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Opinion 06-140

Vehicle Protection Product Act

QUESTION

Does the Tennessee Vehicle Protection Product Act apply to sellers, warrantors, and administrators who sell or offer to sell a sophisticated resin designed to seal vehicle paint and render it impervious to the influence of environmental factors?

OPINION

The Tennessee Vehicle Protection Product Act does not apply to sellers, warrantors, and administrators who sell or offer to sell the described resin since such a resin does not appear to fall within the Act's definition of a "vehicle protection product."

ANALYSIS

The Tennessee Vehicle Protection Product Act, Tenn. Code Ann. §§ 56-55-101, *et seq*. (the "Act"), provides for certain prohibitions and restrictions upon sellers, warrantors, and administrators who sell or offer to sell "vehicle protection products." Tenn. Code Ann. § 56-55-103. The question specifically asked of this Office is whether the Act applies to a sophisticated resin designed to seal vehicle paint and render it impervious to the influence of environmental factors. The question does not reveal if the resin is being sold, and it does not identify who is associated with this resin. For the purposes of this opinion, it is assumed that a seller, warrantor,[1] or administrator[2] is selling or offering to sell the resin and that the question posed is whether such a resin is a "vehicle protection product."

[1] Under the Act, a "warrantor" is a person who is contractually obligated to the warranty holder under the terms of the vehicle protection product warranty agreement. Tenn. Code Ann. § 56-55-102(6). A "vehicle protection product warranty" is "a written agreement by a warrantor that provides that, if the vehicle protection product fails to prevent loss or damage to a vehicle from a specific cause, then the warranty holder shall be paid specified incidental costs by the warrantor as a result of the failure of the vehicle protection product to perform pursuant to the terms of the warranty." Tenn. Code Ann. § 56-55-102(5). A "warrantor," however, does not include an authorized insurer. Tenn. Code Ann. § 56-55-102(6).

[2] An "administrator" is defined by the Act as "a third party, other than the warrantor, who is designated by the warrantor to be responsible for the administration of vehicle protection product warranties." Tenn. Code Ann. § 56-55-102(1).

The Act defines a "vehicle protection product" as follows:

> (4)(A) "Vehicle protection product" means a vehicle protection device, system, or service that:
> (i) Is installed on or applied to a vehicle;
> (ii) Is designed to prevent loss or damage to a vehicle from a specific cause; and
> (iii) Includes a written warranty;
> (B) "Vehicle protection product" includes, but is not limited to, alarm systems, body part marking products, steering locks, window etch products, pedal and ignition locks, fuel and ignition kill switches, and electronic, radio, and satellite tracking devices.

Tenn. Code Ann. §56-55-102(4).

In determining whether an environmental resin is a "vehicle protection product," we are guided by the rules and conventions of statutory construction. The guiding principle of statutory construction is to ascertain and give effect to the intention or purpose of the legislature as expressed in the statute. *Westinghouse Electric Corporation v. King*, 678 S.W.2d 19, 23 (Tenn. 1984), appeal dismissed, 105 S.Ct. 1830 (1984). The meaning of a statute is determined by viewing the statute as a whole and in light of its general purpose. *City of Lenoir City v. State ex rel. City of Loudon*, 571 S.W.2d 297, 299 (Tenn. 1978). A statute should not be given a forced construction in an effort to extend the import of the language. *State v. Butler*, 980 S.W.2d 359 (Tenn. 1998).

With these statutory construction principles in mind, it is necessary to return to the definition of a "vehicle protection product." If the only definition of "vehicle protection product" were the one provided in Tenn. Code Ann. §56-55-102(4)(A), a resin designed to seal vehicle paint and render it impervious to the influence of environmental factors could arguably be a "vehicle protection product," because the application of such a resin could be characterized as a service applied to a vehicle designed to prevent damage. However, Tenn. Code Ann. § 56-55-102(4)(B) appears to qualify the definition of "vehicle protection product." Subsection (B) states that a "'[v]ehicle protection product' includes, but is not limited to, alarm systems, body part marking products, steering locks, window etch products, pedal and ignition locks, fuel and ignition kill switches, and electronic, radio, and satellite tracking devices."

When the General Assembly defines a term by using the phrase "including but not limited to" followed by a representative list of items, the list is illustrative and serves as explanation of the term. *Metropolitan Gov't of Nashville and Davidson County v. Spicewood Creek Watershed Dist.*, 848 S.W.2d 60, 62 (Tenn. 1993); *see also*, *Lyons v. Rasar*, 872 S.W.2d 895, 897 (Tenn. 1994); *Nance by Nance v. Westside Hosp*., 750 S.W.2d 740, 743 (Tenn. 1988); *City of Knoxville v. Brown*, 260 S.W.2d 264, 267 (Tenn. 1953). The term must be confined to include only the same type or class as the examples listed. *Spicewood Creek Watershed Dist*., 848 S.W.2d at 63. All of the items contained in subsection (B) are theft protection products and services. No environmental protection products or services are included in this list. To include an environmental resin in the definition of

a "vehicle protection product" would seem to extend the meaning of the type of product covered by the Act beyond that intended by the General Assembly.

Moreover, nowhere else in the Act does the General Assembly reveal any intent to encompass environmental resins within the purview of Act. Other parts of the Act, however, further demonstrate that security devices and products are that which the Legislature intended to address. For instance, the "incidental costs" to which a warranty holder is entitled if the vehicle protection device fails to perform are defined so that they may include "insurance policy deductibles, rental vehicle charges, the difference between the actual value of the stolen vehicle at the time of theft and the cost of a replacement vehicle, sales taxes, registration fees, transaction fees, and mechanical inspection fees." Tenn. Code Ann. § 56-55-102(3). Finally, remarks from House and Senate sessions during the legislative process pertain only to theft protection products and devices. There is no mention of environmental products or services. (House Finance Ways and Means Committee, April 26, 2005; remarks of Representative Sargent, House Calendar and Rules Committee, May 3, 2005; House Session, May 5, 2005).

In sum, it is the opinion of this Office that the General Assembly did not intend for an environmental resin to be a "vehicle protection product" covered by the Vehicle Protection Product Act, in light of the definition of "vehicle protection product" and the Act as a whole.

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