

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

DARLING’S d/b/a DARLING’S BANGOR)	
FORD,)	
PLAINTIFF)	
)	
v.)	CIVIL No. 95-398-B-H
)	
FORD MOTOR COMPANY,)	
DEFENDANT)	

**CERTIFICATE OF QUESTIONS OF STATE LAW
TO THE SUPREME JUDICIAL COURT OF MAINE
SITTING AS THE LAW COURT**

Several questions of Maine law concerning a Maine statute are determinative of the outcome of this case and there are no clear controlling precedents in the decisions of the Supreme Judicial Court of Maine sitting as the Law Court.¹

1. The relevant facts are set forth in this court’s Recapitulation of Previous Rulings and Findings of Fact and Conclusions of Law as amended (attached).

¹ I note that the Maine Legislature has demonstrated its awareness of some of the enforcement difficulties inherent in section 1176. Specifically, in 1997, the Legislature introduced amendments to the statute that would have resolved Certified Questions B and E. P.L. 1997, ch. 521, § 25; L.D. 1747 (118th Legis. 1997). By subsequent Committee Amendment, however, the Legislature refrained from enacting the proposed amendments, on the grounds that:

[t]he Legislature is aware of the case of Acadia Motors, Inc. v. Ford Motor Credit Company, 44 F.3d 1050 (1st Cir. 1995) and other cases currently pending in the United States District Court for the District of Maine, the Maine Superior Court and the Maine District Court. The Legislature has refrained from addressing warranty reimbursement provisions and warranty audit provisions on Title 10, section 1176 in light of this pending litigation.

Comm. Amend. A to L.D. 1747, at 21 (118th Legis. 1997).

2. In light of those facts, this court respectfully requests instructions concerning the following questions:

- A. (1) Does section 1176 require a dealer/franchisee to make a “particularized claim” to a manufacturer in seeking reimbursement for warranty work?

(2) If yes, does a formal demand letter specifying (a) the original computerized claim number; (b) the retail amount claimed; (c) the amount the dealer received under the nationalized system; (d) the nature of the claim (parts or labor); and (e) the difference between the amount received and the retail price, meet the particularized claim requirement?
- B. Does the term “labor rate” in the statute include pricing systems whereby the dealer/franchisee consults sources for the number of hours to assign and then multiplies that number by its hourly rate regardless of the amount of time actually spent and regardless of the amount of time the manufacturer/franchisor thinks is appropriate (so-called “flat rate” pricing)?
- C. Under section 1174(1), can a dealer/franchisee use a published table of labor times even though those times are greater than what the manufacturer/franchisor concludes are reasonable for the repair transaction?
- D. If flat rate labor pricing is permitted under the statute and if a dealer/franchisee posts the notice set forth in 29-A M.R.S.A. § 1805, has the dealer/franchisee thereby met the posting requirement of 10 M.R.S.A. § 1176 sufficiently to be able to recover its flat rate price in a warranty claim?
- E. (1) Does the language “retail rate customarily charged . . . for the same parts” require a dealer/franchisee to provide a manufacturer with proof of a specific matching sale of the identical part?

(2) If yes, may a manufacturer demand that such a sale have taken place within the six months immediately prior to the making of the claim for reimbursement? If no, what proof can the manufacturer require?

F. Are repairs performed by dealers under a manufacturer's recall, sublet or owner notification program covered by 10 M.R.S.A. § 1176?

3. This court respectfully suggests that the Law Court treat the defendant Ford Motor Company as the appellant before that Court.

4. The Law Court's answers to these questions may be determinative of the outcome as follows: An answer to Question (A) that a "particularized claim" is required and that the particulars described in (A)(2) are insufficient will result in the plaintiff Darling's recovering nothing on its parts claims. An answer to Question (B) that flat labor rates are not covered by the statute will result in the plaintiff Darling's recovering nothing on its labor claims. Thus, these two answers alone could end the case. An answer to Question (C) that use of a published table is impermissible would mean that the plaintiff Darling's could not recover on the bulk of its labor claims. An answer to Question (D) that the described form of posting is inadequate would result in the plaintiff Darling's being unable to recover on any of its labor claims. An answer to Question (E) that specific matching sales are required within six months before a claim for reimbursement would result in the plaintiff Darling's being unable to recover on any of its parts claims. An answer to Question (F) that recall, sublet and/or owner notification programs are not covered by the statute would mean that the plaintiff Darling's cannot recover on any of those claims. In other words, particular answers

to any number of the questions could result in a final decision in favor of the defendant Ford Motor Company. Although the federal courts have struggled repeatedly with the interpretation of this statute, only the Law Court can give a final answer to what this Maine law means.

Accordingly, I hereby certify the questions to the Law Court pursuant to 4 M.R.S.A. § 57 and Maine Rule of Civil Procedure 76B.

DATED THIS 1ST DAY OF APRIL, 1998.

D. BROCK HORNBY
UNITED STATES CHIEF DISTRICT JUDGE