



CATA Bulletin

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Binding arbitration program launched by BBB's Chicago office

Attorneys for the Better Business Bureau and the Chicago Automobile Trade Association rolled out details Wednesday of a new binding arbitration agreement that will help dealers and customers resolve their disputes without protracted and costly lawsuits.

"Simply put, the BBB has created a forum that is fair, equitable, inexpensive and quick," said Irv Capitel, senior counselor of the BBB-Chicago's alternative dispute resolution division. "We want to see disputes settled smoothly and quickly. Lawsuits are antagonistic."

"Disputes" eligible for BBB mediation involve the purchase, lease, servicing or repair of a new or used vehicle; and any service contracts purchased or provided at closing, except for disputes alleging criminal violation.

Dennis O'Keefe, the CATA's general counsel, said some dealers already employ binding arbitration agreements with their customers. "The one thing that's lacking with those individual dealer agreements," O'Keefe said, "is credibility." Some arbitration processes can be expensive, he added.

The BBB of Chicago and Northern Illinois, the bureau office that would hear any arbitration hearings, covers 19 northern counties in the state. Capitel said he is in talks with the BBB of Northwest Indiana to institute a similar program there.

The BBB-authored agreement, which is included with this newsletter, is simple to read, to overcome charges the

SEE **ARBITRATION**, PAGE 4

FTC's do-not-call registry

When does the 18-month call window close?

The Oct. 27, 2003, edition of this newsletter reviewed the three exceptions under which consumers who registered for the Do Not Call Registry still could be called. The exceptions are: (1) the consumer has made a purchase from the dealership in the past 18 months; (2) the consumer has made an inquiry to the dealership in the past 30 days; or (3) the consumer has provided written consent to permit such a call—in advance of any call.

Dennis O'Keefe, the CATA's general counsel, said dealers have asked him whether periodic lease payments made on a lease would qualify under the first exception, and therefore renew the calling period for 18 months after any lease payment. Dealers also asked

O'Keefe if a return to the dealer for service under warranty or otherwise is enough to restart the 18-month period.

"With regard to the second issue," O'Keefe said, "the FTC has indicated that if the consumer has had additional contact with the dealer for service, that is sufficient to form an established business relationship and would allow calls 18 months from the last date of service.

"However, if there is no contact other than the making of periodic lease payments to a leasing company, such payments are insufficient to show further contact with the dealership, and the dealership would be prohibited from calling a customer more than 18 months after the lease signing."

BBB advertising tip

A recent spate of complaints to the Chicago Better Business Bureau accuse dealer Web sites of offering coupons or special prices available only through a dealer Web site.

The Illinois motor vehicle advertising regulations prohibit the use of coupons in connection with a vehicle purchase, Steve Bernas, BBB director of operations, reminded dealers and their advertisers.

"It is imperative to remember," Bernas added, "that a vehicle must be sold for no more than its advertised price, and the price advertised must be available to

SEE **ADVERTISING**, PAGE 3

HIPAA: Dealership compliance with the Medical Information Privacy Rule

The Medical Information Privacy Rule (hereafter Privacy Rule) issued by the U.S. Department of Health and Human Services (HHS) implements the Health Insurance Portability and Accountability Act (HIPAA). The Privacy Rule sets standards governing the use or disclosure of individually identifiable health information—referred to as *protected health information* (PHI)—to help prevent it from being misused in employment decisions and to protect the privacy rights of individual participants in health plans subject to the Rule.

The Health and Human Services Department has the authority to enforce the Privacy Rule, primarily by responding to complaints. Violations potentially are subject to both civil and criminal penalties.

To understand the Privacy Rule, dealers must:

- Determine if the health plans they sponsor are fully insured or self-funded;
- Identify which dealership employees, if any, handle protected health information; and
- Recognize how and when those employees use, disclose or request PHI.

Protected health information, or PHI, is health information maintained or received in any form by an entity subject to the Privacy Rule—known as a *covered entity*—that relates to an individual's medical care and is, or could be, identified with that individual. PHI includes information related to an individual involving the person's past, present or future physical or mental health or condition; the person's health care; or past, present or future payments for the provision of the person's health care.

PHI must be disclosed upon request to the individual (or authorized representative of the individual) whose information it is, and to the HHS during a compliance review or enforcement action. There are numerous circumstances where PHI may be used or disclosed. When in doubt, a writ-

ten authorization should be obtained from the individual whose information is to be used or disclosed.

PHI may include *summary health information* that has been "de-identified," i.e., cleansed of individually identifiable health information. Summary health information, or SHI, should be used only to modify or terminate plans or to seek new plan or coverage bids. SHI summarizes an individual's claims history and expenses.

Examples of employees who handle PHI include human resources personnel who assist plan participants with health claim status questions, final claims arbitrators for self-funded plans, reviewers of Third Party Administrator claims handling practices, and health plan administrators. Most dealerships should handle little, if any, PHI.

Under the Privacy Rule, employers are not regulated. However, regulated and covered entities include health plans sponsored or funded by employers. The exact compliance requirements that a plan or plan sponsor must meet depend on the plan's structure, the types of PHI it receives, and the type of PHI it shares with others.

Health plans subject to the Rule include group health plans, health insurance issuers and HMOs providing medical, dental and/or vision coverage, flexible spending accounts, and employee assistance plans.

Most dealership-sponsored or -funded health plans are small health plans (defined as having \$5 million or less in annual receipts) and must comply with the Privacy Rule by April 14. Further, most dealerships sponsor fully-insured health plans. The plans typically have extensive compliance obligations under the Privacy Rule, but sponsoring dealerships do not.

The above information is excerpted from an NADA Management Bulletin, "HIPAA: Dealership Compliance with the Medical Information Privacy Rule." To order the publication, call the NADA at 800-252-6232, ext. 2. Cost is \$2.50 for NADA members plus shipping.

Financier subject to Day in Court Act: judge

A recent U.S. District Court ruling in the Northern District of Illinois proved welcome for dealers inasmuch as it precludes factory-controlled financing companies from avoiding accountability under federal and state laws.

In the case of Ridge Chrysler-Jeep et al. vs. Daimler Chrysler Services, the judge on Feb. 25 affirmed an earlier decision (Guardino vs. Chrysler Corporation) that Chrysler Financial, a wholly owned subsidiary of DaimlerChrysler Corporation, is subject to the Automobile Dealers' Day in Court Act and the Illinois Motor Vehicle Franchise Act.

Chrysler Financial had argued that only the manufacturer is governed by each of those laws.

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Listings of items for sale are subject to the approval of the CATA. Candidates for employment must submit a full résumé to the Editor.

Review past editions or search by topic at www.cata.info/

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NADA takes the offensive on charges of F&I wrongdoing

By **RAY SCARPELLI**

METRO CHICAGO NADA DIRECTOR

Dealership F&I practices have been under a public and media microscope lately, and the NADA is taking action to make sure the truth is out there.

Immediate Past Chairman Alan Starling is leading the NADA's F&I working group, and NADA Public Affairs is kicking off an aggressive media relations and grassroots effort to counter negative financing accusations and proposed legislation. During a speech to the Consumer Bankers Association in Atlanta this month, Starling presented \$10,000 to Junior Achievement to help fund the Financial Park program, which brings middle-school students to dealerships to learn about the entire finance process.

To be sure your dealership isn't accused of wrongdoing, review the NADA's new video, "F&I: Absolute Integrity, 100% of the Time," available from www.nada.org/mectalog/

So far the controversy doesn't seem to be keeping customers out of showrooms; car and especially truck sales are on the upswing, with large, truck-based SUVs up 27.9 percent in February versus a year ago.

Crossover utility vehicle sales were up 23.1 percent, traditional truck-based SUVs up 8.3 percent, and pickup sales were up by 4 percent last month, compared to a year ago. According to NADA chief economist Paul Taylor, with February sales at an annualized rate of 16.5 million units and with an improving economy, we are on track to reach sales of 16.8 million units for the year.

Help keep your key staff up-to-speed on the latest legal, technical, ethical and industry issues with NADA's new Associate Program. Look for an ad in this month's AutoExec to learn more about the initiative, which brings pertinent NADA communications directly to dealership managers, help them work more efficiently.

Another way to improve your business operations is to join a NADA 20 Group, and now NADA has even more to choose from now. A new used-car department group is forming, focusing specifically on profit opportunities and marketing efficiencies in that area of the dealership. Information on this and the recently added GM Commercial Core Sales Managers 20 Group is coming to your mailbox this month.

This GM truck 20 Group will meet April 15 and 16, just prior to the 2004 ATD Convention in Seattle.

Another specialty 20 Group geared to managers is the Nissan Service 20 Group, and there are openings available in a group for Cadillac/Hummer dealers. And Internal Management Review 20 Groups are available for interested non-competing, multi-franchise dealers. Call NADA at 800/2148-2632, Ext. 5889 to find out more.

In other NADA news:

- Learn how to "Hire the Heroes" at www.autoretailing.org/military, and find out how the Veterans Administration will help pay for veterans' training once they're hired: log on to www.military.com, then click on the Education, Education Resources, and VA Programs. And visit www.autojobstoday.com for more ideas on educating promising young people—both civilian and military—to consider jobs in automotive retail.

- Look like an Internet pro by using NADA Express to set up your perfect personalized home page. Go to www.nadaexpress.com for this free service.

As always, let me know your ideas and concerns, so that I can truly meet your needs as a NADA director. Let's take advantage of all NADA has to offer and turn other industries green with envy.

Advertising

CONTINUED FROM PAGE 1

everyone, regardless of whether they have seen a special advertisement offer.

"Therefore, any limited offer to a select group, including but not limited to your previous clients, is prohibited in Illinois."

Dealers with concerns or complaints about any current advertising practices should contact Bernas at 312-245-2514 or autoadregs@chicago.bbb.org. All correspondence is confidential, in accordance with the BBB/CATA Ad Review Program.

The BBB Web site, www.chicago.bbb.org also lists the state's current automobile advertising regulations. From the splash page, click on "BBB/CATA Ad Review Program."

Arbitration

CONTINUED FROM PAGE 1

customer didn't understand what he agreed to, and is brief, on a single page. Copies can be downloaded from the CATA Web site, www.cata.info/ From the splash page, click on the box that reads "New! Dealer Forms."

Surveys, Capitel said, show 99 percent of people are aware of the BBB and consider it a reliable not-for-profit agency with no real interest in the bottom line.

Capitel would not dictate how dealerships present the BBB arbitration agreement to their customers, but he suggested they make the risk management tool one of the first forms for signature at closing.

Capitel also said customers could be encouraged to sign the agreement based on several savings to them, compared to a lawsuit:

- time used to prepare court documents
- time used to prepare depositions
- time spent in court
- attorneys' fees and other costs

"The key word under the BBB arbitration is *resolution* of the dispute," said Capitel. "Someone wins, someone loses, and everyone gets on with their lives."

For deals negotiated in a language other than English, the arbitration agreement must be translated. Capitel said he can review agreements that dealers translate, to check for

accuracy. He can be reached at 312-245-2539.

Under the agreement, if a customer demands arbitration, he must pay \$100 to the BBB to cover the arbiter's expenses. The dealer, in turn, must pay \$900, or \$700 if the dealer is a BBB member. Most hearings can be concluded in two hours, Capitel said. Charging a fee to both parties can deflect frivolous claims, he added.

However, the one-page pact does not foresee every potential argument, and Capitel said he expects there will be challenges to the new agreement. But he said judges are coming to understand and support arbitration agreements.

"They'll say, 'You have an agreement, we're enforcing it, and you need to go to the forum to arbitrate your disagreement,'" Capitel said.

Nevertheless, a customer who signs the agreement still could sue the dealer. Capitel said: "A customer who insists on going to court will do that. This is not an insurance policy against suits. But your attorney will argue to stay or dismiss any court case by calling on the judge to enforce the agreement."

The agreement does not limit punitive damages against a dealer found at fault by BBB arbiters. If it did, customers could argue they surrendered their rights by signing the agreement, something that is forbidden under the state's Consumer Fraud Act.

New fines for unaccountable TRPs

Citing abuse of the 2-year-old Temporary Registration Permit program, the Illinois secretary of state's office will send bills of \$2,500 for every box of TRPs not checked in at the time of delivery, beginning April 1.

The office also will charge participating agencies, including dealerships, \$50 each for any damaged or voided TRP that cannot be accounted for. Such permits must be retained until picked up by secretary of state representatives.

A lost or stolen TRP not accompanied by a police report or an insurance docu-

ment also will be billed as an unaccountable TRP, bringing a \$50 charge. If a second TRP is needed, only a secretary of state facility employee may issue the additional document.

The government office has the discretion to waive the charges if an insurance claim or police report was filed, or if there is evidence that any TRPs were lost in a fire, flood or theft.

In addition to any fines, TRP program violators could be suspended from the program. Repeated policy violations also could lead to the suspension or revocation of an agency's license.

Counterfeiter sought over cars

Police in 19 states are hunting for a man who allegedly has used more than 100 alias names, dates of birth, social security numbers and addresses to buy vehicles with counterfeit checks.

Edward L. Raifsnider, 44, is wanted by federal, state and local authorities. He is 5 feet 11 inches tall and weighs 220 pounds.

The suspect uses many counterfeit state driver's licenses and ID cards and forged cashier checks to

buy used cars from dealers and individuals. Days later, before they are reported as stolen, Raifsnider allegedly sells the cars to other dealers and individuals.

Raifsnider reportedly has impersonated military personnel and federal, state and local police. He is considered armed and dangerous. If he is spotted, call local authorities or Detective Len Appelbaum of the Crestwood (Mo.) Police Department at 314-729-4800.

Congratulations!

Cadillac named 75 dealers, including three locally, as SFE dealers for achieving outstanding sales, service and customer satisfaction. Local dealers are **Arnie Bauer Cadillac** in Matteson, **Ettleson Cadillac** in Hodgkins, and **Patrick Cadillac** in Schaumburg.