

INVESTIGATING CAR HISTORIES – CLERICAL AND ROUTINE WORK, GREAT VALUE

Overview

The NCLC's Autofraud manual has over 40 pages of detailed discussion about investigation of a vehicle's history, and an appendix about obtaining title histories. As always, keep the NCLC manuals close at hand and use them.

In this presentation we do a practical walk through of investigation (without formal discovery) of a car's history in a typical car fraud case. There are of course endless variations that can occur in real cases and numerous additional things that can be done in investigations, but this "typical" scenario covers the key points in most cases. I've been preaching that these investigations are more a matter of clerical work and almost routine steps than most of our attorneys realize, and that they yield far more valuable information and evidence than most attorneys realize. I also preach doing most of this investigation before deciding whether to take a case. As a penalty for my preachiness, NCLC asked me to give a presentation on the subject.

A typical wrecked/flooded car case – the beginning

We'll review a typical rebuilt wreck or flood vehicle case. The prospective client reports, say, having purchased a two-year old car a year ago for \$15,000 at a local dealership, and having learned that the car seems to have had some previous damage. The prospective client may have learned, say, that the wheels couldn't be aligned because of what appears to be previous damage, or that the vehicle wouldn't be accepted as a trade-in because a Carfax shows a previous accident in the car's history. The prospective client may have bought the car with the selling dealer saying it had never been wrecked, or selling it as a "certified" car, or displaying a Carfax that appeared to show the vehicle as having no damage history, or simply being silent as to the car's history. The prospective client has come to you for help.

Where should we be going with this beginning?

We want to sort things out and see if there is indeed a problem vehicle here, and if there has been cheating or other lawbreaking, and by whom. We want to do this investigation simply and cheaply, if possible. We want to get to the actual truth of the matter as well as we can – it is just as important to discover facts showing that there is not really a decent case here as it is to discover facts supporting a good case. And we want to be combining investigation with gathering of admissible evidence for use in any litigation that we may pursue. This point of gathering admissible evidence is an important consideration in how we do this investigation, as we will see.

Car history investigations break conveniently into two stages:

- “Reality Check” Stage 1 – the easiest investigation, which is the “reality check”, seeing whether there may be a case, and we stop unless a case looks promising;
- “The Rest of the Story” Stage 2 – contacting previous owners, repair shops, etc., to get “the rest of the story”

Stage 1 first step – gathering the client's information

A good legal assistant is a huge help and a major cost savings throughout this investigating process, and that starts at the beginning of any of these cases. (The same applies in handling most kinds of consumer cases – I urge consumer attorneys to get good legal assistant help.) In fact, our legal assistant handles the whole process of the car investigation, though the assistant will touch base with an attorney as notable facts are gathered.

We want a thorough review of what the client knows about the vehicle from all sources, what the client was told or not told at the time of purchase. We want ALL of the client's documents gathered, including all

purchase-related documents and all service documents, and things like records found in the glove boxes (sometimes showing previous owners). Carfax or Autocheck reports are often in the purchase-related documents, as are copies of titles, and damage or prior use disclosures (or nondisclosures).

Stage 1 next step – having the car inspected

Car inspection is like an extremely easy archaeological dig – much of the critical history of a car is easy to detect for the skilled body technician.

We want the client to locate a good body shop of his/her choice to inspect the vehicle. Here we're accomplishing quite a few things at once: by having the client do this, we develop a possible independent expert witness with the good credential of not having been sought out by an attorney; we see the client's willingness to be helpful and carry some of the burden; we often learn through the inspections that the vehicles either weren't damaged or had only minor previous damage (thus saving a waste of additional effort in pursuing the matter); and we get absolutely critical information about the heart of the matter – the vehicle itself.

Before the client takes the vehicle to the body shop, we give careful instruction, and usually have them write down questions for the body shop. Here are typical points of instruction to the client:

- 1) Don't lead the body shop by telling detail about what you know, and don't bring up litigation yet
- 2) ask for careful exam for previous damage of any kind

IF the shop finds previous damage, then --

- 3) ask what is the scope and approximate dollar amount of any damage
- 4) ask if there was frame or structural damage
- 5) ask if there are any apparent problems relating to the damage
- 6) ask if the body shop person can say if the vehicle is definitely crashworthy and safe
- 7) ask if there are any particular items that raise the question of possible safety issues
- 8) ask if they can tell if airbags deployed, and whether they were replaced and are working
- 9) ask if any previous damage they see would be readily apparent to a knowledgeable car dealership
- 10) ask if they can tell approximately what it would take to correct any remaining defects
- 11) the client should write out careful and detailed notes right after leaving the body shop

After we get a verbal report from the client about the inspection, we review. This stuff is critical, so if there are remaining questions we have the client obtain additional inspection.

If the inspection shows that there was minimal or no previous damage, that typically ends things. If the previous damage was minor and the conduct of the dealer was not egregious, we sometimes would suggest the client consider small claims court, and making attorney general complaints.

Stage 1 last step: having the client talk with the dealer

In a typical case, if the inspection reveals serious previous damage issues, the next step we follow is to have the client go in and talk with the dealer. This is partly continuing the investigation, partly giving the dealer the chance to do the right thing, and partly gathering more evidence against a culpable dealer.

Remember a key point: the client can testify about what is said in any discussion with the dealer. Such discussions are often damning evidence against the dealer at trial. Likewise, keeping yourself, the attorney, away from discussions with the dealer is important – you don't want to be dragged into the evidence at trial by a lying dealer claiming you said things you didn't say, etc.

Keep in mind that typically if a vehicle has major undisclosed damage, we expect that in fact the dealer knew about it, and we're looking closely at the issue of evidence about the dealer's knowledge.

We give the client careful guidance in advance, again. We typically recommend that the client genuinely give the dealer the chance to do the right thing, and if the dealer will truly make things right, we typically will decline the case. At any rate, here is typical guidance we give to the client:

- 1) go to the dealer and talk with a top manager
- 2) take a friend or spouse, but have that person pretty much keep quiet (a potential witness)
- 3) tell the dealer that you've learned that the vehicle has been wrecked/flooded (tell the basics of what you've learned)
- 4) remind the dealer that you weren't told and/or were told it hadn't been wrecked, and who told you
- 5) ask the dealer what it knew about the damage
- 6) ask the dealer how it happened that you weren't told or were told false statements
- 7) ask the dealer if the vehicle was inspected before sale, and did they look for damage
- 8) ask the dealer if you can have a complete copy of their file on the vehicle and service records
- 9) ask from whom the dealer received the vehicle, and what that seller told the dealer
- 10) ask the dealer what the dealer is willing to do, if anything, to make things right
(DON'T agree to anything on the spot; do be willing to suggest what would be appropriate, such as repurchase for all amounts paid and reimbursement of all expenses/taxes, say)
- 11) ask the dealer if they have ever had anyone complain about a problem like this before
- 12) keep cool and reasonable, though determined
- 13) if asked if an attorney is involved, say (truthfully) that no attorney has been retained; if asked if an attorney has been consulted, don't lie, but avoid the question and point out none retained
- 14) try to leave with a clear statement from the dealer as to what they will or will not do, and when
- 15) write down careful and detailed notes immediately afterward

Stage 2 first step – identifying the chain of previous owners

By now we've sorted out that there appears to be a good case here. And we haven't spent very much clerical time so far, and almost no attorney time.

Previous owners are an absolute wealth of information and evidence. We locate them several ways. First, the information from the client has may identify one or more previous owners. Titles, owner's manuals, sometimes service records found in the glovebox will identify previous owners. Sometimes the dealer has identified the prior owner. Sometimes the client can get warranty or service records from a dealer that identify prior owners. Beyond this, one needs to get title histories. We will typically run a Carfax to help sort out which states may have title records on the car. We then request title histories from each such state. See the NCLC manual for information on obtaining title histories. Again, this is pure clerical work, and not that expensive. My one comment here is that yes, this may take some persistence and jumping through a few hoops, but this is just a matter of clerical effort and persistence, not rocket science. Getting records from state agencies is usually that way. Phone calls to the right people are often very helpful if there are any problems.

When it comes to getting phone numbers and current addresses for individuals, we will use Accurint for inexpensive location searches if we don't find the individuals by ordinary online searching. If that doesn't get working phone numbers, or if phone messages aren't returned, we'll have the client mail a letter to the previous owner we're trying to contact, explaining and requesting a call.

We fill out an ownership history flow chart. See a sample blank chart, attached. We keep this on our computer, and expand it with detail as we go. We keep contact information, notes from discussions, and similar information on the flow chart. This chart is a wonderfully handy reference throughout a case.

Stage 2 next step – contacting previous owners

Now it REALLY gets interesting – and again, this is easy, it just takes careful clerical attention.

We usually have the clients contact the previous owners. There are several reasons why this is preferable (the client can testify about the conversations, the client isn't threatening and often can get previous owners to be helpful, the client is doing the work).

Usually the most important previous owners are the last owner before the selling dealer, and the owner who had the car when it was wrecked/flooded. The last owner often can show that the selling dealer was told about or already knew about the damage, thus providing powerful evidence of the dealer's actual knowledge. In-between owners often fill out a tapestry of nefarious dealings relating to the car.

Once again, we give the client detailed guidance. The guidance will vary some, depending on whom the client is contacting, but many principles are the same. And it is critical that the client (or the legal assistant, if the legal assistant is making the contacts) ask questions in the right way. Contacts with previous owners are very sensitive. Typical guidance, for contacting the last owner who traded it in to the selling dealer that is disclaiming all knowledge of the damage:

- 1) Identify yourself clearly, and explain that you've got this car that you've learned was previously wrecked, and you need help.
- 2) Explain that the dealer is claiming that it didn't know about the damage, and refuses to help.
- 3) Comment that you doubt that the dealer didn't know about the damage. (But avoid harsh statements, and don't veer off into trashing the dealer beyond minimal informative statements.)
- 4) Explain that you checked and found out that this person was the previous owner.
- 5) Ask this person if there was any discussion about the damage with the dealer when the car was traded in.
- 6) if this person denies any knowledge that the car had been wrecked, ask about from whom the person received the car, and details about that purchase, and anything else the person knows about the car.
- 7) Keep in mind the attitude that individual previous owners are usually our friends – they usually weren't cheating anyone, and after all the dealers almost always can spot damage even if the dealers aren't told about it, so it is a rare individual who pulls off a fraud against a dealer by trading in an undisclosed wreck.
- 8) Once the person is talking, get as much information as you can –
 - a) ask for detail about any discussions with the dealer
 - b) ask how much they were given in trade for the car
 - c) ask whom the person talked with at the dealer
 - d) ask about details of the damage incident, where car repaired, for how much, etc.
 - e) ask for any records they might have, or willingness to have shops/insurers release records
 - f) ask about any problems with the car after repairs
 - g) get best contact information for the person
- 9) make friends with this person
- 10) don't bring up attorneys at this point
- 11) take careful notes right after the conversation
- 12) I instruct not to record calls – I just don't like it, even if it may be legal in some jurisdictions

Contacting other previous individual owners is largely similar. Contacting previous dealers in the chain of title, though, is a little different, but the main difference is in the kind of information they should have readily available. The client can legitimately press those dealers, patiently and respectfully, for information, and if a dealer refuses to provide information, should ask why the dealer refuses, exactly. If a dealer claims it didn't know of damage, the client should ask if the dealer inspects cars and inspected this one. If a dealer claims that it disclosed the damage, there is all the more reason why the dealer should be willing to provide documents showing that.

In the history of a rebuilt wreck or flood car that is eventually sold without disclosure, there has to be at least one point of transition, when a seller that knew of the damage did not disclose the damage to a buyer. So tracking back through previous owners puts those owners on the hot seat: SOMEBODY who knew about the damage didn't tell about the damage to the next buyer. It may have been only the dealer who sold to your client. Often it is several previous owners, usually dealers, who knew about the damage and didn't expressly disclose it.

Stage 2 last step – following up leads from previous owners and other sources

After the client has obtained what he/she can from previous owners, the client should follow up with calls to repair shops and insurers. At this stage it is not as important if the client does the contacting – the legal assistant can do this without much loss of valuable evidence about the conversations. Contacts with repair shops are important and can of course be revealing, though they're usually less cooperative than prior owners. By this stage of investigation, we normally have some pretty clear ideas of what was done, and not done, in the repair/rebuilding of the car, and what problems exist. We have often had an independent retained expert examine the vehicle by this stage. We always want to see their repair records. Often we want to know some particulars about what equipment was used, or what kind of training the technicians had. Insurers typically won't provide information without releases from the owners or subpoenas, though often they will reveal some basics over the phone. We also often have clients try to obtain warranty/service histories of cars by checking with either the manufacturer through an appropriate franchise dealer (a Chevrolet dealer for a Chevrolet car, for example), or with dealers or service shops known to have handled any service on the vehicles.

Conclusion

Simple clerical investigative work about a car's history, coupled with simple efforts by the clients, very often gathers an absolute wealth of information and admissible evidence in car fraud cases. For example, I can't begin to describe how often simple contact with previous owners has yielded direct proof that a dealer knew a car was wrecked or flooded. Those previous owner witnesses are devastating. And the things that the selling dealer will say to the cheated client when the client goes back and asks for assistance are often strong evidence of the dealer's bad motives and deceptive character. I'm constantly astonished when I hear of consumer attorneys who look at prospective car fraud cases, but who don't realize just how valuable a little investigation can be, and are unaware of how easy and inexpensive the investigation can be.

Since this presentation is only about informal investigation of the history of the subject car, we haven't even gotten to investigating pattern misconduct by the dealer by researching attorney general complaints, other lawsuits, or through formal discovery. Former employees, identified through discovery, are often a wealth of incriminating information. But we're getting beyond the topic.

Simple, cheap investigation of car histories, done the right way, blows these cases open.

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Fairway, Kansas
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RECORD OF OWNERSHIP

Vehicle Make:

Year:

VIN:

Model:

Color:

Identifiers:

OWNER	DATE OF PURCHASE	MILEAGE @ PURCHASE	PURCHASE PRICE	DOCUMENT SOURCE/NOTES