

Memorandum

TO: M. R. Greenberg
FROM: C. R. Schader
CC: E. G. Greenberg, K. P. Moor, S. M. Rivera, H. I. Smith, K. L. Duckett
DATE: February 17, 2000
RE: Auto Warranty – Update

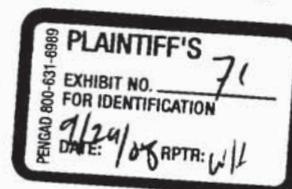
- 1. Warrantech:** I noted in my January 31, 2000 update that Warrantech has been communicating to anyone and everyone, that AIG has changed its long standing auto warranty claim practices to the detriment of Warrantech, its customers, dealers and vehicle owners, by applying previously unheard of coverage restrictions. And in the face of this barrage of disinformation, we amended our complaint to include actions for breach of contract and breach of fiduciary duty, seeking damages in excess of \$20M.

This past week, Warrantech went one step further. On Monday, February 14, 2000, Warrantech ran a full page ad in the trade publication, *Automotive News*, announcing the establishment of a \$1M loss fund to assist active Warrantech dealers, with "special consideration ... given to those denied claims which appear to satisfy AIG's approved policies and procedures as in effect prior to the transition of administrative responsibility." (see attached)

While Warrantech's public statements are audacious and infuriating, the text of the advertisement has been carefully worded to avoid actionable libel. *Automotive News* reaches Warrantech's intended audience, auto dealers, not an audience of particular concern to AIG. The auto dealers themselves are one of the interest groups which most benefited from Warrantech's abuses. As we noted in our amended complaint, "... Warrantech knowingly and intentionally adopted practices that had the effect of overpaying its dealer clients on claims they submitted under vehicle service contracts insured by plaintiffs. Warrantech, in short, bought its dealer clients' loyalty with plaintiffs' money."

Under these circumstances, I do not recommend launching a media campaign against Warrantech. Were this ad to have run in the *Wall Street Journal*, I would feel differently.

I have briefed Joe Norton about these latest developments and provided him with relevant background material. John Wooster is currently out of the office, but Joe will bring him up to speed when he returns.



2. **Service Guard:** In my November 9, 1999 update, I noted that we, along with Warrantech, were named by Service Guard Insurance Agency, Inc. (an agency which "private labeled" the Warrantech program under a separate administrator obligor policy) in an action brought in Texas State Court, alleging damages arising out of revised claims practices --- namely, a) slower response times, as adjusters verified parts prices and labor rates, and b) lower repair prices paid to dealers. Like Warrantech, Service Guard is only interested in appeasing its dealer clients.

On January 31, 2000, Service Guard applied for a Temporary Restraining Order (TRO) against AIG, citing a laundry list of 'objectionable' claims practices. AIG was represented by local Texas counsel at a hearing where the TRO was denied, but the presiding judge directed the parties to participate in a mandatory mediation which occurred this past Monday in Austin.

Most of the remedies requested in the application for the TRO, were not really amenable to TRO-like relief. Were this action in New York, we have little doubt that the TRO would have been denied on the merits. In Texas, however, we were concerned that if we did not reach some limited settlement and, even worse, were viewed as the obstinate party, a renewed TRO application would be perfunctorily granted, teaching a big New York company not to abuse its small Texas counterpart. The mediator, a retired Texas judge inferred as much when he advised us that "Judge Dietz really didn't want to see us back in his courtroom."

Consequently, we agreed to revise two practices which were already in the process of being revised: a) payments by credit card for any requesting dealer, and b) the addition of three specific identifying fields on check stubs. In return Service Guard stipulated that all other issues in the TRO application would be decided at a preliminary injunction hearing, held, after accelerated discovery, in 30 to 45 days. Despite one thorny contractual issue, we stand an excellent chance of prevailing in the more formal atmosphere of a preliminary injunction hearing --- unless we get "hometowned," a not uncommon experience in Texas.

The only possible negative of our mediation strategy is if Service Guard overstates the settlement to its dealers, implying that AIG only capitulated as a consequence of Service Guard's aggressive posture. Anticipating that this is likely to result, at least to some degree, we have prepared a white paper which we will fax to inquiring callers (see attached).