

INSURANCE:

Described "automobile warranty" issued by National Warranties, Inc., not an insurance contract subject to regulatory provisions of Missouri insurance code.

FILED  
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February 14, 1958

Honorable C. Lawrence Leggett  
Superintendent of the Division of Insurance  
Jefferson Building  
Jefferson City, Missouri

Dear Mr. Leggett:

In compliance with your recent request, this opinion construes an "automobile warranty" contract which National Warranties, Inc. proposes to issue in Missouri. It will be herein determined if the contract contains covenants and agreements which will cause it to be denominated a "contract of insurance," the offering for sale of which would be in violation of Section 375.310, RSMo 1949, providing a penalty for engaging in the insurance business without proper State authorization. In order that no doubt will exist as to the written provisions of the contract being construed, it is here quoted in its entirety:

Automobile Warranty  
issued by  
NATIONAL WARRANTIES, INC.  
Tulsa, Oklahoma

OKLA No. 7

Valid Anywhere in the United States of America

This Warranty Protects.....The Owner of.....  
Serial Number.....  
Body Type.....Date Purchased.....  
Issued by.....Speedometer Reading.....

NATIONAL WARRANTIES, INC., certifies that it has inspected the vehicle above described and certifies that in its opinion the parts hereinafter specified are in good working order and condition and will with normal usage require no repairs or replacements for one year from the date of purchase. National Warranties, Inc. agrees that if its said certification is in error, it will protect the retail purchaser of this vehicle and holder of this Warranty from any costs of repairs which may arise for one year from date of purchase on the following specific parts subject to the terms and conditions hereinafter set forth to the extent of the total reasonable price for repairs, replacement and labor which become necessary in the normal use of the above motor car:

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**MOTOR**  
Pistons, pins and rings,  
valves, valve lifters, valve  
stems, valve guides, valve  
springs, oil pump and timing  
gears.

Camshaft  
Crankshaft  
Bearings and  
gaskets.

**STANDARD TRANSMISSION**  
Gears, seals and  
bearings within  
housing.

**AUTOMATIC TRANSMISSION**  
Gears, seals and bearings  
within housing and electrical  
mechanism in transmission.

**CLUTCH**  
Disc.  
Pressure plate  
Release bearings.

**STEERING**  
Front axle assembly  
(except alignment and  
adjustments).

**REAR AXLE**  
Gears, bearings, oil  
seals and gaskets  
within housing.

**BRAKES**  
Master brake cylinder  
Wheel cylinders

This Warranty is for the exclusive use of the dealer to whom issued and of the retail owner named herein and is not transferable.

This Warranty is restricted to passenger cars only, which are neither registered for commercial use, nor cars used for hire, nor cars which are raced in any manner.

This Warranty is in full force for one year from the date of purchase noted hereon provided only however that a written confirmation from National Warranties, Inc. of protection hereunder is received by the holder of this Warranty within ten (10) days from date of purchase.

The necessity for repairs or replacement under this Warranty shall remain in the sole discretion and judgment of National Warranties, Inc. Written authorization must first be obtained before any repairs are made.

The holder of this Warranty is not protected for repairs or replacements not specifically listed in this Warranty, for adjustments or tune-ups, for repairs arising out of or revealed by collision, regardless of the contention that the specific failure was not caused by the collision, nor for any repairs caused by neglect, misuse or resulting from major alterations by Warranty holder not recommended by manufacturer.

Notify National Warranties, Inc. immediately if you do not receive required written confirmation from it of protection hereunder within ten days from date of purchase.

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Notice of any needed repairs or replacements covered by this Warranty must be immediately given to National Warranties, Inc.

National Warranties, Inc. has insured its performance of each warranty and said warranty covers the purchaser anywhere in the United States of America.

NATIONAL WARRANTIES, INC.  
Tulsa, Oklahoma

OKLA. No. 7

This is to certify that (name).....  
(address).....has purchased.....  
passenger car, serial number.....body type.....  
on.....day of.....195.....and is entitled therefore  
to full protection in accordance with the terms of the Automobile  
Warranty issued to the above named purchaser.  
Our check is attached hereto.

PURCHASER..... DEALER.....  
(Signature)

..... (Address) ..... (Signature) (Title)

In State ex rel. Inter-Insurance Auxiliary v. Revelle, 165 S.W. 1084, 257 Mo. 529, 1.c. 535, the Supreme Court of Missouri spoke as follows:

"The essential elements of a contract of insurance are an agreement, oral or written, whereby for a legal consideration the promisor undertakes to indemnify the promisee if he shall suffer a specified loss."

The difference between a contract of warranty and an insurance contract is indicated in the following language from State of Ohio ex rel. Duffy v. Western Auto Supply Company, 134 Ohio St. 163, 16 N.E. 2d 256, 119 A.L.R. 1236, 1.c. 1240:

"A warranty promises indemnity against defects in the article sold, while insurance indemnifies against loss or damage resulting from perils outside of and unrelated to defects in the article itself."

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From Transportation Guarantee Co. v. Jellins, 174 P. 2d 625, l.c. 629, we quote a rule to guide us:

"We are satisfied that a sound jurisprudence does not suggest the extension by judicial construction of the insurance laws to govern every contract involving an assumption of risk or indemnification of loss; that when the question arises each contract must be tested by its own terms as they are written, as they are understood by the parties, and as they are applied under the particular circumstances involved."

Even though we find the element of risk distribution in a contract, we must keep in mind the following language found in Jordan v. Group Health Association (1939), 71 App. D. C. 38, 107 Fed. 2d 239, 247:

"That an incidental element of risk distribution or assumption may be present should not outweigh all other factors. If attention is focused only on that feature, the line between insurance or indemnity and other types of legal arrangement and economic function becomes faint, if not extinct. This is especially true when the contract is for the sale of goods or services on contingency. But obviously it was not the purpose of the insurance statutes to regulate all arrangements for assumption or distribution of risk. That view would cause them to engulf practically all contracts, particularly conditional sales and contingent service agreements."

The automobile warranty being construed is applicable to a designated automobile owned by a particular person. It is issued only after the vehicle has been inspected and the warrantor or his inspector has inspected the vehicle for the purpose of bringing it within the warranty. The designated parts of the vehicle are certified to be in good working order at the time of inspection and it is further certified that they will with normal usage require no repairs or replacements for one year. It is apparent from a consideration of the warranty as a whole that it has as its dominant features services to be rendered, rather than a comprehensive risk coverage common to insurance regulated by statute.

#### CONCLUSION

It is the opinion of this office that the within described "automobile warranty" offered by National Warranties, Inc. is not a

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"contract of insurance" and may be sold without such sale being subject to the regulatory provisions of Missouri's insurance code.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Julian L. O'Malley.

Yours very truly,

John M. Dalton  
Attorney General

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