

Dealers going out of business, leaving consumers out of luck

Rosemary Shahan, Consumers for Auto Reliability and Safety

Bill Brauch, The Iowa Attorney General's Office

**Keith Kiser, The American Association of Motor Vehicle
Administrators**

Adam Holley, The West Virginia Division of Motor Vehicles

Jill Miles, The West Virginia Attorney General's Office

John Van Alst & Jessica Hiemenz
National Consumer Law Center

This webinar is sponsored with a grant from the Annie E. Casey Foundation and is one of a series of webinars about working cars for working families.

January 20, 2011

NCLC
NATIONAL
CONSUMER
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CENTER*

Advancing Fairness
in the Marketplace for All

Presenter – John Van Alst

- Joined NCLC in 2006 as a Staff Attorney at the Center's Washington, DC Office.
- At NCLC John specializes in issues related to car sales and finance.
- Prior to joining NCLC John work for seven years as an Attorney with Legal Aid of North Carolina.
- While at Legal Aid he focused primarily on consumer issues. He was also the Chair of the North Carolina Consumer Law Task Force.

Presenter - Rosemary Shahan

- President and founder of Consumers for Auto Reliability and Safety (CARS), widely recognized as one of the nation's leading pro-consumer advocacy groups.
- Since 1979, she has been on the forefront in successfully advocating to improve consumer protections for vehicle owners, including: initiating California's landmark auto "lemon law"; opposing federal preemption of state lemon laws; opposing binding mandatory arbitration in auto sales contracts; working to preserve class actions as a means of achieving justice; and opposing ballot initiatives that attacked consumer rights.
- Rosemary has been repeatedly invited to testify before Congress on behalf of the car-buying public.
- For decades, she has generated international news coverage of auto consumer issues, and is widely quoted by major news organizations.
- Rosemary has received numerous awards in recognition of her work, including NACA's Distinguished Service Award and the Consumer Federation of America's Esther Peterson award.

Presenter - Bill Brauch

- Special Assistant Attorney General and is Director of the Consumer Protection Division of the Iowa Attorney General's Office
- Bill has been with the Iowa Attorney General's office since 1987.
- From 1987 until March 1995, he was an assistant attorney general in the Consumer Protection Division.
- Bill was named director of the Division in March 1995. As director, he oversees a staff of attorneys, investigators, support staff and a consumer education specialist.
- He is a past national Vice-Chair of the Consumer Protection Committee of the American Bar Association.
- Bill was awarded the Marvin Award by the National Association of Attorneys General in 2001 for his contributions in assisting states to work together on consumer matters.
- Bill was the 1997 recipient of the Distinguished Service Award presented by the National Association of Consumer Advocates for his work on automobile salvage safety issues. He chairs the NAAG Autos Working Group.

Presenter - Keith Kiser

- Currently the Vehicle Programs Director for the American Association of Motor Vehicle Administrators (AAMVA) since April 2005.
- Worked for the Motor Vehicle Division of the North Dakota Department of Transportation (NDDOT) for 34 years. Served as the Motor Vehicle Director with NDDOT from 1990 until his retirement in 2005.
- Been actively involved in AAMVA activities since 1986 and was the president of AAMVA Region III during 1995-1996. Served ten years on the AAMVA Board of Directors and was the Chair of the Board in 2003-2004.
- He is also a past-Chair of the IRP, Inc., Board of Directors.

Presenter - Adam Holley

- Admitted to practice in West Virginia.
- Spent his career in public service by providing counsel to the West Virginia Division of Motor Vehicles since 1997.
- In that role, he also serves as counsel to the West Virginia Motor Vehicle Dealer Advisory Board and to the Dealer Recovery Fund Control Board since its inception in 2001.

Presenter - Jill Miles

- In February 1994, Jill joined the Attorney General's office as an Assistant Attorney General. Within eighteen months, she was promoted to Deputy Attorney General over the Consumer Protection and Antitrust Divisions.
- Once she was put in charge, Jill got very strict marching orders from Attorney General McGraw. McGraw wanted his consumer protection division to be like no other. He was greatly disturbed to learn that even though the West Virginia Consumer Credit and Protection Act had been enacted in 1974, previous Attorneys Generals had failed to enforce the law. McGraw quickly decided to make consumer protection his number one priority.
- In 1994, when McGraw first started monitoring the success of his consumer protection division, the state and its citizens received less than \$1 million. Since 1994, as a result of his staff's hard work and dedication, the state and its citizens have received more than \$1.7 billion in refunds, debt cancellation, services, products, and civil penalties.
- From 2006 to 2008 Jill served as President of the National Association of Consumer Agency Administrators (NACAA). NACAA members are front-line public and private advocates who work to solve consumer problems, prosecute offenders, advance consumer-friendly legislation, and educate the public. NACAA members include over 160 government agencies and 50 corporate consumer offices worldwide.

Agenda:

- The Problem- scope and impact on consumers
- California Efforts
- National Association of Attorneys General (NAAG)
- The Iowa Perspective
- American Association of Motor Vehicle Administrators (AAMVA)
- West Virginia and its *Dealer Recovery Fund*

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For more information

- To subscribe to the listserv of those interested in Cars and Working Families just go to: <http://lists.nclc.org/subscribe/> and check the Auto Ownership, Finance, and Policy list
- Visit the following website:
 - National Consumer Law Center's Auto Page:
 - <http://www.consumerlaw.org/issues/auto/index.shtml>

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National Consumer Law Center Webinar

Thursday, January 20, 2011

**This segment presented by
Rosemary Shahan, President**

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Consumers for Auto Reliability and Safety

Types of Scams

- ▶ Failure to pay off liens on vehicles traded in with negative equity
- ▶ Selling vehicles with unpaid liens
- ▶ Taking vehicles on consignment, selling them, and pocketing the money
- ▶ Taking vehicles for repairs, failing to perform the repairs or return the vehicles, leaving their owners stranded
- ▶ Selling "lifetime" services such as oil changes, pocketing the money, then closing doors
- ▶ Selling items such as extended service contracts (ESCs), Guaranteed Asset Protection (GAP), pocketing the money, and failing to activate the policies
- ▶ Engaging in odometer fraud
- ▶ Engaging in salvage fraud

Types of Scams

- ▶ **Engaging in predatory lending, including:**
 - **Falsifying loan applications**
 - **Yo-yo financing (a form of bait and switch)**
 - **Powerbooking (misrepresenting in documents submitted to lenders / assignees that vehicles have equipment they lack, in order to increase the amount the lender is willing to loan -- leaving borrowers upside down in loans)**
 - **Loan packing (adding high-profit / low value add-ons, and misrepresenting that they are free, low cost, or mandatory in order to obtain financing)**
 - **Forging signatures / forging documents**

Impact on Consumers and Their Families

- ▶ **Ruined credit**
- ▶ **Vehicle repossessions**
- ▶ **Lost transportation to work, resulting in lost jobs**
- ▶ **Lost transportation to school, resulting in truancy and drop-outs**
- ▶ **Bankruptcies, which remain on credit reports for 7 years**
- ▶ **Lost ability to regain employment, due to harm to credit (most employers check credit histories prior to making hiring decisions)**
- ▶ **Lost ability to obtain housing (most landlords check credit histories prior to renting)**
- ▶ **Lost ability to qualify to purchase another vehicle at reasonable interest rates**

Impact on the Automotive Marketplace

- ▶ Shrinks the potential market
- ▶ Reduces consumer confidence
- ▶ Contributes to negative equity -- NOTE: according to auto industry analysts, a whopping 6 million would-be new car buyers are staying out of the market due to negative equity
- ▶ Contributes to lost jobs in the automotive sector
- ▶ Contributes to tens of billions of taxpayer dollars, spent to bail out lenders such as GMAC (now "Ally Bank")

Scope of Problem

- ▶ **Across the entire nation, thousands of franchised new car dealerships that had been in their communities for years have been closing their doors -- usually with no advance warning**
- ▶ **Many more used car dealerships are also closing, with no advance warning**
- ▶ **While the majority of the new car dealerships that have closed are GM and Chrysler franchisees, other makes have also eliminated dealerships, including Ford, Toyota, Suzuki, Isuzu, and other manufacturers**
- ▶ **"GM has reduced its dealerships by 229 to 6,807 in the past year; Ford had shrunk by 139 to fewer than 4,140 as of July; and Chrysler had eliminated 142 to 3,607 as of October." -- "Car dealers close as Ford, GM, Chrysler keep cutting," *USA Today*, January 13, 2008.**
- ▶ **GM announces closing of 1100 dealerships -- News reports, 2009**
- ▶ **Chrysler closes 729 dealerships -- News reports, 2009**

California's Attempts to Address the Carnage

California, the nation's largest auto market, has suffered the worst impacts from dealership closings

▶ **California Consumer Recovery Fund (2007)**

- **Established under SB 729 (Padilla), sponsored by California District Attorneys Association and supported by California New Car Dealers Association; CARS worked to improve the bill, including advocating for more openness, transparency, and accountability**
- **CDAAs provided examples of dealership closings, included in the Senate Judiciary Committee analysis of SB 729, including:**
- **Solano County dealership, more than 100 victims and more than \$1 million in losses**
- **Alameda County dealership, 50 victims and more than \$1 million in losses**
- **Monterey County dealership, more than 80 victims, more than \$1 million in losses**
- **CCRF is funded by a fee charged licensed dealerships, at the rate of \$1 per new or used vehicle sold, up to a maximum of \$2500 per year**

The Fund has been fraught with problems

- ▶ **Contributions to the Fund are capped at \$2500 per dealership, regardless sales volume -- so higher-volume dealers fail to pay their fair share, and contribute less than \$1 per vehicle**
- ▶ **Dealers have a disincentive to inform victims about the existence of the Fund, since they are charged only when the Fund is depleted to the point where it reaches a certain threshold**
- ▶ **For many months, legislative leaders and Governor Schwarzenegger failed to appoint board members, until CARS raised the profile in the news media**
- ▶ **Even after board members were finally appointed, the Fund was not operational for another period of many months**
- ▶ **Lengthy delays in establishing the fund meant thousands of consumers victimized by deadbeat dealerships failed to benefit from the Fund during the worst months of the automotive crisis**

The Fund - Problems

- ▶ **Amount in the Fund is inadequate to meet the need**
 - During 2009, the Fund received only approximately \$1.5 million. According to the California District Attorneys Association and mainstream news reports, a single dealership closing sometimes costs consumer victims over \$4 million in damages.
- ▶ **Severely limited grounds for claims leave many victims with no relief; only grounds for claims are:**
 - Unpaid liens (solely for consumers who traded in vehicles, and not for consumers who purchased vehicles with unpaid liens)
 - Consignment sales
 - DMV fees
- ▶ **Many victims are not eligible for relief due to arbitrary exclusions**
 - Victims such as self-employed persons, real estate agents, landscapers, and small business owners who purchased vehicles primarily for business use, and who need them to make a living, or make a payroll, are excluded
 - The Fund is not retroactive, and can consider only claims arising after July 1, 2008, excluding relief for the very victims whose cases gave rise to the legislation
- ▶ **DMV and the Fund's Board have failed to provide information in multiple languages or do effective outreach regarding the existence of the Fund**

SB 95 (Corbett, 2009)

- ▶ **This new law, sponsored by CARS, requires auto dealers to tender payment on outstanding liens prior to selling vehicles, or within 21 days if they retain the vehicle**
- ▶ **While the new and used car dealers' trade associations argued that SB 95 was not needed due to the establishment of the Consumer Recovery Fund, the Legislature and the Governor disagreed, and enacted the bill.**
- ▶ **SB 95 supporters included:**
 - Consumers for Auto Reliability and Safety (CARS) -- official sponsor
 - California Credit Union League
 - California Bankers Association
 - Alliance of Auto Manufacturers
 - California Financial Services Association
 - Alameda County District Attorney
 - Los Angeles County District Attorney
 - California Statewide Law Enforcement Association
 - Carmax
 - CALPIRG
 - Consumers Union
 - Consumer Action
 - Consumer Watchdog (formerly the Foundation for Taxpayer and Consumer Rights)
 - Consumer Attorneys of California
 - Consumer Federation of California
- ▶ **Opponents:**
 - California New Car Dealers Association
 - California Independent Auto Dealers Association
 - Individual auto dealerships

Private Recourse for Victims

- ▶ **State bonding requirements are insufficient to meet the needs, and usually are depleted by state agencies and /or other creditors, with little or nothing left for consumer victims**
- ▶ **Some consumers have fared better seeking recourse against lenders, under Holder in Due Course**

► Questions



Auto Dealer Closures – Problems and Approaches

Presenter:

William L. Brauch,
Special Assistant Attorney
General
Director, Consumer Protection
Division



Iowa Attorney General

Consumer Protection Division

Common Consumer Problems with Auto Dealer Closures

- Buyer doesn't get title
- Dealer fails to transfer funds:
 - For pay-off on trade-in loan;
 - For tax, title and license;
 - For ancillary purchases, such as service contracts, gap insurance.
- Buyer sometimes ends up having to repay loans on two cars, one she doesn't have, the other she can't legally drive.



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Common Consumer Problems with Auto Dealer Closures

- Consumer doesn't know who has the title.
- Documents are in disarray.
- No dealership contact remains.
- Lenders want their money!



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Auto Dealership Closures – who has the titles?

- Dealer floor planners.
- Former owner's lender (car was taken in trade and sold before dealer paid off loan).
- Auto auction.
- Lost in dealer records.



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Auto Dealer Closures – Sources of Assistance

- The lucky circumstance of the helpful dealer and/or former staff.
- State DMV/DOT personnel.
- State Attorney General or other consumer protection agency that handles auto consumer issues.
- The provider of the dealer's bond.
- Buyer's private counsel.



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Auto Dealer Closure Issues – the Helpful Dealer

- May go so far as to allow access to records.
- May do his or her best to locate titles, deliver documents, and, perhaps, maybe even make some payments.
- May keep a skeleton staff on hand to help.
- All too rare, though.



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Auto Dealer Closures – Help from State DMV/DOT

- Staff on site.
- Familiarity with dealer and dealer personnel.
- Likely has information about consumer complaints.
- Familiar with local title clerks.
- An ongoing presence and source of information.



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Auto Dealer Closures – State AG/Consumer Office Help

- Can serve as single source for consumer complaints.
- May make bond claims for buyers (if authorized by statute).
- Can pressure floorplanners to release titles.
- Regular contact with DMV/DOT.
- Can bring UDAP action.



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Auto Dealer Closures – Bond Claims

- State authorized to claim.
- Private claims as well.
- Requires legwork for broad claim for all who are due recompense.
- Key prerequisite – reduce \$ amount of claim as much as possible through work obtaining titles for buyers.
- Bond amounts vary by state.



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Auto Dealer Closures – What is Compensable via Bond Claim?

- Double payment of Tax, title and license fees.
- Funds that were not forwarded for purchase of ancillary products.
- Funds to pay off trade-in loans.
- Full purchase price of vehicle if title cannot be obtained.
- Losses caused by other violations of law may be compensable.



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Auto Dealer Closures – Dealing with Floorplanners

- The UCC makes clear that between the buyer in the ordinary course and a floorplanner, the buyer's right to title governs. Cite to UCC section 9-320.
- May ask for buyer to assign bond claim – don't do it!
- Be firm.



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Auto Dealer Closures – Dealing with Floorplanners

- Position of Iowa AG: Failure of floorplanner to turn over title to AG for provision to buyer constitutes an unfair practice pursuant to the Iowa Consumer Fraud Act.
- CFA action does not require victim-defendant privity.
- Conduct is “in connection with” the sale of merchandise.



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Auto Dealer Closures – Dealing with Lenders

- Little alternative but to make bond claim for failure to pay off prior owner's loan.
- FTC Holder Rule is great tool for seeking recompense from buyer's lender for losses caused to buyer by dealer.
 - Dealer w/out bond example.



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Auto Dealer Closures – other Legal Tools

- Dealer's conduct in failing to pay off trades, forward funds to third parties, or provide titles is unfair and may constitute deception in violation of UDAP's.
- Ability to recover funds depends on dealer resources and ability to tie conduct to dealer individually.
- Bankruptcy is in another realm.



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NAAG Autos Working Group

- Comprises 35 states + DC.
- Members meet monthly via phone to discuss multistate and individual state cases, federal and state legislation, rulemaking and other issues of interest.
- Maintain ongoing communications via e-mail and phone.
- First group call 11-3-2006.



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NAAG Autos Working Group

- Current areas we are giving attention, collectively:
 - False premise auto advertising.
 - Auto “warranty” sales practices.
 - Working with FTC on dealer practices.
 - At least one major, non-public investigation.



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American Association of
Motor Vehicle Administrators

Dealers Going Out of Business

January 20, 2011

Keith Kiser, Director of Vehicle Programs

AAMVA

www.aamva.org

AAMVA Official Use Only

Dealers Going Out of Business

- **Who Is AAMVA**

AAMVA is a non-profit corporation, established in 1933, and is headquartered in Arlington, VA. AAMVA members are the state and provincial government administrators responsible for registration and titling of vehicles, the licensing and regulation of drivers, and state law enforcement activities.

Dealers Going Out of Business

- **Why is AAMVA Interested?**
 - Responsible for regulation of dealers
 - Licensing
 - Bonding
 - Dealer plates
 - Online interactions between dealers and DMVs
 - First point of contact for vehicle purchasers with problems
 - Expected to have solutions

Dealers Going Out of Business

- **AAMVA Efforts**

- Identified as a membership issue in February 2009
- Multi-discipline presentation and discussion during AAMVA annual conference in 2009
- AAMVA working group proposed
 - Develop best practices related to dealing with issues affecting consumers and jurisdictions
 - 2009 Jurisdiction survey

Dealers Going Out of Business

- **AAMVA Jurisdiction Concerns**
 - Buyers not receiving needed documents from dealers
 - Non-payment of fees collected by dealers
 - Unpaid liens
 - Acceptable alternative documents and procedures
 - Return of dealer plates

Dealers Going Out of Business

- **AAMVA Jurisdictional Concerns**
 - Issuing temp tags or other temporary operating authority
 - Return of DMV inventory provided to dealers
 - License plates
 - Validation decals
 - Registration cards

Dealers Going Out of Business

- **Jurisdiction Efforts**
 - Vary by jurisdiction, but generally:
 - Take the initiative to help consumers by
 - Tracking down needed documents/funds
 - Providing information on bonds and other recovery avenues and options
 - Working with lenders
 - Providing temporary operating authority/temp tags



American Association of
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