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To sell or not to sell: What a dealer should do about recalled vehicles

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Dealers are asking, “How can I retail vehicles under recall and still protect myself?” The answer probably is not what we want to hear.

First of all, most dealers understand that they are prohibited by federal law from retailing new vehicles that are subject to recall. But how about used vehicles?

Is a notice of the recall to my customer sufficient? What if I have my customer execute a Hold Harmless Agreement? How do recalls affect certified pre-owned vehicles? What are my obligations to notify customers

in the service lane? And what are my concerns if I rent vehicles to customers?

As an example of a notice of an air bag deficiency, Carfax uses the following language:

“Specifically, in some vehicles, the driver’s front airbag inflators could produce excessive internal pressure upon deployment. If an affected airbag deploys, the increased internal pressure may cause the inflators to rupture (break apart) and deploy abnormally. In the event of an inflator rupture, metal fragments could pass through the airbag cushion material possibly causing serious inju-

ry or fatality to you or others in the vehicle. Past ruptures like this have killed and injured vehicle drivers.”

Certainly, such language might dissuade a customer from purchasing this vehicle. But will it protect you, the seller, from possibly being sued and being held liable? Hardly!

To the contrary, what such language accomplishes is to show that you, the dealer, had actual knowledge of a potential injury-causing condition and sold the vehicle notwithstanding — a recipe for a lawsuit.



Some manufacturers are suggesting notice language for possible future air bag recalls. Again, such notice, while valuable to the customer, would hardly protect you, as again you now have knowledge of a potential injury-causing condition.

What about having your
SEE **RECALLS**, PAGE 3

Set to take effect July 1, court blocks enforcement of ‘persuader’ rule

A federal court on June 27 enjoined the U.S. Department of Labor from enforcing its so-called “persuader” rule, noting that it undermines employers’ rights to secure legal advice on union organizing. The “persuader” rule was set to take effect July 1.

Among other things, the court held that the Labor Department failed to adequately explain changes from its prior

position on persuader activity.

In doing so, it cited the Supreme Court decision earlier in June in *Encino Motorcars, LLC v. Navarro*, which held that the Department had similarly failed to properly justify a change to its longstanding position that service writers are exempt from overtime.

The “persuader” rule attempts to require employers and their outside law-

yers and consultants to report on any efforts they make to persuade employees on their right to organize or bargain collectively.

Questions on the rule or the injunction can be directed to National Automobile Dealers Association’s regulatory affairs division at regulatoryaffairs@nada.org or (703) 821-7040.

Businesses need advance planning to defend against disasters

Area dealers largely sidestepped tornado-producing storms that roared through north-central Illinois on June 22.

Thunderstorms battered the Chicago area while at least seven tornadoes swept through portions of Grundy, Iroquois, LaSalle, Lee and Livingston counties.

If the reverse occurred, would your dealership be prepared?

Having an emergency preparedness plan in place is as important to the survival of a small business as its business plan. Consider how a natural, human-caused or even public health issue disruption as the Zika virus could affect employees, customers, and the workplace. Would business operations continue?

Consider the following questions and checklist for developing an emergency preparedness plan:

1. How vulnerable would your business be if a disaster or other emergency were to occur?

- Know your region.
- Identify external emergency response resources.

2. What is your plan to protect the business and its employees before, during and after an emergency?

- Identify a planning committee
- Obtain necessary safety equipment.
- Write a plan.

- Develop a Continuity of Operations Plan (COOP).

3. What can we do to integrate emergency preparedness procedures into our workplace culture?

- Train employees.
- Obtain needed equipment and supplies.
- Practice your plan. Practice makes perfect.
- Encourage personal preparedness among employees.
- Help your community get prepared.

The U.S. Small Business Administration also shares steps for dealerships to develop a plan to protect their employees, lessen the financial impact of disasters, and re-open the business quickly after a disaster. See <https://www.sba.gov/managing-business/running-business/emergency-preparedness/emergency-preparedness>.

Having an emergency communication plan also is helpful. Here are a few easy steps to start:

1. Understand how to receive emergency alerts and warnings.

Make sure all employees are able to get alerts about an emergency from local officials. Check with your local emergency management agency to see what is available in your area, and learn more about alerts by visiting www.ready.gov/alerts.

2. Discuss business plans for disasters that may affect your area

and plan where to go. Plan together in advance so that every employee understands where to go during a different type of disaster, such as a tornado or fire.

3. Collect information. Create a paper copy of the contact information for your business that includes:

- phone (office and mobile)
- email
- social media
- medical facilities, doctors, service providers

4. Practice your plan. Hold staff meetings to review your emergency plans, communication plans and meeting place after a disaster, and then practice, just like you would a fire drill.

Heavy rains don't always lead to floods, but employees should remember to avoid walking or driving through accumulated waters. Just six inches of moving water can knock down a pedestrian, and two feet of water can sweep away a vehicle.

And don't forget about water in another state of matter: snow. Cold weather equipment should be tested in advance, and have contact information for all employees and vendors.

Storm watches call for employees to be alert for a storm that is likely. If a storm warning is issued, it is time to take action. If a disaster strikes, return to the area only after officials have declared the area safe.

Favorite car show contest

The Chicago Auto Show was in second place on June 30 in a Readers' Choice contest for the public to vote on their favorite car show in the United States. Online voting continues until July 18.

A panel of automotive experts identified 20 entrants for the 10Best Readers' Choice contest for favorite car show. Consumers can vote once each day during the 28-day voting period.

Other entrants include several Concours and other boutique events. The contest is coordinated by USA TODAY.

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Review past editions dating to 1998 or search by subject at www.cata.info.

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Subprime borrowers at lowest number since 2005

The percentage of Americans with subprime credit scores has fallen to the lowest level in more than a decade, a development that could give bank lending and the overall economy a boost.

The share of U.S. adults with credit scores that are considered “subprime” fell to 20.7 percent in April, the sixth consecutive year-over-year decline and the lowest level since at least 2005, when Fair Isaac Corp., or FICO, started tracking the data. The

ranks of subprime borrowers swelled during the financial crisis, peaking at 25.5 percent in 2010, as mortgage payments, credit-card bills and other debts went unpaid.

The improving trend could bring relief to big banks, which tightened credit standards in the wake of the crisis. An increase in more-creditworthy borrowers could allow them to increase lending without lowering standards. Banks are desperate for revenue growth since the same low rates helping

customers are also squeezing their own profits.

“It will have a positive impact on loan volume, loan growth and revenue,” Morgan Whitacre, a consumer client underwriting executive at Bank of America Corp., said. Credit card and auto lending would be the first areas to benefit.

That, in turn, could bolster consumer spending and the U.S. economy. As more people gain access to credit, consumer spending in the short term should rise, said Rob Martin, U.S. economist at Barclays PLC. “It frees

people from having to spend only the cash they have on hand,” he said.

“It’s good for the economy in the sense that there’s a lot less risk in the credit that’s extended,” Martin added.

Already, consumers are starting to borrow more again. Auto-loan balances surpassed \$1 trillion for the first time ever this year, according to credit-reporting firm Experian. Credit card debt is on pace to hit \$1 trillion this year, and student-loan debt continues to swell.

Recalls

CONTINUED FROM PAGE 1

customer sign a Hold Harmless Agreement? While such an agreement MIGHT protect you from a personal injury claim by your customer, it would not protect you from a claim from a passenger or third party who sustained injury due to a faulty air bag deployment or other recall defect. Again, a recipe for a lawsuit.

So it appears the only way to protect against potential personal injury liability is to not retail the vehicle until it is fixed. This means potentially a lot of vehicles sitting on you lot and depreciating — not a pretty picture, but vastly superior to a multi-million dollar lawsuit.

What does this mean for CPO, “warranted” or “guaranteed” vehicles with open recalls? Back in January, as a result of investigations concerning this issue, the Federal Trade Commission entered into a consent decree with General Mo-

tors and several dealers which prohibits dealers from claiming their used vehicles are safe or have been subject to a rigorous inspection (CPO) unless they are free of unrepaired safety recalls or unless the companies clearly disclose the recalls in close proximity to the inspection claims. This standard would apply to all.

The so-called FAST Act (Fixing America’s Surface Transportation Act) of 2015 provides that a dealership can lose its federal statutory entitlement to be fairly reimbursed for performing safety recall repairs if it fails to notify an “in-brand” service customer of any unremedied safety recalls applicable to their vehicles, if their franchise, operating, or any other agreement with their manufacturer requires such a service lane notice.

With regard to rental vehicles, as of June 1, 2016, federal law prohibits any company or dealer with fleets greater

than 35 vehicles to rent unrepaired recalled vehicles.

www.Safercar.gov

Because of all of the above, dealers might want to consult with their own counsel. However, the CATA urges all dealers to log on to the safercar.gov website on a regular basis, as it is frequently updated, to check the VIN numbers of all used vehicles in inventory prior to sale. The website apparently can retain the information as to who logged in to check a particular VIN, so use this feature to your advantage, not your disadvantage. Don’t let your employees make a mistake that will cost you!

In the service lane, make sure you are notifying customers about in-brand service recalls, and obtain an acknowledgment from those customers stating either that they authorize recall work to be done, they are declining the recall work, or they will return to have the work done when the remedy becomes available.

CATA office closed July 4

The Chicago Automobile Trade Association administrative office will be closed July 4. The CATA officers, directors and staff wish all our members a happy Independence Day holiday!



Franchised New-Car Dealers in the 8-county CATA area as of 1 July 2016

Car Line	Chicago only Ill.	Rest of Cook Cty. Ill.	Lake Cnty. Ill.	DuPage Cnty. Ill.	McHenry Cnty. Ill.	Kane Cnty. Ill.	Will Cnty. Ill.	Lake Cnty. Ind.	Porter Cnty. Ind.	Total [prior] 1/1/2016	Total [present] 7/1/2016
Acura	1	4	2	3	0	0	0	1	0	11	11
Alfa Romeo	1	3	0	1	0	0	0	1	0	5	6
Aston Martin	0	0	1	1	0	0	0	0	0	2	2
Audi	1	3	1	2	0	0	0	1	0	8	8
Bentley	1	1	0	1	0	0	0	0	0	3	3
BMW	1	4	1	3	1	0	0	1	0	11	11
Bugatti	1	0	0	0	0	0	0	0	0	1	1
Buick	2	9	1	4	4	1	3	2	3	29	29
Cadillac	1	8	2	2	1	0	1	1	0	16	16
Chevrolet	4	15	5	6	4	4	6	4	2	50	50
Chrysler	3	11	4	4	3	3	2	3	2	35	35
Dodge	4	11	4	4	3	3	2	3	2	36	36
Ferrari	0	0	1	1	0	0	0	0	0	2	2
Fiat	1	3	0	1	0	0	0	1	0	6	6
Ford	3	13	6	7	3	4	5	4	2	47	47
GMC	1	9	1	4	3	1	2	2	2	25	25
Honda	4	9	3	2	1	3	1	2	0	25	25
Hyundai	2	10	4	3	1	1	1	2	0	24	24
Infiniti	1	4	1	2	0	0	0	1	0	9	9
Jaguar	1	3	1	2	0	0	0	1	0	8	8
Jeep	3	11	4	4	3	3	2	3	2	34	35
Kia	1	8	3	3	1	1	1	2	1	21	21
Lamborghini	1	0	0	1	0	0	0	0	0	2	2
Land Rover	1	3	1	2	0	0	0	0	0	7	7
Lexus	1	4	1	2	0	0	0	1	0	9	9
Lincoln	1	6	3	2	1	0	0	1	0	14	14
Lotus	1	0	1	0	0	0	0	0	0	2	2
Maserati	1	2	0	2	0	0	0	0	0	5	5
Mazda	1	7	3	3	1	0	1	1	1	18	18
McLaren	0	0	1	0	0	0	0	0	0	1	1
Mercedes-Benz	1	5	1	2	0	1	0	1	0	11	11
Mini	1	2	1	1	0	0	0	0	0	5	5
Mitsubishi	0	5	1	2	1	0	0	1	1	11	11
Nissan	2	12	3	4	1	1	1	2	1	27	27
Porsche	0	3	1	1	0	0	0	0	0	5	5
Ram	4	11	4	4	3	3	2	3	2	36	36
Rolls-Royce	1	1	0	0	0	0	0	0	0	2	2
Scion	4	10	3	4	1	1	1	2	1	27	27
smart	0	2	0	0	0	1	0	0	0	3	3
Sprinter	1	3	1	1	0	1	0	0	0	7	7
Subaru	1	5	2	2	1	2	1	1	1	16	16
Toyota	4	11	3	4	1	1	1	2	1	28	28
Volkswagen	2	7	3	4	1	1	1	2	0	21	21
Volvo	1	4	1	1	0	0	0	1	0	8	8
# of Car lines	66	242	79	102	38	36	34	52	24	673	675
# of Outlets	34	160	50	64	20	23	19	35	16	420	421

NOTE: The difference between car line and outlet figures is the result of outlets that handle more than one car line.