation.

CHAIRMAN SONG: Do you really think so realistically, Professor? I would imagine getting a Chevrolet franchise is not the easiest thing to do.

MR. MUELLER: That's true.

CHAIRMAN SONG: So where would the economic pressure

result from?

MR. MUELLER: I think the economic pressure would result from the fact that any other Chevrolet franchise that would be granted that franchisee would have the same problem. Now, if you're suggesting that, if you want to get into the economics of it, I would suppose since all of this is related to the price, that the Chevrolet manufacturer could say to his dealer, "You assume the full responsibility for making these refunds or making these repairs and this gets built into your write-up on the product."

CHAIRMAN SONG: I gather, Professor, the thrust of your recommendation would be to make the dealer the person who deals with the buying public primarily responsible?

MR. MUELLER: This is the person, yes. This is the person to whom the average consumer naturally turns. I think that it's the only reason why we have had an increasing use of the deeper pocket of the manufacturer has been because in the personal injury field where recoveries are apt to be substantial, this can be very important, and it is used I think for that reason as much as anything. The kind of cases that I'm talking about, and I'm terribly interested in are not those cases. They are the cases that are frustrating the average consumer and I think he has a ligitimate complaint. His complaint is that the law is great, but it isn't for him. It doesn't meet his need. Now, I would certainly want to provide an opportunity for appeal by the dealer if he wanted to appeal, but the grounds for appeal would be very narrow, and as you know, finding of fact is rarely overturned unless unsupported by the evidence at all. If he

didn't appeal, then he would pay. If he couldn't pay because he was insolvent, for example, then obviously the consumer would have no relief. I'm not suggesting that we go beyond the normal rules of insolvency and the rest of it.

The consumer then is in the same position, however, as he would have been if he had taken the case to law and had gotten a judgment and been unable to execute it. So there is no hardship on the dealer in this particular case if we assume that these are legitimate complaints. Now, please note that my suggestion carries with it no possibility of enrichment for the consumer because I think that's important. We certainly don't want to set up a system that's going to encourage people to run to this tribunal or hearing officer or whatever you want to call it, with the thought that he can pick up a couple of extra bucks.

CHAIRMAN SONG: From your point of view, Professor, how would this particular tribunal enforce its order?

MR. MUELLER: That would require legislation.

CHAIRMAN SONG: Criminal sanctions?

MR. MUELLER: Well, I don't think it would have to be a criminal sanction. I would suppose you could appeal to the court of competent jurisdiction for a contempt citation. That would be civil contempt under normal circumstances. My own feeling is that here again dealers, if this were a regularly constituted tribunal, I think they would respect the orders of that tribunal. I don't think there are very many dealers, although of course there are some, who are taking unreasonable advantage of the repair or replacement clause. I think they

are in a bind. I think they don't know their way out of it and I think they are encouraged in not being too eager to immediately replace or refund the money by the fact that the chance of litigation against them is remote.

CHAIRMAN SONG: Well, we had a witness yesterday named Gaither, I believe, who among other things sold at the time Norge refrigerators. He testified that he sold the same unit on five successive occasions as a new refrigerator, each time referring it back to the Norge service department for repairs. Apparently they never successfully repaired the thing and it was finally returned to the factory for credit. In this kind of situation I wonder whether or not, and of course obviously the profit factor is a prevailing factor understandably, whether or not a criminal penalty might be in order.

MR. MUELLER: I would suppose if you had cases of such obvious bad faith or dishonesty you might want to impose criminal sanctions, but my own feeling is that this can be overdone. I would prefer to see other sanctions tried first because I believe they would work. Now, what you are talking about is a case that might be considered fraud, and this is a much different situation than the situation I'm talking about where the dealer in terms of his contract, although, and I don't want to get into this question of whether or not those limitations or disclaimer clauses ought to be permitted at all because when we talk contract, we're talking about two parties of reasonably equal bargaining power, and I don't think anybody contends the average consumer has any bargaining power at all in terms of the contract other than the price terms.

CHAIRMAN SONG: They are all alike. He has never met the manufacturer.

MR. MUELLER: Right. But it seems to me that if you limit the relief to the consumer to his money back and if this isn't something that comes up eight months after he has purchased the appliance or the car or whatever it is, there's not going to be any rush to use this relief on the part of consumers to get rich. They are not going to gain anything here. They are simply going to get themselves out of a box they find themselves in now with no way to get relief.

Now, you mentioned one thing, and let me say this, the FTC, of course, has very strict rules against selling as new material that has been returned to a manufacturer and has been re-constituted, has been repaired. My own feeling is that this is a totally unrealistic position for the FTC to take as it defines it, although it is possible to look at their definition and find some leeway in it that would support the position I'm now about to state. If an appliance is found to be defective shortly after delivery or upon a reasonable period of use, and if that is returned to the dealer who then promptly returns it to the manufacturer who thoroughly overhauls it, I can't see any reason at all why that product should not be again put into the chain of distribution as new because for all practical purposes it is new. If you look at the manufacturing process ending up with an inspector, the difference between a product that has been discovered defective in the field as opposed to a product discovered defective by the inspector at the end of the line, they don't throw those away either, they send them back and have

them repaired and fixed up and then they go out as new.

CHAIRMAN SONG: What do you consider a reasonable period of use, what about nine months?

MR. MUELLER: I would say that would be much much too long. Most of these cases, I don't think arise in that way. I think what I'm talking about are the cases, and there are tens of thousands of them and you can knock on any door and ask the person who answers, has he had any trouble with the purchase of an appliance or a car or something lately and he will have had. This is the kind of thing where within the first few days or few weeks of use it becomes clear that there's something terribly wrong with this television or stereo or car, and you take it back to the dealer and it comes out and it's still wrong. At that point, I can't see any reason that it could not quite properly be reconstituted and sold as new. It's probably better than a new one because you have had an additional inspector in the chain, namely the consumer.

And what we have today, and let's face it, there is an increasing use by manufacturers I submit of the consumer as the ultimate inspector in the manufacturing process. He doesn't get paid for this inspection, in fact he pays for it, and I think that's outrageous. I'm perfectly willing to concede that some things are going to come off the end of a line defective, but I think if they come off the end of the line defective they ought to be very promptly replaced or the consumer should get his money back. It's a very interesting area. As I say, it's just one facet of this whole problem, but there is an increasing concern as is obvious if you read the papers, on the part of the

average consumer as to what happens when he buys something and discovers that it isn't what he thought he was going to get. Where does he turn?

CHAIRMAN SONG: Your suggestion is quite interesting. In fact this committee is holding a hearing in Los Angeles on the 17th of this month and we are going to inquire into Governor Reagan's newly created division of consumer affairs. Now, this might possibly be such a tribunal that you mention.

MR. MUELLER: It might be if it had neighborhood offices.

CHAIRMAN SONG: We would like to know what the Governor proposes and this is going to be the purport of this hearing on November 17, and perhaps you would be interested in attending.

MR. MUELLER: This will be in Los Angeles?

CHAIRMAN SONG: Yes, right here in this building.

MR. MUELLER: I'm afraid I'll be out of the city for that whole week. I'm sorry because I would like to be here.

CHAIRMAN SONG: There have been a number of accusations and countercharges flowing back and forth relative to this particular newly created division, and if we find, if this committee finds as a matter of fact that the Governor is really interested in creating an agency with teeth in it for the protection of the consumer, then I would say that he should be entitled to the full support of the legislature, and this is going to be the focal point of our inquiry at that time. I think your suggestion is as I have indicated extremely interesting. It may possibly work. I would certainly like to look into it. If you have any additional material why we would certainly appreciate receiving it from you.

MR. MUELLER: Thank you.

CHAIRMAN SONG: Thank you, Professor. Our next two witnesses are from Radio Station KFWB, Mr. Gene Fuson and Treesa Drury. They would both like to come up together or individually as they see fit. All right, there are no objections to the recordation of the hearing at this point. You have unanimous consent in the absence of any objections. Will you introduce yourselves first, please?

MRS. DRURY: My name is Teresa Drury. I am consumer affairs editor of KFWB. It is an all news radio station located at 6419 Hollywood Boulevard in Hollywood. I receive letters from consumers as far north as Oakland and as far south as San Diego. I speak to various groups around the State and I receive phone calls. And the consumer has many problems in the California marketplace. Warranties and guarantees are only a very small part of this problem, but I would say that the major concern as they apply here is to automobiles, but I believe that earlier in your hearing this has been given quite a little attention and certainly the Federal Trade Commission has also been giving the complaints against automobiles some attention. But in part I believe that this type of complaint reveals the real problem with guarantees because they seem primarily to be to protect the seller and the manufacturer rather than to provide for and to protect the consumer.

I have received many favorable comments on the subject of guarantees and warranties, some dealing with implied warranties, the unspoken agreement between the store and the buyer or the manufacturer. Several also reveal times when the written

guarantee has actually expired and still the manufacturer has come through, or the company, and helped them at no cost. But then we do have the problem areas, the guarantees that guarantee nothing and are used purely as an advertising gimmick.

Many of my listeners are quite upset about this. After reading these documents which many times require legal help before they can be properly deciphered, they discover that little, if anything, is actually guaranteed. I have had reports of guarantees that state that they do not guarantee the merchantability of the product, and although perhaps an old story, someone is always calling my attention to the fact of a guarantee of a large item, say like a piano, that states the piano must be shipped to the factory and returned at the owner's expense. Many guarantees that I receive complaints on cover only parts and not labor.

CHAIRMAN SONG: Mrs. Drury, may I ask you, did you attempt to ascertain the cost of shipping a piano to the manufacturer wherever it might be?

MRS. DRURY: It would be somewhere in the neighborhood of $400.00 or $500.00.

CHAIRMAN SONG: Thank you.

MRS. DRURY: The washing machine with the lifetime tub I think also is a good example here. I'm told that on an older machine it would cost labor-wise $35.00 to $40.00 to repair the tub. Yet this is used as a definite sales tool to the consumer. I do tell my listeners to read their warranties carefully before they purchase a product and also to be sure that that warranty states who is responsible for the statements

made in that warranty. So naturally I hear from them, the people that cannot discover who might be responsible, and who have to go to the library to look up the name and address of the company that might possibly have been responsible for the manufacture of said product.

Then of course I hear from many of them that are totally confused after reading the document. I have heard from listeners that tell me that they feel that some guarantees are not guarantees at all but offers to repair for a price. Also many consumers get service contracts and guarantees utterly confused and feel that the salesman failed to make the difference clear to them. Then there's a lovely card that must be filled in and returned. I hear from the consumer that failed to send the card in on time that they have trouble. For instance, at Christmas time some consumers have told me stores refused to honor their warranty because the card was not filled in and mailed within twenty-four hours of purchase. One columnist did a very amusing article on this last year. He was in the same predicament on a can opener. The company had discontinued making these. The salesman finally told him that he would see if he could get him to accept his late warranty. "Will that get me a can opener that works?" "No," said the salesman, "but it will get you on their mailing list." Many feel that this is the only really good use of that warranty card, to answer questions on how, when and why they bought said item, and to get their name on the company's mailing list. Also many times this card is inadvertently thrown out because it is stuffed down in the bottom of the package, or part of the instruction

book that the consumer does not read.

Then there are small complaints like dresses that carry hang tags stating "guaranteed hand washable exclusive of all trim," which means all the buttons, brickbrack and so forth must be removed before the dress can be washed, so again the guarantee is of no help, plus with all the new fabrics that we now have on the market many consumers are asking for dry clean or wash labels to be permanently attached to the garment. And one other small plea in this area, if it is a wash and wear item, they ask that the manufacturer make the tag of the same fabric because many manufacturers now that do put the tag in put it in cotton and then just the tag has to be ironed when the dress has been laundered.

With clothes there is a very large problem area particularly where dry cleaners are concerned. Who is responsible, the dry cleaner that ruins the garment, the consumer for not having saved the hang tags and told the dry cleaner what they said, or the manufacturer that originally made the garment? The Better Business Bureau has arbitration panels which are quite successful, but the problem here is that not enough consumers know of these. With so many miracle fabrics on the market this side of warranty and guarantee situation receives a lot of attention in the complaints that I do receive.

I would like to close by telling you that any time a listener does write to me a letter of complaint and sends a carbon on to the company or writes the company with a carbon to me, I have always heard from the company immediately either wishing to tell their side of the story or promising to clear

this matter up immediately. That again leads to another type of complaint as far as the consumer is concerned because they want to know why they have to make a threat of publicity before the company actually comes through. Thank you.

CHAIRMAN SONG: Have most of your complaints been with reference to automobiles?

MRS. DRURY: Yes.

CHAIRMAN SONG: And what has been the general nature of the complaints, with dealers or manufacturers or the inability of the purchaser to find someone, anyone who will take care of the problems?

MRS. DRURY: Yes, anyone that will fix it and it's everything from handles falling off to windshields leaking. Some of them that take the car in to be repaired, and will keep taking it again and again, and the same problem is not taken care of because they don't seem to be able to fix it. Others complain that they take the car down, leave it there all day long and come back and pick it up and no work has been done on it at all because it has been set to the side.

CHAIRMAN SONG: Roughly how many complaints have you received about automobiles?

MRS. DRURY: We have not finished doing all of our statistics on this. We have got some fifty to sixty pounds of letters.

CHAIRMAN SONG: On your program do you identify the so-called culprits?

MRS. DRURY: Yes. Because I'm just a reporter and not a commentator as such, so that if it is a case that has been tried

in court where said company has been sued, let's say by the Federal Trade Commission, yes, then I do mention all of the items that are food and drug recall sheet.

CHAIRMAN SONG: As a reporter and also with the benefit of a certain amount of legislative immunity since you are participating in a legislative committee hearing, can you name some of the companies, the names that come up frequently with reference to complaints concerning automobile deficiencies?

MRS. DRURY: Automobile, I would say every single one, I've gotten a letter on every single one of the major manufacturers.

CHAIRMAN SONG: What dealers particularly keep cropping up, dealers who refuse to honor the warranties?

MRS. DRURY: These I would have to get and list for you because I do not --

CHAIRMAN SONG: You do not recall independently the names of any of them?

MRS. DRURY: No.

CHAIRMAN SONG: All right. What seems to come next in order of importance or frequency about complaints by consumers?

MRS. DRURY: Television repair.

CHAIRMAN SONG: Television repairs or new television sets?

MRS. DRURY: I would say television repair.

CHAIRMAN SONG: Now that really shouldn't be because I assume that the licensing procedure of television repairmen should have alleviated many of the problems there.

MRS. DRURY: I would say it definitely has not.

CHAIRMAN SONG: They are simply not performing -- well, perhaps that law should be modified. Anything else?

MRS. DRURY: No, I think I'll let Mr. Fuson take over.

CHAIRMAN SONG: Mr. Fuson, the mike is yours.

MR. FUSON: My name is Eugene Fuson. I am editorial director for radio station KFWB, Westinghouse Broadcasting Corporation, 6419 Hollywood Boulevard, Los Angeles, 90028. For some seven months Mrs. Drury and I have been conducting a research project in the California marketplace as it concerns both buyer and seller. It is the present plan to begin broadcasting the findings of that research on November 10, next Monday. I might add here that it will run for several weeks. The main thrust of our investigation was to seek out the failings of the function of marketplace and the means by which those failings should be corrected.

Necessarily, the broad consideration had to consider the concept of guarantee or warranty or even more basic, the process of unfulfilled promise by which a seller derives profit. That's a nice way of saying you can't study the marketplace without studying the thieves, liars, swindlers and sharpshooters who make money by deceit. Were it not for the sharpshooters and the fourflushers on both sides of the market fence, I would have nothing to investigate and certainly this committee would have no premise on which to hold hearings. I emphasize the word "both," because one of the fundamental findings of our work is that the greatest common misconception in the marketplace is that only the retailer buyer, the consumer, is victimized in the marketplace. Parenthetically, I ask the committee's indulgence if I seem to fail to support what I say right now with actual case histories and statistical evidence. This I

will be glad to furnish the committee immediately on publication next week. I have discussed this with your investigator, Mr. Cathcart. He knows what I have and it will all be available to him.

CHAIRMAN SONG: Your offer is accepted, sir.

MR. FUSON: Back to the marketplace. When the committee considers legislation in the field of guarantees, warranties, promises, I submit that it should keep in mind that the most truly unbiased people in America are the thieves in the marketplace. They will steal from anybody, buyers and sellers alike, and for all of the so-called consumer champions it's all too often forgotten that a small businessman is himself a consumer when he buys goods and services with which to operate his business.

A direct complaint is that when the small businessman gets clipped he has recourse through an attorney. That is true if the size of the loss exceeds the attorney's fees or if the businessman can give up a day from his small shop to seek remedy in a small claims court. Frequently the small businessman can no more afford to leave his store than can the job worker afford to leave his $50.00 a day job to fight a $20.00 traffic ticket, no matter how unjust it may be. Nor can most job workers give a day's pay to seek remedy in the courts to force fulfillment of the promise of a guarantee, and therein lies the fundamental inequity, the means to enforce a small money guarantee. There is need there for remedy. Inasmuch as we were investigators and reporters and not legislators, the following points are submitted for consideration in the drawing

of legislation, not the specific letter of it.

We submit that it should be illegal in California for any manufacturer of any product to disclaim its merchantability in a guarantee. One TV manufacturer now in the Los Angeles market disclaims the merchantability of his product in the guarantee. That is to say he will not guarantee that the set will receive and display television pictures. This is ludicrous. The law should prevent merchantability disclaimers.

Most of the purchasers do not know what the word "merchantability" means. It is therefore deceptive. I submit that many guarantees are written in complicated language even more difficult to understand than the State of California's ballot propositions and that is sometimes impossible even for the people who write them.

CHAIRMAN SONG: That's going pretty far.

MR. FUSON: I submit that a guarantee should be written in the short words, the sentence length and vocabulary of a seventh grade reading standard of the California Department of Education. Now, these are calculated, they are mathematical, and they are readily available to anybody. Lawyers love legalistic double-talk but not the people who have to read it and don't understand it. I submit a guarantee should have included in it a time clause that says when the claim must be settled after it is made. Our research indicates that it is not all uncommon for a guarantor to stall off a claim for as much as a year obviously hoping that the claimant will give up and he frequently does. A claim is either good or bad, and ten days is plenty of time in which to settle it without waiting for all the baloney

about bookkeeping and invoices and references to the home office and all that nonsense.

If a company hasn't the intent or capability of fulfilling a guarantee immediately, it should not have the right to make one. A guarantee should state specifically who is responsible for fulfilling it. All too often the claimant finds he can get the starter on his new lawnmower fixed if he ships it back to, the whole machine, back to Detroit and pay the shipping cost himself. That's a $2.00 starter spring is worth $50.00 and six weeks' time before guarantee is honored. This is the piano again.

I submit that another consideration might have merit, to make the final seller responsible for all guarantees on everything he sells. That would put all of the responsibility in one common area where everybody would know where it is with no question about who is on first.

CHAIRMAN SONG: At that point may I interrupt you? I like your recommendations. I think they are quite simple and could be extremely effective, but one thing that you would do with reference to your last point there is you could conceivably drive out of business the small appliance dealer who has no service facilities.

MR. FUSON: Let me continue.

CHAIRMAN SONG: All right.

MR. FUSON: Then make the writer of the guarantee responsible for reimbursing the final seller, in other words, give the little retailer some recourse back to the manufacturer. Now, if the manufacturer wants to do business in California,

this too is a privilege, he has a business license, if he wants to be a fourflusher, let him do so at his own risk. In short, give the customer direct recourse to the retailer, then give the retailer a direct means of collecting from the manufacturer. All too frequently the retailer finds himself stuck for the cost of making the merchandise function when the manufacturer is the real fourflusher. So the cost comes out of the small businessman's pocket for fulfilling a guarantee made by somebody else. I submit that that is not fair, but it happens.

A guarantee that has any kind of disclaimer in it should state clearly and understandably who pays for what. If a buyer is going to have to pay $40.00 in labor costs to replace a fifty cent belt on his new "guaranteed" atomic bologna slicer, the maker should be required to say so in the big print. I submit that when a guarantee is designed with complicated disclaimers its true function is as much designed to prevent claims as to allow them, and that is fraud and should be labeled as such.

I submit that a guarantee might well be written in two sections, the first stating specifically what is guaranteed; the second, what is not guaranteed.

To sum up, outlaw merchantability disclaimers, clear and simple language, a uniform point of responsibility, a time limit for settlement, protection for the retailer who satisfies a claim, clear delineation of the guarantee of who pays for what when a claim is satisfied. If these conditions are met together with a means of enforcing them, California would have a far better marketplace.

Now, you mentioned a few minutes ago the television repair business. This is part of our research and just as a sample of what we're coming out with, we have about 105 stores doing just like this one. This is a piece of research that was never done before. This came from the Department of Professional and Vocational Standards about six weeks ago. We went to them and started asking questions about what they do and it's my understanding that this organization was set up, I'm referring now to the Bureau of Electrical Dealer Registrations, a couple of years ago to correct a major abuse in California, some twenty years of dealers gouging the public. This was set up with the idea of making the television repair business honest. In 1968-69 this Bureau of Electrical Dealer Registrations had a budget of $269,611. Their duty was to police 6,000 dealers. The purpose was to make them honest. In the entire year their total production involved revokation of five licenses, suspension of three, and one chitchat with somebody called a conference. This is nine actions for $269,000 of the taxpayers' money which comes out to about $29,170 per action, and I think that speaks for itself. Now, that's their statistics.

CHAIRMAN SONG: I frankly didn't realize law enforcement was so expensive.

MR. FUSON: I will furnish the committee with a small mountain of information just like that next week. I submit that if we could correct some of these things, this committee would have a place in history.

CHAIRMAN SONG: We are of course, Mr. Fuson, entrusted with the responsibility of making the laws. This is what we

are inquiring into, of course. The enforcement, of course, is Governor Reagan's baby. Now you have heard about this new Division of Consumer Affairs he has just created?

MR. FUSON: As a matter of fact I will have quite a bit to state about it in a week.

CHAIRMAN SONG: Are you acquainted with and have you read his press release which accompanied the creation of this division?

MR. FUSON: Yes, I did.

CHAIRMAN SONG: I'm paraphrasing necessarily, but I think he stated that we do not intend to harass business or industry. Would you like to comment on that?

MR. FUSON: I don't see that driving the thieves out of California and giving the honest businessman a fair shake at the trade involves harassment. Now, my philosophy my be a little twisted, but I think that when a person's money is taken from him by deception of any kind, it is just as gone as if it were taken at the point of a gun, and the man who took it is just as much a thief as the man who took it at the point of a gun. There's a time to be realistic.

CHAIRMAN SONG: Continue, please.

MR. FUSON: Yes. One more small point. There is ample evidence, and we can supply you all the documentation you want on this, that the words "guaranteed" and "fully warranted" have been widely and commonly prostituted in advertising. The words have come to mean little or nothing in the minds of the public because they no longer are real assurances of integrity. There's a clear need for corrective legislation in that respect. The

word "guarantee" should not be used for sucker bait, but it frequently is.

I thank the committee for having invited us to testify. We shall be happy to furnish you whatever information we have at our command and that's considerable at this point.

CHAIRMAN SONG: On behalf of the committee we certainly express our appreciation to you and we will most eagerly await the added information that you feel you may be able to supply.

MR. FUSON: We'll send you copies of everything in advance.

CHAIRMAN SONG: Our problem of course is at best a difficult one as I have indicated on a number of occasions. Essentially it comes down to a matter of balancing the equities. We have to be fair of course to everyone, but there is obviously this undeniable disparity of bargaining power between the ordinary consumer and the manufacturer, like the Ford Motor Company, for example. And somehow or other, we are going to try to enact legislation if we feel it is indicated, and I think it is, that will be fair and protect the consumer, allow the Ford Motor Company, and I use that term illustratively, to make a fair profit. So we're going to continue with our efforts here and we certainly commend you for yours, and I trust that we will keep in touch with each other.

MR. FUSON: Thank you, Senator.

CHAIRMAN SONG: Since time does permit, ladies and gentlemen, are there any others in the audience who like to be heard today? As I have previously announced, the hearing of yesterday and today is being transcribed and copies of the transcript will be available to you at bare minimum cost with no profit to the

State of California. Simply communicate with Mr. Cathcart, the consultant of our committee, State Capitol Building, Sacramento. There being no further testimony to be offered, this hearing is adjourned.

(Thereupon the hearing was adjourned.)

REPORTER'S CERTIFICATE

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THIS IS TO CERTIFY that I, ALICE BOOK, a Certified Shorthand Reporter, was present at the time and place the foregoing proceedings were had and taken before the SENATE COMMITTEE ON BUSINESS AND PROFESSIONS, held in Los Angeles, California, on November 3 and 4, 1969, and that as such reporter I did take down said proceedings in shorthand writing, and that thereafter I caused the shorthand writing to be transcribed into longhand typewriting, and that the foregoing pages, beginning at the top of Page 1 to and including Line 5 on Page 167 hereof, constitute a true, complete, accurate and correct transcription of the above-mentioned shorthand writing.

Dated this _____ day of December, 1969.

_____
Shorthand Reporter

EXHIBIT A

STATEMENT ON WARRANTIES

I WARRANTIES AND GUARANTEES

For the purpose of this paper the terms "guarantee" and "warranty" should be considered to have the same meaning.

A warranty is a statement or representation, express or implied, made by a seller of goods with reference to the character or quality of the article sold. Express warranty may arise through advertising, sales literature, labeling, or through oral statements.[1] It is generally not necessary to the creation of an express warranty for the formal words "warranty" or "guarantee" to be used or that the seller, for a specific intention, to make a warranty. Thus, liability has been imposed by the courts upon advertisers when their products have not measured up to special claims of quality suitable for use, or safety.[2]

An implied warranty arises by the operation of law rather than out of an agreement or action of the parties to the sale and purchase. There are basically two types of implied warranties. The first being merchantability; that is, that the goods are reasonably satisfactory for the general purpose for which they are sold. The second is fitness; that is, that the goods are suitable for the special purpose of the buyer which will not be satisfied by means of fitness for general purposes.[3]

The trends of recent court decisions, with respect to implied warranties, is that they amount to representations that a product can be used in absolute safety and that it is suitable for its intended use.[4]

For the purpose of this hearing the term "Card Warranty" refers to the "printed guarantee" or "warranty" purchased with most manufactured household articles and appliances sold on the consumer market.

Initially, it might be pointed out that the "card warranty" is important for the manufacturer in that it limits the liability of the seller based upon an express or implied warranty. For example, the manufacturer may insert in the contract of sale, statements that he does not warrant the product at all; that he warrants it with respect to specific consequences only that his liability is limited to particular remedies such as replacement, repair or return of the purchased price.

II IS THERE A PROBLEM WITH WARRANTIES?

Q. What other types of complaints come to you?

A. We get a great many that have to do with high prices, especially for products that don't hold up, but the greatest number of complaints centers on warranties - - the difficulties of getting appliances repaired, and the high costs of repair.

Q. Is there a certain amount of passing the buck now?

A. Yes. Often a consumer does not know whether to complain to the manufacturer, the dealer, or the repair service.

The above was Virginia Knauer's response to questions asked of her by U. S. NEWS AND WORLD REPORT.[5]

In the past year, there have been two comprehensive reports published by the Federal Trade Commission concerning warranties.

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The "FTC Staff Report on Automobile Warranties", thoroughly substantiates the wide-spread failure of manufacturers and their dealers to make good their warranties. The report states: "The conclusion is inescapable that the general performance under warranty often is unsatisfactory to a great many -- actually millions -- new car buyers."[6] The findings of the "Federal Trade Commission Staff Report on Automobile Warranties" has been substantiated by a separate study performed by the Consumer's Union. A 1968 Consumer's Union questionaire showed that one new car owner in four reported that the dealer did not correct warrantied defects.[7]

The second report is entitled "Report of the Task Force on Appliance Warranties and Service". This report concluded that: "It is fair to state that, in some instances, the exclusions, disclaimers, and exceptions, so diminished the obligations of the manufacturer, that it was deceptive to designate the documents as a warranty because the remaining obligations were lacking in substance."[8]

My own investigation which has resulted in talking to various agencies (radio stations, T.V. stations, and various governmental agencies) to where complaints funneled themselves have indicated to me that there is a problem whereby consumers do not feel that they are getting full satisfaction under the terms of their warranty. As best as I can estimate, approximately 10 to 15 percent of all consumer complaints are about problems that consumers have had concerning warranties. Consumers are complaining about

warranties because, as things stand today, there is little beyond persisting and enduring that the average consumer can do about a defective product.[9]

III WHY IS THERE A WARRANTY PROBLEM?

The manufacturer has many purposes in issuing a written guarantee for its products. The primary purpose is giving a written guarantee for the manufacturer to shield itself from the legal responsibilities of express and implied warranties. It does so in basically two ways. First, it specifically disclaims certain responsibilities by stating: "This warranty is in lieu of all other warranties, express or implied." It also limits the corrective action it will provide, and states the length of time for which this will apply. Typically, a company pledges to repair or replace a defective part so that the purchaser is not entitled to either a new machine or a refund.[10]

Secondly, the manufacturer uses the warranty to advertise and to sell his product. The warranty is proposed to extend protection to the buyer of the warrantied product. This function, however, is only incidental to the primary purpose of limiting the manufacturer's liability and to selling the product.[11] Yet, another purpose for issuing a warranty by the manufacturer is for the collection of marketing information. These are warranties whereby the consumer must answer a variety of questions and this must then be filed with the manufacturer in order to effectuate the warranty.

In summary, it must be said that the "card warranty" is not attached to the product by the manufacturer in order to "give" any-

thing to the consumer other than a limited assurance concerning repair of the product should it break down. The warranties function as advertisements for the products and, on several levels, as disclaimers of liability. Only secondary, does the warranty function as a protective device for the purchaser of consumer goods.[12]

Consumers have a variety of problems in obtaining the benefits of warranties in those instances where the product does not function satisfactorily and requires repair during the period they are supposedly covered by a manufacturer's warranty.

The first major problem is with the language of the warranty. Stated below are only three of many whereby the Consumer is confused by the terms of the warranty:

1. Many warranties are drafted in technical and complex language which is often intended to confuse the purchaser. The buyer rarely is told specifically what in the way of parts, labor or shipping is covered by such a warranty. As a result, the manufacturer can interpret the terms of the warranty as he chooses.
2. Many warranties come into effect only if the buyer sends a registration card to the manufacturer within a few days after purchase.
3. Often, warranties are only good as long as the buyer abides by specific conditions such as that the product must be serviced at determined intervals by a factory authorized dealer. By piling condition upon condition,

the manufacturer can whittle a warranty down to almost nothing.

These are only a number of the exclusions, disclaimers and exceptions found in warranties. Many of them are absolutely unnecessary from the standpoint of protecting the manufacturer and serve only to complicate the warranty containing them.[13]

Besides the consumer being unable to fathom or understand the average warranty, he has few remedies at his disposal when, in fact, the manufacturer does not abide by the terms of the warranty. Extra legal institutional actions are not open to the consumer because consumers buying power is impressive only in the mass.[14] Generally, the law, in its present state, is of no use whatsoever. California law, for example, allows manufacturers to disclaim the merchantability and fitness of use of the product.[15] For example, if one buys a guaranteed lawn mower and the lawn mower does not mow the lawn, then under the terms of that warranty, the lawn mower, in fact, does not have to mow the lawn.

On the next page is a warranty on a R.C.A. television. Notice at the bottom in bold type, the section that merchantability and fitness of use is not guaranteed. The typical consumer, when buying the product, is led to believe that that product will perform the function for which it is intended. It is not clear to the consumer that he is, in effect, taking an "as is" product.

In most cases, the purchasing consumer takes his problem plagued purchase to either the factory, the local service center, or the dealer, until the purchase is either fixed or until the pur-

Service

Your RCA instrument is engineered to render dependable, long-lived performance and enjoyment. If service is needed, call the RCA dealer from whom you purchased the set, your independent service dealer or the nearest RCA Service Company branch. Check your local telephone directory for listing.

Warranty

Radio Corporation of America, hereinafter referred to as "RCA," warrants to the original retail purchaser of this product that it will furnish a replacement for, or at its option, repair any part or parts thereof which prove upon inspection by RCA to have been defective within ninety days (or within one year in the case of a defective kinescope) from the date of original retail purchase from the RCA dealer, if it was used thereafter solely within the United States of America, in accordance with the terms of this warranty.

This warranty shall not apply to any part or parts of this product if it has been installed, altered, repaired or misused through negligence or otherwise in a way that in the opinion of RCA affects the reliability of or detracts from the performance of any part or parts of the product, or if its serial number or the serial number of any such part or parts has been altered, defaced or removed; nor does this warranty cover replacement or repairs necessitated by loss or damage resulting from any cause beyond the control of RCA, including but not limited to Acts of God, acts of government, floods, fires, shortage of materials, and labor difficulties.

Within ninety days (or within one year in the case of a defective kinescope) from such purchase, any such defects must be brought to the attention of the RCA dealer from whom this product was purchased, or any RCA Consumer Electronics Products Distributor. If upon examination by RCA, the part is found to have been defective within the applicable warranty period, the RCA dealer or any RCA Consumer Electronics Products Distributor will furnish the purchaser with a new or RCA rebuilt replacement part or return the defective part repaired.

The obligation of RCA under this warranty is limited to making a new or RCA rebuilt replacement part, kinescope, or component available to the purchaser, or the repair of a defective part, kinescope, or component, AND DOES NOT INCLUDE THE FURNISHING OF ANY LABOR involved or connected therewith, such as that required to diagnose the necessity for replacement or repair, or to remove or install any such parts; nor does it include responsibility for any transportation expenses or any damages or losses incurred in transportation in connection therewith.

THE FOREGOING IS IN LIEU OF ALL OTHER WARRANTIES EXPRESS, IMPLIED, OR STATUTORY AND RCA MAKES NO WARRANTY OF MERCHANTABILITY AND NO WARRANTY THAT THE PRODUCT SHALL BE FIT FOR ANY PARTICULAR PURPOSE, AND RCA NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PERSON TO ASSUME FOR IT ANY OTHER OBLIGATION OR LIABILITY IN CONNECTION WITH THE SALE OF THIS PRODUCT. RCA SHALL NOT BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES FOR BREACH OF WARRANTY, RCA'S LIABILITY AND SUCH PURCHASER'S EXCLUSIVE REMEDY BEING EXPRESSLY LIMITED BY THE TERMS HEREOF.

Warr. No. 1405352-1 (BW)

RADIO CORPORATION OF AMERICA
CONSUMER ELECTRONICS DIVISION
INDIANAPOLIS, INDIANA 46201

LEGISLATIVE INTENT SERVICE (800) 666-1917

chaser gives up. In most cases, even if the product is fixed, under the terms of the warranty, the consumer will not receive redress for consequential loss. In effect, regardless of the warranty, the consumer is left in the role of final inspector of the product and the taker of all risks and must bear all expenses involved in making that inspection.[16]

It is the purpose of this hearing to determine whether or not there is sufficient justification of the warranty problems that are to be presented before this Committee for remedial legislative action.

PREPARED BY: James A. Cathcart

FOOTNOTES

1. Report of the Task Force on Appliance Warranties and Service. Federal Trade Commission, Jan. 8, 1969, p.32.
2. IBID., p.33.
3. IBID., p.34.
4. IBID., p.36.
5. U.S. News & World Report, Aug. 25, 1969. LXVII, No.8, p.43-46.
6. Report on Automobile Warrantees. Federal Trade Commission, Nov. 1968, p.80.
7. "Warranties... and what should be done about them," Consumer Reports, April 1969, p.178.
8. Report of the Task Force on Appliance Warranties and Service. Federal Trade Commission, Jan. 8, 1969, p.47.
9. Addison Mueller, "Contracts of Frustration," The Yale Law Review, Vol. 78 No. 4, March 1969, p.576.
10. "How Much Good is a Guarantee," Changing Times, July 1969, p.7.
11. "The Card Warranty and Consumer Sales," Valparaiso Law Review Vol. 2, 1968, pp.358-370.
12. IBID.
13. Report of the Task Force on Appliance Warranties and Service, Federal Trade Commission, Jan. 8, 1969, p.45.
14. Addison Mueller, The Yale Law Review, Vol. 78, No. 4, (March 1969), p.577.
15. See Section 2316, Subsection 2, of the California Civil Code.
16. Mueller, Op. Cit., p.582.

CALIFORNIA CODES APPLICABLE TO WARRANTIES

SECTION 2312. WARRANTY OF TITLE AND AGAINST INFRINGEMENT; BUYER'S OBLIGATION AGAINST INFRINGEMENT.

(1) Subject to subdivision (2) there is in a contract for sale a warranty by the seller that

(a) The title conveyed shall be good, and its transfer rightful; and

(b) The goods shall be delivered free from any security interest or other lien or encumbrance of which the buyer at the time of contracting has no knowledge.

(2) A warranty under subdivision (1) will be excluded or modified only by specific language or by circumstances which give the buyer reason to know that the person selling does not claim title in himself or that he is purporting to sell only such right or title as he or a third person may have.

(3) Unless otherwise agreed a seller who is a merchant regularly dealing in goods of the kind warrants that the goods shall be delivered free of the rightful claim of any third person by way of infringement or the like but a buyer who furnishes specifications to the seller must hold the seller harmless against any such claim which arises out of compliance with the specifications. (Stats.1963,c.819,sec.2312)

SECTION 2313. EXPRESS WARRANTIES BY AFFIRMATION, PROMISE, DESCRIPTION, SAMPLE.

(1) Express warranties by the seller are created as follows:

(a) Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.

(b) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.

(c) Any sample or model which is made part of the basis of the bargain creates an express warranty that the whole of the goods shall conform to the sample or model.

(2) It is not necessary to the creation of an express warranty that the seller use formal words such as "warrant" or "guarantee" or that he have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement pruporting to be merely the seller's opinion or commendation of the goods does not create a warranty. (Stats.1963,c.819, sec.2313.)

SECTION 2314. IMPLIED WARRANTY: MERCHANTABILITY; USAGE OF TRADE.

(1) Unless excluded or modified (Section 2316), a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale.

(2) Goods to be merchantable must be at least such as

(a) Pass without objection in the trade under the contract description; and

(b) In the case of fungible goods, are of fair average quality within the description; and

(c) Are fit for the ordinary purposes for which such goods are used; and

(d) Run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved; and

(e) Are adequately contained, packaged, and labeled as the agreement may require; and

(f) Conform to the promises or affirmations of fact made on the container or label if any.

(3) Unless excluded or modified (Section 2316) other implied warranties may arise from course of dealing or usage of trade. (Stats 1963,c.819, sec.2314.)

SECTION 2315. IMPLIED WARRANTY: FITNESS FOR PARTICULAR PURPOSE.

Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is unless excluded or modified under the next section an implied warranty that the goods shall be fit for such purpose. (Stats.1963,c.819,sec.2315.)

SECTION 2316. EXCLUSION OR MODIFICATION OF WARRANTIES.

(1) Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit warranty shall be construed wherever reasonable as consistent with each other; but subject to the provisions of this division or parol or extrinsic evidence (Section 2202) negation or limitation is inoperative to the extent that such construction is unreasonable.

(2) Subject to subdivision (3), to exclude or modify the implied warranty of merchantability or any part of it the language must mention merchantability and in case of a writing must be conspicuous, and to exclude or modify any implied warranty of fitness the exclusion must be by a writing and conspicuous. Language to exclude all implied warranties or fitness is sufficient if it states, for example, that "There are no warranties which extend beyond the description on the face hereof."

(3) Notwithstanding subdivision (2).

(a) Unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like "as is," "with all faults" or other language which in common understanding calls the buyer's attention to the exclusion of warranties and makes plain that there is no implied warranty; and

(b) When the buyer before entering into the contract has examined the goods or the sample or model as fully as he desired or has refused to examine the goods there is no implied warranty with regard to defects which an examination ought in the circumstances to have revealed to him; and

(c) An implied warranty can also be excluded or modified by course of dealing or course of performances or usage of trade.

(4) Remedies for breach of warranty can be limited in accordance with the provisions of this division on liquidation or limitation of damages and on contractual modification of remedy (Sections 2718 and 2719). (Stats.1963,c.819, sec.2316.)

SECTION 2317. CUMULATION AND CONFLICT OF WARRANTIES EXPRESS OR IMPLIED.

Warranties whether express or implied shall be construed as consistent with each other and as cumulative, but if such construction is unreasonable the intention of the parties shall determine which warranty is dominant. In ascertaining that intention the following rules apply:

(a) Exact or technical specifications displace an inconsistent sample or model or general language of description.

(b) A sample from an existing bulk displaces inconsistent general language of description.

(c) Express warranties displaced[1] inconsistent implied warranties other than an implied warranty of fitness for a particular purpose. (Stats.1963,c.819, sec.2317.)

1 Reads "displace" in official edition.

EXHIBIT B

A STATEMENT OF

GENERAL MOTORS CORPORATION

TO THE

SENATE COMMITTEE ON

BUSINESS AND PROFFESSIONS

CALIFORNIA LEGISLATURE

ON

MANUFACTURERS WARRANTIES

LOS ANGELES, CALIFORNIA NOVEMBER 3 & 4, 1969

THE ROLE OF MANUFACTURERS AND THEIR FRANCHISED DEALERS IN THE AUTOMOTIVE SERVICE INDUSTRY

Any complete, factual and objective report covering vehicle warranties should clearly define the roles played by new car manufacturers and their dealers in the overall automotive marketing and service industry.

The automotive marketing and service industry is made up of new car manufacturers whose business is to manufacture and sell new cars and trucks; franchised dealers whose principal business is the successful marketing of new cars and/or trucks and who under their franchises agree to perform warranty adjustments under the new vehicle warranties; used car dealers, who include among them franchised new car dealers and thousands of independent used car outlets; a vast number of service stations, garages, body shops and other establishments that provide general service on motor vehicles; and thousands of parts, accessory and service equipment manufacturers and their various independent wholesalers, dealers and other outlets.

The total automotive marketing and service industry deals with both new and used cars. On the average, some 17.5 million new and used cars have been sold each year during the past five years -- 8.2 million new and 9.3 million used. It is estimated that there are today over 100 million vehicles of all kinds in operation in the United States.

Since the inception of the industry, a large portion of the business of servicing cars and trucks has been performed by the so-called independent segment of the automotive service industry. In fact, currently in excess of 65% of all servicing is performed by that segment.

In a free competitive economy, it was natural that businesses not directly associated with car manufacturers would engage in the business of providing parts for and servicing motor vehicles. There was no abdication by new car manufacturers of responsibility for servicing vehicles. The independent segment of the automotive servicing industry grew and developed along with the growth of the total automotive industry.

Since vast numbers of used car dealers and members of the independent segment of the automotive service industry are also

involved in contributing to the efficient and safe operation of the total vehicle population, it would be a disservice to the problem to assume that all owner complaints should be directed at new car manufacturers and their franchised dealers.

MARKETING AND SERVICING PRINCIPLES FOLLOWED BY GENERAL MOTORS

From the outset, vehicle manufacturers have recognized that in producing and selling motor vehicles they could not satisfy the need for transportation of people and goods unless quality vehicles were manufactured in the first instance. Secondly, they have recognized the essentiality of networks of qualified service outlets, established to provide regular service and remedy any defects in the vehicles that were not discovered during the manufacturing process.

Early in its automotive manufacturing experience, the industry turned to franchising as the most efficient means for marketing and servicing vehicles. Not only has franchising been adopted by manufacturers in the United States but by automotive manufacturers worldwide.

Use of franchising permits General Motors, for instance, to devote its people, capital and effort to producing quality vehicles, using at all times the best research and development and manufacturing processes available for that purpose.

On the other hand, franchising means the establishment of thousands of privately-owned enterprises, operating as authorized dealers, that supply the required facilities, personnel and capital for retail sales and service operations. Individually-owned dealerships achieve the important personal community relationship and vital person-to-person contact that are essential to successful automotive marketing and servicing.

To be a successful automotive manufacturer, it is necessary to provide quality motor vehicles that appeal to customers at competitive prices -- prices that are acceptable to those who require vehicles to fulfill their transportation needs. Production of highly complex vehicles at satisfactory prices can only be achieved through mass production, which, in turn, can be supported only through mass demand. Mass demand can only be generated by continued overall customer satisfaction, which is the keystone to the success of automotive manufacturers and dealers.

This critical principle has guided General Motors marketing practices and policies over the years. It has been spelled out in numerous statements by General Motors executives. It was forcefully stated by the then President of General Motors, Mr. John F. Gordon, in a portion of a publication sent to all General Motors dealers in December 1961, as follows:

> "The franchise system gives recognition to the unique relationship that exists in the automobile industry between manufacturer, dealer and customer. It has evolved in response to their respective needs.
>
> "These needs stem in large part from the nature of the product. The automobile is a large, durable, highly complex mechanism, the purchase of which represents a substantial investment. It is a friction product, with moving parts subject to wear. It requires expert attention and maintenance to keep it in good operating condition. A customer who has spent a substantial amount of money for a car expects good service from that car -- and he holds both the dealer and the manufacturer responsible.
>
> "The effective marketing and servicing of a product of this nature thus involves a continuing close relationship between manufacturer and dealer and dealer and customer. An unusual mutuality of interest exists among the three. The manufacturer's market in his dealer organization, while the dealers themselves find today's customers the best source of tomorrow's new car business.
>
> "The keystone of this relationship and of the franchise system itself is the customer. Your success as dealers -- and ours as manufacturers -- depend upon how well both of us meet his needs.

"In a broad sense both of us, manufacturer and dealer, jointly hold a 'franchise' from the public of extraordinary value; the privilege of supplying a highly valued product and an essential service which satisfy a basic public need -- individual transportation. We must work together to safeguard and strengthen this unique franchise."

In 1966, Mr. James M. Roche, currently the Chairman of the Board and then President of General Motors, declared before the Annual Convention of the National Automotive Dealers Association:

"The many advantages for you in the retail end of this business are worth considering for a minute.

"First, you not only are selling products which customers want, need and enjoy; you also are selling the service and the parts which are necessary to keep these products operating efficiently and safely ....

"The service department has an additional importantce which we should always remember. It not only provides immediate income; it also produces, or loses, future customers. What is done, or not done, in the service department has a direct and powerful influence on new car business.....

* * *

"The dealer who competes successfully for service business is the dealer who serves his customers best. He is genuinely interested in his customers' problems as well as capable of solving them. He makes this attitude the trademark of his entire organization....

"The basic ingredient of this attitude is respect for the customer -- respect for his opinion, his problem and his time.

> "Whatever his service problem may be, he must have confidence in the dealer's intentions as well as his capabilities. The service part of the business is a real advantage -- protect it."

This principle is spelled out succinctly in every General Motors car and truck division franchise agreement. As a typical example, the Chevrolet Dealer Selling Agreement reads as follows:

> "In entering into this Selling Agreement, Chevrolet and Dealer recognize that the success of Chevrolet and of its dealers depends importantly upon how well Chevrolet and each of its dealers fulfill customers' needs -- upon the quality and value which Chevrolet offers to the public in the motor vehicles, parts and accessories it manufactures and upon how well each authorized Chevrolet dealer fulfills its functions through aggressive, sound and ethical sales effort at the retail level and through conscientious regard for quality customer service."

RESPONSIBILITIES OF MANUFACTURER AND DEALER

As heretofore stated, General Motors recognizes that it has the responsibility for producing quality products. Dealers, on the other hand, accept, under their franchise agreements, responsibility for the performance for the manufacturer of warranty adjustments under the new vehicle warranties, and for providing quality regular maintenance and repair services when such services are requested by owners. How General Motors and its dealers endeavor to fulfill their respective obligations and responsibilities is hereinafter described.

DEVELOPMENT, MANUFACTURING AND QUALITY CONTROL PROGRAMS

Present Programs - Development to Final Assembly

In furtherance of General Motors objective of producing quality motor vehicles, and thereby fulfilling its responsibility in the matter of achieving customer satisfaction, certain procedures and controls are followed consistently by each General Motors car and truck division.

Initially and prior to release for production, the design of parts, components, assemblies and systems for motor vehicles is verified by inspection, testing and analytical techniques which include stress analysis, computer programs for geometric properties and mathematical models. Inspection and evaluation techniques and equipment are continually under development.

These procedures include not only a broad spectrum of static and dynamic laboratory tests and inspections, but extensive road testing and evaluation at the General Motors Technical Center, at facilities of the General Motors divisions, on public roads in widely scattered parts of the country, at the General Motors Proving Grounds located at Milford, Michigan, and Mesa, Arizona, and at the test center located at Manitou Springs, Colorado. The American-sold Kadett is also tested at the Adam Opel A.G. Proving Grounds located at Dudenhofen, Germany.

The road testing involves a cross-section of traffic, road characteristics, climate and altitude conditions. Thus, laboratory and road testing, together with inspection and analysis, provide an excellent evaluation of complete systems and invididual components under normal and severe operating environments.

Following design verification and release for production of parts, components, systems and assemblies, process specifications are determined, production tooling and inspection equipment built, and detailed manufacturering, assembly, inspection, quality and testing procedures are developed. Prior to commencement of each model year's production, a limited number of production parts and vehicles are built on production equipment and inspected. These "pilot model" vehicles then undergo testing.

Even during production, models from each car division, including the overseas-built vehicles, are subjected to proving ground tests. This road testing is performed under more severe environmental conditions than the vehicle will generally be subjected to by the customer. At the conclusion of these tests, each of these models is completely disassembled and each component inspected. The information gained from these dissability tests is utilized to improve product quality.

At the parts production plants, the necessary production and inspection tools and equipment are built from information released by the car divisions. Parts production plants have inspection programs designed to meet their particular requirements. Samples of specific new materials are periodically submitted to the laboratory for detailed analysis to assure compliance. Parts received that require additional operations are verified either one hundred per cent or by specified degrees of statistical sampling, depending on the nature of the part.

Throughout the processing of a part, inspections are performed. In many applications, automatic inspection is combined with automatic adjustment of machines to assure dimensional accuracy. One such example is a grinding machine which automatically checks the dimension being ground, adjusts the machine and then ejects the part when the correct size is reached.

It is not unusual for such specialized inspection equipment to provide one hundred per cent inspection as well as automatic rejection of defective parts and/or shutdown of production when defective or suspicious characteristics are detected.

Inspection equipment is periodically checked with master gauges or parts of known quality to measure the integrity and capability of the equipment. Likewise, production equipment is continually evaluated to measure its capacity to produce parts to the required specifications.

At the assembly plants, additional inspection and testing procedures are applied during both sub-assembly and final vehicle assembly line. These lines are staffed with inspection personnel, where inspection operations are performed at frequent and specified stations. Depending upon the nature of the assembly, these inspections will include visual, functional and mechanical checks or combinations thereof. Once the vehicle is completely assembled, it is driven from the assembly line to an inspection and test area which includes dynamic test equipment. Any defects found during the inspection operations are corrected. Up to this point, many thousands of inspection and test operations have been performed with respect to the manufacture of each vehicle. In addition, vehicles are selected daily on a random basis and subjected to further inspection and tests.

The findings of all inspectors and studies of discovered defects are utilized to develop the proper method of eliminating the defect, either by design or process change. These changes very often can be put into effect only by the purchase of costly new machinery and tools of special and sophisticated configuration.

The installation on the production line of such machinery, by which the occurrence of defects can be reduced or prevented, is invariably costly. Millions of dollars worth of new machinery and tools are purchased annually, separate from those required by styling changes. A large part of this cost is attributable to the defect-minimizing features incorporated in such equipment.

While specific statistics, which would illustrate the magnitude of the total General Motors inspection and quality control efforts, are regularly maintained, a limited survey shows that approximately 20,000 employes whose efforts are devoted entirely to inspection and quality control at our U.S. car, truck, body and assembly divisions, an increase of 19.3% over 1964 and 7.4% over 1966.

The subject of quality is continually emphasized to General Motors employes. Motivation programs, such as "Zero Defects", "Quality Assurance", "Pride of Workmanship", and suggestion programs stimulate employes to assume their share of responsibility for, and gain satisfaction from, high quality products.

Consistent vehicle quality depends primarily upon fast, accurate and prompt reporting of product difficulties experienced with vehicles that are in use. At General Motors, the gathering and analysis of product information is and always has been essential to attaining consistently high vehicle quality.

DEVELOPMENT OF NEW QUALITY CONTROLS

The divisions are also active in developing new systems for inspection and quality control. The Corporation provides technical assistance to the divisions as necessary, as well as initiating the development work necessary in many cases where quality problems are common to several divisions.

Over the years General Motors has continually endeavored to improve its quality control techniques. Illustrations of the wide variety of programs and new techniques for improving quality which are under development or in tryout stages, as well as some pilot program projects, include the following:

1. One vehicle assembly division is pioneering a multiple station special quality checking facility which currently is being used to test approximately 3% of all units produced by that division. Many of the tests are programmed and performed in automatic equipment functions. About 1,500 checks are made on each car processed through this quality test. Both manually recorded and machine

recorded test results are used for a feedback, in a matter of hours, of summarized data available for use in reviewing processes by manufacturing and assembly departments.

2. Manufacturing development work is being done by a Corporation central staff activity to develop new equipment and techniques by which the manufacturing and assembly divisions may be enabled to improve quality. Typical projects are exploring production volume applications of non-destructive testing devices which can be used to inspect for hidden flaws in components, and developing detection devices to disclose improper or malfunctioning of components or systems.

3. A greatly improved system to detect leaks in braking systems has been developed and pilot installations are being made. Additional installations are expected to be made after a period of experience at the pilot locations.

4. New facilities are being installed to improve engine balance and detect malfunctions which otherwise would be apparent only under normal road driving conditions.

DEALER'S RESPONSIBILITIES FOR SERVICE AND MANUFACTURER'S ASSISTANCE PROVIDED IN CONNECTION THEREWITH

In General

The franchising concept employed by General Motors entails the making of a contract with a qualified dealer for the sale and purchase of motor vehicles and parts specified in the terms of the franchise agreement. Additionally the dealer acquires the right to display, in connection with the sale and servicing of those products, the trademarks, trade names and service marks which have been developed by General Motors in connection with these products.

The dealer makes certain return promises relating to the manner in which the dealer will sell and service the franchised products. These promises are spelled out in each General Motors car and truck franchise and they entail an assumption by the dealer of responsibility for providing satisfactory sales performance and satisfactory service performance.

When a manufacturer, like General Motors, relies to a substantial degree upon independent enterprises (franchisees) for the successful marketing and servicing of its products, common sense dictates that the manufacturer impose, as a condition to the granting of the franchise privileges, reasonable requirements relating to the manner in which the dealers will operate their sales and service establishments, so that those operations will not derogate from the goodwill attaching to the products handled.

Ordinary sound business sense dictates that the use of coercive or oppressive tactics with dealers is not desirable in connection with the establishment and maintenance of a stable dealer organization.

Additionally, it appears incumbent upon automobile manufacturers to provide each dealer with a reasonable opportunity to establish the dealer's willingness and ability to perform franchise obligations before any franchise termination or non-renewal action is taken.

Automobile manufacturers know from experience, that there is some variance at all times in the extent to which dealers satisfactorily perform their franchise obligations, including their obligation to perform warranty adjustments. Even so, based on its evaluation of the relative performances of its dealers, General Motors believes that, the vast majority do satisfactorily perform their sales and service obligations under their franchises.

The subsequent portions of this presentation, in spelling out the specific obligations of dealers, will also deal at length with the various forms of assistance General Motors provides its dealers to help them fulfill their responsibilities. It is recognized in every General Motors vehicle franchise that the dealer elects to enter into the agreement and to assume the dealership responsibility spelled out therein because of the assistance the General Motors division involved will provide the dealer in meeting the dealer's sales and service responsibilities.

SERVICE RESPONSIBILITIES ASSUMED BY DEALERS

The provisions of General Motors franchise aggreements relating to a dealer's responsibilities for providing service impose specific obligations on the dealer relating to (1) the conditioning of new motor vehicles prior to their delivery at retail in accordance with the divisional pre-delivery inspection schedules and instructions, and (2) the performance by the dealer, in accordance with the applicable provisions of the divisional Service Policies and Procedures Manuals (a) of warranty adjustments for owners of new vehicles which qualify for adjustments under the provisions of the new vehicle warranties and (b) of special policy adjustments and campaign adjustments approved or requested by the division.

The franchise agreements, of course, do not spell out the specifications for or the manner in which these obligations are to be performed, but such standards and specifications are included in the Service Policies and Procedures Manuals and Service Bulletins furnished separately by the General Motors divisions to each dealer.

Additionally, dealers are required, under the franchise provisions, to provide prompt, efficient and courteous maintenance and repair service. This obligation relates to service other than the specific obligations relating to pre-delivery service on new vehicles and warranty, special policy and campaign adjustments.

Before discussing some of the specifics relating to pre-delivery service and warranty adjustments it should not be overlooked that General Motors dealers compete with all other types of automotive service and repair establishments for general maintenance and service business.

While the principal thrust of a new car dealer's service obligations is directed to the vehicles covered by his franchise and to the specific used cars the dealer takes in trade and elects to resell, every new car dealer is free to compete to the extent the dealer deems desirable for all other types of service business. Every franchised dealer is encouraged to compete for such business vigorously and to provide such service in a good and workmanlike manner so as to enhance the dealer's own reputation as a sales and service outlet.

NEW VEHICLE PRE-DELIVERY SERVICE

Under his franchise, each dealer agrees to condition each new motor vehicle, before delivering it, in accordance with the Pre-Delivery Service and Adjustment Check Sheets furnished to the dealer by the General Motors car and truck divisions.

General Motors field personnel work with dealers toward the improvement of dealership pre-delivery service. This assistance involves periodic inspection of vehicles by divisional service representatives, periodic evaluation of individual dealership practices and special pre-delivery servicing programs at General Motors Training Centers.

A uniform General Motors Pre-Delivery Service Program has been adopted for its car and truck divisions. This program combines the best features of existing divisional activities, strengthened by certain expanded new developments in this area.

The keystone of the expanded Pre-Delivery Service Program involves more divisional assistance to each dealership through periodic analysis of pre-delivery service operations, including the adequacy of space, manpower, equipment, road-testing and administrative procedures. These evaluations are reviewed with dealers personally, and where improvement is needed, an Action Plan is agreed upon by dealership and divisional personnel to accomplish the Action Plan objectives on a reasonable timetable. An effective follow-up procedure has been established to ensure completion of the Action Plan on schedule.

All service representatives are required to test check new car pre-delivery procedures during each of their regular contacts at dealerships. Problems found are discussed with dealership management.

To achieve the objective of this program, General Motors has further expanded its field force of service representatives. These additional service representatives provide the necessary manpower to carry out this program, plus enhancing the effectiveness of all service functions.

Important revisions have been made in the General Motors Pre-Delivery Service and Adjustment Check Sheet to further systematize dealer pre-delivery service. Under this program, on every vehicle sold, dealers certify completion of the pre-delivery service to the zone office. Records of these certifications will be maintained for use in the event problems pertaining to pre-delivery service on any vehicle arise.

WARRANTY ADJUSTMENTS

Under each General Motors franchise, the dealer is required, in matters relating to the new vehicle warranties, to deliver a copy thereof and to explain fully its provisions to each customer to whom the dealer sells a new motor vehicle.

The dealer is obligated to perform warranty adjustments on any General Motors car for which he is franchised, whether he sold the car or whether it was sold by another dealer. If any customer complains that a dealer has refused to perform warranty work on a car for which he is franchised because he did not sell the car, the dealer is contacted and reminded of his franchise obligations pertaining to warranty adjustments.

In this regard, the dealer is not selling warranty services to General Motors in the sense that the dealer sells other repair services to its customers. In return for obtaining the franchise privileges, the dealer has agreed in advance, among other things, to perform for General Motors certain obligations in connection with its new vehicle warranties and to be reimbursed therefor by the General Motors division involved upon an agreed basis.

The discussion of warranties and warranty administration that follows is intended to provide, first, explanations relating to the history of General Motors warranties and, second, divisional programs that help to insure effective application of General Motors warranty obligations through its dealers. Thereafter, the matter of compensating dealers for warranty adjustments is discussed at length.

WARRANTIES AND WARRANTY ADMINISTRATION

General Motors has always attempted to state its product warranty in a clear and concise manner which would avoid any misunderstanding in connection with the administration of the warranty.

The new vehicle warranty issued by General Motors sets forth in a clear and concise manner the basis upon which General Motors, as the manufacturer, stands behind the product with respect to material and workmanship. The warranty sets forth the contractual limitations between the customer and the manufacturer. To minimize misunderstandings, posters and other explanatory pieces of literature have been furnished to all General Motors dealers.

The General Motors new vehicle warranty is intended as a document that sets forth the conditions under which General Motors is obligated to correct without charge defects in the vehicle warranted. The language of the warranty is specific and designed to convey a single interpretation.

For some 30 years prior to the announcement of 1961 models, the normal new vehicle warranty within the automobile industry was for a period of 90 days or 4,000 miles. This appeared reasonable since most defects are discovered within those periods of vehicle usage.

Effective with the announcement of 1961 models, General Motors extended the warranty to 12 months or 12,000 miles, whichever occurred first. This was done because General Motors had authorized its dealers to make policy adjustments in the event defects in a vehicle were discovered within such periods of vehicle usage.

In the Fall of 1962, concurrently with the announcement of 1963 models, General Motors extended its new vehicle warranty to 24 months or 24,000 miles, whichever occurred first. It was at this juncture in the automobile business that a competitor, while retaining the 12-month and 12,000 mile warranty, offered a powertrain component warranty for a period of 5 years or 50,000 miles. The warranty adopted by General Motors effective with the 1963 models remained in effect on essentially the same basis for the 1964, 1965 and 1966 models.

For its 1967 models, General Motors included in its new car warranties an extended powertrain component warranty covering a period of five years or 50,000 miles. This warranty was continued in essentially the same form for the 1968 models, and it required periodic validation of service work performed to maintain the warranty in full force and effect.

For 1969 models, the warranty period was changed to 12 months or 12,000 miles, but the extended warranty on powertrain components was retained. However, the validation requirement was eliminated. Furthermore, the 1969 new vehicle warranty for General Motors passenger cars and light-duty trucks has been simplified. It clearly sets forth, in separate sections, the time and mileage limitations and the manufacturer's obligations under the warranty. In addition, it sets forth those conditions under which the warranty shall not apply.

The length of the warranty coverage remains unchanged for 1970. The extended coverage for the original owner continues on powertrain components and may be transferred to a second owner in the same manner in which it was possible to transfer it in 1969.

Concurrent with the 1969 warranty, General Motors provided for further improvements in the administrative detail involved in warranty claim procedure by dealers. A combination repair order and warranty claim has been developed and this single form will allow the dealer to write both customer paid and warranty claim items on a single form, which with the addition of a minimum amount of data will provide a document which the division will accept from the dealer as a claim for warranty service performed. This new procedure will also simplify processing of warranty claims.

Concurrently with dealer use of this combination repair order and warranty claim form, General Motors is establishing an interdivisional warranty processing and information system whereby it is planned that the warranty claims submitted by all General Motors dealers for all divisions will be processed at a single warranty claim processing location. Through operational handling and automated equipment General Motors expects to reduce to a minimum the period of time between receipt of a dealer's claim for warranty reimbursement and when credit is issued to the dealer's account.

Approximately two years ago, General Motors adopted a program whereby dealers are credited with an amount equal to the average monthly warranty reimbursement as determined from the dealers' previous 12 months' warranty claims. In effect, General Motors is paying the dealer in advance for the warranty work performed.

DEALER COMPENSATION FOR PERFORMANCE OF WARRANTY ADJUSTMENTS

There are essentially three basic factors involved in the determination of compensation rates applicable to warranty work.

The first factor relates to parts. On parts used for warranty work, General Motors furnishes the part to the dealer at no cost and, in addition, pays the dealer a handling charge of 25% of dealer cost for the part.

The second factor relates to the time allowance for the performance of the repair or replacement of a part or the time allowance for an adjustment or labor-only operation not involving parts. As explained previously, General Motors vehicle divisions publish Flat Rate Schedules of Time Allowances for each model vehicle, setting forth the time required for individual service operations.

For some operations, such as spot painting and correction of rough metal surfaces, time allowances are not established because of the variable nature of these repairs. Dealers are reimbursed for such repairs, however, on the basis of the straight time required to accomplish the repair.

Flat-rate time allowances are determined by performing each operation a sufficient number of times to arrive at a fair and equitable average of the time requirement. These time studies are made with mechanics of average capabilities working under conditions simulating those present in an average dealership; i.e., they use conventional hand tools, recommended special tools and follow standard disassembly and assembly procedures. In these time studies the mechanics do not make use of or employ special equipment unless such items are readily available in all dealerships. Special equipment, such as power tools, are not used although they are available in most modern service departments. Where a dealer has such equipment, the dealer enjoys a benefit from the time allowance. The determined amount of time to perform a service operation is increased by 16% to provide for nonproductive time, such as normal diagnosis, obtaining parts from the parts department, procuring tools and for personal relief time.

Due to variances in engineering and design between series or models of vehicles that use a common component, it is possible to have different time allowances applicable to the servicing of that component. For example, an Oldsmobile and a Pontiac equipped with the same model transmission could have different time allowances applicable to the servicing of the transmission. This could be occasioned by differences in chassis or engine design of one vehicle as compared to the other which would affect the time required for servicing.

The third factor considered is the hourly labor rate, in dollars, which when multiplied by the time allowance for a specific operation as contained in the Flat Rate Schedule of Time Allowances determines the labor reimbursement for a warranty claim.

Dealers use various pay plans for reimbursing mechanics. Regardless of the dealer pay plan in effect, the General Motors labor rate formula as previously explained takes into consideration the equity of all concerned and is applicable, uniformly, to all dealers nationally. The dealer is reimbursed at the mechanics' average hourly base rate for the number of flat rate hours specified for performing a warranty job and, in addition, given an extra 120% of the mechanics' base rate. Moreover, under the formula, the dealer recovers his cost plus an additional 50% of that cost of the following fringe benefits:

1. Paid vacations
2. Pay in lieu of vacation
3. Holiday pay
4. Sick pay
5. Separation allowance
6. Hospital insurance
7. Retirement or pension plan
8. Uniforms and laundry
9. Group life insurance

Following is an illustration of the application of the General Motors Warranty Labor Rate Formula as applied under a flat rate hour pay system which has wide application among dealers:

Conditions: Dealer pays mechanic - $3.52 per hour.

Dealer charges customer for labor per hour at retail - $8.50

Application of General Motors Formula:

Mechanic's Base Hourly Rate	$3.52
120% of Mechanic's Base Hourly Rate to Recognize Overhead, etc.	4.23
*Hourly Cost of Fringe Benefits	.50
50% Mark-up of Fringe Benefits	.25
Warranty Labor Reimbursement Per Hour	$8.50

*Insurance, Hospitalization, Holiday and Sick Pay, etc.

Thus, in this example, the warranty rate would be exactly the same as the rate which the dealer charges his retail customers for labor, namely $8.50. If the dealer retail labor rate is less than the rate resulting from the application of the formula, then General Motors' warranty labor rate becomes the same as the dealer retail labor rate.

The published schedule of flat rate time allowances and the agreed upon hourly rate applicable thereto is intended for use in determining dealer compensation for warranty and other service work performed by the dealer for the account of and by agreement with the manufacturer. To the extent that dealers use the flat rate time allowances as guides, however, they do serve the interests of customers since they are established on a realistic basis.

However, in addition to automobile manufacturers, others publish flat rate time schedules which are used by some dealers and other service outlets. In these instances, schedules may reflect greater time values than those in the manufacturer's manual. Thus it should be clear (1) that not all dealers and service outlets use the same, or any, flat rate time schedules in non-warranty work, and (2) those using them do not always use the same schedules or all of the specific time values in a particular schedule.

Each dealer and service outlet determines for itself what factors or arrangements of time values, if any, it will use as a base for establishing its service charges.

As to the labor rate to be applied to the time factor for repair, it has been our experience that repairers -- whether new car dealers or others -- establish their own labor rates that take into consideration what they pay their mechanics, the competitive situation in the area and their own individual operating circumstances.

Taking all of the variables as to time and hourly rate into account, each operator, as an independent businessman, determines his retail labor charge for service or repair work, as a matter of business judgment.

DEALERSHIP PLACES OF BUSINESS

A franchised General Motors dealer specifically undertakes to establish and maintain a place of business that is satisfactory as to appearance and at all times currently adequate in size and layout for the sales and service operations contemplated by the agreement.

Before detailing the efforts made by dealers to establish satisfactory places of business and the assistance provided by General Motors divisions in connection therewith, it should be explained that early in its marketing experience General Motors concluded that sales and service went hand-in-hand. The responsibility for both should be in the hands of one business entity as to each particular location, since the opportunities for profits from new car sales provided the best inducement for furnishing the required service outlets.

New vehicles have to be finally inspected immediately prior to delivery to a retail customer for damage or maladjustments that may have occurred in shipments and for any theretofore undiscovered defects. Obviously, this could best be done on the spot by those to whom the vehicles were shipped for resale purposes. Additionally, customers normally look to the place they purchase a new vehicle for correction if something goes wrong with it.

Additionally, in the business of marketing new cars, it has long been an axiom that a substantial portion of repeat new car sales are generated from among satisfied service customers. All General Motors dealers recognize the importance to their overall success of developing a high percentage of repeat customers.

Conceptually, an automobile dealership operates as an integrated operation, with total income from new and used product sales and income from service going to support the costs of providing the facilities, extensive and expensive equipment and special tools, and the trained sales representatives and service technicians required. Combined sales and service operations are less expensive than would be the case if sales and service were separated.

In summary, an automobile franchise system requires combined sales and service outlets that are properly located in relation to customers and owners so as to be readily accessible as points of sale and for needed repair and maintenance service -- in short, an orderly network of sales and service outlets established on a basis which takes into account sales potentials and service potentials determined by vehicle population, traffic patterns and accessibility.

It is the practice within General Motors not to enter into a Selling Agreement unless the dealer applicant is in a position to provide the required facilities. In those instances where adequate facilities are not available in the vicinity where the dealership is to be located, the division is authorized to issue to its selected applicant for that location a Letter of Intent. The Letter of Intent sets forth a specified period of time by which the applicant agrees to acquire and occupy facilities of a size agreed upon between the dealer applicant and the division in the vicinity of the specified dealer location. When the applicant is in a position to occupy such facilities, the division then executes its Selling Agreement with the new dealer.

The effectiveness of constant attention to service facilities by GM and its dealers is revealed by the record of expansion in service areas as the vehicle population has grown. In 1960, General Motors car and truck dealers had a total building and outside service and parts area of 279 million square feet, compared to 477 million in 1968, an increase of 70.9 per cent.

During this period, the number of GM cars and trucks in use increased 42.7 per cent, from 31.2 million in 1960 to 44.6 million in 1968.

To obtain a more realistic evaluation of what General Motors dealers have done in the way of facility expansion to meet the needs of the growing family of General Motors owners on a current basis, a study of dealership facility expansion for the period 1965 through 1967 indicates that 6,500 or 46% of General Motors dealers have new or improved facilities, and the records indicate that an additional 1,400 dealers are currently accomplishing dealership expansion. Upon completion of the 1968 facility program it is estimated that General Motors dealers will have expended, in the four-year period, $680,000,000 for land and buildings to better serve their customers.

Specific standards for physical facilities used for servicing vehicles are supplied to dealers by General Motors. In general, these guidelines say the total building space of a dealership should be distributed into essentially three parts: (1) the service department should occupy 65-70% of the total area, (2) the parts

department should occupy 15-20% of the total area, and (3) the new car showroom and offices should account for the remainder of 10-20%. This clearly points out the emphasis placed on the parts and service activity in a dealership -- approximately 80-90% of the total building area is devoted to handling the needs of the service customer. Furthermore, experience shows that approximately one-half of the total lot area is devoted to service and parts customer parking, with the remainder devoted to used car display and new car storage.

As the need arises, these guides are periodically revised and updated to incorporate the latest thinking on dealership planning for best handling the needs of the customer.

Divisional field representatives, using the applicable Facilities Planning Guides assist dealers in planning, equipping and staffing the dealership facilities. A dealer, with the aid of these guides, and with the counsel and experience provided by divisional personnel, is in a position to arrive at sound decisions regarding the facilities, equipment and personnel he is to establish in relation to the sales and service potentials that will be available to his dealership point.

As heretofore indicated, a dealer is required to maintain places of business which are currently adequate to enable the dealer to fulfill its sales and service responsibilities. No dealership is required to make changes in its facilities on a week-to-week or month-to-month or even year-to-year basis. However, it does mean the dealerships are required at reasonable intervals to improve or to expand upon their facilities or even to furnish new ones as and when sales and service potentials increase to a degree justifying the improvements, expansion or new facilities.

Divisional field representatives counsel with dealers from time to time regarding deficiencies in facilities that are found to exist and they offer suggestions for corrective action. Conferences with dealers are held regarding needed improvements, and, more frequently than not, dealers are willing to make the improvements and even to provide the new facilities, since they realize that their own progress and growth depend upon their keeping up with the increases in sales and service opportunities that arise from an expanding vehicle population.

Under the provisions of a General Motors franchise agreement, the dealer agrees to provide adequate service equipment and such special tools as may be necessary to enable the dealer to fulfill his responsibilities for service under this agreement.

Dealers are constantly upgrading their shop equipment and acquiring new tools to provide more efficient and better service and, certainly, any dealer who engages in a facility expansion program equips such new facilities with modern service tools. To provide every possible assistance to dealers with respect to the performance of quality and efficient service of General Motors products special tools are developed by divisional engineering and service staffs to facilitate the repair of General Motors vehicles. Such special tools are manufactured by independent outside tool manufacturers who offer their products for sale to dealers.

In addition to assisting dealers in being conversant with the latest in the way of shop equipment and tools, General Motors has conducted, in cooperation with tool and equipment manufacturers, Equip-O-Rama displays at selected General Motors Training Centers. These displays have been designed to familiarize dealers and their service personnel with the latest in tool and equipment development.

Representatives of manufacturers who make and distribute service equipment have been invited to participate in these three-day exhibits. Most of them are members of the Equipment and Tool Institute.

All types of service equipment are shown, ranging from power hand tools to lifts, hoists and diagnostic test equipment. The Equip-O-Rama displays have aided in encouraging General Motors dealers to update their equipment so that they have modern tools to handle their total service responsibilities. In addition, AC Spark Plug Division and United Motors Service Division wholesale distributors and other wholesale distributors have been invited to see the Equip-O-Rama displays.

SERVICE PERSONNEL TRAINING PROGRAMS

Under a General Motors franchise agreement, a dealer agrees to organize and maintain a complete service organization, including a sufficient number of competent, trained service personnel, adequate

to take care of the service requirements of owners of vehicles of the type for which the dealer is franchised. The dealer agrees to send members of his service organization, based upon the needs of his service personnel, to general and specialized service courses offered from time to time by General Motors.

These general and specialized service courses, to train new service personnel and improve the skills of mechanics already in the dealer's employ, are offered under what is called the General Motors Training Center Program. This program is the most extensive in the automobile industry from the standpoints of both facilities and instruction, and represents a direct expense to GM of more than $10,000,000 annually.

Focal points of the program are 30 training centers strategically located across the country in areas of high vehicle and dealer density. All are situated on the perimeters of metropolitan areas so as to be easily accessible to as many dealer personnel as possible. While the size of each center varies depending upon the area it serves, altogether the 30 centers comprise more than one million square feet of floor space, including 258 classrooms and other instructional facilities designed specifically for technical training. The centers are staffed by more than 300 highly skilled full-time instructors and approximately 170 administrative and other supporting personnel. More than 120,000 mechanics and other technical service personnel receive nearly 2,600,000 man-hours of classroom and shop instruction annually at these centers.

Classes feature the "learn by doing" method of instruction. The number of students in each class is small, not more than seven to twelve except at the introduction of new models when classes may number as many as twenty. By limiting class size, instructors can give the personal instruction to each student that the "learn by doing" instruction technique requires.

Many years of experience in training prior to the advent of the General Motors Training Center Program was sufficient proof to General Motors that an effective training program could not be realized if the major emphasis was placed on student volume, and

if training was performed in the back end of garages, in warehouses, or in hotel rooms. The Training Center Program, therefore, was based on making instructions available to as many dealer service personnel as possible in an educational atmosphere with a limited number of students in each class, close instructor supervision, and emphasizing the "learn by doing" technique.

General Motors is the only car manufacturer which has had an organized, continuous training program for the past fourteen years (starting with the inception of The General Motors Training Center Program) for independent garages and service stations. United Motors Service Division and AC Spark Plug Division alone maintain 55 classrooms in the Training Centers. Students attending these classrooms are employes of service stations, garages and other automotive repair outlets.

To provide additional training at locations other than the Training Centers, United Motors employs 26 Service Training representatives who have fully equipped station wagons and hold training schools wherever a class can usefully be organized. Training activities are also carreid out by 24 United Motors Zone Service Managers who continually conduct service clinics and seminars for automotive wholesalers, universities, vocational schools and school bus operators.

All of the service training offered by United Motors Service and AC is in addition to the General Motors car and truck division training.

General Motors Delco-Remy Division also offers specialized instruction on automotive electrical equipment and, in addition, provides approximately 2,700 schools annually with training charts, service literature and electrical components.

The service instruction offered by General Motors thus reaches and assists substantial portions of the automotive service industry in addition to General Motors car and truck dealers.

REPLACEMENT PARTS

Furnished to Dealers

Under their General Motors franchise agreements, dealers agree

to maintain an adequate stock of replacement parts so as to enable them to satisfactorily fulfill service responsibilities.

As inducements to dealers to maintain adequate inventories of parts, so that service can be readily provided, the franchise agreements contain provisions such as those permitting a dealer to return inactive parts and a parts allowance plan that enables dealers to maintain parts stock on a current basis. Additionally, in the event of any termination or non-renewal of a franchise agreement, General Motors is obligated to purchase from the dealer all inventories of current replacement parts.

In fulfilling its responsibility to the customer and the dealer, General Motors provides an extensive and efficient replacement parts distribution system. Currently, this parts distribution system consists of thirty-nine strategically located field warehouse distribution centers. These thirty-nine field warehouses, whose primary objective is to have readily available fast-moving and frequently needed parts, utilize 6,800,000 square feet of floor space and require the services of over 8,300 people.

In addition to the field warehouses, each car division maintains a master parts warehouse at its main plant location providing an additional 10,200,000 square feet for parts storage and the employment of almost 7,000 additional parts personnel. The current parts catalog of the General Motors car divisions lists more than 384,000 replacement service parts, the stocking and distribution of which are the responsibility of the aforementioned warehouse operations.

All of these warehouses are connected by a computerized communications system which makes possible rapid location of any part required to fill a dealer's order.

For example, a dealer located in Chicago, Illinois is served by the Chicago parts warehouse. An order placed with that warehouse would immediately be processed through the computer inventory system to determine if the part was available at that location. If it was, shipment would go forward immediately to the dealer. If the part was not available at the Chicago warehouse, a simultaneous search would locate the warehouse closest to the dealer location having the part and would set in motion shipping procedures so that the part was sent to the dealer in Chicago. If the part was for an inoperative vehicle, shipment would be made by the fastest means of transportation, which, in many cases, would be air freight.

This computerized inventory system, designed primarily to expedite the handling of dealer parts orders, has the additional advantage of providing an effective inventory control system for all General Motors parts warehouses.

General Motors, in its continued effort to be of greater service to its customers and its dealers, has within the past five years expanded the space devoted to warehousing by 47% and increased its number of warehouse employes by about 40%. Further expansion of this activity is currently under way at Martinsburg, West Virginia, where a 1,700,000 square foot warehouse is under construction. When completed and in operation in 1970, it will provide employment for an additional 1,200 people.

FURNISHED TO THE TRADE THROUGH THE UNITED MOTORS SERVICE AND AC SPARK PLUG DIVISIONS

In addition to making parts available to franchised car dealers, various General Motors parts are made available to other automotive service businesses by the United Motors Service and AC Spark Plug Divisions. These divisions sell replacement parts to wholesale distributors who in turn warehouse and sell to thousands of jobbers, service stations and general repair shops.

United Motors Service Division maintains fourteen warehouses located in major metropolitan areas. The fourteen warehouses are linked together by a computer-communication system located in Detroit. Orders pass through the computer and instantaneously the computer selects the warehouse closest to the distributor and advises that warehouse to ship. For emergency orders, parts are shipped the same day as the orders are received by any of the fourteen warehouses in the system. Regular orders are shipped within a normal shipping schedule of forty-eight hours. In addition to the warehouse system which provides fast dependable service for all parts handled by United Motors Service, certain of these parts are also available for direct shipment from the supplying factory to the distributor.

The above indicates full recognition on the part of General Motors as to the need for fast, dependable handling.

HANDLING OWNER COMPLAINTS

As indicated, the critical principle guiding General Motors policies is the maintenance of customer satisfaction with General Motors products.

The Central Offices of General Motors and of its vehicle divisions for many years have had owner relations departments whose principal duties are to assist in promoting customer satisfaction and to demonstrate the desire of General Motors and its divisions to take care of the needs of present and potential owners of General Motors vehicles.

One of the more important facets of owner relations concerns the investigation and handling of owner "complaints", which, of course, includes those that may involve the warranty. Not only does proper handling of a "complaint" reduce owner dissatisfaction, but the investigation and adjustment of various problems provide a direct source of information as to where product improvement might be effected and the customer-dealer relationship improved.

It is a policy of General Motors that a reply be accorded every owner communication. In the event the owner's communication contains an expression of dissatisfaction, the owner usually will be informed that his comments are being referred to his local dealer and that the dealer will contact him in order that an investigation may be completed and the matter brought to a fair conclusion. In other instances, the owner is informed that he will be contacted by a divisional representative.

Basically, communications come to the attention of General Motors Central Office, divisional Central Offices and Zone Offices, through the media of correspondence, telegrams, telephone calls or personal contacts. However the communication orginates, it will be acknowledged. In the event the communication is with General Motors Central Office, a copy of the acknowledgement and the owner's communication will be referred to the appropriate divisional Central Office and from there to the local Zone Office, which, in turn, will advise the appropriate dealer, providing that dealer with copies of all pertinent communications and the necessary forms which the dealer must complete during the handling of the case.

Upon receipt by the dealer of notification of an owner's complaint, together with copies of pertinent correspondence and appropriate forms, the dealer is to immediately contact the owner and arrange an appointment. In the event it is felt that Zone Office personnel should be involved, each Zone is adequately staffed with experienced personnel who are available to render assistance to the dealer and the owner.

When the owner contacts the dealership, he is afforded every opportunity to explain the problem or the request for assistance. If the situation is one which cannot be given warranty consideration, the owner is to be fully advised.

Following the dealer-owner contact, appropriate records are completed with all pertinent information and returned directly to the divisional Central Office. If there is an expression of owner dissatisfaction, it must be accounted for by an explanation of the services rendered or the decisions made.

We know that as a rule if an owner is concerned about his automobile he will first consult with his dealer. In the great majority of cases, the matter is brought to a conclusion at that level.

Only the more difficult problems are called to the attention of the manufacturer. When this occurs, a careful system of follow-up is activated to assure prompt and proper investigation and conclusion with the owner.

As an example, every Tuesday, Chevrolet Division sends to each Zone Office, as a follow-up, a list of those complaints where a closing report has not been received. This follow-up by the Division is required on only about 2% of the monthly total of cases. In 1968 the average case was concluded with the owner in eight days. Only 1% of the cases required more than twenty days to conclude and this is due to a variety of reasons. For example, there may be difficulty in scheduling an appointment with the owner at a mutually available time, or the owner may be on an extended business or pleasure trip.

With respect to personnel available to handle "owner complaints" General Motors has in excess of 900 employes at 147 zone locations whose primary responsibility is to see that customers are able to obtain all necessary service repairs, and, if the customer is not satisfied, to handle any complaints. In addition, there are 1,652 additional zone employes who are available to assist in handling service problems. This includes 966 district managers who review many service problems directly with the dealer in an effort to eliminate any conditions causing complaints.

A brief description of the responsibility of certain supervisory employes at the Zone Office level is hereinafter provided to illustrate the extent these individuals have responsibility in connection with the handling of owner "complaints".

Zone Manager - A Zone Manager is responsible for all divisional operations in his Zone. This responsibility includes supervision over the proper handling of owner "complaints" and in particular, the review of owner "complaints" which have not been satisfactorily concluded, and the review of a reopened case.

Assistant Zone Manager - An Assistant Zone Manager is directly responsible to the Zone Manager and shares responsibility for all divisional operations of the Zone. This responsibility includes counselling with dealers with respect to various divisional policies and the development and implementation of owner relation programs, which comprehends a measurable degree of supervision over the disposition of owner "complaints".

Zone Service Manager - A Zone Service Manager works under the supervision of the Zone Manager. One of the responsibilities of the Zone Service Manager is to follow up "complaints" which are sent to dealers and to provide assistance to dealers whenever necessary. The Zone Service Manager is also responsible for the administration of warranty policy and procedures and for the supervision of various owner relations personnel engaged in this work.

Assistant Zone Service Manager - An Assistant Zone Service Manager is responsible to the Zone Service Manager and assists in the supervision of the administration of warranty policy and procedure and the handling of owner "complaints".

Area Service Manager (Service Representative) - An Area Service Manager works under the supervision of the Zone Service Manager and Assistant Zone Service Manager. Included among the responsibilities of the Area Service Manager is to assist dealers in the handling of customer complaints. The Area Service Manager provides technical knowledge and assistance and verifies valid warranty claims.

Zone Owner Relations Manager - In all Zone Offices, there are one or more individuals who perform the functions of a Zone Owner Relations Manager. It is the responsibility of these individuals to properly acknowledge, assign to dealers, follow up and review the final handling of all "complaints" within the Zone.

It is the objective of General Motors to see that all owner complaints are brought to a prompt conclusion and that the incidence of owner dissatisfaction is minimized. In a continuing effort to eliminate the causes of owner dissatisfaction, careful attention is given to owner complaints. Where the cause of the complaint has originated at the dealer level, divisional personnel will counsel with the dealer so that he, in turn, may take appropriate action.

Complaints on dealer service sometimes result from the actions of individual dealership employes rather than because of dealership policies or intentions. Such problems require training programs in customer relations for dealership personnel. General Motors Corporation has, therefore, developed programs dealing with customer relations for presentation to dealership personnel. To assure maximum attendance the owner relations programs are presented at evening meetings.

In conclusion, it is hoped that this statement has provided information of value to the Committee in its deliberations.

* * * * * * * * * * *

EXHIBIT C

Statement by Guenther Baumgart, President
Association of Home Appliance Manufacturers
for the
Senate Committee on Business and Professions,
California Legislature

Hearings on S. B. 1166 and Consumer Warranty Problems
November 3-4, 1969
Sacramento, California

The Association of Home Appliance Manufacturers (AHAM) has been asked to comment on S. B. 1166, on which the Senate Committee on Business and Professions is holding hearings. The association's membership of some 60 companies includes manufacturers of major appliances used in the home, such as automatic dishwashers, ranges, refrigerators, room air conditioners, and home laundry equipment. The membership also includes manufacturers of portable appliances, such as coffeemakers, toasters, irons, electric fans, and so on. Enclosed is a brochure listing AHAM's members and the home appliances they manufacture.

As we read S. B. 1166, in its application to the home appliance industry, it would require a manufacturer who issues a written warranty or guarantee on an appliance installed in a home by a builder or contractor to bear all costs of fulfilling a warranty. Those costs would include costs of "loss of use," labor, replacement parts, shipments, and "all other costs" incident to bringing the appliance "into good working order."

At the outset it must be understood that decisions on whether to extend a warranty, the parts a warranty will cover, the period of time it is to run,

and who shall perform the service or bear the costs of labor and parts are the province of the individual manufacturer. The decisions are often determined through negotiation between manufacturer and dealer, distributor, or building contractor.

Because of federal and state antitrust laws, AHAM cannot participate in these decisions. All elements of a warranty, including the obligations a manufacturer or its dealers or distributors will assume, have competitive implications. They also are considered in a manufacturer's decisions on the prices at which it will sell its products; and in its dealers' and distributors' decision on their markups. It is obvious that the manufacturer who decides to assume all costs of fulfilling its warranties must build these costs into its price to dealer, distributor, or contractor. If some costs of fulfilling the warranties are to be assumed by the dealer, distributor, or contractor, they will be dropped from the manufacturer's price and built into the markup, or the price the consumer pays.

AHAM abstains from taking part in decisions on these matters not only because of the federal and state antitrust laws. We also firmly believe that diversity of practice gives the dealer, the distributor, the contractor and the consumer a broader choice among manufacturers of products they want to purchase. This diversity enriches the fabric of our economy. The question is essentially one of economics and freedom of contract. Does the dealer, the distributor, or the contractor want to assume some responsibility for a warranty

and buy from the manufacturer at a lower price, or does he want to pay a somewhat higher price and place that responsibility entirely on the manufacturer?

Manufacturers who prefer to leave some of the responsibility for fulfilling a warranty, particularly labor charges, with their dealers or distributors do so in large part because they believe it gives the dealer an economic "stake" in seeing that the installation and any necessary adjustments or repairs are well done in the first instance. Sloppy installation, unsatisfactory adjustment or repair cuts back on the dealer's or distributor's profit and, just as importantly, on his reputation. If all costs of poor installation or inefficient repairs are to be assumed by the manufacturer, the dealer or distributor may be interested only in sales and not in the over-all "package" - selling, installation, and repair - that must be delivered if the consumer is to obtain satisfactory performance from an appliance, particularly a major appliance.

Other manufacturers may prefer to sell through their own distribution systems and assume all costs of fulfilling warranties, or they may assume these costs while selling through independent dealers or distributors. In some geographic areas a manufacturer and the available dealers may find it advantageous to operate in another way. This freedom of choice, which would be removed in California by S.B. 1166, makes it possible for manufacturers and dealers to strive for the most economical and efficient method of distribution in diverse circumstances.

We cannot comment to any extent on the language of S.B. 1166, because we do not know how frequently similar language has been used in other California

statutes or the construction placed on the terms by the state's courts. We will call attention, however, to a few phrases that seem to raise questions of interpretation - "installation" for instance. Would this include the delivery of an automatic washer and making the necessary electrical and plumbing connections or would more work be required to qualify as "installation"? Is "any contractor" the builder of one home, the builder of a development, or both? Would S.B. 1166 result in difference of treatment between the person who buys an appliance for installation by the dealer's personnel in an existing home, one who buys and does the installation himself, and one who employs a contractor? How are the costs of "loss of use," particularly for an appliance installed in a single home, to be determined?

The provision for the recovery of "three times the amount of the actual loss or four hundred dollars, whichever is greater" by "any person who suffers any loss as a result of any breach of warranty" seems unnecessary and unwise. Is "any person" the person to whom the warranty runs, or is it also a dealer, distributor or contractor who might perform the warranty service because a manufacturer was unable to arrange the service expeditiously.

Under present circumstances, legal action can be brought by the person to whom a warranty runs for breach thereof. Legal action can also be brought by a dealer, contractor, or distributor for breach of a manufacturer's contract with him. In either case actual damages can be recovered. To treble these damages, and set a floor of $400, is to impose a penalty on a manufacturer for action that is not criminal. The possibility of recovering at least $400, plus

attorneys' fees, for even trivial loss would undoubtedly encourage needless litigation.

We do not know the problem or problems that prompted the introduction of S. B. 1166, but we do not feel that warranty problems of which we have knowledge can be solved by the blanket imposition of liability for all costs of fulfilling warranty terms on a manufacturer whose products may be chosen for installation by contractors. Just as practices with respect to performance under warranties differ among manufacturers in the appliance industry, so they must differ among industries. We believe these practices have in the past and should in the future be determined by the requirements of the marketplace. These vary from product to product, from place to place, among producers of different size, and so on. We believe that S. B. 1166 would impose a rigidity on at least one element of warranties, which would interfere with the adaptation of practices to changing market conditions.

AHAM and its member manufacturers do not contend that problems do not exist with respect to warranties in the appliance industry. We have been and will continue to do all that is possible to eliminate sources of the problems, and to solve problems as they arise. Since February 1968, the association has worked with a Task Force appointed by President Johnson to evaluate warranty practices and problems in the appliance industry. The Task Force was composed of the Secretaries of Commerce and Labor, the Chairman of the Federal Trade Commission, and the President's Special Assistant for

Consumer Affairs. Information was freely furnished to the Task Force while its study was being made. Since the publication of its report, on January 8, 1969, representatives of the association have met with members of the Task Force to discuss the report.

As a result of its work with the Task Force and of its independent studies, the association has initiated the issuance of guidelines on the preparation and advertising of warranties, on the availability of parts for the repair of discontinued models, and on the preparation of "use and care" manuals and other consumer-information literature. Steps have also been taken to establish a Consumer Complaint Council, to receive, investigate and process complaints, whatever the source, on advertising claims, deficiencies in product performance, warranties, service and repair, and safety of product design and use.

In January of this year, to encourage full disclosure in warranties, the association published a statement recommending elements each warranty should contain. A copy of these recommendations is attached. The association has also drafted a proposed revision of the Federal Trade Commission's Guides Against the Deceptive Advertising of Guarantees. This draft will be submitted soon to the Commission for its consideration and possible publication.

One final comment on S. B. 1166. AHAM and its members do not believe that federal or state legislation is necessary to assure the consumer satisfaction under warranties given by manufacturers of home appliances. If legislation is thought by others to be necessary, it should be uniform throughout the

United States - either through the adoption of uniform state laws or through federal legislation. Voluntary efforts to solve problems that arise and the preservation of freedom of contract between manufacturer and middleman and between middleman and consumer seems to us, however, to be a much more effective means of solving and eliminating problems than does the passage of legislation.

Should the Committee on Business and Professions want other information on warranties that may be available through the Association of Home Appliance Manufacturers do not hesitate to call upon us.

EXHIBIT D

MANUFACTURERS' WARRANTIES

(SB-1166 - Song)

Statement of:
RAY BURCH, Vice President-Marketing
SCHWINN BICYCLE COMPANY
1856 North Kostner Avenue
Chicago, Illinois 60649

Before the:
CALIFORNIA LEGISLATURE
SENATE COMMITTEE ON BUSINESS AND PROFESSIONS
Senator Alfred S. Song, Chairman

At:
Old State Building, Room 215
217 West First Street
Los Angeles, California

November 3-4, 1969

Statement of Ray Burch, Vice President of Marketing
for Schwinn Bicycle Company, Chicago, Illinois

Mr. Chairman and Members of the Committee:

My name is Ray Burch, and I am Vice President of Marketing for Schwinn Bicycle Company of Chicago, Illinois - manufacturers of Schwinn Bicycles.

I would like to introduce my associate Mr. Al Fritz, Vice President of Engineering, Research and Design for Schwinn Bicycle Company.

We appreciate very much the invitation extended to us by your Committee, and this opportunity to express our views on the subject of manufacturers' warranties, and on the pending bill, SB-1166.

We have already submitted certain preliminary information about our Schwinn Guarantee policy, as you requested in your letter of August 18, 1969. We have also made a thorough study of our files and tabulated all customer complaints and other data relating to our own warranty experience for the full year 1968 and for the first nine months of 1969.

Today, with your permission, we would like to present the results of that study, and also offer our own comments regarding the proposed legislation - after which Mr. Fritz and I will be glad to answer any questions the Committee may have.

First, before discussing our warranty procedures, it may be helpful to give a few brief facts about our company, its products and its method

of distribution...and let me say right here, in the very beginning, that we believe the proper method of distribution is absolutely essential to customer satisfaction, as well as the quality of the product or the integrity of the company that makes it. We make that statement, based on our own experience - which I will explain in just a few minutes.

Schwinn Bicycle Company is a family-owned business, founded in Chicago in 1895 by Ignaz Schwinn, who learned bicycle engineering and production in Germany before immigrating to America in 1891. Until 1967, the company was known as Arnold, Schwinn & Co.

Schwinn has always been devoted entirely to the manufacture of high-quality bicycles and bicycle equipment, except during World War II when its factory was converted to war work. It's annual sales volume in 1968 was approximately forty-five million dollars, or a little over one million bicycles out of total industry sales of nearly six million bicycles. All Schwinn bicycles are sold under the Schwinn name by approximately 2,200 franchised sales-and-service dealers.

These 2,200 Schwinn Dealers are all franchised by the factory and serviced by salesmen employed by three factory-owned distribution centers near Chicago, Newark and Atlanta - and by six Schwinn agencies located in Buffalo, Dallas, Wichita, Spokane, Tacoma, Los Angeles and Union City California.

The Schwinn Company has always been actively managed by the Schwinn family - first by its founder, Ignaz Schwinn; then by his son, Frank W. Schwinn, until his death in 1966; and now by his son, Frank V. Schwinn - the third generation. This continuity of management has helped Schwinn

to maintain a tradition of high quality in its prodcuts and in its responsibility to the consumer. That policy was stated in 1945 by the late Frank W. Schwinn in the book "FIFTY YEARS OF SCHWINN-BUILT BICYCLES" as follows:

> "A Product, like an individual, has character - good, bad or indifferent as the case may be, and only too often, nondescript. The character of a product reflects the character of its maker, of the organization behind it. In the degree to which that organization recognizes its responsibility to the consumer and is willing to replace defective parts which in spite of its vigilance and care may occur in its product - in that degree you can judge the honesty and integrity of the organization.
>
> "[Schwinn Bicycle Company] has always stood squarely behind its product, and for fifty years has had a policy of replacing any part of its manufacture which proved defective either in material or workmanship. The Company has never set a time limit upon this self imposed obligation. Parts which prove defective are replaced regardless of the length of time they have been in service."

That same policy of replacing defective parts, without any time limit, has always been standard practice at Schwinn, although the wording of the Schwinn Guarantee has been changed many times through the years. Our company introduced the Schwinn "No-Time-Limit Guarantee" in 1959, and the wording was revised in 1966, so it now reads as follows:

> "Schwinn bicycles are guaranteed against all defects in material and workmanship - no time limit. Schwinn will replace - without charge - any original part that is determined by the factory to

"be defective under the terms of this guarantee. Failure due to accident, abuse, neglect, improper assembly or maintenance, normal wear or use of other than Schwinn Parts is not covered. Transportation costs and dealer's labor charges are not covered by this guarantee.

"Replacement of defective parts shall be the sole remedy of any purchaser under the Schwinn Guarantee, and in no event shall Schwinn be liable on any implied warranty of merchantability or fitness, or for special or consequential damage.

"See your Schwinn Dealer for service under the Schwinn Guarantee, or write for assistance to: Customer Service Department, SCHWINN BICYCLE COMPANY, 1856 North Kostner Avenue, Chicago, Illinois 60639."

Schwinn has learned from experience, however, that the wording of any warranty is not enough to insure customer satisfaction, no matter how honest the intentions or how reliable the quality of the product - especially if it is the kind of product that requires service, assembly or installation. Unless the consumer is able to buy from a competent and responsible sales-and-service dealer who can and will stand behind the product, and stand behind the product guarantee and the company that made the product and also stand behind the assembly or installation, and the servicing of the product - he will continue to be unhappy.

We do not believe the consumer will ever be fully satisfied with any arrangement where he buys a product from one company, has it assembled or installed by another company, and then has to go to a third company or a factory service branch for service. The consumer all too often finds himself caught in the middle between several companies, none of which accepts full responsibility for his complete satisfaction.

Years ago, before the advent of the high-volume, no-service outlet, a reputable manufacturer could require his sales-and-service dealers to maintain adequate standards of service to the consumer - especially if he allowed the dealer enough market potential to make a fair return on his investment and helped him run a successful business. Unfortunately, many manufacturers did not help their sales-and-service dealers, but on the contrary they sold anybody and everybody, from gas stations to variety stores, so the sales-and-service dealer has almost disappeared from the scene, except in rural markets.

Now the low-overhead retailer is making about as much gross profit as the sales-and-service dealer used to get, and the cost of factory service branches has to be passed along to the consumer in the price he pays for the product. So the consumer gets a bad bargain and bad service, the manufacturer has warranty problems, and the only one who comes out ahead is the no-service outlet who collects the retailer's profit without doing the retailer's job. These are exactly the same problems Schwinn went through before we changed our method of distribution in 1952, but we learned from experience.

We learned from experience because, from 1895 to 1952, Schwinn practiced saturation selling, as many companies still do. We sold bicycles to anybody and everybody, the more the merrier - Sears, Wards, Goodrich, tire stores, gas stations, hardware stores, department stores, toy stores, and drug stores. We even had a barber shop; a mattress factory; and up in Wisconsin, a funeral parlor - all selling Schwinn bicycles as a sideline. We had quantity - not quality - distribution.

In 1951, we had over 15,000 accounts on our mailing list, but when we investigated them, we found 40 percent hadn't bought a single bicycle in

sold 94 percent of our bicycles. Shopping tests showed many dealers even in this group had sub-standard stores, couldn't answer customers' questions about the product accurately, didn't know how to service bicycles, and had little interest in learning. Very few of these accounts made any effort to handle warranty work, nor did they accept any responsibility for satisfying the consumer.

So, in 1952, Schwinn instituted a franchising program, to weed out the dead accounts, the hopeless and the untrainables, and to select those who showed promise. By this method of selection, which is an ever continuing process, we have by now discontinued all miscellaneous accounts, including all chain stores and all department stores, even the very finest ones, because we found their employees simply could not be trained. They were not willing to learn. So we have trimmed down to about 2,200 dealers today, approximately 300 of them in California, all of them sales-and-service dealers. And our sales volume has more than doubled, from 479,000 bicycles in 1952 to over a million bicycles in 1968. In Schwinn dealerships, it is now an established fact - quality counts more than quantity.

Perhaps I should mention, also, that our franchising program did not make everyone happy, especially some of the accounts we dropped, as well as the U. S. Department of Justice. The Government filed a civil antitrust suit against Schwinn in 1957 which, after ten years of litigation and nearly a million dollars of expense, was finally decided by the U. S. Supreme Court in 1967. We won the main issue - the right to select our own Schwinn Dealers and to franchise them at specified locations. However, we failed to win the right to limit sales of bicycles owned by distributors to franchised dealers, so we are replacing our independent distributors

with factory-owned distribution warehouses.

Today we have the strongest, most effective sales-and-service retail organization we have ever had. In addition to the free sales and store management school, and free store-planning service frequently provided by manufacturers, we attempt by every known method to insure that the maintenance and repair service we require each dealer to provide will be satisfactory to the consumer. We have a free service school, a free suggested layout for the dealer's service department, suggested equipment, tools and inventory for the service department, and are completing a revised manual which will guide proper maintenance and repair not only of Schwinn bicycles, but also of competitors' bicycles. We help the dealer with this service activity by selling store fixtures, signs, tools, equipment and retail store supplies at cost. The overall performance of our revised retail selling organization is satisfactory in all respects. Nearly 700 of our dealers are operating high-volume stores selling over 500 bicycles per year, and these 700 sold nearly twice as many bicycles as all 15,000 accounts sold in 1951. I will comment later on their maintenance and repair work, including "warranty work."

Many dealers are 100 percent Schwinn and do not sell any competitive brands - by their own choice. All of them, with perhaps a rare exception here and there, are enthusiastic Schwinn boosters and honest, hard-working merchants. Their gross profit margin is modest, as it is throughout the bicycle industry - only 28 percent of the retail price, on the average, out of which they absorb incoming freight, assembly of new bicycles and most free warranty service. They handle practically all warranty claims and replacements on their own responsibility and usually do whatever is necessary to satisfy the consumer because they know the good reputation

of Schwinn products is the dealer's bread and butter, the same as it is ours. We are, in a very real sense, partners for profit with our dealers.

The effectiveness of this factory-dealer relationship in satisfying Schwinn Owners can be judged from the very small number of consumer complaints received at the Schwinn factory, as shown in Exhibit 1, below. It should be noted that there are approximately seven million Schwinn bicycles now in use under the Schwinn No-Time-Limit Guarantee, one and three-quarters million of which were sold to consumers in 1968 and 1969.

EXHIBIT 1

TOTAL U. S. CONSUMER LETTERS RECEIVED BY SCHWINN

TYPE	1968 (12 MOS.)	1969 (9 MOS.)
Complaint about Product	243	297
Complaint about Dealer	98	128
Re: Stolen Bicycles	52	35
Requests for Information	567	788
Re: Sales Questionnaire Cards	101	74
Complimentary Letters	114	76
Miscellaneous - All Other	1,900	1,680
Totals	3,075	3,078
Sales Questionnaire Cards Returned by Consumers	172,837	121,695
Total Consumer Communications	175,912	124,773

A summary of letters received by the Schwinn factory from California consumers during 1968 and the first nine months of 1969 is shown on the following page in Exhibit 2.

EXHIBIT 2

CALIFORNIA CONSUMER LETTERS RECEIVED BY SCHWINN

TYPE	1968 (12 MOS.)	1969 (9 MOS.)
Complaint about Product	10	32
Complaint about Dealer	19	9
Re: Stolen Bicycles	13	5
Requests for Information	31	66
Re: Sales Questionnaire Cards	5	6
Complimentary Letters	10	9
Miscellaneous - All Other	199	174
Totals	287	301

Most of the complaints about product, listed above, involved tires and tubes, where it is frequently difficult to distinguish between failures due to defects and failures due to abuse or wear and tear, and there is often room for honest differences of opinion. Also, many "complaint" letters are really requests for service under the warranty. Complaints about dealers are often due to a misunderstanding or a dispute, or unsatisfactory repair work, or the dealer's refusal to make a warranty adjustment. It has been our experience that the responsibility for disputes is almost evenly divided between customer and dealer. In almost every instance, however, the factory backs up the customer and does whatever is necessary to satisfy him, even if it involves sending him to another dealer for a fresh approach to the problem.

In only three cases, out of all of those handled in 1968 and in the first nine months of 1969, did we fail to satisfy the complaint. Two of those involved demands by consumers for the replacement of stolen bicycles, which the factory refused to do. The other involved a third unreasonable demand from the same consumer over a period of four years,

the first two demands having been granted. So far as we can determine we do not have any other dissatisfied Schwinn Owners, except, perhaps, for 86 product liability claims being handled by our insurance company.

The effectiveness of the Schwinn Dealer organization in handling warranty work can be judged, not only by the very small number of complaints received by the factory, but also from the quantities of parts replaced. In 1968, and for the first nine months of 1969, the factory issued credit or replaced a total of 50,034 parts and assemblies which were claimed to be defective, as shown in Exhibit 3 on the following page.

EXHIBIT 3

SCHWINN PARTS REPLACED OR CREDIT ISSUED

PART	1968 (12 MOS.)	1969 (9 MOS.)
Frame	2,332	2,985
Forks	709	288
Saddles	4,596	3,215
Cogs	3,392	1,861
Stems	2,156	1,181
Pedals	1,878	283
Wheels	2,001	1,267
Cranks	1,934	1,135
Handlebars	1,380	874
Fenders	1,016	692
Derailleur Parts	359	289
Sprockets	675	547
Chains	442	432
Cycle Aid Components	122	64
Reflectors	314	15
Saddle Struts	625	1,210
Hub	304	66
Rims	854	386
Pump, Carriers, Kickstand	172	154
Caliper Parts, Caliper Brakes	870	719
Seat Post, Baskets, Chainguards	436	676
Generator, Lamp, Head Lamp	1,213	680
Grips	11	40
Stick Shifts	256	296
Sturmey Parts	400	403
Miscellaneous	832	586
Tires & Tubes	209	144
Spoke Protector	9	18
Duo-post Lever	0	31
Totals	29,497	20,537

This list of parts includes only a few tires and tubes, because practically all such replacements are made directly by our tire suppliers (Goodyear, U. S., and Carlisle) to our distribution warehouses, and records are not available at the Schwinn factory or from the tire manufacturers. However, we estimate replacements total approximately 30,000 tires per year.

It should be noted, also, that it is Schwinn's policy to replace all broken frames, regardless of age or cause, and our records show the oldest

frame replaced on the list above was a 1948 model. We reimburse the dealer on all frame changeovers made within the first year of usage, which covers most of them, at a flat rate of $4 each for coaster brake models, $6 each for 3-speed models, and $8 for 5- or 10-speed models.

In addition to handling warranty replacements, it should be noted that Schwinn Dealers assemble every Schwinn bicycle and service it before it is delivered to the purchaser. Most of the defects which slip by the many inspection processes at the factory are caught and corrected by the dealer during assembly.

In order for the factory to keep a close check on the quality of factory production and inspection functions, a Schwinn Dealer Quality Report Card is included in every bicycle carton. This card identifies the final inspector and provides the dealer with a convenient way of reporting defects and shortages. In the case of a shortage, the factory sends the missing part to the dealer, at no charge, upon receipt of the card. A sample of the Schwinn Dealer Quality Report Card is attached below as Exhibit 4.

EXHIBIT 4

Sample of SCHWINN DEALER QUALITY REPORT CARD

SCHWINN DEALER QUALITY REPORT

This bicycle checked by Final Packing Inspector: PAUL NARDI

NOTICE TO SCHWINN DEALER:

This Schwinn Bicycle and its components have been carefully inspected during manufacture, assembly and packing. This card identifies the Final Packing Inspector of this bicycle. The seat post tag identifies the Final Assembly Inspector, and the two wheel tags identify the Wheel Truers. All of us, as well as other inspectors and production personnel here at Schwinn, have made a sincere effort to eliminate errors which might inconvenience you or your customer.

You can help us in this effort, however, should you find an error or defect in this bicycle. In that event, please return this card promptly, using the other side to describe the trouble. Also, please attach the seat post tag and wheel tags where they may apply. Your promptness may help us to quickly correct an error and prevent more bicycles from going out in a similar condition.

Please do not use this card to return defective parts or to request replacement of same. Instead, use regular CLAIM TAGS and process through your Schwinn Distributor—or use regular FACTORY REPLACEMENT CLAIM TAGS for frames or painted parts not stocked by distributor. Replacement of SHORTAGE in packing may be requested on this card, however.

MAIL TO: Customer Service Dept.
SCHWINN BICYCLE COMPANY
1856 North Kostner Avenue
Chicago, Illinois 60639

Sincerely yours,

Bill Schmidt, Chief Inspector

Schwinn factory records show that 3,622 cards were returned in 1968, reporting 4,045 shortages and defects, and for the first nine months in 1969, 3,442 cards were returned reporting 4,250 shortages and defects. A summary of these returns is shown in Exhibit 5.

EXHIBIT 5

SUMMARY OF SCHWINN DEALER QUALITY REPORT CARDS

	QUANTITY REPORTED	
TYPE OF DEFECT REPORTED	1968 (12 MOS.)	1969 (9 MOS.)
Shortages	2,268	2,657
Mechanical Defects	1,295	1,235
Plating Defects	76	32
Other	406	326
Total Defects Reported	4,045	4,250
Number of bicycles produced:	1,066,914	639,052
Ratio: Defects Reported to Bicycle Produced:	.4%	.6%

As these figures disclose, the ratio of defects reported to bicycles produced is about one-half of one percent - but it is probably safe to assume that dealers correct perhaps an equal number of defects, or even more, without returning the Quality Report Card.

Through the assistance of Schwinn Dealers, the Schwinn factory's cost of warranty replacements and related Customer Service Department functions is held within reasonable limits, as shown in Exhibit 6.

EXHIBIT 6

SCHWINN CUSTOMER SERVICE DEPARTMENT EXPENSE

EXPENSE ITEM	1968 (12 MOS.)	1969 (9 MOS.)
Cost of Parts Replaced	$ 74,918	$ 54,769
Transportation, Labor, Refunds, etc.	21,679	11,258
Salaries and Overhead	53,157	43,698
Total	$149,754	$109,625
Net Sales	$44,464,390	$30,367,807
Ratio: Warranty Expense to Sales	.3%	.4%

Even though these figures do not include administrative overhead, it will be apparent that Schwinn Dealers play an important role in reducing warranty costs. They do this by satisfying Schwinn bicycle owners and by sharing the factory's responsibility under the Schwinn Guarantee. They do this, not because of any contractual obligation, or because of any law or regulation, but simply because they know satisfied customers create more sales.

To illustrate this fact, an analysis of the consumer questionnaire cards delivered with each Schwinn bicycle - about 20 percent of which are returned by purchasers, shows the following reasons given by the consumer for selecting a Schwinn - see Exhibit 7 on the following page.

EXHIBIT 7

SUMMARY OF REPLIES TO QUESTION 4, CONSUMER SALES QUESTIONNAIRE CARDS

Question: Why Did You Buy A Schwinn?

REASON	1968	1967
Best Bike - Quality	43%	46%
Name - Reputation	9%	7%
Previous Ownership	17%	16%
Recommended	3%	6%
Parts, Service Available	4%	5%
Total Related to Satisfied Customers	76%	80%
American Made	2%	2%
Other	12%	6%
No Answer	10%	12%
Total Replies	100%	100%

We believe it is apparent from the foregoing that owners of Schwinn bicycles are satisfied and do not have a warranty problem. Also, we believe Schwinn's experience is strong evidence that providing satisfactory warranty service to the consumer is not an insoluble problem.

Other manufacturers of products which require service can achieve similar results, in our opinion, if they will do six things which we consider to be essential:

1. Give the consumer a simple, easy-to-understand warranty;
2. Sell products that require service, assembly or installation only through retailers who are equipped to provide factory-trained service;
3. Select the proper number of local sales-and-service dealers, properly located to serve each local market, so that each dealer has an incentive to provide proper service;
4. Provide factory-training and other factory assistance to maintain an adequate standard of service;
5. Hold the local sales-and-service dealer fully responsible for satisfying the consumer;
6. Give the consumer the name and address of the person at the factory who has authority to settle disputes or misunderstandings that may arise with the local sales-and-service dealer.

In conclusion, we believe warranty service can be handled in a manner which will be entirely satisfactory to the consumer, fair to the dealer, and practical for the manufacturer - simply through better organization of the retail sales-and-service function by reputable manufacturers. This implies, of course, that the manufacturer must have a clear, legal right to select his own sales-and-service retailers in the locations where they are needed - and a clear, legal right to refuse to sell to others.

We do not believe the proposed legislation is necessary or desirable to accomplish that objective.

Thank you.

EXHIBIT E

STATEMENT OF THE ASSOCIATION OF CALIFORNIA CONSUMERS
BEFORE THE SENATE COMMITTEE ON BUSINESS AND PROFESSIONS
AT HEARINGS ON WARRANTY PROTECTION AT LOS ANGELES ON 11/3/69
PREPARED FOR THE ASSOCIATION BY RICHARD A. ELBRECHT

The question of the warranty is basically one of fair dealing with the consumer. The problem of the warranty is essentially that it has been used as an instrument of unfair dealing with the consumer. The Association of California Consumers is pleased to offer the following comments and proposals for the committee's consideration and use in drafting remedial measures.

DISCLAIMER OF IMPLIED WARRANTIES

The warranty, in its present use, usually results in the loss to the consumer of the basic protections which the law accords to all purchasers of goods.

The basic law-imposed protections include, mainly, the warranty of merchantability. The meaning of the warranty of merchantability is that the law requires the merchant to supply goods whose quality meets certain minimum standards. In order to meet the standard of merchantability, the goods must be " * * * fit for the ordinary purposes for which such goods are used" (California Commercial Code Section 2314, reproduced in the appendix).

But there is a loophole in this law, which almost all sellers of consumer goods now use. By the use of printed clauses in form-pad contracts, which printing companies that supply the contracts routinely insert, sellers routinely exercise the power, which this loophole gives them, to effectively avoid the law-imposed warranty of merchantability. The loophole is Section 2316 of the California Commercial Code. This section allows a seller to disclaim the basic warranties by the use of a printed clause under which consumers purport to agree that the basic warranties do not apply.

The use of warranty disclaimer clauses has become so universal that manufacturers and sellers of consumer goods have effectively repealed the law of merchantability. It is therefore proper for the Legislature to re-assert the primacy of law in consumer transactions by re-introducing the basic requirement of merchantability into the law of consumer sales.

The Association of California Consumers therefore recommends the following first step in eliminating present abuses in warranties in California. The proposal is to abolish the power of the seller to disclaim the minimum warranties which the law supplies. The amendment would take the form of the addition to Section 2316 of the Commercial Code of a new paragraph (5) providing as follows: "(5) Notwithstanding the other provisions of this section, exclusion or modification of the implied warranty of merchantability is inoperative in a sale of consumer goods to a consumer or other buyer; provided, that exclusion or modification is operative in a sale of used goods of the cash price of less than twenty-five dollars ($25.00), to the extent only that (a) the exclusion or modification does not conflict with an express warranty applicable to such goods, and (b) the exclusion or modification does not apply to a standard of safety of consumer goods established by an applicable statute or regulation, and (c) the buyer has actual knowledge of the fact and nature of the exclusion or modification. There shall be a rebuttable presumption that a buyer does not have such actual knowledge."

DISCLAIMER OF EXPRESS WARRANTIES

The warranty, in its present use, results in the frequent unenforceability by the consumer of many of the express warranties stated by the manufacturer and seller in their television, radio and newspaper advertising, in their sale brochures, and in the oral communications of the salesmen during negotiations, all of which usually form the real basis of the sale to the consumer. The cause is another loophole in the law.

Virtually all sellers insert in their form-pad contract instruments a clause which reads something like this: "This instrument is a complete and exclusive statement of all the terms of the agreement between the buyer and seller and of all the representations of the parties." There is no problem if all the express representations and warranties are, indeed, set forth in the written instrument; in those cases the statement in the written contract, that there are no other warranties, is correct. The problem arises if the statement is false - and the disclaimer is usually false.

In the case of almost all sales of consumer goods, the real cause of the sale rests in a series of written and oral representations to the consumer, made by the seller or manufacturer with the intention and for the purpose of selling the goods to the consumer (and therefore constituting express warranties under Section 2313 of the Commercial Code), but not included in the seller's form contract.

In those cases the printed clause, usually a fine-print printed clause, states falsely that there were no such representations. Unfortunately, existing law gives the clause legal effect; existing law allows a clause of this kind to shield the manufacturer and seller from the moral duty to fulfill their express warranties.

The Association of California Consumers therefore recommends that in determining what warranties were formed at the time of sale, a court should admit as evidence, consider and give proper weight to all relevant oral and written representations concerning the merchandise.

The amendment would take the form of the same amendment described previously - the addition to Section 2316 of the Commercial Code of a new paragraph (5) which would eliminate the power of the seller to disclaim his warranties merely by the use of a clause in a form contract - plus the following language: "The provisions of this division on parol or extrinsic evidence (Section 2202) shall be inoperative to exclude evidence of an express warranty in a sale of consumer goods to a consumer or other buyer."

The effect of the proposed change should not be overstated. Only seldom in consumer sales do the parties express their agreements in a writing that is "intended" by both of them as a final, complete and exclusive statement of their mutual understanding of the seller's warranties. It is only in those cases that Section 2202 comes into effect; and its abolition to allow proof of express warranties will affect only such cases.

An important side-effect of the amendment will be to eliminate any uncertainty in the admissability of evidence to prove express warranties in those cases where there is doubt whether both parties really intended a given instrument to be the exclusive statement of their mutual understanding of the seller's warranties. See: the law review by Professor Justin Sweet entitled "Contract Making and Parol Evidence: Diagnosis and Treatment of a Sick Rule," at 53 Cornell Law Review 1036 (1968).

PRIVITY OF CONTRACT

The present law of warranty serves to immunize the manufacturer from what should be the legal consequences of the failure of the manufacturer to deliver goods which (a) conform with the manufacturer's advertising and printed brochures and (b) are merchantable.

From the point of view of the consumer and, frequently, that of the retailer who buys from a distributor rather than directly from the manufacturer, the loophole here is the doctrine of privity of contract. This doctrine says that since the consumer has purchased from an intermediary and not directly from the manufacturer, the consumer's only recourse in the event the goods are not merchantable or do not conform with the manufacturer's advertising is against the party from whom he purchased - that is, the retailer. The manufacturer, except in cases of personal injury, is immune.

The Association of California Consumers therefore recommends adoption of the substance of a measure recently adopted in Maryland, consisting of the addition to paragraph (1) of Section 2314 of the California Commercial Code of the following language:

"Notwithstanding any other provisions of this division, the term 'seller' as used in Sections 2314 through 2318 of this division shall include manufacturer, distributor, wholesaler, retailer and any person subject to notice under Section 2507(5)(a). Any previous requirement of privity is abolished as between the buyer and any of the aforementioned parties. Damages sustained by the buyer by reason of breach of warranty may be recovered in a direct action against any of the aforementioned parties. An action against one of the aforementioned parties does not of itself bar action against another."

APPLICABILITY OF GOVERNMENT STANDARDS

The law of contract relations between private parties should recognize the existence of government safety and quality standards and should give them legal effect.

The minimum obligation of the seller of consumer goods to the buyer of consumer goods therefore should include the obligation to furnish merchandise that conforms with the standards set by government.

If a seller furnishes merchandise that violates Federal- or State-imposed quality or safety standards, the buyer today lacks a clear-cut private remedy. To give the consumer a private remedy would significantly aid in the enforcement and observance by manufacturers of government-set standards.

The Association of California Consumers therefore recommends adoption of legislation that would render unmerchantable any goods that fail to conform to a Federal- or State-imposed standard of quality or safety in any material respect. Upon a showing of the existence of a non-conformance of the goods with a government-set standard, the consumer would have all the basic rights and remedies for breach of warranty unless the merchant were able to prove that the nonconformance was not material to consumers.

The proposal calls for the addition of a new subparagraph (g) to Section 2314 of the California Commercial Code, to provide that goods will not be deemed merchantable unless they "(g) Conform to all applicable Federal and State statutes and regulations establishing standards of quality and safety of consumer goods, provided that the nonconformance is in a particular that is material to consumers; there shall be a rebuttable presumption that a nonconformance is in a particular that is material to consumers."

WARRANTY OF PERFORMANCE

The law should give effect to the normal expectation of buyers of consumer goods with mechanical, electric or thermal components that the goods and components thereof are in good working order at the time of sale and will operate properly in normal usage for a reasonable period of time thereafter.

In the absence of an express warranty of future performance, the consumer today lacks assurance that a consumer product that is sold on the basis that it will perform will indeed perform. The basic standard of merchantability of consumer goods therefore should be modified to reflect the nearly universal expectation of consumers that a product will be in good working order and will operate properly in normal usage for a reasonable period of time.

The Association of California Consumers therefore proposes the addition of a new subparagraph (h) to Section 2314 of the California Commercial Code, to provide that goods will not be deemed merchantable unless "(h) In the case of goods with mechanical, electric or thermal components, /such goods/ are in good working order and will operate properly in normal usage for a reasonable period of time."

MODIFICATION OF STANDARD REMEDIES

A loophole in the law gives the seller of consumer goods the power to avoid the basic law-supplied remedies for breach of warranty by inserting another fine-print clause in his form contract.

The feeling of the consumer when he encounters one of these clauses is aptly described in the title of a recent law review article - "Contracts of Frustration" - in the March 1969 issue of the Yale Law Journal (78 Yale Law Journal 576).

The clause comes in a variety of shapes and sizes. Here is an illustration of one: "This product is precision built, inspected and tested before leaving our factory. It is guaranteed against defects in materials and workmanship for one year, cord set and plastic container excluded. If found defective it must promptly be returned postpaid to the factory or an authorized service station, not to the dealer, and it will be repaired without charge. It is expressly agreed that our total liability is limited to such repair. If used according to instructions, it should give years of satisfactory service."

The seller's only obligation under this warranty is to keep trying to cure his default until the promised defect-free product has been delivered. The author of the Yale Law Review article, U.C.L.A. Law Professor Addison Mueller, states: "If the language of this 'guarantee' to repair or replace means what it says, what a consumer really buys from his dealer is not a properly operating color TV, stereo, dishwasher or car. He buys a promised opportunity to get one sooner or later, if, in the meantime, he cooperates with the manufacturer-wholesaler-dealer establishment. In effect, he not only has the role of final inspector in the production process, but is also expected to take all risks and bear all expenses involved in making that inspection."

To help solve this problem and restore to the consumer the remedies he needs to meet today's needs, the Association of California Consumers submits several recommendations.

First, prohibit modification of any of the standard remedies that are prescribed in the California Commercial Code for breach of contract, including the buyer's right under Commercial Code Section 2601 to reject nonconforming goods (subject to the seller's right under Section 2508 to promptly cure the default), the buyer's right under Section 2714 to recover reimbursement of all ordinary losses occasioned by a breach, such as the reasonable value of parts and labor, pickup-and-delivery costs, and postage, and the buyer's right under Section 2717 to deduct the amount of his damages from the unpaid balance. This would be accomplished by adding the following language at the beginning of paragraph (1) of Section 2719 of the Commercial Code: "(1) Except in a sale of consumer goods to a consumer or other buyer and * * * *." This also would serve to protect the retailer; if the retailer is given a non-waiveable private remedy against the manufacturer for the manufacturer's breach of warranty, it is more likely that the retailer will fulfill and be able and more willing to fulfill <u>his</u> warranty obligations to the consumer.

Second (and in conformance with the recommendations of Professor Mueller), give the consumer the right to a decree of specific performance of the seller's contract obligations. A seller who was able but unwilling to fulfill his warranty obligations could thus be required by court order to do so. This would be accomplished by amending paragraph (1) of Section 2716 of the Commercial Code to read as follows: "(1) Specific performance may be decreed where the goods are unique, <u>in the case of a sale consumer goods to a consumer or other buyer</u>, or in other proper circumstances." (New language underlined.) Professor Mueller states with reference to the decree of specific performance that "Only such a remedy will truly protect a consumer's expectation that he will receive a usable product without undue delay when he buys one."

ADVERTISING, DISCLOSURE AND REGISTRATION OF WARRANTIES

The consumer naturally seeks assurance that a product he buys will conform with and perform according to his expectations, and the written warranty purports to give the consumer that assurance.

The sale of a product more often is made by a seller who is willing to offer the assurance of a written warranty than by one who is unwilling to give the consumer that assurance. It is thus that the warranty is used as a selling device.

The problem is that both the product and the warranty have too often failed to measure up to the expectations of the consumer - expectations, let it be said, that have been engendered by modern advertising. The consumer, in short, has been led to believe that the written warranty gives him more protection than it really does. The assurance sought and presumably obtained by the consumer has too often proved to be of little value.

To help solve this problem, remedial legislation is needed. The Association of California Consumers therefore proposes enactment of the foregoing amendments to Sections 2314, 2316, 2716, and 2719 of the California Commercial Code, together with a new chapter of the law entitled "Advertising, Disclosure and Registration of Warranties."

The proposal complements S. 3074 introduced in the United States Senate on October 27, 1969, by Senator Warren G. Magnuson. Like all proposals, it is offered in the spirit of a proposal and in the expectation that it will be refined in the legislative process.

The proposal calls for the addition to Part 3 of Division 7 of the Business and Professions Code of a new Chapter 5, commencing with Section 17910, to provide in substance as follows:

CHAPTER 5

ADVERTISING, DISCLOSURE AND REGISTRATION OF WARRANTIES

ARTICLE I - DEFINITIONS

Section 17910. In General. For the purposes of this article -

a) "Buyer" means the consumer of a product, whether an individual or organization.

b) "Maker" of a warranty includes the manufacturer, distributor, wholesaler and retailer of a new product and the retailer of a used product but excludes a person or organization not engaged in business.

c) "Product" means goods normally used or bought for use primarily for personal, family or household purposes.

d) "Warranty" includes:

1) The warranty of merchantability, as defined in Section 2314 of the Commercial Code and applicable decisions and regulations interpreting or applying said statute;

2) Express warranties, as defined in Section 2313 of the Commercial Code and applicable decisions and regulations interpreting or applying said statute;

3) Express guaranties, as defined in subparagraph 9 of Section 2 of the Federal Consumer Products Guaranty Act and applicable decisions and regulations interpreting or applying said statute;

4) Any other warranties, guaranties and undertakings which assure or purport to assure the consumer that a product has described qualities or will perform in a described manner, or which state or suggest that the product or its performance is warranted or guaranteed.

ARTICLE II - DISCLOSURE

Section 17920. In General. Unless otherwise provided in this article every maker of a warranty shall cause to be delivered to the buyer of the product that is warranted a writing which shall conspicuously disclose the information required under this article.

Section 17921. Exclusions. A maker need not cause the writing mentioned in Section 17920 to be delivered unless:

a) The retail cash price of the product is twenty-five dollars ($25.00) or more; or,

b) An advertisement caused or permitted to be placed by the maker has stated or suggested that a warranty or guarantee will accompany the product, or that the product is in any respect warranted or guaranteed; or,

c) The maker customarily delivers to the buyer, at any time before or after sale, a writing that states or suggests that the product is in any respect warranted or guaranteed.

Section 17922. Time of Delivery. The maker shall cause the writing mentioned in Section 17920 to be delivered to the buyer no later than the delivery of possession of the product to the buyer. The writing need not be delivered to the buyer before the consummation of the sale. It should ordinarily accompany the product and may be packaged with the product in such a way that it is not disclosed to the buyer until the package is opened. At the request of any person, at any time before or after sale, the maker shall cause a true copy of the writing to be delivered to the person making the request; the maker may condition such delivery upon reasonable conditions including payment of actual costs incurred by the maker in complying with the request.

Section 17923. Language. The writing mentioned in Section 17920 shall be in the English language. If the maker of a warranty knows or has reasonable cause to know of the use of a language other than English in any negotiations or advertisement for the sale of a product, the information disclosed in the writing mentioned in Section 17920 shall be disclosed both in English and in such other language.

Section 17924. Warranty of merchantability of new product. If the product is advertised or offered as a new product, the writing shall contain:

a) A statement in substantially the following language: "The makers of this warranty each warrant to the buyer that this product is merchantable. A product is not merchantable unless it is fit for the ordinary purposes for which it is used, and is in good working order at the time of sale, and will operate properly in normal usage for a reasonable period of time, and conforms to any promises and affirmations of fact on the container or label, and conforms to all applicable statutes and regulations establishing standards of quality and safety of consumer goods, and conforms in all other respects to the standards prescribed in Section 2314 of the Commercial Code." and,

b) A statement in substantially the following language: "The makers of this warranty each promise to the buyer that if this product proves to be unmerchantable, they and each of them promptly will render it merchantable or will refund the purchase price if that is not possible. If the product is unmerchantable by reason of a defect in material or workmanship, the makers of this warranty each promise to repair the product, or replace the product or component part thereof if repair is not possible or cannot be timely made, or refund the full purchase price if repair or replacement is not possible or cannot be timely made."

Section 17925. Warranty of Merchantability of used product. If the product is not a new product, then unless the product is advertised or offered as a new product the writing shall contain:

a) A statement in substantially the following language: "Except as otherwise agreed between the seller and the buyer, the retail seller warrants to the buyer that this product is merchantable. A product is not merchantable unless it is fit for the ordinary purposes for which it is used, and is in good working order at the time of sale, and will operate properly in normal usage for a reasonable period of time, and conforms to any promises and affirmations of fact on the container or label, and conforms to all applicable statutes and regulations establishing standards of quality and safety of consumer goods, and conforms in all other respects to the standards prescribed in Section 2314 of the Commercial Code. To the extent not inconsistent with any oral or written warranty expressed to the buyer by the seller, the seller and buyer, by mutual agreement, may, however, modify this warranty of merchantability if the cash sale price is less than twenty-five dollars ($25.00). Safety standards established by statute or regulation shall nevertheless apply. To modify this warranty or merchantability, the seller must describe the product, or any component part thereof to which the modification applies, by the use of the term 'unmerchantable' and must cause the buyer, prior to the consummation of the sale, to acquire actual knowledge that such product or part is or may be unmerchantable." and,

b) A statement in substantially the following language: "If the warranty of merchantability applies to this product or a component part thereof, the seller promises to the buyer that if the product or part proves to be unmerchantable, the seller promptly will render it merchantable or will refund the purchase price if that is not possible; if the product or component part thereof is unmerchantable by reason of a defect in material or workmanship, the seller will repair the product or part, or replace the product or part if repair is not possible or cannot be timely made, or refund the full purchase price if repair or replacement is not possible or cannot be timely made."

Section 17926. Express Warranties. The writing shall also contain any express written warranties by which the maker assumes or purports to assume any warranty obligations to the buyer other than or in addition to those existing under the warranty of merchantability. The statement of such express written warranty shall contain all of the following information:

a) The nature and extent of the express warranty, including but not limited to:

1) What product or component of the product is covered by, or excluded from, the express warranty.

2) What characteristics or properties of the designated product or component thereof are covered by, or excluded from, the express warranty.

3) What the duration of the express warranty period is, measured either by time, or where practical, by some measure of useage such as mileage.

4) Any reasonable and necessary maintenance required as a condition of the express warranty, and the costs of such maintenance if required to be performe by a designated representative of the maker of the warranty.

b) The manner in which the maker of the express warranty will perform. A statement of exactly what duties the maker of the express warranty undertakes to perform under the warranty during the warranty period.

c) The identity of the protected parties. That the duties of the maker of the express warranty extend to the first purchaser and any subsequent owners of the product for the duration of any express warranty period, or, if no period is stated, for a reasonable time.

Section 17927. Other Information. The writing shall also contain:

a) A heading which conspicuously discloses that the instrument is a written warranty.

b) The name and address of each maker of the warranty.

c) The name and address of the representative or representatives, if any, designated by the maker of the warranty to perform duties required to be performed under the warranty by the maker of the warranty.

d) What procedure the buyer should take to obtain fulfillment by the maker of the warranty in the event the product does not conform with the warranty.

e) A description of any means available for quick informal settlement of any dispute regarding the conformance of the product with or its performance under the warranty, including any settlement procedure created by the maker of the warranty in cooperation with an independent or governmental entity if supervised by a governmental or public body.

f) A statement that legal remedies are available to the buyer if the maker of the warranty has not fulfilled the requirements of the warranty.

g) A promise of the maker of the warranty that a buyer who successfully pursues his legal remedies shall be entitled to reasonable costs including reasonable attorney's fees.

Section 17928. Prohibited Statements. It shall be unlawful to cause or permit the writing to contain:

a) Any deceptive statement of fact or law.

b) Any statement that is inconsistent with the warranty of merchantability, if any, or with the rights and duties of the parties in the event of nonfulfillment of such warranty.

Section 17929. Terminology. The statements and other information required to be disclosed in said writing shall be in the exact terminology and shall comply with such other requirements (whether as to positioning, style and size of type, color or disposition of lettering or otherwise) as may be prescribed by regulations issued under this article. Such regulations may require or prohibit disclosure in such writing of any additional information which in the judgment of the (supervising agency) is necessary or proper to effectuate the purposes or to prevent circumvention or evasion of, or to facilitate compliance with, the provisions of this chapter.

ARTICLE III - ADVERTISING

Section 17940. General Rule. No person shall advertise, offer, publish or make a deceptive warranty, guaranty or other similar undertaking.

Section 17941. Warranty of Merchantability. Any advertisement of a warranty, guaranty or other similar undertaking shall conspicuously disclose that the product is warranted to be merchantable.

Section 17942. Prohibition if Merchantability Warranty Modified. No person shall advertise a warranty for the purpose or with the effect of aiding in the consummation of a sale of a product in which the warranty of merchantability is modified with respect to the product or any component part thereof.

Section 17943. Express Warranty. No person shall advertise a warranty under which the maker assumes or purports to assume any warranty obligations to the buyer other than or in addition to those existing under the warranty of merchantability, unless the advertisement contains all the information required to be disclosed under Sections 17926 and 17941.

Section 17944. Terminology. The information required to be disclosed in an advertisement under this article shall be in the exact terminology and shall comply with such other requirements (whether as to positioning, style and size of type, color or disposition of lettering or otherwise) as may be prescribed by regulations issued under this article. Such regulations may require or prohibit disclosure in such writing of any additional information which in the judgment of the (supervising agency) is necessary or proper to effectuate the purposes or to prevent circumvention or evasion of, or to facilitate compliance with, the provisions of this chapter.

ARTICLE IV - REGISTRATION

Section 17950. Registration. The manufacturer, distributor, wholesaler and retailer of a product sold for use in California shall file with the (supervising agency) annually at its office in Sacramento on or before January 1st, ten (10) true copies of each printed warranty and of each printed sale contract, manual and other instrument which contains or purports to contain a written warranty issued by such manufacturer, distributor, wholesaler or retailer of such product, and shall file ten (10) true copies of each printed amendment to such document within thirty (30) days after the effective date of the amendment.

Section 17951. Notification. Every person who files a warranty and every person on whose behalf a warranty is filed under Section 17950 shall file notification with the (supervising agency) within 30 days after such filing and thereafter on or before January 31 of each year, which notification shall state:

a) Name of the person;

b) Name in which business is transacted if different from (a);

c) If a partnership, the name and address of each partner;

d) If a corporation, the name and address of each officer, director, and each stockholder holding five per cent (5%) or more of the voting stock;

e) If an association other than in (c) or (d), the names and addresses of such persons as the (supervising agency) shall by regulation prescribe;

f) Address of principal office, which may be outside this State;

g) Address of all offices or retail stores, if any, in this State at which sales or leases of products are made;

h) If sales or leases of products or repairs of products are made otherwise than at an office or retail store in this State, a brief description of the manner in which they are made;

i) Address of designated agent upon whom service of process may be made in this State; and

j) Such other information as the (supervising agency) may from time to time require to effectuate the purposes of this chapter.

Section 17952. Rules. The (supervising agency) shall adopt regulations governing the filing of warranties, and the notification required by Section 17951 and any amendments thereto.

Section 17953. Fees. A person required to file notification shall on or before January 31 of each year pay to the (supervising agency) an annual fee of ten dollars ($10.00) for that year.

Section 17954. Non-endorsement. No person shall make or publish the fact of filing a warranty under Section 17950 for the purpose or with the effect of aiding in the sale of a product. No person shall make or publish a statement which suggests that such filing constitutes approval of the document so filed.

Section 17955. Failure to File. The failure to file any such document shall be deemed to be an act of deceptive advertising and the violation a substantial cause of all sales of the product warranted.

ARTICLE V - FULFILLMENT

Section 17960. Fulfillment. No maker of a warranty shall fail or refuse to attempt in good faith to fulfill his obligations under a warranty.

ARTICLE VI - REMEDIES

Section 17970. In General. The buyer shall have all the rights and remedies provided in the California Commercial Code for breach of warranty, and, in addition, shall have all the rights and remedies provided in the Federal Consumer Products Guaranty Act for breach of guaranty, and, in addition, shall have all the rights and remedies provided in this article. Nothing in this article shall impair any rights and remedies of the buyer under the California Commercial Code, the Federal Consumer Products Guaranty Act, or any other State or Federal

Section 17971. Rescission. A buyer may rescind a contract for the sale of a product, and the financing of the sale of a product by a financing agency subject to this article, in every case in which a deceptive advertisement or warranty or other violation of this article was a substantial cause of the sale, or in which the maker of a warranty of such product has neglected to attempt in good faith to fulfill his obligations under such warranty in some material respect. The recission shall be governed by the chapter of the California Civil Code on rescission of contracts, consisting of Chapter 2 of Title 5 of Part 2 of Division 3 of the Civil Code, commencing with Section 1688.

Section 17972. Liability of Financing Agency. The buyer on notifying a financing agency subject to this article of his intention to do so, may deduct from the unpaid balance owing to such financing agency all or any part of the damages proximately resulting from a breach of warranty or any violation of this chapter, together with any amount awarded under Section 17975, and in addition may recover from such financing agency the amount by which the total of such damages exceeds the amount so deducted; provided, that such recovery may not exceed the total amount paid by or on behalf of the buyer to the financing agency in the same transaction plus any amount awarded under Section 17975, unless there exists (and then only to the extent of the balance in) a reserve held by the financing agency for the account of the maker of the warranty. A breach of warranty by the maker of the warranty shall be deemed to be a breach by a financing agency subject to this article, and the buyer shall have the same rights and duties with respect to such financing agency as the buyer has with respect to the maker of the warranty, except that the liability of such financing agency under this article shall not exceed the limit established in this section.

Section 17973. Certain Financing Agencies Excluded. A financing agency is subject to this article only if:

a) The cash sale price of the product exceeds twenty-five dollars ($25.00); and

b) Credit extended by the financing agency is in fact used directly or indirectly to finance or aid in the financing of all or any part of the sale of the product; and

c) The financing agency knows or has reasonable cause to know of such intended use before the credit is extended; and

d) The amount of credit extended by the financing agency exceeds twenty-five dollars ($25.00); and

e) The extension of credit by the financing agency is not genuinely independent of the sale of the product.

Section 17974. Independent Extensions of Credit. An extension of credit is not genuinely independent of the sale of a product if:

a) The financing agency extends the credit through the purchase, assignment, transfer or other acquisition from a maker of the warranty or any other person of an evidence of indebtedness of the buyer to a maker of the warranty;

b) The financing agency holds a reserve for the account of the maker of the warranty;

c) The financing agency and maker of the warranty are parties to a contract under which the maker of the warranty agrees to indemnify the financing agency from the consequences of any event;

d) The financing agency extends the credit in a transaction in which it acquires a purchase money security interest in the product;

e) The maker of the warranty prepares documents used in connection with the financing agency's extension of credit;

f) The financing agency supplies printed forms to the maker of the warranty which are used by the buyer to obtain the extension of credit;

g) The financing agency is related to the maker of the warranty; "related to" means, with respect to an individual, a relative, within the third degree, and, with respect to an organization, one or all of the following: (a) a person directly or indirectly controlling, controlled by or under common control of the organization or owning ten percent (10%) of the control in the organization directly or through one or more other persons or organizations, (b) an officer or director of the organization performing similar functions with respect to the organizations or to a person related to the organization, and (c) the spouse, or a relative by blood or marriage who shares the same home with, a person related to the organization

h) The financing agency extends credit to facilitate the consummation of twenty (20) or more sales during the preceding twelve (12) months by the maker of the warranty.

h) The financing agency and maker of the warranty engaged in conduct which is other than "arm's-length-dealing" with each other.

Section 17975. Attorney's Fees. If any buyer shall prevail in an action or proceeding on a warranty, he shall recover the aggregate amount of costs and expenses determined by the court to have been reasonably incurred by such buyer for or in connection with the prosecution or defense of such action or proceeding, together with a reasonable amount for attorney's fees. An award of attorney's fee shall be in an amount which is sufficient to reasonably compensate attorneys representing consumers in the enforcement of their rights under this chapter.

Section 17976. Injunction Against Violation. Any person, corporation, firm, partnership, joint stock company, or any other association or organization which violates or proposes to violate this chapter may be enjoined by any court of competent jurisdiction. Actions for injunction under this section may be prosecuted by the (supervising agency), the Attorney General, or any district attorney in this State in the name of the people of the State of California upon their own complaint or upon the complaint of any board, officer, person, corporation or association or by any person acting for the interests of itself, its members or the general public.

Section 17977. Civil Penalty for Violation. Any person who violates any provision of this chapter shall be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500.00) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the (supervising agency), the Attorney General, or by any district attorney in any court of competent jurisdiction. If brought by the (supervising agency) or the Attorney General, one-half of the penalty collected shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the state treasurer. If brought by a district attorney, the entire amount of penalty collected shall be paid to the treasurer of the county in which the judgment was entered.

Section 17978. Injunction Against Business Engagement. A person who is engaged in business and who, in the course of such business, persistently engages in knowing violations of this chapter, or knowingly counsels or permits an employee or other agent or business partner or associate to persistently engage in violations of this chapter, or knowingly connives with any other person in the persistent violation of this chapter, may be enjoined, either permanently, or temporarily, or on reasonable conditions, from engaging in such business and in any similar kind of business in this State. Application for the injunction shall be made to the Superior Court of the county in which the person has his principal place of business in California or in which the person has engaged in business in violation of this chapter. Application may be made only by the (supervising agency), the Attorney General, or the District Attorney of a county in which the person has his principal place of business in California or has engaged in business in violation of this chapter.

Section 17979. Violation a Misdemeanor. Any person, firm, corporation, partnership or association or any employee or agent thereof who violates this chapter is guilty of a misdemeanor.

ARTICLE VII - ADMINISTRATION

Section 17980. Rules. The (supervising agency) shall make, promulgate and enforce rules to implement the intent and purpose of this chapter. Such rules shall be not inconsistent with the rules adopted by the Federal Trade Commission pursuant to the Federal Trade Commission Act, the Federal Consumer Products Guaranty Act, and other Federal statute governing the nature, effect, contents, terminology, form, offer or advertising of warranties, guaranties and other similar undertakings, and may provide for adjustments and exceptions for any class of transactions subject to this chapter which in the judgment of the (supervising agency) are necessary or proper to effectuate the purposes or to prevent circumvention or evasion of, or to facilitate compliance with, the provisions of this chapter.

Section 17981. Consumer Products Guaranty Act. The provisions of this chapter and regulations issued hereunder shall be interpreted, observed, applied and enforced in a manner not inconsistent with the Federal Consumer Products Guaranty Act. A practice required of a manufacturer, distributor, wholesaler, retailer or any other party under the Federal Consumer Products Guaranty Act in all cases shall be deemed to be a practice permitted under this chapter.

CONCLUSION

The California Legislature is urged to spearhead a renaissance in fair dealing to consumers by enacting legislation that will deal effectively with the problem of the warranty.

It is hoped that these comments and proposals may be of use to the Legislature in drafting remedial measures.

Respectfully submitted,

Richard A. Elbrecht, Attorney
Legal Aid Society of Santa Clara Co.
235 E. Santa Clara St., Rm. 200
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Prepared for:
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§ 2202. [Final Written Expression: Parol or Extrinsic Evidence.]

Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented:

(a) By course of dealing or usage of trade (Section 1205) or by course of performance (Section 2208); and

(b) By evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement.

§ 2313. [Express Warranties by Affirmation, Promise, Description, Sample.]

(1) Express warranties by the seller are created as follows:

(a) Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.

(b) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.

(c) Any sample or model which is made part of the basis of the bargain creates an express warranty that the whole of the goods shall conform to the sample or model.

(2) It is not necessary to the creation of an express warranty that the seller use formal words such as "warrant" or "guarantee" or that he have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the seller's opinion or commendation of the goods does not create a warranty.

§ 2314. [Implied Warranty: Merchantability; Usage of Trade.]

(1) Unless excluded or modified (Section 2316), a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale.

(2) Goods to be merchantable must be at least such as

(a) Pass without objection in the trade under the contract description; and

(b) In the case of fungible goods, are of fair average quality within the description; and

(c) Are fit for the ordinary purposes for which such goods are used; and

(d) Run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved; and

(e) Are adequately contained, packaged, and labeled as the agreement may require; and

(f) Conform to the promises or affirmations of fact made on the container or label if any.

(3) Unless excluded or modified (Section 2316) other implied warranties may arise from course of dealing or usage of trade.

§ 2315. [Implied Warranty: Fitness for Particular Purpose.]

Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is unless excluded or modified under the next section an implied warranty that the goods shall be fit for

§ 2316. [Exclusion or Modification of Warranties.]

(1) Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit warranty shall be construed wherever reasonable as consistent with each other; but subject to the provisions of this division on parol or extrinsic evidence (Section 2202) negation or limitation is inoperative to the extent that such construction is unreasonable.

(2) Subject to subdivision (3), to exclude or modify the implied warranty of merchantability or any part of it the language must mention merchantability and in case of a writing must be conspicuous, and to exclude or modify any implied warranty of fitness the exclusion must be by a writing and conspicuous. Language to exclude all implied warranties of fitness is sufficient if it states, for example, that "There are no warranties which extend beyond the description on the face hereof."

(3) Notwithstanding subdivision (2)

(a) Unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like "as is," "with all faults" or other language which in common understanding calls the buyer's attention to the exclusion of warranties and makes plain that there is no implied warranty; and

(b) When the buyer before entering into the contract has examined the goods or the sample or model as fully as he desired or has refused to examine the goods there is no implied warranty with regard to defects which an examination ought in the circumstances to have revealed to him; and

(c) An implied warranty can also be excluded or modified by course of dealing or course of performance or usage of trade.

(4) Remedies for breach of warranty can be limited in accordance with the provisions of this division on liquidation or limitation of damages and on contractual modification of remedy (Sections 2718 and 2719).

§ 2508. [Cure by Seller of Improper Tender or Delivery; Replacement.]

(1) Where any tender or delivery by the seller is rejected because nonconforming and the time for performance has not yet expired, the seller may seasonably notify the buyer of his intention to cure and may then within the contract time make a conforming delivery.

(2) Where the buyer rejects a nonconforming tender which the seller had reasonable grounds to believe would be acceptable with or without money allowance the seller may if he seasonally notifies the buyer have a further reasonable time to substitute a conforming tender.

§ 2601. [Buyer's Rights on Improper Delivery.]

Subject to the provisions of this division on breach in installment contracts (Section 2612) and unless otherwise agreed under the sections on contractual limitations of remedy (Sections 2718 and 2719), if the goods or the tender of delivery fail in any respect to conform to the contract, the buyer may

(a) Reject the whole; or

(b) Accept the whole; or

(c) Accept any commercial unit or units and reject the rest.

§ 2714. [Buyer's Damages for Breach in Regard to Accepted Goods.]

(1) Where the buyer has accepted goods and given notification (subdivision (3) of Section 2607) he may recover as damages for any nonconformity of tender the loss resulting in the ordinary course of events from the seller's breach as determined in any manner which is reasonable.

(2) The measure of damages for breach of warranty is the difference at the time and place of acceptance between the value of the goods accepted and the value they would have had if they had been as warranted, unless special circumstances show proximate damages of a different amount.

(3) In a proper case any incidental and consequential damages under the next section may also be recovered.

§ 2715. [Buyer's Incidental and Consequential Damages.]

(1) Incidental damages resulting from the seller's breach include expenses reasonably incurred in inspection, receipt, transportation and care and custody of goods rightfully rejected, any commercially reasonable charges, expenses or commissions in connection with effecting cover and any other reasonable expense incident to the delay or other breach.

(2) Consequential damages resulting from the seller's breach include

(a) Any loss resulting from general or particular requirements and needs of which the seller at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and

(b) Injury to person or property proximately resulting from any breach of warranty.

§ 2716. [Buyer's Right to Specific Performance or Replevin.]

(1) Specific performance may be decreed where the goods are unique or in other proper circumstances.

(2) The decree for specific performance may include such terms and conditions as to payment of the price, damages, or other relief as the court may deem just.

(3) The buyer has a right of replevin for goods identified to the contract if after reasonable effort he is unable to effect cover for such goods or the circumstances reasonably indicate that such effort will be unavailing or if the goods have been shipped under reservation and satisfaction of the security interest in them has been made or tendered.

§ 2717. [Deduction of Damages From the Price.]

The buyer on notifying the seller of his intention to do so may deduct all or any part of the damages resulting from any breach of the contract from any part of the price still due under the same contract.

§ 2719. [Contractual Modification or Limitation of Remedy.]

(1) Subject to the provisions of subdivisions (2) and (3) of this section and of the preceding section on liquidation and limitation of damages,

(a) The agreement may provide for remedies in addition to or in substitution for those provided in this division and may limit or alter the measure of damages recoverable under this division, as by limiting the buyer's remedies to return of the goods and repayment of the price or to repair and replacement of nonconforming goods or parts; and

(b) Resort to a remedy as provided is optional unless the remedy is expressly agreed to be exclusive, in which case it is the sole remedy.

(2) Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this code.

(3) Consequential damages may be limited or excluded unless the limitation or exclusion is unconscionable. Limitation of consequential damages for injury to the person in the case of consumer goods is prima facie unconscionable but limitation of damages where the loss is commercial is not.

APPENDIX B - CONSUMER PRODUCTS GUARANTY ACT

S. 3074

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Consumer Products Guaranty Act."

DEFINITIONS

SEC. 2. For the purposes of this Act—

(1) A "consumer product" is one normally used for personal, family or household purposes.

(2) An "electrical component" is one with an assemblage of parts which conducts a flow of electrons from one point to another in a predetermined manner in order to perform an intended function.

(3) A "mechanical component" is one with an assemblage of parts which transmits mechanical forces or energy from one point to another in a predetermined manner in order to perform an intended function.

(4) A "thermal component" is one with an assemblage of parts which conducts heat energy from one point to another in a predetermined manner in order to perform an intended function.

(5) A "malfunctioning component" is one in which the assemblage of parts is not properly transmitting mechanical, electrical, or thermal forces in a predetermined manner, and, therefore, not performing its intended function.

(6) The term "without charge" means that the guarantor(s) cannot assess the owner for any costs the guarantor or his representative incur in connection with the required repair or replacement of guaranteed components. The term does not mean that the guarantor must compensate the owner for incidental expenses unless such expenses were incurred because the repair or replacement was not made within a reasonable time or because the guarantor imposed an unreasonable duty upon the owner as a condition of securing repair or replacement.

(7) "Reasonable and necessary maintenance" consists of those operations which the consumer reasonably can be expected to perform or have performed which are necessary to keep any thermal, mechanical, or electrical component operating in a predetermined manner and performing its intended function.

(8) The term "replacement" shall include the refunding of the purchase price of the product less reasonable depreciation based upon use prior to malfunctioning if the guarantor is unable to effect replacement, or if the owner is willing to accept such refund in lieu of replacement or repair.

(9) An "express guaranty" is one created as follows:

(a) Any affirmation of fact or promise made by the seller to the buyer which relates to the consumer product or any of its components and becomes part of the basis of the bargain creates an express guaranty.

(b) Any description of the consumer product or any of its components which is made part of the bargain creates an express guaranty.

(c) Any sample or model which is made part of the basis of the bargain creates an express guaranty.

It is not necessary to the creation of an express guaranty that the seller use formal words such as "warrant" or "guarantee" or that he have a specific intention to make a guaranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the seller's opinion or commendation of the goods does not create a guaranty.

DUTIES OF GUARANTORS

SEC. 3. In the sale of consumer products which are distributed in or which affect interstate commerce and which have electrical, mechanical, or thermal components, any express guaranty related to the performance of such products imposes upon the maker or makers of such guaranty the duties—

(a) to repair, or replace if repair is not possible or cannot be timely made, any malfunctioning guaranteed components,

(b) within a reasonable time, and

(c) without charge.

In fulfilling the above duties the maker shall not impose any duty other than notification upon owners as a condition of securing repair or replacement of a malfunctioning guaranteed component unless the maker can show that such a duty is reasonable. In a determination of whether or not the additional duty or duties are reasonable, the magnitude of the economic burden necessarily imposed upon the maker and purchaser shall be weighed against the magnitude of the trouble and annoyance caused owners of malfunctioning guaranteed products.

The above duties extend from the maker to the first purchaser and any subsequent owners for the duration of the guaranty period stated, or if no period is stated, for a reasonable time.

DEFENSES AVAILABLE TO GUARANTORS

SEC. 4. The duties enumerated in section 3 shall not be imposed upon the maker of any performance guaranty if the maker can show that damage or unreasonable use (including failure to provide reasonable and necessary maintenance) caused any guaranteed components to malfunction.

REQUIREMENTS OF WRITTEN GUARANTEES

SEC. 5. Whenever a guaranty described in section 3 is made in writing, the maker of the guaranty shall cause it to be labelled "performance guaranty" and shall cause the following information to be provided to the first purchaser prior to the time of purchase:

(a) The duration of the guaranty period measured either by time, or where practical, by some measure of usage such as mileage.

(b) Any reasonable and necessary maintenance required as a condition of the guaranty.

(c) The costs of such maintenance if required to be performed by a designated representative of the maker.

The maker shall also provide the following information to the first purchaser:

(a) A recital of the maker's duties to the purchaser or subsequent owners during the guaranty period.

(b) The step-by-step procedure which the owner should take in order to obtain repair or replacement of a malfunctioning guaranteed component.

(c) Any means available for quick informal settlement of any guaranty dispute.

(d) A recital that legal remedies are available to any owner if the guarantor has not fulfilled the terms of the performance guaranty.

(e) A recital that any consumer who successfully pursues his legal remedies may recover the reasonable costs incurred, including reasonable attorney's fees.

EXCLUSIVE USE OF THE WORD-"GUARANTY"

SEC. 6. One year after the date of enactment of this Act, no guarantor shall characterize any promise or affirmation which relates to consumer products by the word "guaranty" unless such promise or affirmation relates to the performance of consumer products which have electrical, mechanical, or thermal components.

SEPARATE GUARANTY PERIODS

SEC. 7. Nothing in this Act shall prohibit the maker of a performance guaranty from assigning separate guaranty periods to separate components of a consumer product, provided that any varying coverages are clearly stated and reasonable in number.

PARTS WARRANTY

SEC. 8. Nothing in this Act shall prohibit the maker of a performance guaranty from warranting parts and not labor after the expiration of a performance guaranty period if that period is of reasonable duration.

SERVICE CONTRACTS

SEC. 9. Nothing in this Act shall be construed to prevent a manufacturer, distributor, or retailer who does not give a performance guaranty on consumer products which have mechanical, electrical, or thermal components from selling a service contract covering parts and labor to the first purchaser at the time of sale.

DESIGNATION OF REPRESENTATIVES

SEC. 10. Nothing in this Act shall be construed to prevent the maker of any performance guaranty from designating representatives to perform the duties required under this Act, but no such designation shall relieve the maker of his direct responsibilities to the consumer.

RELATION OF THIS ACT TO STATE LAW

SEC. 11. Except as provided by section 12, State law is not preempted by this Act.

SEC. 12. State law is modified to the extent that there may be no express disclaimer of implied warranties if any performance guaranty is given.

SEC. 13. Remedies for breach of implied warranties may be limited, liquidated, or contractually modified in accordance with applicable provisions of State law.

SEC. 14. Nothing in this Act shall be construed to limit implied warranties to durations coincidental with express performance guarantees.

FEDERAL TRADE COMMISSION

SEC. 15. (a) The Federal Trade Commission shall establish such trade regulation rules as it shall determine are necessary for implementing sections 2-10 of this Act.

(b) It shall be a violation of section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. 45(a)) for any person or corporation subject to the provisions of this Act to fail to comply with any requirement imposed on such person or corporation by or pursuant to this Act or to violate any prohibition contained in this Act.

(c) Nothing in this section shall be construed as impairing the rights of owners, to seek, individually or as a class, any remedy available for any breach of any duty imposed by law.

REMEDIES

SEC. 16. Congress hereby declares it to be its policy to encourage guarantors to establish procedures whereby consumer disputes related to performance guarantees are fairly and expeditious settled through informal dispute settlement mechanisms. Such informal dispute settlement procedures should be created by guarantors in cooperation with independent and governmental entities and should be supervised by some governmental or public body.

SEC. 17. Any owner, individually or as a class, may sue in any United States, State, or District of Columbia court of competent jurisdiction for any breach of a performance guaranty.

SEC. 18. The guarantor shall be liable to the owner for any breach of a performance guaranty and shall be under a duty to perform as required under this Act and to compensate the owner for all reasonable expenses incurred by the owner because of the guarantor's initial failure to perform.

SEC. 19. If any owner shall finally prevail in any suit or proceeding involving a performance guaranty, he shall be allowed to recover as part of the judgment a sum equal to the aggregate amount of cost and expenses (including attorneys' fees) determined by the court to have been reasonable incurred by such owner for or in connection with the institution and prosecution of such suit or proceeding.

EFFECTIVE DATE

SEC. 20. This Act shall take effect six months after the date of its enactment.

EXHIBIT F

Statement by Ford Motor Company for California State Senate Committee on Business and Professions:

Ford Motor Company and its dealers offer with 1970-model passenger cars (except Maverick and Cortina) and light trucks a simplified 12-month basic warranty which has no limitation on mileage or number of owners and provides adjustments and service without charge in virtually all cases during the first 90 days of the warranty period.

The new warranty also eliminates all requirements for validation of maintenance and does not require presentation of Ownercards during the basic warranty period.

The Company and the selling dealer jointly warrant that the dealer will repair or replace, without charge to the customer, any part (except tires and tubes) of a new 1970 model Ford Motor Company passenger car or light truck in normal use in the U. S., Canada, Puerto Rico or U.S. Virgin Islands which is found to be defective in factory materials or workmanship within the first 12 months of use, without limitation as to mileage or ownership changes. Tires and tubes are warranted separately by their manufacturers.

In addition, during the first 90 days of the basic warranty period, virtually all adjustments and services other than scheduled periodic maintenance, will be performed without charge except in cases where the vehicle obviously has been damaged or abused.

This means that for a 90-day "break-in-period", Ford buyers do not have to bear the cost of adjustments such as wheel and headlight alignments, wheel balancing and carburetor adjustment that in prior model years may have been charged to them.

On all car lines except Maverick, which was introduced earlier this year with a 12-month/12,000-mile warranty, and the British Cortina, the new warranty replaces a 12-month/12,000-mile basic warranty plus a 5-year/50,000-mile extended powertrain warranty for first owners (remaining warranty coverage was transferable to second owners for a $25 charge; warranty adjustments for second owners beyond 12 months or 12,000 miles were subject to a deductible charge of $25 per incident). The prior warranty was also conditioned on use of an Ownercard, proof of performance of specified maintenance, and verification of odometer readings.

Both customers and dealers found it difficult to understand and apply the former warranty because of ownership changes, incomplete maintenance records, odometer repairs and mislaid Ownercards. Those factors have no effect under the new basic warranty. The new warranty should contribute importantly to improving the warranty service relationship between dealers and their customers and between the company and its dealers by eliminating many of the conditions of coverage present in past warranties.

Since the new warranty outlined above was announced in August, Ford Motor Company has amended it in two ways:

1. The first owner may purchase a 5-year/50,000 mile powertrain warranty for $15.00.
2. The second owner may purchase a 5-year/50,000 mile powertrain warranty for $25.00, subject to a deductible charge of $25.00 per incident.

GAFFERS & SATTLER, INC.

4851 SO. ALAMEDA ST. LOS ANGELES, CALIF. 90058 (213) 232-4711

Dear Customer:

Your Gaffers and Sattler range was carefully inspected and tested before shipping. The inspector's name proudly appears on the range. To assure you further, we provide you with the Consumer Protection Warranty set forth below.

Consumer Protection Warranty

Subject to the limitations set forth below, we guarantee your range under normal use in your home against defects in workmanship or material for a period of one year from the date that it is first used.

We will under this Warranty, replace any defective part at no cost or expense to you except for the labor involved in the removal of the defective part and the installation of the replacement.

LIMITATIONS

1. **Porcelain Enamel.** Porcelain enamel is actually glass fused to steel and will chip or craze if not properly cared for. This Warranty does not apply to enameled parts.
2. **Decorative Finishes.** This Warranty does not apply to scratches or discoloration of decorative finishes.
3. **Light Bulbs.** This Warranty does not apply to light bulbs.
4. This Warranty is in place of all other warranties, express or implied, including any implied warranty of merchantability.

Finally, this Warranty does not cover damage to the range caused by misuse, accident, or act of God.

If the range fails to operate we ask you to do the following

1. Contact your nearest Gaffers and Sattler Service Branch or Authorized Agency, either of whom can be found in the Yellow Pages, or contact us directly at 4851 So. Alameda, Los Angeles, California 90058, (213) 232-4711.
2. Whenever requesting service, please be sure to give the model number and serial number of your range which is found on the rating plate of the range.

We suggest that you retain this letter with your operating instructions. We know you will enjoy using your Gaffers and Sattler range; and would like you to know that we are always at your service.

Sincerely,

GAFFERS & SATTLER, INC.

PART NO. 9-5616

GAFFERS & SATTLER
A DIVISION OF REPUBLIC CORPORATION

QUALITY HOME APPLIANCES

Dear Customer:

You can depend on your Gaffers & Sattler water heater for plenty of hot water and years of trouble free service.

The performance of your water heater is protected by your consumer protection warranty.

CONSUMER PROTECTION WARRANTY

DEL MAR

The glasslined tank in your water heater is guaranteed under normal use in a single family residence against leaks from corrosion for a full 7 years. This simply means that, if after your water heater is installed, the tank should leak because it is corroded a complete new heater, of our manufacturer, will be furnished to you to fulfill this warranty.

The component parts of your heater under normal use are guaranteed against defects in material and workmanship for one year. This means, if you discover a defect within the first year after installation, a replacement part will be furnished at no cost to you.

Though a replacement for a defective heater or part under this warranty is furnished to you at no cost, you will be responsible for the cost of transportation and installation of the item.

Of course, our warranty does not cover any damage or defect to the heater or any component part caused by accident, misuse, fire, flood, acts of God or any consequential damages to property from a defective water heater or part. We also believe that it is only fair that this warranty apply only if you install the heater in accordance with the plumbing law of your community and operate it in accordance with the directions found on the rating plate attached to the heater.

We suggest you keep this letter in a convenient place. If you ever require a replacement under this warranty, we ask that you contact your local authorized Gaffers & Sattler dealer or you may contact us directly. All that we will need to know is the product code number and model number of your heater which is found on the rating plate. You will find then that your consumer protection warranty makes owning a Gaffers & Sattler appliance a good investment.

Very truly yours,

GAFFERS & SATTLER

4851 SOUTH ALAMEDA STREET LOS ANGELES, CALIFORNIA 90058 PHONE (213) 232-4711

Part No. 9-20635

EXHIBIT H

WE DEMAND...

1. That all warranties be written in layman's language in in English and Spanish.

2. That legal services for the low-income person be extended.

3. That some mechanism be established to insure that the manufacturer or seller will continue to be responsible for the fulfilment of the warranty in cases where the product is discontinued or the manufacturer or seller goes out of business.

4. That instruction material attached to appliances be written in layman's language in English and Spanish.

5. That all warranties include free labor, parts, service calls, Pick-up and delivery and postage.

6. That in cases where the product is an off brand name and service and parts difficult to obtain that the seller be responsible for the compliance with the warranty.

CONSUMER ACTION COUNCIL
4778 Brooklyn Avenue
East Los Angeles, Calif.
269-4755

PUBLIC HEARING
SENATE COMMITTEE ON BUSINESS AND PROFESSIONS
CALIFORNIA STATE LEGISLATURE

Held In
Room 115, 217 West First Street
Los Angeles, California

November 4, 1969

Subject: Interim Hearing on Manufacturer's Warranties

Committee Members:

Chairman:	Senator Alfred H. Song
Vice Chairman:	Senator Milton Marks
	Senator Gordon Cologne
	Senator William E. Coombs
	Senator H. L. Richardson
	Senator Lewis F. Sherman
	Senator Robert S. Stevens
	Senator Lawrence E. Walsh
	Senator James E. Whetmore
Secretary:	Vicki Biastre
Committee Consultant:	James A. Cathcart

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INDEX OF EXHIBITS

TUESDAY, NOVEMBER 4, 1969, 10:00 O'CLOCK A.M.

CHAIRMAN SONG: The meeting will come to order. Yesterday's hearing was productive of information that eventually could be helpful in the formulation of possible legislation governing the subject of warranties. Also I believe it's made possible a number of tentative conclusions. To begin with, it is not to be denied that a purchaser of a refrigerator or an automobile or a television set or any other consumer goods is entitled to a product that functions, that performs as represented. It is likewise not to be denied that the manufacturer or the seller or a combination of both of them should stand behind the product they manufacture or sell. I think this is only fair.

We found that certain manufacturers will in fact stand behind they sell. This is also true of certain retailers or dealers. On the other hand, during the course of yesterday's hearings we also found that certain written warranties are no more than a device for evasion, nothing more than an advertising gimmick with enough exceptions to make them really for all practical purposes worthless. The buyer then in these instances seeking redress finds himself running around in circles, still legally obligated to pay for a non-functioning product.

One conclusion is clear at this point. Warranties should accompany the sale of consumer goods. The nature and extent, the terms and conditions hopefully will eventually be determined and I also hope that the equities can be balanced so that the consumer, the manufacturer, the retailer, all of the parties involved will be treated fairly. As I have indicated and simply

to paraphrase, I think it's undeniable that a person is entitled to get what he pays for. On the other hand, the retailer, the manufacturer, are all entitled of course to make a fair profit. This is the scheme of things under which we live and this is what I would like to see accomplished eventually.

As I announced yesterday we have a number of scheduled witnesses. If time permits any others present here today who would like to offer testimony of course will be allowed to do so. The first witness today will be Bob Nambo who has, I understand, two or three witnesses.

MR. NAMBO: That's true, Mr. Chairman, but unfortunately my two or three witnesses aren't here yet.

CHAIRMAN SONG: We will pass you temporarily. Is Mr. Gerson D. Ribnick here representing the Institute of Heating and Air Conditioning Industries?

MR. RIBNICK: Yes. Mr. Chairman, my name is Gerson Ribnick. I am the executive director of the Institute of Heating and Air Conditioning Industries. I am very happy to be here this morning and present to you three witnesses from the industry representative of three different divisions of an industry.

I would like to first explain a little bit about the organization if I may. The Institute of Heating and Air Conditioning Industries is the only organization in the United States representing those fractions of an industry all within one organization. It's been in existence since the 1930's, and has had the opportunity of discussing and reviewing industry problems; problems, of course, going far beyond those just involved with warranties and guarantees. There are a multitude

of problems within an industry, but this problem has not been one that the Association has evaded. In fact it has been under discussion prior to the promulgation of Senate Bill 1166, and I know we've had some conversations on that subject. There have been no conclusions reached other than the fact that a problem does exist.

In our testimony before you on the hearing of the bill itself these problems were explained. The subject matter has continued to be under discussion within the organization and we would like to continue to offer the experiences, talent and history of the many problems involved with warranties and guarantees to your committee for any continued studies after this hearing.

At this time I would be very proud to present to you three of the representatives from our different divisions within the Institute of Heating and Air Conditioning. I would like to first start out with the spokesman for the contractors' division. I think I have supplied to Mr. Cathcart the names of the other two so I won't have to come back to the podium again unless I am called to. I will start out first with Mr. Tom Jones, who is the spokesman for the contractors' division of the Institute of Heating and Air Conditioning.

CHAIRMAN SONG: Very well. Is Mr. Jones here?

MR. JONES: Thank you, Mr. Chairman. Mr. Chairman, ladies and gentlemen, as I have been introduced, my name is Tom Jones. I am a licensed C-20 contractor and I represent the Heating, Ventilating and Air Conditioning Contractors' Association of Los Angeles. I respectfully appear before you on this occasion

for the purpose of relating the installing contractors' position in this complex web of problems, concerning the implementing of warranties and guarantees of the heating and air conditioning system installations relative to the residential housing in the Los Angeles area.

I have submitted to you for your review my formal presentation. I would like briefly to go over this presentation for your review at this time.

CHAIRMAN SONG: Mr. Jones, we have the written statement. This will be incorporated in the record in its entirety so it won't be necessary for you to read it. You can touch on the highlights.

(See Appendix A for the complete statement.)

MR. JONES: I want to give you the highlights of the presentation.

CHAIRMAN SONG: May I announce the arrival of Senator James Whetmore of Orange County sitting on my left. You may proceed, Mr. Jones.

MR. JONES: Thank you, sir. May I start out with the point that the installed system of the air conditioning contractor is merely a component part of a large product, the total whole. Very seldom do we have any occasion to have direct contact communications with the consumer himself.

CHAIRMAN SONG: Who employs you, the subdivider, for example?

MR. JONES: The general contractor is our customer. This is the point that I would like to make, is that we have a very distinct distinction between the consumer and our customer, the

customer being the general contractor, and the consumer being the home owner.

CHAIRMAN SONG: That is true, and I think anyone who is well versed enough in matters of this kind is aware of that, but on the other hand though, Mr. Jones, I'm aware of another thing and that is while there is no privative contract so to speak between yourself and the home owner, you still can claim legal redress directly against the home owner by the exercise of your lien rights.

MR. JONES: This is correct.

CHAIRMAN SONG: So in that particular sense there is a slight disparity relationship.

MR. JONES: And we as the heating and air conditioning installing contractors do not deny our obligation and responsibility to the consumer which we attempt to exercise in all respects and fulfill the warranties that are both implied and written that the consumer receives from the manufacturer and from the general contractor himself.

CHAIRMAN SONG: Let me ask you a series of questions, if I may, since your statement is going to be incorporated in its entirety. You purchase air conditioners, for example, and heaters, from a certain manufacturer, do you not, when you get a job?

MR. JONES: That is right.

CHAIRMAN SONG: And generally speaking if you are working on a subdivision project it's a number of units?

MR. JONES: That is correct.

CHAIRMAN SONG: Are they generally accompanied by the written guarantee or warranty of some kind?

MR. JONES: Usually they are accompanied by a written warranty that is attached in what they call a homeowner's operation instruction booklet attached to the unit itself which we normally leave intact attached to the unit also. In many instances we accumulate these and give them to the general contractors' representatives so that at the time the homeowner moves in he may distribute these warranty booklets in total along with all the other products that they receive.

CHAIRMAN SONG: In view of the fact that there is very infrequent, if any at all, personal contact between yourself, the subcontractors that is and the homeowner, it's your assumption then that the general contractor's representative will deliver these guarantees to the purchaser of the home?

MR. JONES: This is true and many times this is not done by the general contractor, and many times after the homeowner has received them, if they have been distributed, the homeowner in his enthusiasm with his new home does not use them in the manner in which they were supposed to be used. He merely puts them in the bottom of a drawer someplace and figures when he has a problem he will then review the booklet.

CHAIRMAN SONG: All right. Let's consider the normal kind of written guarantee that accompanies the unit that you install. What do they generally provide?

MR. JONES: They generally provide, and I might insert at this point that in the past there have been many various different warranties by the manufacturers. There has been little standardization. However, this last year, the contractors and the manufacturers have attempted to get together to pretty well

standardize this problem. To get back to your question, the warranty from the manufacturer usually states that the product will be guaranteed, both labor and materials until start-up of the unit.

CHAIRMAN SONG: Until what?

MR. JONES: Until start-up of the unit.

CHAIRMAN SONG: Well, I don't quite follow you there, until it is actually put into use?

MR. JONES: Until it's actually started and tested and it is in use by the consumer.

CHAIRMAN SONG: Well, you mean the minute the consumer or the purchaser of the home occupies the premises and turns the heater on, for example, that is a start-up?

MR. JONES: That is start-up, yes, sir.

CHAIRMAN SONG: Well, how can he be compensated for labor and parts from prior to that time -- how can he be benefitted?

MR. JONES: We, the contractors, implement the manufacturer's warranty by extending that labor and material guarantee for one entire year from the date of installation.

CHAIRMAN SONG: You, the subcontractor?

MR. JONES: We are obligated by our contract with the general building contractor.

CHAIRMAN SONG: And this is a general clause that's contained in your contract?

MR. JONES: This is almost standard within the industry, yes.

CHAIRMAN SONG: Senator Whetmore.

SENATOR WHETMORE: Is this extension given to the customer

in writing, or is this just general knowledge?

MR. JONES: No, it is not given to the customer in writing because again we do not deal with the customer. Now, whether he receives this from the builder or the general contractor, I do not know.

SENATOR WHETMORE: This is interesting to me and I won't belabor it since Senator Song has very aptly pointed it out, but am I correct in assuming when I move into an apartment with an air conditioner in it that the guarantee only extends until I turn it on and that after that there is no warranty?

MR. JONES: No, the manufacturer's responsibility ends as far as the labor portion of repair to that unit at the time that that unit is started up and running satisfactorily. The heating installer or the air conditioning installer then is the responsible party for any replacement of defective parts and so forth to the unit.

CHAIRMAN SONG: You mean the labor aspect of it?

MR. JONES: The labor aspect of it.

SENATOR WHETMORE: How does he get those parts, does he get it for free or does he have to buy it from you?

MR. JONES: No, the parts are warrantied for one year. They are warrantied by the manufacturer. But the manufacturer relieves himself of the responsibility as soon as that unit is started and running satisfactorily.

SENATOR WHETMORE: Then it is up to the air conditioning --

MR. JONES: Then it is the installing contractor's responsibility to maintain that warranty, both parts and material, for one year.

SENATOR WHETMORE: Very interesting. Thank you. Proceed.

CHAIRMAN SONG: I realize, Mr. Jones, some of the questions directed at you should probably be directed to the manufacturers' spokesmen whom I notice is scheduled to testify. Let me ask you this. Isn't it true that sometimes some of the difficulties which ensue following installation and the start-up could possibly be because of defective installation?

MR. JONES: Yes, sir, this is very true.

CHAIRMAN SONG: And that could be your sole responsibility?

MR. JONES: It could be and basically it is our responsibility whether it is a defective piece of merchandise that we received or whether it is a defective installation that we performed.

CHAIRMAN SONG: What are some of the contributing factors to what we might describe as defective installation? Is it the utilization say of cheap materials?

MR. JONES: Yes, the utilization of "cheap parts," component parts, which are purchased in large quantities by the manufacturers. They are sometimes quality controlled at the manufacturer. However, we have found that we, the installing contractors, have not always been satisfied with quality control.

CHAIRMAN SONG: I'm referring to -- I'm using the term "cheap" advisedly, cheap installation methods utilized by the installing subcontractor. Is that a possibility?

MR. JONES: Yes, this again is a possibility.

CHAIRMAN SONG: Does that pose a problem at all?

MR. JONES: It most definitely does, if the general building

contractor has specified a system that does not necessarily meet the Code requirements, for instance, or does not live up to the overall normal installation standard practices of the industry, then if the installing contractor does not bring this to the general contractor's attention, then he's going to be the guy that's stuck for it for the rest of that year.

CHAIRMAN SONG: I see. Also with the hope that nothing will happen that will bring this to the attention of the homeowner?

MR. JONES: Well, again if I may just elaborate a second, this is basically my entire contention, that if the responsibility, if legislation is necessary and the legislation is put on the responsible parties, then the responsible parties will be more aware of what should be done in the design of systems, selection of equipment as to, will this equipment be warrantied, will this system be warrantied for one year with very little trouble and very little customer complaint problems. And my summary indicates that in my opinion the responsibility should be with the building contractor, the general building contractor, the person who is manufacturing a total product. And I go a step further and I say, I do feel that the responsibility should be carried even to the lending institution, the person who is carrying the loan for this home for thirty years.

SENATOR WHETMORE: Mr. Chairman.

CHAIRMAN SONG: Senator Whetmore.

SENATOR WHETMORE: Have you a suggestion as to how that could be passed on to the lending institution?

MR. JONES: That's a very good question. I don't know all the aspects of how it could be listed and so forth, but I do

feel that this is where the responsibility should lie.

SENATOR WHETMORE: The general contractor?

MR. JONES: General contractor and/or the lending institution who holds the mortgage on the property.

SENATOR WHETMORE: And not the subcontractor that actually did the installation?

MR. JONES: The subcontractor is responsible to the general contractor in his written contract in most instances.

SENATOR WHETMORE: I see.

MR. JONES: So therefore we are not getting away from the responsibility. We are just trying to put the responsibility on one person where it should lie, where the homeowner has proper redress to a responsible party.

SENATOR WHETMORE: Thank you.

CHAIRMAN SONG: I found, Mr. Jones, that in the limited course of my personal experience that frequently the problem is caused by defective workmanship. Just to cite one illustration, there was a swimming pool at the home I just purchased. I had an electrician out to look at the wiring. Apparently when the pool was installed, and I assume the swimming pool contractor this time handled all of the aspects of it, rather than run the necessary kind of wiring in whatever it is called, he simply tacked it onto something else resulting in a frequent overloading of that, again whatever you may call this, I don't know, but here again this is a clear illustration of defective, slipshod workmanship.

MR. JONES: It apparently was not in accordance with Code requirements either. This could be and it should caught by the

building inspector if nobody else.

CHAIRMAN SONG: I agree, but unfortunately the contractor himself obviously successfully attempted to circumvent minimum building standards. Does your group attempt to police itself and set out certain standards?

MR. JONES: Yes, we do, but again it is most difficult when the responsibility can be shifted from one party to another party such as in your instance. Who did you go to when you had this particular problem? Did you go to the general contractor or did you go to the electrician or who passed the back to who? This is the problem that I bring out and lay on the table as I see it, and with the responsibility lying with the selling party in this instance, the manufacturer of the total product, by legislation if necessary, I think that he, the manufacturer of the total product, the general building contractor, would have more of an obligation or a moral responsibility or legal responsibility in this case, to fulfill his obligation.

CHAIRMAN SONG: You are certainly pointing out the dilemma the consumer frequently has, as pointed out by another witness yesterday. He just didn't know who to go to to get redress.

MR. JONES: This unfortunately is true. When we get involved we are involved with the builder, the sales representative of the builder, the other subcontractor trades, the electrician, the plumber, the installation contractor, the public utilities, may I add, they answer the problem of responsibility in many instances. You talk about an electrical overloaded circuit for your swimming pool. The City of Los Angeles has had a history of not being able to keep up with

their capacity to supply enough electricity to the overall building program that's been going on for years.

CHAIRMAN SONG: You would undoubtedly be for legislation that would clarify and limit perhaps the responsibility of each participant in the home building process, would you not?

MR. JONES: I think that's just going to muddy up the water, frankly, Senator Song.

CHAIRMAN SONG: What would you suggest?

MR. JONES: My suggestion is that if legislation is necessary, you can legislate each individual responsible party to a particular line, but when that homeowner, consumer, individual, attempts now to have his problem corrected, he has to now define in his mind who was at fault and attempt to contact this party. We get calls all the time that the circuit breaker has kicked out on the air conditioning system. We have to send a man out at our expense to reset the circuit breaker. Maybe the circuit breaker was too small in the original installation and we didn't catch it or the inspector didn't catch it or the general building contractor didn't catch it, or who. So again what I'm trying to say is that by legislating and defining responsibility, I don't think that is the answer to the problem. I think that by putting responsibility squarely where it belongs and making the general building contractor responsible to see to it that the people he has working for him are responsible in their own way of work and living up to their contract requirements which should include a service warranty clause is better.

CHAIRMAN SONG: In other words, since there's no privaty of contract between you and the homeowner, but only between the

homeowner and the general, you feel the statute should pinpoint liability just solely on the general contractor who in turn --

MR. JONES: Who in turn then can enforce his subcontractors' responsibility to him.

CHAIRMAN SONG: And you believe that such legislation is in fact indicated at the present time, do you not?

MR. JONES: I think that if any legislation at all is necessary in the future, this is where the legislation should be pinpointed.

CHAIRMAN SONG: Anything else?

SENATOR WHETMORE: Mr. Chairman, I'm glad to hear somebody say that legislation could be indicated. Sometimes many industries don't want any legislation at all.

MR. JONES: We don't want legislation that is going to make a problem for our industry.

SENATOR WHETMORE: Of course not, certainly, we don't either.

MR. JONES: I appreciate this.

SENATOR WHETMORE: But we do have some constituents that write us nasty letters and we've got to do something about it.

MR. JONES: I feel this is the answer to the legislative position in our industry.

CHAIRMAN SONG: Very well. If we were, however, just one comment, Mr. Jones, to follow your reasoning here, if privative contract is going to be irrelevant, if not the only factor, this would automatically exclude a manufacturer from our considerations because the consumer has no dealings with the manufacturer.

MR. JONES: Again I come back to the several statements that were made yesterday, one by Schwinn Bicycle, and one I believe by Senator Walsh that was on the panel yesterday, that the installing contractor should be the one to implement the warranty by the manufacturer. If he does not produce a product that is good, don't use it any longer. If the manufacturer deals directly with the builder as far as selling his product, that's where the responsibility should lie.

CHAIRMAN SONG: Very good. Anything else? Thank you very much, Mr. Jones. Is Mr. Bob Feuer here? Mr. Feuer, you are the spokesman for the distributor division of the Institute of Heating and Air Conditioning, is that correct?

MR. FEUER: That is correct, Senator.

CHAIRMAN SONG: All right.

MR. FEUER: Ladies and gentlemen, I represent the distributors and wholesalers, but I also feel that I have a direct responsibility because I'm also a consumer as all of us are in this room, and responsibilities are what we are here to talk about I believe.

CHAIRMAN SONG: That's correct.

MR. FEUER: And you have my written presentation. I'm not going to dwell on it because what I'm going to speak of is a little different than the written presentation that I have submitted.

CHAIRMAN SONG: Before you proceed, Miss Reporter, will you include that in your transcript?

(See Appendix D.)

MR. FEUER: There are three responsible parties, I beg your

pardon, there are four responsible parties in every air conditioning installation, the manufacturer who builds the equipment, the distributor or the wholesaler who sells for the manufacturer, the installing contractor, and I'm probably going to bring up a very unpopular point of view, but there's a trade union involved, and then there's the responsibility of the consumer whom I feel has probably the greatest responsibility of all of the responsible parties involved in this installation.

CHAIRMAN SONG: You have excluded the general contractor.

MR. FEUER: Well, my feeling is, of course, as a wholesaler and distributor, I am not involved with the general contractor in any way. I have to avoid even talking about the general because I know nothing about his activities with regard to the building. All of my work is done with the contractor who installs the equipment. I assume the general is a part of it, but actually the installing contractor is the responsible party to the general, so my feelings are that we must dwell on the installing contractor who incidentally is usually the servicing contractor of the equipment that he installs.

The manufacturers' responsibilities lie in an area of selecting good distributors, distributors who have financial backgrounds and who have qualified people to sell the merchandise. The distributor, the wholesaler, has a direct responsibility to his industry to select and sell to qualified competent installing contractors. Now, myself and my industry as wholesalers probably fall down in this area. When someone walks in and says, "I want to buy equipment," we are all too quick to sell to them, and if you have read my presentation

you know I'm going to dwell a little bit on the installing and servicing contractor. The trade unions are responsible for not supplying qualified people that our contractors need and I'm a firm believer in this. I always will be. And I have been in this industry for twenty-three years and I have seen too much of this thing happening and our unions are responsible for not supplying the personnel, particularly in the home building area.

SENATOR WHETMORE: Mr. Chairman.

CHAIRMAN SONG: Senator Whetmore.

SENATOR WHETMORE: Am I to understand you are saying that the trade unions are unable to supply qualified workmen to install the equipment?

MR. FEUER: Senator Whetmore, there's installing contractors in this area have to select from a pool of journeyman installers and journeyman service people. A great deal of the installation in this town is done in commercial buildings. It's very complex and complicated and the better men go to the heavy industrial and commercial installers. Now, this isn't to say that the installing contractors, all of them have bad people. They don't. They have some excellent people, but they don't have the pool to pick from and the higher paid jobs that command the higher wages that are set by the contractors installing largely high rise buildings, complex equipment and control systems, things that you wouldn't normally find in a home as complicated as you would in a commercial building.

SENATOR WHETMORE: The scale is higher for working in a commercial building?

MR. FEUER: No, the union scale isn't higher, but the

commercial contractor generally pays more money than the contractor installing in the residence.

SENATOR WHETMORE: Would it be possible for the residence contractor to pay more money and get these people if he wanted to?

MR. FEUER: Sure, it's possible, but these people have to bid to general contractors at prices that I've seen, and I can't see how they can do it, some of them. It's a tough game. The residential contracting game is probably the roughest of all. I'm glad I'm not in it.

Now, getting back to the manufacturer's responsibility, the manufacturer has a warranty on his equipment. My contention is that the manufacturer's warranty isn't strongly worded in enough areas to protect either himself or the consumer or the installing contractor. If I, the manufacturer, say that I'm going to warrant this compressor for a period of five years, how am I going to control the equipment after it leaves my plant? How am I going to control the contractor who installs it and how am I going to control the wholesaler that sold the equipment that may have sized it improperly. If a house takes a five-ton heating load or a five-ton cooling load and we sell the man a three-ton piece of equipment because we are going to get it at a cheaper price to them, then we are responsible. The manufacturer must stipulate in his warranties stronger wording and he must have something to back him up. We need service agreements. We need service of our residence air conditioning equipment. The only time the residential equipment is serviced is when a customer cries wolf, it's broken down. The building

we are in today is air conditioned and I'll guarantee you someone looks at it every day. I don't think there's many people in this room that change the filters in their air conditioning. The manufacturer absolutely must instruct the installing contractor, he must have educational classes, he must have strong service clinics, strong installation clinics to be sure that the equipment that he builds is properly installed and properly serviced.

CHAIRMAN SONG: You think this should be the manufacturer's responsibility?

MR. FEUER: I certainly do. I think the manufacturer --

CHAIRMAN SONG: The manufacturer you have indicated has little if any contact with the installing contractor. You do as a distributor.

MR. FEUER: The manufacturer, and I believe he will bear me out when the manufacturer gets up here from whatever company he is going to speak from, does offer training classes either at their own plants or through their distributors and when these are offered we gladly pick them up and invite our dealers, our contractors, to attend these classes. But it shouldn't stop there.

We have the consumer and the consumer is the least schooled of all the people who use the merchandise that's sold.

CHAIRMAN SONG: Certainly that's why we are considering some legislation to protect the consumer, but what's your role? You talk about the manufacturer's responsibility and extension thereof.

MR. FEUER: All right. The role of the wholesaler, I take the position that the wholesaler should pick his contractor, the

contractors who are most qualified, who can lay out a decent job and put in a good installation. We have classes and when I say "we," I'm talking of the industry. Our manufacturers call us and say, "We would like to set up a clinic." We send our own people to them and we invite contractors to go along. But you can only do so much. There's only so many hours in a day. I still feel that we must school the people who are using the equipment. I think that is a key to the whole program. The theme that I'm probably getting at is that I'm afraid that legislation without a purpose other than to protect just the consumer is going to subsidize incompetence in installing contractors. It's going to give them a free hand to do what they want, to walk away and say, "Mr. Consumer, you can sue this guy when we're all finished this manufacturer, but if it doesn't work, don't call me." I feel more emphasis has to be placed on the trade association itself, the unions, the wholesalers, and the manufacturers, to iron out the difficulties, and there are difficulties in these warranties. If a manufacturer puts a warranty on his equipment and the consumer isn't told that the filter has to be changed, the construction dirt that's jammed up into the filter the first winter is going to continually burn out limit switches in these pieces of equipment and the manufacturer is going to be forced to supply replacement parts to the contractor who will supply them free of charge to the consumer. He will have to eat the labor himself all because someone didn't tell that consumer to change the filter.

CHAIRMAN SONG: You apparently believe that making the manufacturer solely responsible would not be equitable?

MR. FEUER: I think this is absolutely true. It's not equitable. I think the responsibility lies in four different directions.

CHAIRMAN SONG: Well, what kind of legislation do you think can be formulated that would improve the calibre of the working man who belongs to a trade union? Isn't that rather farfetched from the purpose of this hearing?

MR. FEUER: I think that the legislation should not be used in this particular manner. I hate to sound like someone that doesn't think that legislation is necessary. Sometimes it is. My firm belief is that our own associations should clean their own closets.

CHAIRMAN SONG: And you believe that legislation is not necessary?

MR. FEUER: I don't think legislation is necessary in this case.

CHAIRMAN SONG: With reference to your particular industry, or are you speaking generally?

MR. FEUER: No, I'm speaking for the air conditioning industry. I'm also a consumer. I have my automobile problems and refrigerator problems and what have you, and you brought up an interesting point, Senator Song, and I'm going to speak just for a moment on it. How often do you plug a refrigerator into the wall and have problems with it? The only problems you have is with your wife who wants to buy a new one ten years down the pike, but take an installation that's covered by the human error factor, the consumer factor, and you have got a problem on your hands.

CHAIRMAN SONG: Well, I find with an air conditioner unless I'm wrong, and unless they are changed drastically, you set the temperature and you turn it on and that's about the extent of the consumer involvement aside from, as you've indicated, the necessity for periodic change of filter. But how would education of the consumer other than that enhance the life of the product?

MR. FEUER: Well, the life of any product can be lengthened and enhanced by periodic maintenance, the same thing that we do to our automobiles, and you wouldn't think of not changing oil in your car and getting a lube job. The air conditioning equipment takes the same intensive care that an automobile takes and should last fifty to one hundred times longer than an automoible.

CHAIRMAN SONG: O.K. Assume that I have an air conditioning unit installed in my home in the month of June. July becomes awfully warm and the unit goes off. Is the consumer responsible? Who is responsible at that point?

MR. FEUER: The responsibility lies in what made the unit go off. Did a breaker trip, did the electrician put too small wires in?

CHAIRMAN SONG: We'll concede at this point in the course of our dialogue that someone should be responsible, but would you agree with me that one month, within a month after the installation, the consumer at least should be excluded from responsibility? I ask you this because you obviously believe that he should be a participant.

MR. FEUER: Yes. I think you are correct, or I'm assuming you would say the consumer certainly has no responsibility

thirty days after the start of the equipment.

CHAIRMAN SONG: Then there's a point in time when your basic premise wouldn't apply?

MR. FEUER: There's a gray area, of course. You can't just install a piece of equipment and throw the switch for a check test and start, and then it blows up in your face -- we know something is wrong in the manufactured product. Thirty days down the pike I would say there was probably an installation problem or a manufacturing defect.

CHAIRMAN SONG: At that point, what if the consumer has a problem in getting redress?

MR. FEUER: Senator Song, I have heard a lot of stories. I for one have never heard of this in the air conditioning industry. If something goes out thirty days down the pike or six months or whatever, and the contractor comes back to me for the new part and we take a look and we see when it was delivered and started up, we have no other alternative but to pass the part to him over the counter because it's under warranty. We don't even investigate who's at fault.

CHAIRMAN SONG: What kind of warranty?

MR. FEUER: We sell equipment that maintains a full one-year warranty on parts and five-year warranty on the compressor, and we are bound by these warranties to supply the contractors with parts.

CHAIRMAN SONG: Are the warranties that you deal with written clearly and simply?

MR. FEUER: Well, maybe they are written too simply. My previous statement that there isn't enough teeth put into the

warranty, there aren't enough ifs, as and whereases put into it. I understand them. I understand them to be carte blanc.

CHAIRMAN SONG: Well, if legislation so provided, you certainly could have no reasonable objection to that?

MR. FEUER: Reasonable.

CHAIRMAN SONG: This is your current practice already.

MR. FEUER: Well, that is correct. The only thing is if we are doing it with a free hand, I feel that it should be left in that manner. No one likes to be forced into doing anything. The only thing that, out of pocket expenses, that happens when we give a part to a contractor, and now I'm speaking of a wholesaler or the distributor, is the paper work factor. It's costly to us, but it is part of the selling game. We have a built-in cushion, a percentage of profit that covers our paper work. The contractor must build into his selling price, and most of the time he doesn't, a service reserve to pick up this labor, because he can't be competitive if he doesn't.

CHAIRMAN SONG: You indicate, and I certainly have no basis for disagreeing with you, sir, that you are an ethical wholesaler, that you would necessarily I'm sure have to concede that there are certain unscrupulous people who may be taking part in your particular business?

MR. FEUER: I absolutely agree, and I believe that becomes the responsibility --

CHAIRMAN SONG: These are the individuals that the law would be directed to.

MR. FEUER: Again I think the responsibility for those unscrupulous distributors lies in the hand of the manufacturer.

He's the one that should cut the distributor off. If he has unscrupulous practices or bad distributors, they should be eliminated from his sales immediately.

CHAIRMAN SONG: Wouldn't the law make it easier for the manufacturer to eliminate him?

MR. FEUER: I think that the manufacturer out of his own good will and better judgment could take care of this himself, and they do this.

CHAIRMAN SONG: Very well. I think you made your position clear, sir. Anything else?

MR. FEUER: No, I think that clears it up.

CHAIRMAN SONG: All right, thank you very much. Is Mr. Jack Hollingsworth here? We have Mr. James Hollingsworth's written statement also which will be incorporated in the record.

(See Appendix C.)

MR. HOLLINGSWORTH: Mr. Chairman, as you have indicated, I have presented a written statement and in the interest of time I will attempt to be brief and to the point. The proposed legislation would place on the manufacturer of the equipment that's installed by the contractors all the costs in fulfilling the warranty that's designed to protect the consumer, and as manufacturers of heating and air conditioning equipment we don't believe that this would advance the protection of the consumer. In prior testimony, and I would only emphasize this, it has become obvious that there are many parties involved and we believe that there are really three primary goals which should be considered in judging the value of any form or legislation that would be in the public interest.

First and most importantly, the legislation must encourage all the parties involved in the sale, the installation and the service of consumer products to provide their goods and services in a responsible manner to prevent the consumer problems from occurring, and this is best accomplished by placing responsibility for failure on the party that's able to prevent it.

Secondly, we believe that the burden that would be imposed on these parties must be such that it would not require a substantial increase in the cost of the equipment that's warranted to the extent that it would then be priced beyond the reach of the average consumer.

And third, the legislation should satisfy the responsible needs of the public by encouraging prompt and effective maintenance and repair service for the product purchased.

And so in your determination of the type of legislation that would be most appropriate, we believe that a clear distinction first must be drawn between the free standing plug-in type of appliance such as the refrigerator or the television set, and that such as comfort, heating and air conditioning products which, as have been indicated before, become part of a system installation, an integral part of a structure. If I may use a typical installation in residential construction as a basis for illustration, the major components in this system include a central heating furnace, an air distributor duct system, a cooling coil that's in the duct system, and a condensing unit, usually installed outside the residence with inter-connecting refrigerant tubing to the cooling coil, and so the proper performance and the operating reliability of the

system is then based on many contentions. These include not only the proper selection of the components to satisfy the system requirements, but their proper inter-connecting installation and adequate maintenance. So we believe clearly that the responsibility is divided. The architect designs, the manufacturer provides the equipment, the mechanical contractor installs, and the owner operates and maintains. The manufacturer is and should be responsible for the designed reliability and the manufactured quality of his product and he's willing to stand behind that. The contractor is responsible for the proper selection and the installation of these products in conformance with our manufacturing application instructions, and the general contractor or the installing contractor, depending on the case, is responsible for instruction of the end user in the operation and maintenance of the system.

CHAIRMAN SONG: Mr. Hollingsworth, would you agree as a matter of principle and let's consider say the installation of a heating system in a new home, if the problem encountered by the home owner shortly after he moves into the house is caused by a basic defect in the manufacture, you would agree without any hesitancy that the manufacturer should make good on that?

MR. HOLLINGSWORTH: Unquestionably.

CHAIRMAN SONG: Now, what about the labor costs attendant to this? I gather from Mr. Jones' testimony that the liability of manufacturer for cost of labor stops at the moment the unit is turned on. Now, my question to you is this, we are assuming that the defect is a manufacturing defect. Why shouldn't the manufacturer's liability for labor continue at that point?

MR. HOLLINGSWORTH: Generally speaking it does if it is clearly defined as a manufacturer's defect, not in the written warranty, but in our relationship with our distributor and our dealer.

CHAIRMAN SONG: In other words, Mr. Jones' statement was not simply a flat statement. Your liability does not necessarily stop until and unless you determine the cause of the failure, is that correct?

MR. HOLLINGSWORTH: That's correct. I think it is obvious that we as a manufacturer have really many customers. We have the distributor as the customer, we have the installing contractor as a customer, and then obviously on the basis of our trade brand name we have the end consumer as a customer, and we must recognize our responsibility where it is obvious that it is a manufacturing defect, irrespective of what the warranty might read.

CHAIRMAN SONG: So in those instances you would compensate the necessary serviceman there, wouldn't you?

MR. HOLLINGSWORTH: Yes.

CHAIRMAN SONG: What if it is a mistake in judgment in the installation process where, as indicated by the previous witness, a three-ton unit is installed when really a five-ton unit should have been installed, resulting in a very unhappy consumer with an inadequately air conditioned house?

MR. HOLLINGSWORTH: This becomes a problem and it is not easily resolved. In a clear case of misapplication of the equipment, we attempt through whatever leverage we can apply, through either our distributor or directly to the installing

contractor, to correct the situation for the consumer. In some instances we have gone so far as to shoulder part of the expense of this ourselves in the interest of our reputation, and then perhaps make certain that we don't deal with that installing contractor again in the future. The question of the established practice for a manufacturer of placing the labor cost portion of warranty obligations on the distributor and the installing dealer is based on the matter of divided responsibility. We provide the replacement parts within the warranty period as I have said almost universally irrespective of the cause of failure. If we can clearly define in say a tract installation of 200 homes that the installing contractor had made an error in the installation which was going to cause a series or repetitive defects in all 200 of these homes, we will apply whatever leverage we can apply through our distributor and through the installation contractor to have this corrected at his expense.

CHAIRMAN SONG: Mr. Hollingsworth, how long have you been in this particular industry?

MR. HOLLINGSWORTH: About twenty-three years.

CHAIRMAN SONG: How frequently would you say, just give me a rough estimate, are problems caused by defective installation and techniques and methods?

MR. HOLLINGSWORTH: That would be a difficult question to answer precisely. I understand the objective of your question. Let me attempt to answer it this way. We set quality level standards in our manufacturing process and look to failure rates exclusive of compressors in excess of 1.5 percent per year as being too high. I would say that probably 30 percent of those

could be attributed to poor installation and 70 percent of them could be attributed to other problems such as inadequate home maintenance or defective equipment, which is the manufacturer's responsibility.

CHAIRMAN SONG: I'm coming to the conclusion here, Mr. Hollingsworth, that you would recommend that if legislation were in fact enacted that the legislation clearly define and allocate areas of responsibility, wouldn't you?

MR. HOLLINGSWORTH: Yes, I would, very much so. I think it is important to recognize that any such legislation that would not be equitably distributed between all the parties involved would surely be to the consumer's disadvantage. For example, in the extreme case of placing all of the responsibility on the manufacturer, the cost of the equipment would necessarily go up to the point that the manufacturer could not afford it. And our industry and I have been in it long enough to see this occur, has grown explosively, the air conditioning industry, and the basic reason has been that the cost of the equipment over the past ten years has come down to roughly fifty percent of what it was. In other words, it's down at the level where the average home owner, the average consumer, can afford to use the equipment. Now altruistically, this is fine. This is something that we like to see, but speaking purely selfishly, we also like to see this because as a manufacturer who distributes nationally and in large volume, we recognize that the return on investment for our stockholders has to be based on high volume sales, and we are interested in keeping the cost of the equipment to the consumer at the absolute minimum and

obviously the consumer must be satisfied with what he has purchased, so we are very desirous to see any effort made in the direction of straightening up some of the problems that have existed in our industry, first being the responsibility of the industry, and we are making real effort to correct the problems that have occurred as a result of our explosive growth; but secondly, if it is supported by legislation, this legislation should be carefully designed to avoid added cost to the consumer.

CHAIRMAN SONG: I certainly agree it should meet the test of reasonableness. Very good.

MR. HOLLINGSWORTH: Yes.

CHAIRMAN SONG: Very good, Mr. Hollingsworth. Is there anything else you wish to offer?

MR. HOLLINGSWORTH: No, I believe not.

CHAIRMAN SONG: Thank you for your candor and presentation. Mr. Nambo, are your witnesses here?

MR. NAMBO: Yes, Mr. Chairman.

CHAIRMAN SONG: All right, will you come forward, please. How many do you have?

MR. NAMBO: Two, Mr. Chairman. I would like to make a couple of general remarks and then I would like to ask them to appear before you to make specific statements. My name is Bob Nambo, managing director of the California Association of Sheet Metal, Heating and Air Conditioning Contractors. We are a statewide organization representing some 700 sheet metal, heating and air conditioning contractors throughout the State of California.

I would like to make it clear that our presentation and

our comments today are not specifically directed to the piece of legislation that was offered by you, Mr. Chairman, this past session. We would like to direct our comments and our presentation to the problem in general, the problem being that in the State of California contractors are licensed to do business. They pay an application fee and in addition to that they are also bonded. We therefore find ourselves in a little different position than the retailer who sells a refrigerator. The consumer does have recourse on the contractor. He can claim against that bond. He can claim against that man's license and could ultimately have that license removed or revoked from that contractor. But we do find ourselves in a position of having to take the responsibility for a piece of equipment over which we have no control.

We feel that there should be dual responsibility. We are willing as seen by the fact that we have 700 licensed contractors in the State to assume our responsibility as installing contractors, and I don't think I have a contractor in the State of California who is not willing to assume that responsibility, but we cannot continue to carry the load of the manufacturers in their unclear and unconcise warranties.

I would like to introduce two of our contractors, members of ours, from Sacramento, and I'll let them introduce themselves for the record if I may.

CHAIRMAN SONG: Mr. Nambo, before you do that, unless your witnesses are going to cover this, you made mention of the fact that the manufacturers' warranties are deficient in themselves. You say they are unconcise, to use your term. Unless they are

going to cover it, would you elaborate on that?

MR. NAMBO: They are going to cover that, but may I say that yesterday and part of today you have heard statements that the language leaves a great deal to be desired, and I think that's what I mean.

CHAIRMAN SONG: In some instances, yes, of course.

MR. NAMBO: And let me also say that we are not sitting here condemning every manufacturer in the United States. We have many of them who are very reputable and stand behind their warranties 100 percent. I cannot imagine of any reputable manufacturer who would not be willing to go down the road with the contractor on a fifty-fifty basis as far as responsibility is concerned.

CHAIRMAN SONG: Very well. Call your witnesses if you will. Will you introduce yourself and proceed?

MR. CRUSE: I am Bob Cruse. I am a California State licensed contractor. Yesterday in seeing the hearing and listening to the hearing, I heard some statements made that I don't want to say are untrue, but I'll say are very very vague as far as facts are concerned. We as contractors in the State are probably out of the category of the testimony we heard yesterday because we are licensed, because we are controlled by the California State License Board, because we have performed, because we are professionals. The question was asked yesterday, how far should legislation go. Well, my answer to this is as far as the State has seen fit to go with the California State licensed contractors.

We as contractors are subjected to a governing control

body, namely the State Contractors' Board who has been empowered by the legislature to enforce regulatory requirements, we are bonded, the investigation of complaints by the California State Contractors' Board which has the legal power to both place the responsibility where it belongs and to enforce the responsibility if need be.

I've heard said that as high as 30 percent of the installations or the complaints are due to faulty installations. This committee has at its disposal already these complaints on record at the California State Contractors' Board under a file per contractor. I disagree with the 30 percent. I say that anybody that says that 30 percent of the installations in the State of California are faulty or defective, or the defective installations, 30 percent of them are caused by faulty installation, then they are derelict in their duty, Mr. Chairman.

CHAIRMAN SONG: What percentage would you estimate, Mr. Cruse?

MR. CRUSE: I would estimate somewhere between 5 and 7 percent.

CHAIRMAN SONG: Very well.

MR. CRUSE: The person making this complaint has to realize that he has recourse, whether he be a manufacturer, a distributor, or a consumer. The law has set policies. They have set procedures that he can follow. If a contractor is derelict in his duty, in his installation, in fulfilling his warranty, the law can be used to go so far as to prosecute that contractor. He realizes that he has his bond and his license at stake.

CHAIRMAN SONG: What is your understanding of the contractor's

warranty?

MR. CRUSE: A warranty provided by us, the typical warranty provided by us, by the major manufacturers, is one year all parts, four additional years compressor part only. The labor responsibility provided by the manufacturer ceases the day the manufacturer ships that equipment. We have heard testimony that the manufacturer provides both to myself and to the consumer a warranty. We have also heard the same manufacturer say he has somewhere another policy, that he will give a labor allowance to somebody sometime. This is our problem. We find in the field the one criteria that you have to enforce warranties, enforce labor warranties, from a manufacturer, is your buying power, period.

CHAIRMAN SONG: What warranty do you as an installing contractor extend to the consumer?

MR. CRUSE: Again referring back to California State law, the California State law requires me as a licensed contractor to provide to the general contractor or to the consumer a one-year warranty including parts and labor irrespective of the reason the equipment failed.

CHAIRMAN SONG: This is for heating and air conditioning?

MR. CRUSE: This is for heating and air conditioning, sheet metal, anything connected to heating, air conditioning and sheet metal.

CHAIRMAN SONG: You say this requirement is imposed upon you by the State Contractors' License Board?

MR. CRUSE: Yes, sir.

CHAIRMAN SONG: Is it a regulation promulgated by the

registrar of contractors?

MR. CRUSE: Yes, sir. Every contractor in the State of California carrying a heating and air conditioning license is controlled by that law. Every consumer, ultimate consumer of our product, goods or services, can avail themselves of that law, but we're talking in the areas of volume, and you take an average volume dealer, and by average I'm going to use $700,000 worth of gross business per year, it's not unrealistic to see that $700,000 gross volume dealer spend close to $30,000 in total warranty expense. It's not unrealistic to realize that if you broke that down on a monthly basis, this same contractor is spending nearly $2500.00 under warranty. In all the testimony I've heard in the last day and a half, it surprises me that there's such a failure to realize or to bring out that if we as contractors could get a product that had adequate, sensible and reasonable quality control, a product that would perform as so stated when we buy it and when we present it to the consumer, that the actual consumer's total cost could be reduced.

CHAIRMAN SONG: Do you believe this is one of the major problems then, lack of proper quality control?

MR. CRUSE: I certainly do. As an example, Mr. Chairman, a typical air conditioning condensing unit is comprised of sixteen component parts. I have the component parts itemized. I don't think it is necessary to read all sixteen. Out of the sixteen component parts, three of them are manufactured by the manufacturer of the equipment. Thirteen of them are secured or procured by that manufacturer from a vendor. So really when we are talking about the manufacturers in our industry,

aren't we talking about assemblers. If the assembler then has all of the care, custody and control of the vendor, he has a couple of choices. He can buy quality or he can buy price, but when he assembles these items, puts it under his name, sells it to myself as one consumer, and I sell it to the retailer, I have no care, custody and control over any of his purchasing process, his ethics, his procedures, yet I have to guarantee that product under California State law for one year, parts and labor.

CHAIRMAN SONG: I see the point you are trying to make, so what kind of legislation would you recommend to this committee?

MR. CRUSE: My recommendation to this committee is not necessarily to ask that the contractor be relieved of any responsibility whatsoever. I think we're content, we are happy, we are able to live with the California State laws. We would like to see legislation enacted that would make the law comparable to ourselves and to the manufacturer. We think that the California State Contractors' Board with the power that has been bestowed on them, that they have all of the policing facilities, the investigative facilities, the legal due course to proceed in court, as long as we are under these restraints or have to bear this responsibility, we feel that the manufacturer should, too, and we would suggest to this committee that the manufacturer be brought to the level of the California State licensed contractor.

CHAIRMAN SONG: Is it your opinion that today the manufacturers are contributing to the many problems that confront the consumer because of faulty production, lack of quality

control, and are perhaps somewhat irresponsible in the buying of parts? I believe I am paraphrasing what you are telling me. Is that true?

MR. CRUSE: Yes, Mr. Chairman, I do. Here's a typical example, and I brought several examples, and I am prepared to furnish to this committee within the next ten days a complete text of all of this, all samples and copies and I'll do this.

CHAIRMAN SONG: I wish you would because I think you are levelling a fair serious accusation against the manufacturers, at least the manufacturers of the units you utilize in your business.

MR. CRUSE: I have before me a warranty of a manufacturer, Amana. We have heard from the Amana people yesterday. Amana provides or has provided in the past two warranties. One warranty comes with the equipment and it's a generalization or a warranty that's accepted by most major manufacturers as a standard, that they will provide parts for one year, and compressor parts for four additional years, no labor. Then I have before me an amendment to that warranty that doesn't go to the consumer. This warranty is directed to the only exclusive authorized parts distributor and all dealers of Amana products, and it pertains to compressors, and it says, "All compressors supplied by Standard Motor Parts of Sacramento will be shipped to all dealers and service men C.O.D. For example, a three-ton compressor will be shipped to the customer and $142.56 plus $18.39 freight, collect. Customer must return the defective compressor complete with properly filled out warranty tag within thirty days after receiving the

replacement compressor to receive credit or cash refund as the case may be."

CHAIRMAN SONG: This is during the one-year period that the compressor is supposedly guaranteed for?

MR. CRUSE: Yes, sir, this is from the day the unit is set on the premises and turned over to the ultimate consumer.

CHAIRMAN SONG: In other words, Amana gives to the consumer a warranty including among other things that the compressor is guaranteed for a period of one year?

MR. CRUSE: Guaranteed for a period of five years.

CHAIRMAN SONG: Within the guaranteed period if something goes wrong with the compressor, Amana will provide the consumer with another compressor, C.O.D., that is freight charges, isn't that what it amounts to?

MR. CRUSE: This is the cost of the compressor, $142.56, plus $18.39 freight, collect.

CHAIRMAN SONG: In other words, Amana is selling the compressor, they are not providing it free?

MR. CRUSE: Yes, sir.

CHAIRMAN SONG: During the warranty period?

MR. CRUSE: Yes, sir. Now, let me explain how they feel you should get your money back, you as the consumer.

CHAIRMAN SONG: Who is supposed to pay Amana for this?

MR. CRUSE: The consumer.

CHAIRMAN SONG: The home owner?

MR. CRUSE: Yes, sir. If I have the courage to confront the home owner with this and am successful in billing him for it, then of course my monetary responsibility is alleviated by

the consumer.

CHAIRMAN SONG: You are intimating then that to avoid doing that, that you, the contractor, pay for it?

MR. CRUSE: Yes, sir.

CHAIRMAN SONG: Is that what you have been doing?

MR. CRUSE: Yes, sir. Now, "Refund to the customer will be promptly made by us after we receive credit from Amana. This normally takes one month, but can take longer due to the delay in our receiving the replacement compressor from Tecumseh."

CHAIRMAN SONG: Oh, there's a refund?

MR. CRUSE: Yes, sir. The refund can go from thirty days to six months.

CHAIRMAN SONG: So in effect you are advancing your money?

MR. CRUSE: Yes, we are, and this again is something that influences our warranty reserve, and in the long run if somebody is going to use $200.00 to $2,000 of my money for a given period of time and no return to me, the freight is never returned, you are just out that, and then I in turn have to increase my warranty reserve to handle this.

CHAIRMAN SONG: This is Amana. Have you found that to be true with the other companies you deal with?

MR. CRUSE: Yes, the next is Gaffers and Sattler. I have invoices, I have expenses, I have checks, I have the same exact procedure on three occasions in 1969 from Gaffers and Sattler. It seems to be a trend now in the industry for manufacturers to do this with compressors. The first time we noticed it was freight. All of a sudden the manufacturers began to charge the consumer. The statement was the consumer should pay the

freight. We as contractors absorbed the freight. We didn't have the courage to pass it on to the consumer. We have just sold him a thousand dollar product. It ran for three months. He expects us to fulfill the warranty. We fulfill the warranty and absorb the freight, approximately $10.00 to a California manufacturer. Then we noticed --

CHAIRMAN SONG: Can defective installation methods and techniques in any way affect the compressor and whether or not it continues operative or goes out of business in a month?

MR. CRUSE: Absolutely.

CHAIRMAN SONG: It can affect it?

MR. CRUSE: Absolutely.

CHAIRMAN SONG: What if the compressor became inoperative because of defective installation by the contractor? Then you should properly pay for the cost?

MR. CRUSE: We should. That's our responsibility and under the law we have to pay for that cost.

CHAIRMAN SONG: But you are talking about instances where without the defective installation and for reasons beyond your control the compressor goes out of business?

MR. CRUSE: Yes.

CHAIRMAN SONG: You still have to pay?

MR. CRUSE: Yes. To make it maybe a little ridiculous, but very factual because we have had over 35 of these happen so far in 1969, I'm talking about the unit that you uncrate, set on the premises, turn it on, and it won't start.

CHAIRMAN SONG: Then you have to pay the freight?

MR. CRUSE: Yes, sir. We have to pay the freight. We

have to buy that compressor, we have to wait a determinate length of time to get our refund on the compressor and in all cases, in all instances, the freight on that compressor was deducted from our credit or refund.

CHAIRMAN SONG: Well, that certainly sounds unfair.

MR. CRUSE: Well, now, this is printed on Amana letterhead by the distributor.

CHAIRMAN SONG: I wish you would submit all of those to the committee.

MR. CRUSE: I will. Here is the General Electric engineering bulletin which, to try to expedite things, Mr. Chairman, I'll go over briefly because you will have this in your possession. It says here that for quite a long period of time General Electric manufactured air conditioning equipment that had a problem starting. They finally determined that by the addition of two components costing approximately $18.00 they could correct this problem. They say in the engineering bulletin that these components have been installed on all current production, but for the many hundreds of units that the dealer has already bought and the consumer now owns, General Electric will provide the two parts, but tells the installing dealer he has to provide the labor to keep this equipment running.

CHAIRMAN SONG: At your cost?

MR. CRUSE: At our cost. He'll provide no labor. But it says that the above required parts will be furnished at no charge, but with no labor allowance. Now, this entails several hundred pieces of equipment throughout Northern California. Who is going to pay this labor, and if I pay it, isn't it going to

affect my warranty reserve, and isn't that going to affect the ultimate cost to the consumer?

CHAIRMAN SONG: Very well, I think it's obvious. If you will let us have that, Mr. Cruse, we will certainly appreciate it very much.

MR. CRUSE: Yes, Mr. Chairman. I would rather not leave these copies. You will get this thing in its entirety in one package within the next ten days.

CHAIRMAN SONG: Very good. Thank you, Mr. Cruse. Will you identify yourself?

MR. TYER: My name is Clarence Tyer, a heating and air conditioning contractor from Sacramento. I am speaking for the sheet metal, heating and air conditioning contracts association of Sacramento Valley.

I would like to start off by referring to Senator Walsh's statement yesterday that the warranty problems contractors have with manufacturers is the seller contractor's problem. He is absolutely correct, and this is why we are here today, because we need some help to solve this problem. I believe we need legislation in regard to warranties, first, because the contractors' license law evidently came into effect as a minimum standard so at least the public would have some standard protection as a minimum. And I think the same thing is needed for the warranties on manufacturers selling in this State. At least we should establish a minimum warranty that they are all going to have to comply with. If some wanted to do better than that, fine, but at least they cannot go any lower than the set minimum. I would like to get on -- I have a prepared statement

here which I will read now. I would like to discuss some of the reasoning behind the philosophies prevalent in the industry today. These are actually why we are having warranty problems. I'm sure you can all imagine the frustration of a contractor continually correcting someone else's errors and at his expense. I believe the committee can see or understand the feeling of the contractor who spends a great deal of time and money doing just that. The contractor is at a dead end as far as his power to enforce the slipshod irresponsible manufacturer to fully warrant his product.

CHAIRMAN SONG: How often is this the case, Mr. Tyer?

MR. TYER: Quite often in the service on the equipment.

CHAIRMAN SONG: You are talking about slipshod manufacturing. This is what I am interested in.

MR. TYER: Well, I have a bill in to a manufacturer right now for nearly $3,000 on a 283-unit apartment house. I would say 90 percent of that bill is leaky coils, where the refrigeration tubing was improperly soldered and leaks developed during the first year. Now, I don't know how many more are going to show up after the first year which will be when the job is out of warranty for me.

CHAIRMAN SONG: Now, your problem there is that while the parts are warrantied, you have to provide the labor, isn't that right?

MR. TYER: Right.

CHAIRMAN SONG: And you feel this is an unjust imposition of cost?

MR. TYER: I think it is.

CHAIRMAN SONG: Due to defective workmanship?

MR. TYER: I think it is where the manufacturer states that he guarantees his material and workmanship.

CHAIRMAN SONG: How often is this the case where you find yourself behind the eight ball so to speak because of defective manufacturing in one way or another?

MR. TYER: Well, to my own experience I would say 90 percent.

CHAIRMAN SONG: What is your volume of business?

MR. TYER: Roughly $1,000,000 a year.

CHAIRMAN SONG: So breaking it down into sort of a per capita basis, how many different people or households did you serve?

MR. TYER: I would say between 1500 and 2,000.

CHAIRMAN SONG: Well, I would say that this is a serious indictment of the manufacturers here if that is in fact the case.

MR. TYER: It is.

CHAIRMAN SONG: Are you able to document this? Can you provide this committee with the kind of evidence we would like to see?

MR. TYER: I could but --

CHAIRMAN SONG: Of course not today, but in the future?

MR. TYER: Yes.

CHAIRMAN SONG: I think we understand the point you're trying to make. You can go ahead with your statement if you like, but I think between yourself and Mr. Cruse you make the point rather clearly here.

MR. TYER: Let me go ahead and I'll read through this quickly.

CHAIRMAN SONG: All right.

MR. TYER: I think for one thing we have to understand what a warranty is. I will quote the Funke and Wagnall definition, "A warranty is an assurance or understanding by the seller of property, express or implied, that the property is or shall be as is represented or promised to be."

CHAIRMAN SONG: I read that yesterday.

MR. TYER: O.K. I've got some warranties here I'll submit. One is from Worthington. I'll read just what they say for the warranty and also I'll read the disclaimer. It says: "Worthington Air Conditioning Climatrol warrants to the original user of the Climatrol air conditioning unit identified herein to be free of defects in material and workmanship under normal use and service."

You heard some of this yesterday.

Here are the general conditions under the disclaimer, "Climatrol will not be liable for labor costs of any kind. This warranty does not cover the cost of recharging the refrigeration system with refrigerant and/or oil regardless of reason."

So if there was a defect in the workmanship resulting in the loss of freon, they wouldn't pay for it.

CHAIRMAN SONG: I would say they made it clear there.

MR. TYER: Very clear. And here's one from Lennox which is the same, and another one from Rheem Corsaire.

CHAIRMAN SONG: Do they all contain similar disclaimers?

MR. TYER: Right, they are all similar to that. Now,

regarding the manufacturer's philosophy, for years these people have marketed products and sold these products to the public mainly through the contractor. Sometimes this product is marketed with very limited advertising, especially in the area of reliability. In the air conditioning business the majority of the units are manufactured for the residential market. I would say that roughly 70 percent to 80 percent of the cost of these units is made up of subcontractors' materials. I think Mr. Cruse covered that quite thoroughly. I'll skip that portion. These components are usually chosen for the specific job by a design engineer of the manufacturers. These components could even be chosen from a quality standpoint or they could be chosen from a price standpoint, and in my opinion not too often from the quality standpoint. Why not the quality standpoint? Competition. All the manufacturers are seeking to have the lowest price. They are seeking to have the lowest price because like the contractor they must bid competitively and in the majority of cases all sales or jobs they sell are predicated on their having the low price. There is really not much incentive to build a quality piece of equipment.

CHAIRMAN SONG: Tell me, Mr. Tyer, if I were to call and ask you to recommend a unit for installation in my own home, which one would you recommend today?

MR. TYER: Westinghouse. That's the one I have had good luck with.

CHAIRMAN SONG: Are you acquainted with the warranty that accompanies the sale of a Westinghouse?

MR. TYER: Pardon?

CHAIRMAN SONG: What about the Westinghouse warranty?

MR. TYER: It's typical. There's a little difference, but like Mr. Cruse pointed out, it depends on what volume you use of the equipment as to how well the manufacturer takes care of you. These people have taken care of me fairly well. Do you want me to read their warranty?

CHAIRMAN SONG: What about the disclaimer?

MR. TYER: There is none. It says, "The warranty on your Westinghouse air conditioning equipment is the industry standard of a one-year parts only warranty on the entire unit. Westinghouse will furnish replacement parts for all products which prove defective in material or workmanship, under normal and proper use, within one year from date of installation. In addition, the hermetic motor compressor unit only is covered by a four-year extended parts warranty. Labor for installation and service under the warranty covering this product of the air conditioning division is the responsibility of the distributor, dealer, or contractor who installs the equipment per the terms of sale of your contract. In the event that service under this warranty is required, you should request such service directly from the distributor, dealer or contractor from whom you purchased the unit."

They do not have a disclaimer.

CHAIRMAN SONG: The point obviously that you're making here, and if this is not your position so enlighten me, is that the contractors have been bearing this unjust burden for years and the manufacturers have been engaged in slipshod manufacturing methods to the detriment of the consumer. Is this the essence

of your position?

MR. TYER: Yes.

CHAIRMAN SONG: I would like to hear, rather than just your reading your statement there, about some of the personal experiences you have encountered in the course of your business.

MR. TYER: Well, I had one here that I had written down. We did a 100-unit apartment house. The compressor failure rate reached 70 percent to 80 percent within a three-year period.

CHAIRMAN SONG: You had to make good --

MR. TYER: Pardon?

CHAIRMAN SONG: You had to make good on those?

MR. TYER: No, I was only on the hook for the year. If I read the whole thing, you'll have the whole story. The compressor failure reached 70 percent to 80 percent within a three-year period. The labor and freight cost was borne by myself for the first year, and the owner bore the labor cost of changing the compressor for the following two-year period. The manufacturer gladly supplied the compressors which was a drop in the bucket compared to labor costs of installing that. The manufacturer did not correct the problem which in my opinion was a bad choice of compressors for the application.

CHAIRMAN SONG: What was the warranty period in that case?

MR. TYER: It was a standard one-year warranty with the extended four-year coverage on the compressor only, with no labor allowed. If the manufacturer was going to do the right thing by the owner, he should have gone in there and found the problem and if necessary replaced every compressor in the project, but he did not do this.

CHAIRMAN SONG: What was the manufacturer in that case?

MR. TYER: Chrysler Air Temp.

CHAIRMAN SONG: I think the name "Chrysler" came up on more than one occasion in the course of these hearings here.

MR. TYER: I'm sure if the owner was reimbursed for this troublesome cost it was only through the courts and probably he had to compromise and take a settlement if he got anything. Well, the thing was, see, the manufacturer replaced the compressors with the exact same compressor they were losing, so I imagine the problem is still going on. I mean after I was out of the picture, I lost track of it, although I know the general contractor on the job and I followed it, but then again you can see the manufacturer has no incentive to do any more for the customer than his warranty calls for. This is exactly what he did. He supplied a replacement.

CHAIRMAN SONG: Well, obviously the warranty is extremely limited. I'm a little perturbed to hear that the manufacturer or at least the consumer can buy a brand new air conditioning unit and during the warranty period if the compressor goes out, he's got to bear the cost, even if it is only the shipping cost I think it would be unjust.

MR. TYER: Right. We bear it for the first year.

CHAIRMAN SONG: But after that?

MR. TYER: It is out of our pocket.

CHAIRMAN SONG: During the remainder of the warranty period the consumer is stuck?

MR. TYER: I found in my experience with this is that the majority of the problems could be corrected in the factory

either through changing of the components they are using or better quality control, and they could correct the problem much much cheaper than we can correct it in the field.

CHAIRMAN SONG: Very well. I think that point has been reiterated more than once. It's well taken. Anything else? I don't want to appear to be rushing you, but we want to meet our schedule here. We have several other witnesses.

MR. TYER: Well, the only other thing you might consider is if we don't come up with some legislation that's going to at least set a minimum standard of warranty for the manufacturer and the contractor continues to bear this cost, that if the present manufacturer's warranty is considered adequate for the public protection, that they might consider relieving the contractor of his responsibility to the extent that we would extend the manufacturer's warranty to the consumer.

CHAIRMAN SONG: Very well. Thank you very much, Mr. Tyer. Would you identify yourself?

MR. DUNN: Yes, sir. Mr. Chairman, my name is Gale Dunn. I'm executive manager of the Sheet Metal and Air Conditioning National Association in the Sacramento Valley. I have several items here that I feel haven't been elaborated on. I might point out I won't take too much time.

Because of the warranty starting period of the manufacturer, which starts at the time the unit is shipped, it causes quite a problem in the warranty expiring time when it is on the job because it may be six months or more before that unit is even started up or even installed on the job. Consequently in the Sacramento area, some of the architects are putting in their

specifications that the heating and air conditioning system must be warranted for two or maybe three years because of the delay in time, and the warranty may expire prior to the time the unit is even started up.

Also on the general contractor portion of the discussions, I gather you understand now that the general contractor is not always involved in the job and probably he was not even involved on your swimming pool. Also every contractor that makes an installation on heating and air conditioning should be qualified and should be ready and willing and able to service any unit that he installs. Our industry has made door knob hangers that we put on the inside of the furnace room door or the air conditioning room door where the equipment is that tells them that they should change the filter every thirty days or whatever it should be, that the fan and the blower should be oiled, that they should not close up any of the registers after the unit has once been balanced out by the contractor that installed the unit, because if the lady of the house decides that these two rooms are too hot and if she turns the unit down that they will be too cold, that if she just closes off the register this could cause back pressure on the unit and cause damage, cause the unit to freeze up and probably damage the compressor itself. There is some merit to educating the user even six months, eight months or three years after the unit is installed. There are items that they should be told about, and the contractors should be responsible for the sizing of the unit. This is not a problem of the manufacturer. The contractor should be a qualified contractor if he is properly licensed, and should be able to

tell what size unit to put in.

Very briefly we have in our labor agreement which we have negotiated with the unions an examining committee and just to cite one example, on a tract job east of Sacramento between Lake Tahoe and Sacramento there was some faulty installations in these units both on the gutters and in the duct work of these units. The examining committee took pictures of this, called the contractor in before the examining committee and had him pull the duct work out of seventeen units and replace all of this complete at his expense because they were installed improperly. The manufacturer did not even know anything about this.

We also have a training fund building, that we built a $200,000 building last year which we are operating for the advancement of journeymen, sheet metal and air conditioning workers, to train them for the new units that are coming out, and also to keep the apprentices in line on the sheet metal and air conditioning. That's about all I have. Thank you.

CHAIRMAN SONG: Thank you very much. Is Mr. A. E. Davis here?

MR. DAVIS: Mr. Chairman, my name is A. E. Davis of the California Manufacturers' Association. You can well imagine, every one of our members produces a product for sale. The consumer products almost always carry a guarantee. Many products are built by many manufacturers here in California that are sold to processors, contractors, and other non-consumers, and these usually have warranties that state that the product will perform as specified. However, in this latter particular

area, there are trade practices that exist between the producer and his customers relating to the proper functioning of the product or the raw material.

Our testimony covers this particular area of commerce and to discuss this further I would like to introduce to you Mr. Thomas Daily, attorney for Owens, Corning and Fibreglass in Santa Clara. His company produces a variety of building materials that are sold to contractors for installation. Tom.

CHAIRMAN SONG: Before Mr. Daily proceeds, you listened to the testimony of the two preceding witnesses. Do you have an opinion about the kind of warranty that was made mention of that provides in substance that the manufacturer will not be responsible for any labor costs regardless of the cause? Do you have an opinion on that?

MR. DAVIS: I was listening to that and was trying to determine in my own mind what brought about the particular situation where they disclaim any labor responsibility, and I'm trying to -- I don't have any firsthand knowledge. I can only assume that somewhere along the line maybe the original warranties based on -- maybe this all started 100 years ago when the manufacturer or producer of the product shook hands with the buyer and that was the bond and he said, "If this thing doesn't work, I'll make it good and I'll fix it for you." Well, we have come a long ways since that time. I'm wondering if somewhere along the line the inability to determine precisely how much labor might be involved, and maybe after -- as you recognize, I'm merely surmising this, but perhaps, I think I am correct in this, the manufacturer might have been

presented with a bill on the basis that his arrangement with the contractor or with the purchaser was, "I'll make it good, period." And the assumption was that he would pay the labor charge. Maybe the labor charge for some reason or other, maybe it was more involved than it should have been, maybe the fellow got a labor bill for $100.00 and said, "Gee whiz, I only got $28.00 for it wholesale and I have to pay $100.00 for it. So what can I do to protect myself?" By tightening up or trying to maintain some control over the labor charge, and maybe they couldn't specifically say, well it ought to be worth $50.00 in labor, or $10.00, maybe that's the extent of my obligation that I'm willing to go, and maybe that didn't work either, and he simply said, "Well, no labor involved, period, is the best way to protect myself."

CHAIRMAN SONG: This is obviously for his self-protection, this outright disclaimer. But it would seem unreasonable on the face of it for the manufacturer to disclaim any liability for labor regardless of the cause. These were the words apparently contained in that particular warranty. Perhaps as you have indicated a generation of problems impelled the manufacturer to take this position, but from the point of view of the consumer, it does seem patently unfair.

MR. DAVIS: I would say this, and it may seem strange coming from me because I represent manufacturers in Sacramento, if I were those two fellows I would certainly find some new venders. Don't quote me. Obviously competition is such that I'm sure some producer of a product, and obviously these are component products, it is not a complete unit because the manufacturer doesn't make the ducting, and he doesn't install --

maybe if he had installed it, the guarantee could be different, but since he does not install it, he's providing only a component part, it seems to me in my knowledge of the general competitive business world, that the man that figures out a better way of protecting the consumer is the proverbial builder of the better mouse trap. Obviously there are some warranties that you have seen that are more extensive than others, and I'm sure that this is an effort on that company's part to provide a more satisfactory business transaction all the way up and down the line. But the problems that these two gentlemen have indicated, it's a wonder they get any sleep at night. Seems like on one job they had 2,000 problems. That may be half of his business, I don't know. It seems unusual. I don't have firsthand knowledge but something is wrong someplace.

CHAIRMAN SONG: All right, Mr. Daily.

MR. DAILY: Thank you. I would like to start out by saying Owens, Corning and Fibreglass is very much involved in the construction industry and manufacturing products for that. Basically here on the Coast this is primarily my responsibility as far as problem areas that arise with our products, we're looking at, like, our insulation that goes in the walls and the ceiling in your home or mobile homes and this, also insulation of pipe wrap that goes on hot and cold pipe, and also roofing products that we get into our Santa Clara plant. Now, roughly these products are simple from the fact that there's not a lot of moving parts in them so some of the problems they relate to do not filter back to me, but at the same time I get a product, you have a certain percentage that you do develop

problems with. All right. I think when we're talking about construction industry, I think it's very important that we distinguish the difference in consumer than what we had yesterday because the consumer that buys the product and you go in and plug it in is entirely different than the construction industry consumer. For example, so far in these hearings we have not had any complaints from the ultimate consumer, this ultimate consumer in the construction industry being your apartment owner, your office building owner, your home owner sort of thing, or you get into your big utility companies in this State. Mostly we've heard the in between people that get up to the consumer stage and their problems with responsibility in where fault lies, and I think it's real important that this consumer be distinguished here.

Now, we primarily sell to distributors and distributors in turn sell to the contractors. We do have a unique feature about our business in that we also have a division that does its own subcontracting work whereby when we get into large commercial buildings or large utility construction of refineries and that, we actually go out and install our own installation there, so we get this feeling of what it is like to be a subcontractor working directly with the general. All right. Now, as we go in and try to establish legislation to regulate warranties, I feel a number of problems arise in this area, and I think one of the biggest ones can be exemplified by, for example, we sell roofing products.

Now, by this we sell insulation that goes on a flat built-up roof plus we sell different plies of material that goes on

top of that. Now, the various people that are involved in a failure that might develop around this part of the work, not around the rest of the building, but just around the roof, these are the different people that are involved here. First you have an architect that designed the building. Then you may have a soil engineer that went ahead and determined the condition of the soil. You have a structural engineer involved, and of course you have your general contractor. You have your manufacturer of the roof deck that we lay our materials on. Then also besides that you have the contractor of that roof deck. Then you have the manufacturer of the roofing materials which is ourselves, but we don't manufacture all the materials that go on there. We just have the insulation and the plies. Now, in addition to this there's a manufacturer of the asphalt which is your oil companies, that goes on there, and then you have gravel that goes on there. You have the processors of this and then you have the roofer that lays the roof and we sell our products through the distributor to him. Then of course you come along and you have the owner's inspector which may be the architect in a normal situation, and then all of these people could affect a failure of a built-up roof, any one of them. If the architect doesn't design the building right, and it doesn't have proper expansion joints, and then the roof can split, and also the soil engineer can be involved, so the structural engineer can be involved in the roofing split. Also coming down, if the roofer himself, who is a contractor in this case, doesn't apply the materials properly it could happen. So there's any number -- I named off eleven of them there. Now, there's

finally the acts of God as the final thing that could cause this to fail, you know, unprecedented winds to blow off this type of roof. So this is one of the major problems that you have when you try to assign fault in the construction industry. Whereas yesterday, and I'm not pointing the finger at our good friends from the manufacturers of yesterday, that have products that are sold in the so-called original package. Ours in the construction industry never ends up in the original package, and when I say it never ends up, usually there is somebody at least installing it and there's somebody that's affecting this. I give you the example of our roofing products. Well, even in other products when people install it, they hook things up to it and it is changed from the original package. And this may get back to one of the good reasons why manufacturers hesitate on the so-called labor.

Now, there's two types of labor we're talking about. First we are talking about the labor that goes into manufacturing a product which there is no question about the manufacturer assuming this type of responsibility. But the other thing is the labor that's involved in installing the particular product on the job. This is where the manufacturer hesitates, and one of the reasons I think he hesitates is because of this idea of whose at fault there, you know, who is the ultimate one at fault. I know in practice what happens here often is that when we get a complaint in is it 99 to 95 percent of the complaints are handled very rapidly at the local level or sales office level out there and sometimes it's a minor adjustment on our part, giving people credit and that, but then as the complaint is in greater

magnitude, then we call out our plant people who immediately will go out to the field and they will inspect the materials on the job and that. If they find that it is our fault, and oftentimes like I said, it is not easily determined here because you have so many people involved in the total installation here, that we will make adjustments promptly to service our customers. And of course I think a good point was heard a while ago that oftentimes when you have a problem thrown up, usually the end consumer here in the construction industry, the owner of the office building, he gets his completed building because in the very contractual relationship that he has they are withholding ten percent on the various contractors on down the line and they won't get paid until that is completed, so he does normally get his building and usually again here the problem comes in in allocating the fault among the architect, the structural engineer, the roofer, all of these people in between, and to me to try to legislate that area, it's almost an impossible task. So what you end up doing when you get these major failures is that usually you get a compromise in these areas. We find oftentimes we have taken our material back and run it through the lab and everything else and we find no fault, but we end up, you know, participating in a compromise in these problems.

CHAIRMAN SONG: Well, Mr. Daily, what you say is quite true. There's no disagreement. This is a difficult field even to consider the enactment of legislation, fair apportionment of responsibility, but is it fair to the consumer on the other hand, Mr. Daily, if he buys a manufactured product and within a very short period of time through no fault of his own, the thing goes

out of order? Should he have to compromise in any way and pay any additional sum of money? This is in the final analysis what we are concerned about.

MR. DAILY: I'm saying here, in the construction industry the consumer, the end consumer, does not compromise. I'm saying that he is basically satisfied. Now, here again our experience, you have to qualify my experience, is primarily with the office buildings, the apartment buildings, the high rise, and also we get into the home owner thing, too, and my experience is that in the construction industry they are usually satisfied and usually the burden is pushed back up the line among the contractors, the manufacturer, the distributors, the architects and the general and that.

CHAIRMAN SONG: I have certainly never at this point heard anything that might be considered disparaging about your principal point.

MR. DAILY: Another point that I heard comment on, was that some of this responsibility ought to be passed on to the lending institution. I didn't name it in our list.

CHAIRMAN SONG: What was the name of that case there?

MR. DAILY: Well, I think it is a very good one. I don't have it on my fingertips, but there was a recent case on this very point and I think it points out, it makes a good point of this fact that as times change and the law changes, the lender is taking a greater participation, his role has changed in the construction industry. He used to just lend the money and look back at it. Now, all of a sudden in the apartment areas he is becoming part owner, he wants to take part of the action, ten

percent. Well, as this slow evolution of the law takes place, you find just like this last case we were talking about, that they have held that the lender is responsible to that home owner for failure, and so the law does change and it does cover these people.

CHAIRMAN SONG: I gather, Mr. Daily, that you would be for some kind of law if one can be faily enacted that would equitably apportion responsibility and clearly define it. You would have no objection to something like that, would you?

MR. DAILY: Well, my opinion is that I don't think you can come up with this type of law. I think you were talking about an industry that is so complex that the law has developed through the court system over a long period of time and we are having -- California's probably the leader in the nation on giving new law for consumer protection, you know, in the area where you have personal injury due to manufacturing failures, you know. You have your strict liability there, which is a leader in the whole country.

CHAIRMAN SONG: You believe then we should just rely on case law and hope it continues?

MR. DAILY: I think as far as my industry, the construction industry, I feel we should rely on case law and let it develop through the courts and sometimes the development of law in a slower process is not all bad because it can be very advantageous under the right conditions.

CHAIRMAN SONG: What about the person who buys a new home in a subdivision and finds his heater doesn't work? Should he wait for the development of case law?

MR. DAILY: Well, I feel he has proper protection now. He has a contractual relationship. I think this is an important point. When you are talking about the construction industry, everybody is in contractual relationship. If he has an FHA loan he has a one-year guarantee that is required by law for parts and labor. When you have a contractual relationship between the general contractor and his subs all the way back and it is clearly spelled out what the responsibility for every party is, going back up the line in the contractual relationship, so he is not out on his own, nor is the building owner or the apartment owner in that they all have a contractual relationship.

CHAIRMAN SONG: Mr. Daily, it is somewhat difficult to reconcile that with the provisions of the warranties that were read by the preceding witness when the manufacturer of the particular goods in question specifically says, "I will not be responsible for any labor cost regardless of the cause." Now, doesn't that spell out at least an implied contractual relationship?

MR. DAILY: Here again I have to relate back to my experience in this, that is in the normal contracts that I see, all of them, you know, they don't rely upon the warranty situation within them because they spell out new warranties and it's in the standard association contracts that there are warranties spelled out within each contract and so if you want that job --

CHAIRMAN SONG: I bought a brand new home in a subdivision. I had no, absolutely no written contract that covered my heating system, the stove or any of the other built-in features, and

they are part of the contracting industry, construction industry as such today, are they not?

MR. DAILY: I would say they are, yes.

CHAIRMAN SONG: So what contract are you referring to? The only contract I had to sign consisted of the terms of payment, how I would pay for my home.

MR. DAILY: Now, if you are talking -- we have to be talking about new homes.

CHAIRMAN SONG: That's precisely what I was talking about. A brand new home -- when I bought it, there was no house there. I selected the site. It was a subdivision. There was no contract at all, so I don't know what contract you are referring to.

MR. DAILY: The one I'm referring to is the standard FHA or VA type of contract.

CHAIRMAN SONG: I bought a GI home. They wanted to know how much money I earned and whether I could make the monthly payments. That was about the sum and substance of it.

MR. DAILY: All I can say is I bought one, too, and it was required, and it was written in there about the warranty.

CHAIRMAN SONG: Thank you very much, Mr. Daily and Mr. Davis. The committee will recess for lunch and reconvene at 1:30.

(Thereupon the noon recess was taken.)

REPORTER'S CERTIFICATE

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THIS IS TO CERTIFY that I, ALICE BOOK, a Certified Shorthand Reporter, was present at the time and place the foregoing proceedings were had and taken before the SENATE COMMITTEE ON BUSINESS AND PROFESSIONS, held in Los Angeles, California, on November 4, 1969, and that as such reporter I did take down said proceedings in shorthand writing, and that thereafter I caused the shorthand writing to be transcribed into longhand typewriting, and that the foregoing pages, beginning at the top of Page 1 to and including Line 23 on Page 64 hereof, constitute a true, complete, accurate and correct transcription of the above-mentioned shorthand writing.

Dated this 5th day of December, 1969.

Alice Book
Shorthand Reporter

EXHIBIT A

P R E S E N T A T I O N

by
Robert Feuer
Representing Distributors Engaged in the Heating and Air Conditioning Industry
in
Southern California

The intent of this written presentation is to open an avenue of communication and better understanding between the members of this Hearing Committee and Manufacturers, their Agents or Suppliers, with regards to warranties and guarantees.

Equipment such as air conditioning sold to a contractor by a supplier to be installed in a residence or any commercial building contains in it, as part and parcel, hundreds of thousands of dollars of research and development and as much as thirty years of total industry knowledge and experience in both manufacturing know how and engineering.

In comparing a seemingly uncomplicated box installed on a slab of concrete with the air conditioning of a 2000 square foot residence or a thirty story skyscraper....why do we hear the outcry from the owner of the box on the slab. Quite frankly there is a good reason. The labor force for both installation and service on this type of equipment is, in my opinion, of a standard below that of the standard of the labor force used for installing and servicing commercial and industry equipment.

Have the supporters of Senate Bill 1166 investigated the contractors and their labor force and have the committee members actually seen the workmanship or so called workmanship on the many residential tracts in the State of California -- or have the members investigated the labor unions activities with regard to supplying qualified personnel to do the type of work that warrants the privilege of supplying

a warranty by the manufacturer of the equipment?

Gentlemen -- let us be realistic. Who exactly are we attempting to protect? The consumer? No, the consumer is best protected by the State Contractors License Board and other regulatory agencies of our cities and state.

I am concerned with the facts as they are being presented. The installing and servicing contractor of air conditioning equipment is asking for a blank check of absolutely no responsibility in accordance with the wording of the proposed legislation. Only the manufacturer and the supplier are held responsible for the failure of a piece of equipment.

What of the installation? Was it done according to the specifications laid down by the equipment manufacturer? Is it of sufficient capacity or was the job sold short and the payments of the consumer high?

Just who is to regulate the most important part of the picture? When the equipment fails, who investigates to see if the complete job deserves warrantee consideration.

The many warrantee jobs that I have been involved in have proven to me that both the original installation and the after market service leaves a great deal to be desired.

Open the Yellow Pages of your local telephone directory and look at the appliance dealers servicing our many air conditioning units in all areas of our state. What qualifies a washing machine repairman to service air conditioning equipment?

When this equipment fails,do to unqualified service -- what right does the consumer have to "cry wolf" to the supplier or the manufacturer?

During the term of the five year warranty or the compressors installed in air conditioning equipment, how does the manufacturer protect his interests while his warrantee is in effect? The consumer has his responsibility but does he feel that only the manufacturer should be responsible if a clogged filter causes the loss of the compressor?

It is inconceivable that intelligent lawmakers and critics would consider a legislative device such as Senate Bill 1166 a device that hides behind a skirt of innuendoes and questionable facts.

I am as anxious as any good citizen and consumer to see that protection is justly accorded to the consumers of all goods and that warrantees be upheld in accordance with the manufacturers limitations not with the traumatic hysteria of the irate homeowner.

Our industry is striving to build better equipment, do a better job of distribution and supply the consumer with a product that all of us are proud to market.

Let us all work together for all intelligent answers to a very serious problem. The answer and resulting solution can be obtained through our various trade associations with the assistance of the consumer and the legislative bodies of our state and local governments.

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11469

EXHIBIT B

DAY & NIGHT MANUFACTURING COMPANY
THE PAYNE COMPANY
855 ANAHEIM-PUENTE ROAD
CITY OF INDUSTRY, CALIFORNIA

TELEPHONES
213 / CU 3-6611
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P. O. BOX 1234
LA PUENTE, CALIF.
91747

October 28, 1969

Senate Committee on Business and Professions
California Legislature
State Capitol
Sacramento, California 95814

Gentlemen:

Re: Interim Study, Bill 1166, Warranties and Guarantees

Your committee is presently considering proposed legislation which would shift to the manufacturer of articles and equipment for installation by contractors all costs involved in the fulfillment of a manufacturer's written warranty. We, as manufacturers of heating and air conditioning equipment, do not believe such legislation as presently proposed to be in the public interest and wish to point out to you certain detrimental aspects and effects of such legislation.

In judging the value of this form of legislation, we must bear in mind that there are three primary goals which must be pursued in the public interest. First, the legislation must be such that it will encourage manufacturers to broaden their warranties so as to provide more effective protection for the public. Second, the burden imposed on the manufacturer must not be so great as to require a substantial increase in cost of the articles and equipment warranted so as to price such items beyond the reach of the average wage-earner. Third, the

legislation must be such as to meet the reasonable needs of the public and encourage prompt and effective maintenance and repair service for the product purchased.

In determining what type of legislation would be most appropriate and best protect the public interest in the area of warranties, a distinction should be drawn between the type of product which requires the assistance and actions of an architect or designer, mechanical engineer, electrical engineer, building contractor and installing contractor in order to operate satisfactorily (such as a heating and air conditioning system) and that type of free standing product which can be placed in operation by the public by simply plugging a cord into the wall (such as a television set). With respect to the former type of contractor-installed product system, it is necessary to create legislation that will encourage each of the persons involved in such system to fulfill each of their respective obligations through the design, manufacture and installation with the least possible additional cost to the public. In this regard, the equipment manufacturer, the architect, the mechanical engineer, the builder and the installing contractor each directly influence performance and reliability of the heating or air conditioning system.

Any form of legislation that seeks to impose the responsibility for the proper functioning of a system solely on the manufacturer of the equipment used, who has limited control over the system design or manner of installation of his equipment, would create a channel of distribution and service that is expensive, inefficient and ineffective. We contend that this is exactly what the provisions of California Senate Bill No. 1166 proposes to do: Manufacturers of comfort heating and air conditioning equipment would be required to bear all of the cost of insuring the proper functioning and operation of their equipment or article, regardless of whether or not a particular malfunction was caused by the abuse of a customer, the faulty design of an architect or engineer, or the improper installation by a contractor. To explain more fully why the imposition of responsibility on the manufacturer alone is detrimental to the public welfare, let us examine Senate Bill No. 1166 more closely.

At present, most heating and air conditioning warranties provide that the expense of replacing component parts within the warranty period, will be borne by the manufacturer with the distributor or installing contractor bearing the cost of labor. Senate Bill No. 1166 seeks to change such procedure. Senate Bill No. 1166 provides that the manufacturer, in addition to the cost of the parts, will also be responsible for "loss of use and the cost of labor," as well as all other costs involved

in bringing such equipment or article into good working order for the purpose for which it was originally intended. This we believe will impose substantial additional costs on the manufacturer as guarantor for all other parties involved in the installation and operation of the heating or air conditioning system and will result in a substantial increased price to the public for the product. Meanwhile, we doubt that contractors will voluntarily reduce their prices to the purchaser to reflect the cost of labor no longer required to be performed.

The manufacturer can control the design and quality of the product as it is being produced and the manufacturer is willing to stand behind its equipment; however, the manufacturer cannot control the design of the heating and air conditioning system or manner of installation or instruction of the public in the operation and maintenance of the equipment once it has been installed.

Relieving the contractor or other intermediate parties of any financial obligation resulting from any malfunction of the equipment or article will remove a great incentive of the builder, dealer or contractor to install, maintain or repair the product properly. In other words, Senate Bill No. 1166 relieves the person who is closest to the public from the obligation for the proper functioning of the unit and instead

places all of this burden upon the manufacturer who is far removed from the problem at hand. The consumer, on the other hand, will be left with the dilemma of not being able to obtain assistance from the local dealer, contractor or installer with whom he dealt previously but will be required to seek redress from a new and different source.

A further effect of such legislation will be to handicap the manufacturer in training responsible maintenance and repair men for his distributors, contractors and dealers. Manufacturers now provide product training programs, technical direction and other instruction in the installation, maintenance and repair of their articles and equipment. Without some economic burden being placed on the contractors, distributors, dealers or builders for the proper selection, installation and function of the equipment, such individuals will have little, if any, incentive to take advantage of the training and guidance programs provided by manufacturers.

Finally, even if a manufacturer should attempt to shoulder all the financial burden regarding the installation and operation of his unit to the complete satisfaction of the customer, such additional responsibility will mean that repair and maintenance costs and consequently the price of the unit will significantly increase. With the manufacturer picking up the bill for all

repairs, the impetus on the part of the local service man to effect repairs at the least cost to both himself and the manufacture will no longer be present. It would be unrealistic to believe that manufacturers will not pass these increased costs on to the ultimate consumer by way of a higher sales price for the articles and equipment.

The explosive growth of residential air conditioning has undoubtedly produced problems for ourselves, for builders, for contractors and the public. The members of our industry have a very real and substantial interest in quickly resolving these and other problems. Substantial progress we believe is being made toward their resolution.

Most manufacturers now have comprehensive quality control procedures which include continuous reliability testing of their products and quality audits which involve unpackaging and testing random samplings of equipment and articles ready for shipment. Procedures for obtaining and utilizing field feedback from warranty experience have been substantially expanded. Many manufacturers have installed sophisticated data processing systems for analysis of failure rates and field parts replacement. Manufacturers, distributors, dealers and installing contractors have made substantial investments in training programs in an effort to overcome a shortage of skilled labor. To this end many manufacturers have established training schools with full time

instructors and training facilities for the express purpose of helping develop technical skills needed by sales, installation and service personnel.

Manufacturers, working through their trade associations, have developed guidelines and standards to improve the industry. These include such items as national standards for performance, safety and durability; adequate model number identification on major appliances and their components; industry codes to ensure that parts lists and service manuals are properly distributed by manufacturers to distributors, dealers, installing contractors and service center networks.

Residential comfort heating and air conditioning has become available to the average homeowner in California through the efforts of the manufacturer in reducing the cost of equipment and articles to a level he can afford. Legislation that would exclude any person involved in the channel of distribution and service from responsibility for the proper installation and operation of the heating and air conditioning system would most surely spiral the cost of equipment and articles upward to the direct detriment of the average homeowner.

Sincerely yours,

DAY & NIGHT MANUFACTURING COMPANY
THE PAYNE COMPANY

J. H. Hollingsworth
Vice President, Engineering

/cw

EXHIBIT C

COMMITTEE ON WARRANTIES AND GUARANTEES

Gentlemen:

I am a licensed C-20 contractor, and I represent the Heating, Ventilating and Air Conditioning Contractor's Association of Los Angeles, California. I respectfully appear before you on this occasion for the purpose relating to the installing contractor's position in this complex web of problems concerning the implementing of warranties and guarantee of the heating and air conditioning system installations relative to the residential housing in the Los Angeles area.

We, the installing contractors do not deny our obligation or responsibility to perform the warranty service for the consumer in accordance with the stated manufacturer's guarantee, which in most instances is further implemented with our own guarantee. However, we are usually not in the best of position to spell out and state the terms of the warranty of the installed system to the consumer. In many instances we are caught in the middle between the equipment manufacturer and the general building contractor, who may have mis-stated the warranty conditions or implied something other than what can reasonably be expected to the consumer. The installing contractor is most anxious to fulfill his obligation in this regard, however, because we install a system which becomes only a component part of the total product purchased, and many times never have any dealings with the consumer until a problem is in existance, we are placed in a difficult position to perform to the satisfaction of the consumer.

DIFFERENCE BETWEEN CONSUMER AND CUSTOMER:

Perhaps at this point I should mention that the consumer in most instances (specifically in the tract housing industry) is not our customer. Our customer is the general building contractor who puts the entire package together, and sells a total product, the home, to the consumer. Our obligation to the home owner is usually through the builder or his representative. The general contractor usually spells out the expected warranty conditions in the contract for the heating and or air conditioning. Many such statements include: "One year warranty of the system from date of installation". The past several years have shown us that the houses can stand vacant for a full year or more after they have been finished before they are sold. In such a case what warranty should be expected by the new homeowner (consumer) and who is the responsible party to maintain such a warranty?

INSTALLING CONTRACTOR'S VOICE IN SELECTION OF EQUIPMENT MANUFACTURER:

We usually are not consulted by the general contractor; architect; mechanical engineer; or the lender, which ever has the sayso in the selection of the equipment manufacturer as to who's equipment will be used. By the time the installing contractor is called in to bid on the housing project the entire system has been designed, and specifications are set forth. This is not always the case, I may point out, that if we have worked with a particular builder over a period of years, we may be asked to voice our opinion or requested to design the system and specify the equipment of our choice. In some instances on the other hand, the houses are in the framing stage of construction before any

consideration is given to the system to be installed, then it is a case of use whatever will fit. This in most instances leaves us to the dictation of the builder's specifications, and all warranty stated has been between the builder and the manufacturer.

MANUFACTURER'S NON-STANDARDIZATION OF WARRANTIES:

In the past the manufacturers have had little or no standardization of warranty policy. The warranty that the installing contractor obtained from a specific manufacturer on the equipment purchased from him usually depended on his ability to negotiate and his volume of purchases. If he was a large volume user he could carry a large whip to persuade the manufacturer to participate in the area of warranty responsibility to the consumer.

In the past year however, the manufacturers have responded with more standardization in their warranty policies, but there are still many gray areas where it is hard to determine whose responsibility the problem should rest with, such as:

The manufacturer says that he will pay labor and materials to correct any defects of the equipment until after "START-UP" of the equipment: then he will only replace the parts, all labor to remove and replace is to be born by the installer.

This on the surface looks reasonable, but now let's look at the gray area of this statement. The word "Start-up", - Let me cite an example: An air conditioning unit is installed in November of a given year. The consumer takes Occupancy in December of the same year, and does not use his air conditioning until April of the following year, but in the interum used h is heating equipment which is part of the air conditioning equipment. Just exactly when did "START-UP" occur? To go further into the same area of manufacture warranty, it is reasonable to expect that if the installing contractor is to be responsible to remove and replace defective parts at his own expense as part of the warranty to the consumer, then he should be able to expect that the quality control of the manufacture should be within reasonable stated tolerance, and if not what should be the policy, and who should be responsible?

These are problems to only mention a few that we the installing contractors through our association have been working with the responsible manufacturers in recent months to try to conclude. But still they add to the never ending complexity of the entire realm of warranty service.

AVAILABILITY OF SERVICE REPLACEMENT PARTS:

Due to the vast improvements and inovations made in our heating and air conditioning equipment in the past years, and the continuing technological changes occuring every day, the problem of maintaining a stock of service replacement parts is difficult to conceive. This problem is further made more difficult by the varying different models available and the many new manufacturers of equipment that have recently come into the Los Angeles area.

The stocking of adequate parts on a single service vehicle has indeed become one of great magnitude not to mention the expense of said stock, or the perishability, or just the cost to operate the truck to carry this great mass

from consumer to consumer in expectancy of the need to replace a defective part at a given time. Then only to return a in-warranty replaced part to the manufacturer and to justify the need of replacement or the fact that it really is still in warranty, becomes further complicated by the rotation of the stock to meet the seasonal needs, when many times the manufacturer has run out of replacement parts because he has used them in the manufacturing and assembly of out of stock items.

AVAILABILITY OF QUALIFIED SERVICE TECHNICIANS:

The elusive qualified service technician and his availability to this industry is a problem that has faced the residential installing contractor for a long time. First of all the unions do not produce and train, or bring through the apprenticeship programs enough of this type of man to fill our needs; recently the unions place such restrictions on their working conditions that it is hard for the union contractor to compete with the non-union shop, this is especially true for the needed service function that comes about beyond the normal five day, eight to five work week, holidays excluded. Third, that because the needs of highly qualified service personnel is only a seasonal one, the better man is attracted to other fields or into other phases of our industry. The training of service technicians has solely been left up to the manufacturers, installing contractors, and trade associations at their own expense. This phase of our industry has received a great deal of attention in the past year, through the cooperation of the manufacturers, while the union has sat idly by. In the past 10 years the average age of our journeyman has increased 8 years in age. The young, new man is needed in our fast moving technical industry. A union contractor has only one source of manpower supply.

CONSUMER'S RESPONSIBILITY AND OBLIGATION OF MAINTAINING HIS EQUIPMENT

The only way that the product can be warranted to the consumer is to expect that the consumer will fulfill his obligation in maintaining proper care, use, and maintenance of the equipment.

The manufacturers have made extensive efforts to prepare home owner operation and maintenance manuals which are packaged with each piece of equipment, many installing contractors supplement this with their own written literature, and upon installation of the equipment, all of this information is left attached to the equipment for the homeowner to use. Unfortunately, many times this information is swept out with the clean out of the dwelling prior to move-in or if not, it may be misplaced or thrown away by the homeowner himself. It is the exception to the rule-consumer who pays head to the information gathered for his benefit, that has a problem later, prior to the warranty expiration.

The clogged filter, the disconnected circuit breaker, the turned off thermostat, and similar consumer ignorance complaints account for approximately 50% of in warranty service complaints.

We in attempt to overcome this problem have made attempts to have the builders move-in man or real estate salesman make up packages, which include: all warranty product information and operation manuals to be handed to the consumer at time of move-in, but much of it goes unheeded.

Supreme Court of California
Jorge E. Navarrete, Clerk and Executive Officer of the Court
Electronically FILED on 6/1/2021 by Florentino Jimenez, Deputy Clerk

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Supreme Court of California

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Case Name: **NIEDERMEIER v. FCA US**
Case Number: **S266034**
Lower Court Case Number: **B293960**

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BRIEF	Opening Brief on the Merits

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6/1/2021

Date

/s/Chris Hsu

Signature

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