

The Saab Situation

Saab's future is unclear. The manufacturer's Dutch owner, Swedish Automotive NV (also known as SWAN and formerly known as Spyker) has been struggling since its separation from General Motors in 2010. Currently under Bankruptcy protection from its creditors in Sweden, it has been seeking takeover candidates in an effort to reorganize, but the present suitors have been deemed unacceptable by GM who remains connected to the brand because it owns the rights to technology and know-how critical to Saab production. GM's reasoning to block approval of the potential buyers is due to the fear of turning over its intellectual property rights to the Chinese, thereby protecting GM stakeholders' interests.

Saab recently sent a letter and held a conference call discussing this situation. The company has announced that it will at least delay warranty and incentive payments to dealers while it pursues funding.

Saab dealers, of course, have questions concerning the future of the company and what it means for them. Every dealer's situation is different, and each dealer will have to evaluate its own situation. Here are some general guidelines, but a dealer is advised to discuss these matters with its own attorney.

CUSTOMER VEHICLES

Saabs previously sold as new cars in the hands of customers can be divided into two basic groups – those manufactured while GM owned Saab and those manufactured after Saab separated from GM. The situation with respect to warranty coverage differs for those two groups.

Warranties on Vehicles Built by GM-owned Saab

GM is responsible for warranties on Saabs built while the company was controlled by old-GM. It appears that GM has been funding those warranty repair obligations by payments to Saab, but GM apparently recently ceased making those payments because of money owed by Saab to GM. Nevertheless, in the amended master purchase and sale agreement approved by the Bankruptcy Court in 2009, new-GM bought certain assets and assumed certain liabilities of old-GM. As part of that, new-GM agreed to be responsible for express warranties on all GM-manufactured vehicles. GM is thus responsible to pay for warranty repairs on Saab vehicles manufactured when the brand was owned by GM.

Vehicles Built post-GM

The warranties on vehicles built when Saab once again became a stand-alone company are not the responsibility of GM. Based on recent announcements, it appears that payments on warranty work for those will at least be delayed.

Parts?

Even where GM is responsible for warranty coverage, there is a question about the future availability of parts. For now, Saab has stated that it will continue to ship parts. However, GM does not presently control parts manufacturing by Saab, and dealers must be concerned about the future availability of parts if the company cannot find new funding.

Performing Warranty Work for Customers

A dealer will have to make its own determination as to whether it will continue to do Saab warranty work for its customers. There is a serious customer relations problem that a dealer will face if it refuses to do warranty work. There are also potential state law issues that may affect this. First, in some states, like Maryland, a dealer may not disclaim implied warranties for vehicles that it sells. Consequently, dealers may still have implied warranty obligations with respect to Saab vehicles they sold that may require dealers to provide repairs even if they don't have responsibility for express warranty coverage. Second, while under the Magnusson Moss Warranty Act a dealer is not generally responsible for the warranty of a manufacturer, there can be circumstances under state law where dealers may be responsible (where implied warranties cannot be disclaimed or where they are not appropriately disclaimed) or where prior representations made with respect to the Saab vehicles sold by a dealer may be construed as a warranty. Any decision as to whether to continue to provide warranty support for customers is a very delicate one that must balance the business interests of the dealer versus the potential liability of and negative publicity for the dealer. The decision must be made after consultation with the dealer's own attorney based upon a dealer's specific circumstances and applicable state law.

Stay tuned on this issue. You must be alert to future calls and communications from Saab. It appears that the company is trying to restructure the deal for funding to save the company on terms acceptable to General Motors. Even if that does not work, the experience with brands that have ceased distribution in the past has been that any funds left in the company have been set aside for warranty obligations.

Service Contracts

If there is no source for payment for warranty repairs in the future, dealers may wish to investigate whether a customer has purchased a service contract with coverage. Where warranty coverage is not available, the service customer's service contract may cover repairs within the terms of that service contract depending on the language.

VEHICLES ON THE LOT

For those dealers with new unsold Saab vehicles, there are a number of issues that a dealer must consider.

Termination of the Brand

If the Saab brand ceases to exist because a funding deal cannot be made, there are rights to return inventories and fixed assets under the dealer agreement and many state laws. However, those rights are only as effective as the availability of funds to make the repurchase. Unless there are significant developments that will save the company, there may not be funds available to repurchase cars, parts, special tools, and signs.

What to Do With the New Cars

If you can't send the cars back, what do you do with them?

Selling new vehicles is something that can be done only with most careful disclaimers. If selling a vehicle at retail, it will be important to emphasize to buyers that there may be no warranty. In some states, where dealers may not disclaim implied warranties, dealers will have implied warranty obligations nevertheless which could lead to future repair obligations. There may even be disruptions of necessary parts in the future. These disclosures will have a severe impact on the selling prices of vehicles. The unavailability of Saab funds to pay sales incentives will exacerbate this problem.

One solution may be to sell vehicles with extended service contracts so that there is a funding source for any future problems. This may require a special arrangement with an administrator, with special pricing provisions. This still leaves open the question of availability of parts in the future.

If it appears that the company will not be saved, a dealer may consider turning the vehicles into used cars by putting them in rental fleets or by having them driven by dealership personnel. They can then be sold "as is" as used cars (where "as is" sales are allowed), and the vehicles may also be wholesaled.

Floorplan

Given the potential diminished marketability of the vehicles, floorplan sources may become uneasy. Dealers should contact their floorplan sources to discuss the present situation with Saab and their plans if the manufacturer cannot continue to support sales. Develop a plan. Any arrangement you make will depend on your relationship with your floorplan sources, but at least expect some accelerated curtailment demands. It may be possible to arrange to pay down the floorplan balance over time on the Saab vehicles.