

STATE OF MAINE
KENNEBEC, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-82-45

STATE OF MAINE,)
)
Plaintiff)
)
vs.)
)
BOB CHAMBERS FORD,)
)
Defendant)
)

FINAL DECISION AND ORDER

This Final Decision and Order sets forth a comprehensive relief plan to provide consumers with the remedies established by the underlying judgment of December 13, 1985.

1. Notice to Consumers

The Defendant shall elect and implement either Option A or Option B to advise eligible consumers of their rights under this judgment.

Option A: Notification by Mail

The Defendant will mail to each of its customers who purchased rust-proofing from February 5, 1976 to February 5, 1982 the relief notice attached to this Decision as Appendix A. This notice need only be sent to customers who the Defendant has determined still own the car that was rustproofed.

To obtain these names and addresses, the Defendant may, through the Department of the Attorney General, provide the Maine Department of Motor Vehicles (DMV) with the names of all customers eligible for relief and the VIN number of the automobile that was rustproofed. DMV will then provide the Defendant with mailing labels for each customer who still owns the car.

If the Defendant decides to use the assistance of the Attorney General and DMV, the necessary information shall be provided to the Attorney General within two weeks of the effective date of this Order. The Attorney General

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MAR - 7 1986

CLERK OF COURTS
KENNEBEC COUNTY

will then forward to the Defendant the DMV mailing labels. Within two weeks of receiving these mailing labels, the Defendant will mail to all its customers eligible for relief and for which it has current mailing addresses the notice attached to this Decision and labeled Appendix A.

If the Defendant decides to mail the notices required by this Order without using the services of the Attorney General and DMV, all notices shall be mailed within one month of the effective date of this Order.

Option B: Notification by Publication

The Defendant will publish in the Kennebec Journal two times a week, for three weeks, a notice 7½ inches in length and 4½ inches in width alerting eligible consumers to the relief program ordered by this Court. A copy of this notice is attached to this Decision as Appendix 1-A. It shall be printed in as bold, easy-to-read print as space provides.

2. Inspection

Upon contacting the dealership, each customer would provide name, address, telephone number, make of vehicle, type of rustproofing and approximate date of purchase and amount of consideration.

Bob Chambers would then schedule an inspection during specified daily hours within the next ninety (90) days. If the number of inspections requested is so great as to require an extension of time, the Defendant may request such an extension to permit the orderly completion of the inspections.

The customer would be expected to arrive at the appointed hour with the appropriate documentation to demonstrate original ownership, proof of purchase, etc.. Unexplained failure to maintain an appointment would result in a forfeiture of rights. It would be recommended that the car be cleaned prior to arrival.

The inspections themselves would be conducted as Bob Chambers presently

conducts Rusty Jones inspections, operating from the Rusty Jones checklist. A material defect or insufficiency in any area where erosion could not be expected over time (inside door panels, dog legs, etc.) would precipitate relief. Any areas requiring "touch up" would be remedied, with no additional relief to the consumer.

Appendix B to this Decision is the basic inspection form that the Defendant shall use in its relief program. When the Defendant has completed an inspection, the customer shall be given a copy of the completed inspection form and a copy will remain in the Defendant's permanent file.

Prior to the inspection, the consumer would be provided a card which would explain this process and provide the Attorney General's phone number in case of disputes. In the event of a dispute concerning materiality, a neutral third party would view the automobile and make a binding determination. The parties will endeavor to agree upon a neutral arbitrator.

It is presumed that most, if not all, aggrieved consumers will desire a refund. All refunds will be provided within sixty (60) days of the date of inspection.

3. Notice to Customers Who Received Inadequate Rustproofing

A copy of Appendix C to this Decision will be given to each customer if the Defendant's inspection shows the car received materially inadequate rustproofing.

4. Customer Selection Of Relief

The Defendant shall seek from each customer who received inadequate rustproofing a selection of relief. Appendix D to this Decision is the form the customer will fill out and sign. A copy will be given to the customer and a copy will be kept in a permanent file by the Defendant.

5. Attorney General Monitoring Of Relief Program

The Attorney General may make copies of these inspection records and,

if a customer were willing, conduct its own inspection. If the inspections by the Defendant were only superficial or misrepresented the quality of the rustproofing, the State may apply to this Court for a permanent injunction.

6. Notice To Holders Of Bob Chambers Ford Express Warranty

In its underlying Decision of December 13, 1985, this Court declared certain limitations in the Bob Chambers Ford express rustproofing warranty to be illegal. Pursuant to 11 M.R.S.A. §2-316(5) (a), the following limitations by the Defendant are illegal:

- A. limitations on the customer's implied warranty remedies for inadequately applied rustproofing; and
- B. limitations on consequential and incidental damages for inadequately applied rustproofing.

The Defendant shall mail a copy of Appendix E to this Decision to every current holder of a Bob Chambers Ford express warranty. Any customers who receive this letter who also purchased their rustproofing prior to February 5, 1982 shall also receive a copy of Appendix A (or Appendix 1-A) (Notification of Inadequate Rustproofing).

7. Inspection Disputes

In the event of a dispute between the Defendant and the Attorney General as to whether a particular customer's rustproofing was materially inadequate, a neutral third party shall view the automobile and make a binding determination. If the parties are unable to agree upon a neutral third party, they shall each submit two names to this Court and the Court will select the mutual party.

Dated: March 6, 1986


G. Arthur Brennan
Justice, Superior Court

APPENDIX A

Re: RELIEF PROGRAM FOR BOB CHAMBERS FORD CUSTOMERS WHO RECEIVED INADEQUATE RUSTPROOFING

Dear Bob Chambers Ford Rustproofing Customer:

As a result of the Attorney General's rustproofing lawsuit against Bob Chambers Ford, the Maine Superior Court found a pattern of grossly-inadequate rustproofing applications. The Superior Court also found that there is a substantial likelihood that all cars rustproofed by Bob Chambers Ford between February 5, 1976 and February 5, 1982 were inadequately rustproofed.

The Court has now ordered the following relief for any person who purchased rustproofing by Bob Chambers Ford and still owns the rustproofed car:

1. until [a date 63 days from the date of this letter], customers can make an appointment with Bob Chambers Ford for a prompt, free inspection of their rustproofing;

2. if this inspection reveals any significant inadequacy in the rustproofing, then the customer has the option of having his or her car cleaned and re-rustproofed or receiving back the purchase price of the rustproofing (not less than \$125 and more if your paperwork shows a higher price), along with interest for each year since the State filed its lawsuit in February, 1982).

If you received inadequate rustproofing but do not wish to accept either of these relief options, you are not prohibited from privately pursuing your own legal remedies. If you have any questions concerning this Court-ordered relief program, please call either Bob Chambers Ford or the Attorney General's Consumer Division at 289-3716 between 9:00 A.M. and 12:00 noon.

IF YOU PURCHASED RUSTPROOFING BETWEEN FEBRUARY 5, 1976 AND FEBRUARY 5, 1982, PLEASE CALL BOB CHAMBERS FORD AT [PHONE NUMBER] FOR YOUR FREE RUSTPROOFING INSPECTION.

Sincerely,

BOB CHAMBERS FORD

APPENDIX 1-A

ATTENTION:

BOB CHAMBERS FORD RUSTPROOFING CUSTOMERS

As a result of the Attorney General's rustproofing lawsuit against Bob Chambers Ford, the Maine Superior Court found a pattern of grossly-inadequate rustproofing applications. The Superior Court also found that there is a substantial likelihood that all cars rustproofed by Bob Chambers Ford between February 5, 1976 and February 5, 1982 were inadequately rustproofed.

The Court has now ordered the following relief for any person who purchased rustproofing by Bob Chambers Ford and still owns the rustproofed car:

1. until [a date 63 days from initial publication], customers can make an appointment with Bob Chambers Ford for a prompt, free inspection of their rustproofing;
2. if this inspection reveals any significant inadequacy in the rustproofing, then the customer has the option of having his or her car cleaned and re-rustproofed or receiving back the purchase price of the rustproofing (not less than \$125, and more if your paperwork shows a higher price,) along with interest for each year since the State filed its lawsuit in February, 1982.

If you received inadequate rustproofing but do not wish to accept either of these relief options, you are not prohibited from privately pursuing your own legal remedies. If you have any questions concerning this Court-ordered relief program, please call either Bob Chambers Ford or the Attorney General's Consumer Division at 289-3716 between 9:00 A.M. and 12:00 Noon.

IF YOU PURCHASED RUSTPROOFING BETWEEN FEBRUARY 5, 1976
AND FEBRUARY 5, 1982, PLEASE CALL BOB CHAMBERS FORD
AT [PHONE NUMBER] FOR YOUR FREE RUSTPROOFING INSPECTION.

APPENDIX B

COURT-ORDERED BOB CHAMBERS FORD
RUSTPROOFING INSPECTION PROGRAM

Customer Information

1. Car owner's name: _____
2. Car owner's address: _____

3. Car owner's phone numbers:
_____ (Work); _____ (Home)
4. Date car purchased: _____
5. Year and model of car: _____
6. VIN number of car: _____
7. Cost of rustproofing: _____

Court-Ordered Customer Relief

As a result of the State of Maine's rustproofing lawsuit against Bob Chambers Ford (State v. Bob Chambers Ford CV-82-45), the Maine Superior Court has ordered that Bob Chambers Ford provide all customers who purchased rustproofing between February 5, 1976 and February 5, 1982 a free rustproofing inspection. The Superior Court found that the State's inspections revealed a pattern by Bob Chambers Ford of grossly-inadequate rustproofing applications.

The Bob Chambers Ford free rustproofing inspection will inspect each of the vehicle areas listed below. It will note whether an area received "acceptable" rustproofing ("A"), materially "inadequate" rustproofing ("I") or no rustproofing material at all ("N"). If any of the areas below received an inadequate rustproofing application or no rustproofing, then you have the option of requesting either:

1. that the area be completely cleaned and re-rustproofed; or

2. that you receive back the purchase price of your rustproofing (not less than \$125 and more if your paperwork shows a higher price, plus interest for each year since the State filed its lawsuit in February, 1982).

The relief provided by the Superior Court does not include any relief to customers for inside-out rust damage in areas that were not adequately rustproofed by Bob Chambers Ford. Consumers eligible for relief under the Court's Order are not prohibited from declining this court-ordered relief and privately pursuing their own legal remedies.

If you have any questions concerning this relief program, contact either Bob Chambers Ford or the Attorney General's Consumer Division, Station 6, Augusta, Maine 04333 (289-3716 between 9:00 A.M. and 12:00 noon).

Instructions For Rustproofing Inspector

A 5-7 mil (wet) coating should have been applied to all rustproofed areas of the vehicle. This includes the specific areas listed below. Each of these areas should have been thoroughly covered with rustproofing material, with special attention paid to all seam areas.

Please use the following code: "A" for acceptable; "I" for inadequate; "N" for none. Make any comments on the line below the area named, including a description of any inside-out rust damage. Crucial areas are marked by an asterisk (*).

1. UNDERSIDE OF VEHICLE:

- _____ Headlight area

- * _____ Radiator support section

- _____ Wheelwells, particularly at edge of opening

- _____ Floor pan, and front and rear gravel panels

* _____ Spot check inside all holes and boxed-in frame areas

_____ Gas tank and mounting straps or bolts

_____ Taillight area

* _____ Rocker panels

_____ All other struts, support sections and welded or bolted seams

2. DOORS AND DOOR OPENINGS:

* _____ Upper and lower areas inside all doors

* _____ Front door posts

* _____ Rear section of front quarter panel/fender cavities, particularly vertical fender brace

* _____ Rear door posts and dog legs; also, center posts if four-door model

- _____ Front section of wheelwells
- _____
- _____ Windshield pillars if accessible
- _____
- _____ All welded and bolted seams in doors and door openings
- _____

3. TRUNK:

- * _____ All enclosed surfaces of trunk lid (or tailgate area)
- _____
- _____
- * _____ Trailing edge of trunk lid
- _____
- _____
- _____ Side roof panel between side and rear windows
- _____
- * _____ Rear section of wheelwells
- _____
- _____
- * _____ Lower rear quarter panels
- _____
- _____
- _____ Shelf beneath rear window
- _____
- _____
- _____ Back edge of trunk, including around taillights
- _____

_____ All welded and bolted seams

_____ Check to insure no chemical is spilled on carpeting

4. UNDER HOOD:

* _____ Forward edge of hood

_____ All enclosed surfaces of hood

_____ Hood hinges, hinge mountings and cowl area, including
all boxed-in or double wall support sections

* _____ Front fender cavities/quarter panels

_____ Fender beds

_____ Battery platform

_____ Headlight areas

* _____ A-frame/front suspension

_____ All welded and bolted seams

5. FINAL CHECK:

_____ Inspect all drainholes to make sure that chemical has reached them

_____ Outside trim on front, rear and sides of vehicle

_____ Trim around windshield and rear window

_____ Confirm all drilled holes are plugged

_____ Replace all padding, carpeting, mats, etc.

_____ Check for any overspray on painted surfaces or windshield

Inspection Date

Inspector's Signature

Customer Relief Options

If any of the above areas received inadequate ("I") or no rustproofing ("N"), then the customer is entitled to the following relief:

1. complete cleaning and re-rustproofing; or
2. return of purchase price (not less than \$125 and more if your paperwork shows a higher price, plus interest for each year since the State filed its lawsuit in February, 1982).

Customers, of course, are free to refuse any of the above Court-ordered relief and to decide to pursue private legal remedies for inadequate rustproofing. If you received inadequate rustproofing, then within 30 days of _____, you should complete and return the attached form entitled "Customer Relief for Inadequate Rustproofing". If you decide to accept one of the Court relief options, we will as soon as possible return your purchase price plus interest, or schedule you for a new rustproofing job.

APPENDIX C

[Date of letter]

Dear Rustproofing Customer:

Please find attached the results of a completed rustproofing inspection of your [car year and model].

Our inspection of your car has revealed that you received inadequate rustproofing. Therefore, pursuant to the Maine Superior Court's Decision in State of Maine v. Bob Chambers Ford (CV-82-45), you are eligible for the following relief:

1. a cleaning of your car and new rustproofing job; or
2. reimbursement of the purchase price of rustproofing (at least \$125, and more if your paperwork shows a higher price, plus interest for each year from the date the State filed its lawsuit in February, 1982).

Of course, you are not required to accept either of these relief options. If you like, you are free to privately pursue other legal remedies for damage caused by the inadequate rustproofing. Please note: you must inform us within 30 days of [date of this letter] as to whether you wish to accept one of the Court-ordered relief options. If you have any questions concerning this matter, please call us at [BCF phone number] or the Attorney General's Consumer Division (Station 6, Augusta, Maine 04333) at 289-3716 from 9:00 A.M. to 12:00 noon. Thank you.

Sincerely,

BOB CHAMBERS FORD

APPENDIX D

CUSTOMER RELIEF FOR INADEQUATE RUSTPROOFING

Pursuant to the Maine Superior Court's Order in the case of State of Maine v. Bob Chambers Ford (CV-82-45), I have had my _____ (car year and model) inspected by Bob Chambers Ford and have been informed that this car received inadequate rustproofing. The Court's Order in this case requires Bob Chambers Ford to provide either a new rustproofing job or my money back if my car has received inadequate rustproofing. I realize that I am not required to accept this relief but that I am able to pursue privately whatever other legal remedies I might have. However, if I do accept this relief, I agree that Bob Chambers Ford will not be liable to me in the future for damages due to inadequate rustproofing of the above-named car. Therefore, I choose the following:

- A. _____ a cleaning of my car and rustproofing job; or
- B. _____ reimbursement of the purchase price of the rustproofing (at least \$125, and more if my paperwork shows a higher price) in the amount of: \$_____, plus interest since February, 1982; or
- C. _____ none of the above court-ordered relief. I understand I am free to privately pursue whatever legal remedies I might have for the inadequate rustproofing sold me.

Customer Name: _____

Customer Address: _____

Date: _____

Customer Signature

APPENDIX E

[Date of Letter]

Dear Holder of A Bob Chambers Ford Rustproofing Express Warranty:

Within the last few years, you have purchased rustproofing from Bob Chambers Ford and received a Bob Chambers Ford rustproofing express warranty (as opposed to a Rusty Jones express warranty). As the result of the Court's Order in the case of State of Maine v. Bob Chambers Ford (CV-82-45), some of the limitations in the Bob Chambers Ford rustproofing warranty have been declared illegal. Namely:

1. It is illegal for Bob Chambers Ford to limit a customer's implied warranty remedies for inadequately applied rustproofing. The Implied Warranty is Bob Chambers Ford's unspoken promise that it has properly applied your rustproofing.

2. It is also illegal for Bob Chambers Ford to attempt to limit consequential and incidental damages for inadequately applied rustproofing. These damages may include the money it costs you because Bob Chambers Ford improperly applied your rustproofing.

3. Further, the Bob Chambers Ford express warranty gives Bob Chambers Ford, not the purchaser, the option of either repairing any rust damage or returning your purchase price. However, the Court has ordered that you, the purchaser (not Bob Chambers Ford), will have the option of deciding whether to accept rust repair or the return of your purchase price and that if you select the return of the purchase price you will receive the full market value of the rustproofing, not a reduced price if you bargained over the cost.

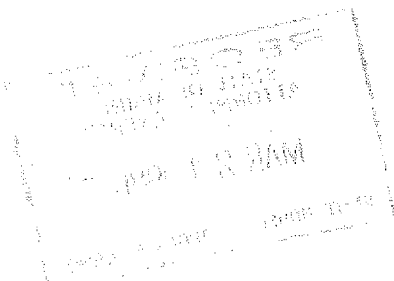
At this time let me also remind you that in order to keep your Bob Chambers Ford Rustproofing warranty valid, you must bring your vehicle into Bob Chambers Ford for a rustproofing inspection within two years (plus or minus 60 days) from the date of issue of the warranty or within 20 miles of total use, whichever comes first. If you have any questions, please do not hesitate to contact this dealership.

Finally, if you purchased rustproofing before February 5, 1982, the Court also has found that there is a substantial likelihood you received inadequate rustproofing. Please find enclosed with this letter a description of your right to a free inspection and relief for inadequate rustproofing.

Sincerely,

BOB CHAMBERS FORD

Enclosure



RECEIVED
STATE OF MAINE
ATTORNEY GENERAL
MAR 21 1986
STATE HOUSE AUGUSTA, MAINE

STATE OF MAINE
KENNEBEC, ss.

SUPERIOR COURT
Civil Action
Docket No. CV-82-45

STATE OF MAINE,)
Plaintiff)
v.)
BOB CHAMBERS FORD,)
Defendant)

DECISION AND ORDER

This civil action, brought by the Attorney General under Maine's Unfair Trade Practices Act, 5 M.R.S.A. § 206 et. seq., came on for jury-waived trial during the week of February 11, 1985. At issue were the adequacy of rustproofing applications sold by defendant and certain limitations placed on warranties. Based on the evidence produced at trial and the oral and written arguments of counsel, the court makes the following findings of fact and conclusions of law.

Findings and Conclusions

The defendant operates two high-volume motor vehicle dealerships in Augusta, one dealing in Ford products and the other dealing in Volvo and Honda products. Between 1976 and 1982 the combined sales of these dealerships were approximately 6,700 units. Of these, approximately 4,200 were rustproofed by defendant. The average fair market value of a rustproofing application during this period was \$125.

Beginning in 1979, the Consumer and Antitrust Division of the Attorney General's office began to receive complaints concerning

the adequacy of rustproofing applications sold by defendant. There were a sufficient number of such complaints to motivate the Attorney General's office to commence a formal investigation into defendant's rustproofing practices.

An unscientific survey was conducted which ultimately resulted in physical inspections by agents of the Attorney General of 42 vehicles rustproofed by defendant between 1976 and 1982 by agents of the Attorney General. The investigators would qualify as experts on the subject of rustproofing. The purpose of the inspections was to determine the adequacy of the rustproofing applications. The inspections revealed a pattern of grossly inadequate rustproofing applications. There is a substantial likelihood that a significant number of other vehicles rustproofed by defendant between 1976 and 1982 were inadequately rustproofed. While the evidence would not support a finding of intentional conduct on the part of the defendant -- that is to say a conscious purpose to perpetuate a fraud on the consumer -- the evidence does support, and the court finds, that the defendant engaged in a pattern of unfair and deceptive acts or practices in the conduct of trade or commerce.

The components of these unfair and deceptive practices included: failure to adequately rustproof vehicles, failure to adequately train rustproofing personnel, failure to provide adequate tools and manuals necessary for proper rustproofing, failure to properly supervise rustproofing operations, failure to

establish adequate quality-control procedures, and failure to conduct adequate follow-up rustproofing inspections.

Further, concerning both the Sym-Tech and Bob Chambers warranties, as distinguished from the presently utilized and adequate Rusty Jones warranty, these warranties were illusory and deceptive. Limitations of warranties such as those set out in both the Sym-Tech and Bob Chambers rustproofing warranties contravene Maine law and are deceptive to the consumer.

Since 1982 the Attorney General has not received any complaints concerning defendant's rustproofing practices. Further, the testimony reveals that defendant has remedied many of the underlying causes that produced the inadequate rustproofing results in earlier years. He uses Rusty Jones products. Rusty Jones personnel conduct both training for defendant's personnel and also play a limited role in quality control. All rustproofing is done by one employee and all parties agree that he is skilled and conscientious. He has all the necessary tools and manuals to do the job. This employee also conducts all of the follow-up inspections. The defendant's principal now is actively involved in quality control. All parties agree that the Rusty Jones warranty comports with Maine law and is fair.

Thus, the court concludes that the defendant engaged in Unfair Trade Practices between 1976 and 1982. Further, the court concludes that the six-year statute of limitations set out in 14 M.R.S.A. § 752 applies to actions brought under the Unfair Trade Practices Act.

Remedies

Based on the finding and conclusions set out above, the court orders the defendant to take the following remedial measures:

1. As to the consumers listed in Exhibit "A" attached hereto who have not already settled with the defendant, the defendant shall, at the consumers option, provide a complete re-application of rustproofing or refund to the consumer the original cost of rustproofing application but not less than One Hundred Twenty-five Dollars along with interest at the rate of 5.5% for each year since the purchase of the rustproofing.

2. As to other consumers who purchased rustproofing from defendant between February, 1976 and February, 1982, the defendant shall:

A. Notify each consumer who still owns a rustproofed car that the rustproofing may be inadequate, that a free inspection of the rustproofing is promptly available at defendant's business location and that if the inspection reveals any inadequacy in the rustproofing, offer, at the consumer's option, to either clean and re-rustproof the vehicle or refund the purchase price of the rustproofing but not less than One Hundred Twenty-five Dollars (\$125) along with interest at the rate of 5.5% for each year since the purchase.

The notice here contemplated may be either by mail to each consumer or by publication at the election of the defendant. The court retains jurisdiction of the matter to

approve the content of any letter of notice or to approve the content and form of any notice by publication.

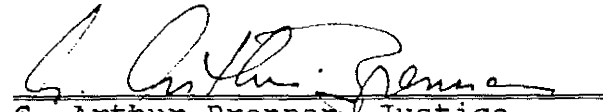
Inspections will be made and re-applications or refunds provided as promptly as is commercially reasonable. When the notification is complete and consumer responses received, the defendant will submit to the court a plan or schedule indicating the manner and time-frame during which these remedial measures will be accomplished. The Attorney General may monitor this remedial program in any commercially reasonable fashion including attending inspections and re-applications and reviewing records kept by defendant concerning this remedial program.

3. The defendant shall notify all holders of Bob Chambers Ford rustproofing warranties still in effect that the limitations contained therein are unenforceable and that should a warranty claim arise, in appropriate cases, they have the option of requesting a refund of the fair value of the rustproofing service notwithstanding any bargaining which may have occurred concerning its cost to the consumer. The court retains jurisdiction to review and approve the content and form of the notice here contemplated which may be by mail or by publication.

4. No permanent injunction is ordered because the defendant has taken appropriate action to remedy the conditions which brought about this action. The success of these measures is shown by the lack of any complaints relating to rustproofing from 1982 to the present.

5. The defendant is ordered to pay the sum of \$2,500 to the State of Maine towards the costs of this investigation.

Dated: September 5, 1985


G. Arthur Brennan, Justice
Superior Court

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CLERK OF COURTS
SUPERIOR COURT

Injured Consumers Eligible for Restitution

1. John Abbott
2. Stanley Baker
3. Patricia Bergeron
4. Roger Bernier
5. Linda Brown
6. ~~Victoria Burwell~~ ✓
7. ~~Betty Case~~ ✓
8. ~~Robert Clark~~ ✓
9. Charles L. Clement
10. Stephen Cottrell
11. ~~Ann Cox~~ ✓
12. Alan Crichton
13. ~~David Dermott~~ ✓
14. Peter Downey
15. ~~James Dunn~~ *did not wish to be*
16. Keith Elwell
17. ~~Elwell Fairmont~~
18. Harold Fowler
19. Jessie Greve
20. John Hopkins
21. Alice Hutchinson
22. Barbara Jordan
23. William and Janet LaChapelle
24. James McClay
25. Carolyn B. McLaughlin
26. ~~Eugene Murrow~~ ✓
27. Peter Muzerolle
28. Wesley D. Plummer
29. ~~Evelyn Roberts~~ ✓
30. Joan Sturmthal
31. ~~Alan Sturtevant~~ ✓ *Sturtevant Alan*
32. ~~Lloyd Webber~~ ✓
33. Elwyn Whitman

STATE OF MAINE
KENNEBEC, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV82-45

STATE OF MAINE,	*
	*
Plaintiff	*
	*
v.	*
BOB CHAMBERS FORD, INC.,	*
	*
Defendant	*

AMENDED COMPLAINT UNDER MAINE
RULE OF CIVIL PROCEDURE 15(a)
AND REQUEST FOR PRELIMINARY AND
PERMANENT INJUNCTIONS AND
RESTITUTION AND DAMAGES

The State of Maine, by and through James E. Tierney, Attorney General of the State of Maine, amends as a matter of course under Maine Rule of Civil Procedure 15(a) its Complaint dated February 2, 1982, and herein alleges:

JURISDICTION AND VENUE

1. This action is brought in the public interest under 5 M.R.S.A. § 206 et seq., commonly known as the Maine Unfair Trade Practices Act, 11 M.R.S.A. §§ 2-314, 2-316, and 2-715 of the Maine Uniform Commercial Code, 10 M.R.S.A. § 1174, which prohibits motor vehicle dealers from engaging in any action which is arbitrary, in bad faith or unconscionable and which causes damages to the public, and 10 M.R.S.A. § 1211 et seq., the Maine Uniform Deceptive Trade Practices Act.

2. Venue is laid in Kennebec County, pursuant to 5 M.R.S.A. § 209. *Concluded, D*

bc

3. Bob Chambers Ford, Inc. is a Maine corporation with registered offices at 283 Water Street, Augusta, Maine 04330. This Corporation has sold new motor vehicles and provided automobile repair services at its business locations in Augusta, Maine.

^

NATURE OF TRADE OR COMMERCE

4. The Defendant has sold new Ford, Honda, and Volvo motor vehicles at its business locations on Western Avenue and State Street, Augusta, Maine 04330.

A

5. The Defendant, in selling a new motor vehicle, would often add "extra" merchandise to the vehicle, such as auto body rustproofing.

I K,
D.

COUNT ONE

6. From 1976 into the present the Defendant has sold motor vehicles to consumer-purchasers for personal, family, or household use which it had rustproofed.

A, copy
copy

7. By virtue of 11 M.R.S.A. §§ 2-314 and 2-316, all rustproofing jobs sold by the Defendant to consumer-purchasers for personal, family, or household use also carry an implied warranty of merchantability.

(copy - D)

8. This implied warranty of merchantability applies both to the quality of the rustproofing product and the quality of the Defendant's application of the product.

(copy - D)

9. As the result of complaints by consumer-purchasers to the Department of the Attorney General, the State of Maine initiated an investigation of the Defendant's rustproofing practices.

I . K

10. The State has notified the Defendant in a September 9, 1981, letter of the results of its investigation of the Defendant's rustproofing practices, providing the names of consumer- ^{A/D} purchases of rustproofing whose vehicles the State had inspected.

11. In rustproofing many, if not all motor vehicles purchased by its consumer-purchasers, the Defendant failed to adequately rustproof the vehicle and the Defendant's consumer-purchasers have consequently been injured. ^D

12. By selling improperly applied rustproofing to consumer-purchasers for personal, family, or household use the Defendant breached its warranty of implied merchantability. This breach constitutes an unfair trade practice in violation of the Maine Unfair Trade Practices Act, 5 M.R.S.A. § 206 et seq., by operation of 11 M.R.S.A. §§ 2-314 and 2-316. ^{C, D}

13. This breach of the implied warranty of merchantability proximately caused injury to consumer-purchasers of the Defendant's rustproofing. ^{C, D}

COUNT TWO

14. Plaintiff repeats its allegations in paragraphs 1 through 13 with the same full force and effect.

15. Rustproofing customers of the Defendant are required by the terms of their rustproofing express warranty to bring their vehicle to the Defendant so that the Defendant can inspect the adequacy of its rustproofing application. ^{C, D}

16. In at least two (2) instances the Defendant inspected inadequate rustproofing sold to its customers yet failed to correct the inadequate rustproofing. ^{I, D}

17. It is an unfair and deceptive trade practice, in violation of 5 M.R.S.A. § 206 et seq. for the Defendant to represent that it will inspect the quality of its rustproofing but to then fail to correct deficiencies in its rustproofing application. *C. G. C., D.*

COUNT THREE

18. Plaintiff repeats its allegations in paragraphs 1 through 17 with the same full force and effect.

19. Included in the price of the rustproofing protection currently sold its customers by the Defendant is an express limited warranty against rust damage. *I. K., D.*

20. The written terms of this express warranty communicate to consumer-purchasers the very strong impression that it limits the length of any implied warranties existing under state law to the duration of the Defendant's express written warranty. *I. K.,*

21. The written terms of this express warranty communicate to consumer-purchasers the very strong impression that it denies the purchaser's right to incidental or consequential damages for breach of warranty by the Defendant. *I. K., D.*

22. It is an unfair and deceptive trade practice, in violation of 5 M.R.S.A. § 206 et seq., by operation of 5 M.R.S.A. §§ 2-314, 2-316, and 2-715 for the Defendant to convey the very strong impression that its rustproofing express warranty limits the consumer-purchaser's right under State law to implied warranties or incidental or consequential damages for a breach of warranty. *D.; unusual statutory reference*

COUNT FOUR

23. Plaintiff repeats its allegations in paragraphs 1 through 22 with the same full force and effect.

24. Under the terms of the Defendant's rustproofing express warranty in the event of rust perforation the Defendant has the option of repairing once the damage or refunding the cost of the customer's original rustproofing application. I.K. - D

25. The Defendant, in the course of bargaining with a consumer-purchaser over the price of a vehicle at times sells its rustproofing application at a price significantly reduced from the Defendant's initial asking price. I.K. - D

26. The consumer-purchaser of a car improperly rustproofed by the Defendant can be faced with rust damage in areas improperly rustproofed that would require more than the optional one repair job provided by the Defendant's express warranty. I.K. - D

27. The consumer-purchaser of a car improperly rustproofed by the Defendant can be faced with rust damage in areas improperly rustproofed that would require repairs more costly than the optional refund of the cost of the rustproofing provided by the Defendant's express warranty. I.K. - D

28. It is an unfair and deceptive trade practice in violation of 5 M.R.S.A. § 206 et seq. to offer consumer-purchasers only an illusion of protection against rust damage by giving an express warranty that allows the Defendant the option of repairing once the rust damage or refunding the price paid for the rustproofing. (Ordinance of 1987, D)

COUNT FIVE

29. Plaintiff repeats its allegations in paragraphs 1 through 28 with the same full force and effect.

30. The Defendant's application of rustproofing is largely to areas of the vehicle hidden from the view of the customer. *Definitional problems - D*

31. The Defendant in selling rustproofed vehicles to consumer-purchasers represented to the purchaser in its rustproofing express warranty that these hidden from view areas would be adequately coated with rustproofing material. *IK - D*

32. It is an unfair and deceptive trade practice, in violation of 5 M.R.S.A. § 206 et seq. for the Defendant to inaccurately represent that the vehicle has been adequately coated with rustproofing material. *... D*

COUNT SIX

33. The business practices described in the above counts are in violation of the Maine Unfair Trade Practices Act, inflict immediate loss and damage upon Maine citizens, and are grounds for preliminary and permanent injunctions and other relief requested below. *D*

34. As an officer of the State acting in his official capacity to protect Maine citizens from unfair trade practices, the Attorney General is not required to post bond as required by Rule 65(C) of the Maine Rules of Court. *D*

REQUEST FOR RELIEF

WHEREFORE, Plaintiff requests this Honorable Court to:

1. Declare that the Defendant's inadequate rustproofing of its customers' cars, as described above, constitutes a breach of the implied warranty extended by the Defendant pursuant to 11 M.R.S.A. §§ 2-314 and 2-316.

2. Declare that the Defendant's breach of the implied warranty of merchantability constitutes an unfair trade practice in violation of 5 M.R.S.A. § 206 et seq.

3. Declare that the Defendant's failure to adequately inspect the quality of its rustproofing is an unfair trade practice in violation of 5 M.R.S.A. § 206 et seq.

4. Declare that the Defendant's rustproofing express warranty which offers only illusory protection by giving the Defendant an option to repair the rust or refund the price of the rustproofing is in violation of 5 M.R.S.A. § 206 et seq.

5. Declare that the Defendant's rustproofing express warranty which strongly persuades its customers that their implied warranty rights and incidental and consequential damages rights are limited by the express warranty, is in violation of 5 M.R.S.A. § 206 et seq.

6. Declare that the Defendant's misrepresentation that a vehicle has been adequately rustproofed is in violation of 5 M.R.S.A. § 206 et seq.

7. Permanently enjoin the Defendant from continuing the unfair trade practices described above in paragraphs 1 through 6.

8. Order the restoration of monies, payment of incidental and consequential damages, or motor vehicle repairs necessitated by the Defendant's unfair trade practices, as described in this Complaint. At the option of the consumer-purchaser, who has received rustproofing that violates their implied warranty rights, the Defendant shall provide the consumer with:

- A. Restitution equal to the cost of the consumer of the original rustproofing done by the Defendant and the consumer's incidental damages; or
- B. Repair by the Defendant of any rust or corrosion that has or will occur in areas or surfaces not adequately rustproofed, and a completely new rustproofing job wherever necessary; or
- C. Damages equal to the amount necessary to pay for repairs of any rust or corrosion that has or will occur in areas or surfaces not adequately rustproofed and the cost of a new rustproofing job.

9. Order the Defendant to pay the costs of this suit and of the investigation of the Defendant made by the Attorney General.

10. Grant such other relief as the Court deems just and equitable.

11. Require that the bond required by Rule 65(c) of the Maine Rules of Court be waived, due to the fact that the Attorney General is acting in his official capacity to protect Maine citizens from unfair trade practices.

DATED: *March 19, 1982*

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