

Automotive Dealers Newsletter for Legal Resources



Verification of Insurance Coverage

Most dealers know that a "deal" is not complete just because the parties have mutually agreed to the financial terms of the sale/lease. One of the final steps to complete the transaction and send the deal package to one of their lenders, is to verify the customer's insurance coverage. However, as many as 20% of customers cannot provide proof of insurance at the dealership.

In these situations, utilizing a "spot delivery" insurance program can be a dealer's best protection. These programs have evolved over the years, and one of the most common types of insurance used by dealers today is a commercial master policy which is designed to protect both the dealer and their customers. Additionally, the newest part of this evolution is the technology which

enables auto dealers to instantaneously order insurance coverage to protect both their dealership and the customer. Twenty-four hours a day a dealer can receive confirmation of coverage, without the necessity of completing or faxing a form or getting a customer's signature. And they can receive confirmation of coverage in less than forty-five seconds.

A dealership, under a commercial master policy, is the named insured and the coverage chosen by the dealer is extended to the customer as an additional insured. Commercial spot delivery insurance programs usually allow a dealer the option to order one of three types of insurance coverages. The coverages available to dealers are physical damage only coverage, the state mandated minimum limits coverage (i.e., \$15,000/30,000/10,000) and the lease limits (i.e., \$100,000/300,000/50,000) required by some leasing companies.

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Dealers Have Strength in Numbers

Keeping in touch with the community of dealers in your local area is not only a good way to build a solid business network, but it is also a good way to determine if a problem you might be having with your operation is common to other dealers and has a common cause. If it is, joining forces

with similarly situated dealers in a mass action lawsuit might be the most efficient and effective way to resolve the problem.

A good example of how successful this tool can be is currently playing out in Long Island, New York. A group of 50
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Dealers Have Strength in Numbers

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dealers are suing Newsday in an anti-trust suit. The suit alleges that Newsday, which dominates the Long Island advertising industry, has developed an illegal monopoly by providing exorbitant advertising discounts to large volume mega-dealers. Other ad sources simply cannot compete for the business and the discounts penalize smaller dealers. For instance, the discount is so substantial that one of the dealers in the suit claims to have paid \$15,000 for an ad that cost a mega-dealer \$2,000.

The litigation has been moving forward for close to two years now. Anti-trust matters are commonly such complex cases that litigation expenses (even before trial) can easily run up into the hundreds of thousands of dollars. In the Long Island suit, however, by sharing all of the expenses, each dealer has paid

less than \$15,000 a piece thus far. By joining forces and pooling their resources, the 50 dealers can afford to go head-to-head with a large conglomerate which could otherwise easily outlast and outspend them in the lawsuit.

Even though the 50 dealers are suing together, however, the advantage of a mass-action suit is that each individual dealership will collect its own damages, rather than splitting a lump-sum amount.

By staying connected and keeping your ears open, a dealer can stand up to an adversary who might otherwise prevail simply because of its financial strength. As one of the Long Island dealers put it, "We have a lot more strength in numbers. As soon as I got wind of the suit I wanted to be part of it."

Verification of Insurance Coverage (continued from cover)

Assuming a dealer chooses to use a commercial "spot delivery" insurance program the next question would be how much coverage should a dealership order? The California Vehicle Code requires every "owner" to maintain financial responsibility insurance coverage (i.e., \$15,000/30,000/10,000 or more) while driving. The Code defines an "owner" as a purchaser/lessee if they take possession of a vehicle from a dealer under a Conditionals Sales Contract or Lease Agreement. This means that even though the dealer maintains a security interest in the vehicle they are not considered to be an owner with regard to the requirement that an owner maintain financial responsibility insurance coverage. Most auto financing sources, other than leasing companies, only require that the "collateral" be covered since that is their primary business concern. The type of coverage necessary to solely cover the collateral is called physical damage only coverage and is usually offered at a lower cost

than coverages that provide full coverage for both the vehicle and the driver. Full coverage, which is both physical damage and liability coverage, will cover both the vehicle being sold/leased and the actions of the customer if they are involved in an accident.

If the dealer uses a spot delivery insurance program, it is imperative that no one at the dealership talk to the customer about the coverages unless they are confident about the type of coverage the dealership is ordering. Discussing coverages could be construed as transacting insurance which requires a license. Additionally, since the dealer is the named insured, they should decide what coverage will satisfy both their coverage requirement and business practice. However, if a dealer decides to only order "full coverage" (i.e., coverage limits of \$15,000/30,000/10,000 or \$100,000/300,000/50,000) they can safely state the coverage they order satisfies the customer's California financial responsibility insurance

requirement.

If the dealership decides to order physical damage only coverage, the dealer should make sure their sales and F&I personnel understand the limitations of this coverage. The difference in price between physical damage only coverage and full coverage is not significant when considering the potential exposure for a dealer who either makes an inadvertent statement regarding the coverage provided, or does not properly describe the coverage to their customer.

Every busy dealership is constantly looking for ways to reduce the time necessary to complete the "deal" and deliver the car. If verifying a customer's insurance coverage takes too much time, or if it has caused your dealership to lose even one sale, then it makes sense to research the latest technology and types of insurance programs available.



This article was provided by Chris Mercer of Carousel Insurance Services, Inc. Carousel is a licensed administrator offering spot delivery coverage programs in the largest markets in the United States. For more information, call Chris at (800) 452-7742 x224.

Do Not Call!



When many of us first heard of the national Do Not Call registry which took effect in October 2003, we probably sympathized and recalled our own experience with an annoying call from a telemarketer in the middle of a family dinner. By now, you probably know that these rules apply not only to telemarketers, but also to other businesses whose employees solicit business over the phone, including you.

As a dealer, you should know and practice the following:

1. Never initiate a telephone solicitation to a customer who has registered with the national Do Not Call Registry, unless:
 - a) You have received prior express written permission to contact that customer;
 - b) You have an established business relationship with a customer (i.e., the customer has purchased, leased or entered into a transaction within 18 months of the call, or applied for a product or service offered by the dealer within 3 months of the call); or
 - c) You have a personal relationship with the person called.
2. Never initiate a telephone solicitation to a customer who has asked the dealership not to call him or her.
3. Never place a call before 8:00 am or after 9:00 pm.
4. Keep a list of individuals who have requested that they not be contacted (your "Do Not Call List") and include all contact information and the date and time each individual requested not to be contacted.
5. Develop a company-wide written policy for maintaining and updating your Do Not Call List and train personnel who may contact customers over the phone on your Do Not Call procedures (after all, your written policy must be "available upon demand").
6. In every telephone solicitation, be sure that the caller identifies:
 - a) Himself or herself;
 - b) The name of the dealership; and
 - c) The telephone number or address of the dealership.

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Cutting the Fat ?

It doesn't take a Wall Street wizard to realize that one way to increase a dealership's profits is to cut dealership expenses. In an effort to become leaner and more efficient, some dealers have taken drastic steps to revamp and even eliminate their Finance and Insurance Departments. With computer software available to take a salesperson through the finance process and with the familiarity of standardized forms adding to that salesperson's level of comfort, it is possible to have a well-trained and knowledgeable salesperson take the customer through the entire sales transaction.

This move, although attractive in concept, is fraught with dangerous potentials. Dealerships are frequently the targets of class action lawsuits, the basis of which could simply be a reoccurring mistake on the sales contract. In a recent interview, Carl Ragsdale with the National Automobile Dealer's Association cautioned that because of the vast array of legal disclosures required with each financed sale, "I don't see the F&I department as the area where dealers are able to

reduce their expenses very much right now."

That being said, one Michigan dealer has operated without an F&I department for the past 10 years and reports the move not only eliminated an expense but has made the sales experience less frustrating and more pleasant for its customers, driving up its repeat business.

The long and the short of it seems to be that if your dealership is considering a move to streamline F&I, it makes sense to consult your attorney first to ensure that in an attempt to cut costs, you do not end up paying out hefty judgments later on as the result of a lawsuit.



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Legal Brief

Court Asks for Help Defining Unfair Competition

In *Bardin v. DaimlerChrysler*, 39 Cal.Rptr.3d 634 (4th Dist. 2006), plaintiffs brought a class action suit against Chrysler arguing that using less expensive and less durable tubular steel to construct exhaust manifolds violated the Unfair Competition Law (UCL) and the Consumer Legal Remedies Act (CLRA). The plaintiffs alleged the public was damaged because the exhaust manifolds would crack and fail requiring replacement and that Chrysler did not disclose to consumers that it was using tubular steel rather than cast iron (which is the industry standard).

The Court said the use of tubular steel was not unfair as Chrysler did not guarantee its durability. The Court also found Chrysler was not required to disclose to consumers its cost saving method of selecting tubular steel over cast iron because the burden of imposing such disclosures could overwhelm a manufacturer and outweigh any benefit to the public.

Interestingly, although the Court was able to reach a decision under the facts of this case, it noted that the current definition of what constitutes "unfair" competition needs to be clarified by either the Supreme Court or the Legislature.

Do Not Call! (continued from page 3)

7. Transmit your dealership's Caller I.D. information. Never use call blocking.
8. Accommodate Do Not Call requests and allow individuals to make such requests during regular business hours.

For additional information, see the NADA publication, "A Dealer Guide to Federal Telemarketing Restrictions," which was mailed to all NADA members in September 2003. Please note, however, that this 2003 publication does not address more recently enacted legislation, such as the CAN-SPAM Act of 2003 and the Junk Fax Prevention Act of 2005.

Events

Wow! That's Generous!

Special thanks to **Rick Evans** (Huntington Beach Chrysler Jeep), **Pete Shaver** (Shaver Auto Center, San Bernardino) and **Andy Shaver** (Shaver Pontiac Jeep, Westlake Village) for providing over \$50,000 of support to Orangewood Children's Foundation at their Athletes First Classic Charity Gala.

BMKG at Dealer Day

Keep an eye out for BMKG partners **Alton Burkhalter** and **Jonathan Michaels** at this year's Dealer Day Gala Dinner. With the celebrity entertainment and the chance to meet more of you, it is sure to be a good time for all.

Help BMKG Support Providence Speech and Hearing Center

The partners of BMKG know there is nothing better than providing support to the communities in which we serve. Therefore, this year, we decided to lend a hand to the *Providence Speech and Hearing Center* in Orange, CA, whose mission is to help those with speech and hearing impairments.

In keeping in line with our dedication to the auto industry, we have decided to get involved by sponsoring the golf carts in Providence's 22nd Annual Golf Tournament to be held on June 19, 2006. The center's most critical need right now is for financial support to make lives better for those less fortunate. Therefore, if you would like to help by making a donation, please send checks payable to *Providence Speech and Hearing* and mail to BMKG at 4 Park Plaza, Suite 850, Irvine, CA 92614. BMKG will be matching your generous donations up to \$5,000.

At the event, we will be recognizing all of the dealers who helped out in support of the center. If you are interested in participating in the golf tournament, or for more information regarding Providence, a non-profit 501(c) (3) organization, visit their website at www.pshc.org or call Janece Smoot at 714 639 4990.

Thank you and let's drive this charity to the top!!!!

"The gracious support of our organization by community business partners is a driving force behind the 40 year success of Providence. If you have or know someone with a speech or hearing impairment, then you know that life without the ability to communicate is a very silent world."

--Mary Jo Hooper, CEO of Providence Speech and Hearing Center.

BMKG

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Industry Affiliations

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- California Motor Car Dealers Association
- Orange County Automobile Dealers Association
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Burkhalter, Michaels, Kessler & George (BMKG) is a law firm based in Irvine, California. The BMKG lawyers bring almost a century of combined legal experience to their clients. BMKG has the largest jury verdicts in California for dealers against manufacturers. BMKG services include prosecution and defense of manufacturer disputes, strategic defense of consumer litigation, dealership/real estate acquisition and sales, and employment law. In addition, BMKG provides owners with comprehensive estate planning services through their State Bar Certified Estate Planning Specialist.