

READING AND RESPONSE

NOVEMBER 2006

TWO SIDES OF A COIN?

Marketing vehicles on the internet has been discussed in Continuing Education classes and in articles several times over the past year. There are currently no laws that we are aware of regulating the interstate sale of vehicles marketed over the internet, but there are numerous lawsuits involving these transactions. One of the biggest issues in these lawsuits is the question of jurisdiction – the court must decide where the transaction took place in order to establish which court has jurisdiction. Two such cases came up in US District Courts in May in the same week, with very different results.

An individual in South Carolina placed a winning bid on a new Porsche Carrera GT that was listed on an online auction by a dealership in Virginia. As soon as he started it up he heard a “knocking noise” and took it to a dealership. Unable to get the problem resolved, he sued the selling dealership for a number of things, including misrepresentation, unfair trade practices, and breach of warranty. The US District Court for the District of South Carolina dismissed the case for lack of personal jurisdiction. The buyer filed a motion for reconsideration and was denied. The Court stated that it did not have jurisdiction over the dealership because the dealership did not “purposefully avail itself of the privilege of conducting business activities within the forum state”. The auction listing indicates anyone worldwide could have bought the car, provided the buyer pay for shipping – the dealership did not advertise specifically toward South Carolina.

Meanwhile in California... a dealership listed a 1973 Mustang on an online auction. The winning bid was placed by an individual in Michigan. When the buyer received the car, he found it did not have a title and said the condition had been misrepresented in the listing. He tried to undo the deal, and the dealer refused – so he sued him in the US District Court for the Eastern District of Michigan. The dealer did not appear and a default judgement was entered against him. He asked that the default judgement be set aside for lack of jurisdiction. The Court ruled that “By selling a car to a Michigan resident, Defendants have transacted business in the state, giving this Court personal jurisdiction over them because Plaintiff’s claims arise out of that transaction.”

One coin, two sides... In the South Carolina case, the paperwork was completed at the dealership in Virginia. There was no mention of paperwork (other than the lack of it) in the Michigan case. Both buyers arranged and paid for delivery. So... the jury is still out. When you market a vehicle online, complete the paperwork at your dealership, in compliance with state and federal law. If you list it on an online auction, offer it with a reserve. Have the buyer arrange and pay for delivery. **DON’T MISREPRESENT YOUR VEHICLES.** Use arbitration agreements. If you sell a vehicle through an online auction and your customer has a problem, do what you need to to satisfy him. And pay attention – we’ll keep you informed as the coin gets tossed again and again.

Kat Messenger, CAE
Director of Training
Carolinas IADA

NEW DEALER PLATE AVAILABLE

Dealers will now have a choice when it comes to your dealer plate. Over the years OIADA has heard many requests for a change in the design of our dealer plates. Well, the wait is over. OIADA took the request to ODAC (Oregon Dealers Advisory Committee) recently and were able to successfully see this come to reality. OIADA wants to thank DMV for working with us to make this change possible.

The December issue of the Squeaky Wheel will have the exact “how to’s” as DMV hasn’t worked all the details out as yet.

TEMPORARY REGISTRATION FOR MOTORCYCLES

Another example of OIADA working for the industry is the new temporary registration form for the motorcycle. There will soon be available a two-part temporary dealers can provide their customers with. One part the customer will carry with them and the other part is designed to easily be attached to the rear of the cycle so it can be seen from a distance. This will be a waterproof document.

As with the new dealer plates all the details of this new process have not been totally worked out but should be available for the December issue of the Squeaky Wheel. If you are interested in knowing as soon as we do, call the OIADA office and we will put your name on the list and when we have the details we will be sure and contact you.

INSURING A DEALERSHIP BUILDING

BY: Larry Hecht, Hecht & Hecht Insurance Agency Inc.

Property insurance for a building can be purchased in many different ways. By property insurance we mean fire, theft and other perils that are associated with the ownership of a building from which a dealer conducts dealership business.

Used car dealers either operate from an owned or rented business location or they may operate from their home location. There is no one single answer as to how best to insure a dealer building. Let's investigate several possible situations.

Dealer owns. This is the easy one. You simply add it to the Garage Liability Insurance. Well maybe you can maybe you can't. Some Garage policies do not allow property insurance to be added to their policies. Or possibly the condition or age of the building will not permit it to be added. Often dealers say they own the building but what they really are saying is that they personally own the land and the building and they own the Corporation or the LLC that is the dealership. So there may be two separate entities. Should there be one or two policies? It depends and should be discussed with your insurance agent and attorney. There are pro's and con's to insuring together and apart. The broadest of coverage may be obtained by insuring separately!

Dealership rents or leases. If the dealership rents a building he should not purchase the insurance for the building. He does not own it and has no insurable interest. This is the responsibility of the building owner. However there is an exception that needs to be discussed and dealt with. Often the building lease says that the tenant must insure the building and the lease spells out, in one form or another, what that insurance should be. We do understand that the dealer may be responsible for having to pay for the insurance on the building but dealers should not buy the insurance nor have it on the dealer insurance policy. In our opinion you are asking for trouble. In many instances the building owner is not getting what he intends nor are all of his insurance needs being met.

Let's look at this a little closer. Lease agreements often say "the tenant must insure and provide proof of insurance issued through an acceptable insurance company and provide notice to the landlord if insurance is cancelled". Often too are the words "fire and extended coverage". Seldom does a lease say anything about an amount of insurance. Is that left up to the tenant to select? Fire and extended coverage is very old insurance language and very limited coverage. What about all the other perils that can cause a loss to a dealer building? What about replacement cost? These questions should not be the concern of the tenant. The building owner and his insurance agent should deal with these questions.

What the lease is trying to do is make the tenant responsible for the cost of the insurance. It is part of what a tenant pays for and often referred to as a Net Net Lease. Having this type of a lease arrangement does not require the tenant to buy the insurance. When the tenant is required to buy the insurance and the coverage is included on the Dealer Policy often the issue of Landlord Liability is ignored. The lease in another part of the document probably requires that the landlord be named as an additional insured. What this means is that the landlord is insured to the same extent that the dealer is insured. But this does not give the landlord any more coverage. What if the landlord and the tenant get into a situation where the landlord causes bodily injury or property damage to the tenant? There would be no coverage because both are insured under the same policy and one cannot collect a liability claim from ones self. If for no other reason, the landlord should want his insurance under his control and in his name as a named insured instead of only as an additional insured and loss payee. The landlord's policy should also include Lessors Risk liability to further protect his interest.

Dealer operates from home. If you are using your home or attached garage for your dealer business, there is no problem. However, if you are using an unattached garage for an office or to store your business dealer tools or cars you may have a problem. Your homeowners insurance, probably, includes an exclusion against loss or damage to a building that is not attached to the house if a loss occurs while conducting business from that building. Check with your homeowner insurance carrier if you conduct business from a separate building on your home premises. A commercial fire insurance policy may be required.

All Garage Insurance is not alike. What you had last year in your policy may not be what you have this year when you renew somewhere else. If your premium is a lot less, you need to ask, "What less did you get in coverage?" when you changed insurance. Make sure you compare what you had and what you are now getting. It is good when you can get more for less money or the same for less money, but make sure when you choose to change you know what you have purchased. Remember a new insurance carrier has 60 days after writing your new policy to agree to continue to write it for the price quoted. Many dealer policies have audit provisions. This means at the end of the year and after audit you may be required to pay additional premium for the past year based on the audit.

Hecht and Hecht Insurance Agency, Inc has been providing dealer insurance since 1989. We can be reached at 800-285-1773, in Portland 503-288-6371, or info@hechtinsur.com.

OIADA Legislative Efforts

Convention is over and it is time to move forward with all the new ideas so that we can continue to make this association better and better! We have come up with a new slogan and it is "OIADA MAKES A BETTER DEALER". We have all noticed the difference it makes to be a part of one of the best car dealer associations in America!

Starting this month we have added a new line item next to the OIADA-Political Action Contribution (PAC) which will read OIADA-Charities. By giving \$50, \$100, \$250, \$500 or more to each of these should add up to a sizable amount. The PAC is spread out to pay for lobbying expenses and to distribute to those senators and representatives that help us out from year to year. We have helped out charities in the past, but this is something that we should be doing every year. If we all come together as one, we will be able to do more. *Remember: Individually we struggle to be heard-Collectively we can't be ignored!*

Thanks for being a member and let us all come together so that we can make a difference.

READING & RESPONSE FORM
OIADA CONTINUING EDUCATION PROGRAM
November 2006

- | ARTICLE: | QUESTION |
|------------------------|---|
| Two Sides of a Coin | There are currently no laws regulating the interstate sale of vehicles marketed over the internet. To our knowledge.
<p style="text-align: right;">(1) True ____ False ____</p> |
| DMV | The new dealer plates will be issued for motorcycles only.
<p style="text-align: right;">(2) True ____ False ____</p> |
| Hecht & Hecht | If a dealer owns their own building the garage insurance they purchase will automatically cover all the property including the building.
<p style="text-align: right;">(3) True ____ False ____</p> |
| Two Sides of a Coin | When you market a vehicle online, complete the paperwork at your dealership, in compliance with state and federal law.
<p style="text-align: right;">(4) True ____ False ____</p> |
| Temporary Registration | Dealers will now be able to give a temporary registration that is designed to hang from the back and seen from a distance.
<p style="text-align: right;">(5) True ____ False ____</p> |
| Two Sides of a Coin | One of the biggest issues with internet transactions is the question of jurisdiction. If there is a lawsuit involved, the courts would need to decide which state/court has jurisdiction.
<p style="text-align: right;">(6) True ____ False ____</p> |
| PAC | The PAC funds are spread out to pay for lobbying expenses and to distribute to those senators and representatives that help us out from year to year.
<p style="text-align: right;">(7) True ____ False ____</p> |

I certify to OIADA that I have personally read these articles in Squeaky Wheel Magazine issue **Nov. 2006**
Nov. 2006

Continuing Education Packet # 11-06

My Name _____ (printed)
Dealership Name _____ Dealership # _____
Dealer License Expiration Date:(Month)_____ Year)_____
Signed: _____ Date _____

FAX TO: 503-364-7331 or mail to OIADA, 1475 Capitol St NE, Salem, Oregon 97301

Answers: (1) T, (2) F, (3) F, (4) T, (5) T, (6) T, (7) T

