



## NOT SO FAST: FIRM PUTS BRAKES ON AUTO MAKER'S UNLAWFUL SURCHARGE FOR INFINITI AND NISSAN DEALERS

December 6, 2012 | News

featuring Ira M Levin, Eric P VanderPloeg

### RELATED PROFESSIONALS

Ira M. Levin

Eric P. VanderPloeg

Litigation partner Ira Levin recently achieved a signal victory on behalf of Fields Infiniti and Fields Infiniti of Lake County before both the Illinois Motor Vehicle Review Board and the Circuit Court of Cook County against Nissan North America's Infiniti Division. Levin succeeded in both forums on the Fields dealerships' challenge to Nissan's practice of imposing a surcharge on every new vehicle invoice to lower Nissan's reimbursement costs for parts used in warranty repairs. The surcharge, which Nissan has also imposed on Nissan dealers throughout the state, violates the Illinois Motor Vehicle Franchise Act. The latest ruling obtained by Levin opens the door to damages for Nissan and Infiniti dealers throughout Illinois, estimated to be in excess of \$10 million.

The Motor Vehicle Franchise Act prohibits manufacturers from imposing a surcharge unless they have an agreement for a uniform reimbursement rate with a majority of their franchisees. A manufacturer who has done so may then collect a surcharge only from franchisees that have not joined in the agreement. Nissan, however, was imposing the surcharge on all of its Infiniti and Nissan dealers without having the necessary agreement with any of them.

Levin prevailed on Fields' protests before the Illinois Motor Vehicle Review Board, and successfully defended the Board's final order before the Circuit Court of Cook County. The Court agreed with Levin that the provision requiring Nissan to have a uniform reimbursement agreement could be applied to franchise agreements that were entered into before that provision was added to the Franchise Act in 2001. The Court also rejected Nissan's argument that this application of the section unconstitutionally deprived Nissan of vested rights, since Nissan had not even adopted the surcharge until 2007, which it had no contractual right to impose in the first place. Nissan has appealed



the Circuit Court's decision.

Levin sums up the significance of the Court's ruling like this: "To my knowledge, every manufacturer in this state has complied with the law except Nissan, who somehow believed it could circumvent the Act that requires dealers to be reimbursed at their retail rate for parts used to satisfy warranty repairs. The Franchise Act is there to level the playing field with manufacturers. The ability to take on a rogue manufacturer, like Nissan in this case, is particularly important in these times, when dealers find themselves in perhaps the most competitive marketplace ever. "

Levin represents automobile dealerships at Burke, Warren with partners Bill Kelly, who is responsible for drafting and lobbying the Illinois Franchise Act, and Jay Statland. Recognized as one of the leading automotive franchise practices in the United States, they represent the interests of automobile franchises and the entrepreneurs and families who own, operate and invest in them. Assisting Levin before the Board and in the Circuit Court action were associates Katie Bunch and Eric Vanderploeg. Mr. Levin can be reached at 312/840-7065 or [ilevin@burkelaw.com](mailto:ilevin@burkelaw.com).