UCDA FRONT LINE

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AUCTION ARBITRATION ... PART 2

We have been receiving a lot of calls lately from members who, for one reason or another, are unhappy with the way their concerns are being addressed by the auctions. Whether they are buyers or sellers, whether the auction is Adesa or Manheim, or an online auction, the problem seems to boil down to confusion over the rules that govern the relationship between buyers, sellers and dealer auctions.

All auctions have written rules, and buyers and sellers agree to abide by them in exchange for the opportunity to buy or sell under the auction's "roof" or online.

It's no surprise that sometimes a vehicle will have problems of one kind or another and the issue is dealt with through the auction's arbitration process. If the seller did not make a disclosure that the rules (or the *Motor Vehicle Dealers Act*) require, then the seller can be required to take the vehicle back and refund the price paid to the buyer.

While this might sound simple on paper, it's complicated in practice. Auction rules come from a number of sources:

1. The MVDA, which governs all Ontario dealers and is administered by OMVIC. Dealers are legally required under the wholesale sections of the MVDA to disclose as many as 21 specific items if they apply to the vehicle being sold.

   Some of the most common disclosures are daily rental, accident damage over $3,000 and out-of-province disclosure. The complete disclosure list was included in last month's issue of Front Line. It can also be found in Section 5 of the MVDA Code of Ethics regulations at https://www.ontario.ca/laws/regulation/080332#BK6

2. When dealers do business, either buying or selling, at an auction, they are also agreeing to abide by the National Auto Auction Association (NAAA) arbitration rules. Links to Manheim and Adesa rules were also included in July's Front Line. Hard copies are available from the auctions. Dealers need to be aware of the specific disclosure rules and time limits for requesting arbitration.

3. Unwritten policies that the auctions have implemented to cope with specific concerns.

The UCDA has met with senior officials of Manheim and Adesa and communicated our concerns to them. These include how long arbitrations can take and how much time a dealer can expect to pass before the auction can no longer call them with a buyer complaint.

The rules may provide for a 48 hour or 7 day window, but the auction's policies might mean that, in some circumstances, MVDA or NAAA significant disclosures about a vehicle's history or pre-existing problems could come back to the seller weeks or even months later.

For example, as we wrote in July's Front Line, the auctions are seeing a significant increase in vehicles that have been purchased at salvage auctions (like Impact or Copart). The seller is an insurance company that has deemed these vehicles as "total loss".

The purchasing dealer resells the repaired vehicle at a non-salvage auction declared only as an "accident repair". Several MVDA and NAAA required disclosures are not made by the seller and in these cases, the auction can come back to the seller after the arbitration window has closed.

The NAAA Rules also require certain damage or mechanical repairs in excess of $750 to be disclosed. A buyer has 7 days to arbitrate repairs.

However, not all repairs qualify. For example, engine, transmission, computer equipment and electrical

systems are considered to be "major components" and can be arbitrated. Reconditioning costs and repairs to items like brakes and air conditioning, to name just two, are considered wear and tear items, and are not generally arbitrable. The full list of arbitrable repair items are contained in the auction arbitration rules.

Arbitration is a complex and difficult area and the auctions have to navigate a minefield of competing concerns: legislation, clients, policy, national arbitration rules and their own business strategy.

What's more, of the thousands of vehicles that run through these auctions, the auctions get relatively few complaints. When they do, they are often due to a lack of clarity, consistency or communication of the rules.

The UCDA has reached out to Manheim and Adesa and started a dialogue with the auctions in hopes of trying to help organize a path forward that takes everyone's interests into account. The dialogue will continue.

OMVIC Does Not Always Have The Answers

Having received numerous inquiries from members, the UCDA, for some time now, has sought guidance from OMVIC on a lease/finance arrangement being offered by a leasing company. However, OMVIC seems as unsure how to proceed as the dealers who call us for advice.

The company in question provides lease and finance services to consumers, and works with dealers on a regular basis to do so.

The company is a dealer itself, registered with OMVIC like any other dealer.

Some months ago the company started putting leases together in an unconventional way that raised concerns with some members. When these members asked us for advice about it, we sought guidance from OMVIC.

We can describe the process as we understand it and let you decide whether it seems right.

A customer approaches a dealer to buy a vehicle. The customer cannot afford to buy the vehicle using their own resources, and the dealer does not provide in-house financing, so they approach the leasing company to put a deal together for the customer.

The deal ends up being done as a lease by the dealer to the consumer. The dealer signs paperwork with the leasing company and the consumer for the vehicle to be leased by the dealer to the consumer. The lease is then "assigned" by the dealer to the lease company. The company is described as the "owner" of the vehicle.

However, notwithstanding the language used, the vehicle itself is not registered in the name of the leasing company, but instead is transferred directly from the dealer's name into the name of the consumer.

The leasing company ... which remember is also a registered dealer ... takes the assignment of the lease and owns the vehicle. The company never actually takes the registration of the vehicle into their name.

Some concerns we've raised with OMVIC include:

- *The Highway Traffic Act* requires a new owner, within 6 days of becoming the owner, to register the vehicle into their name.
- The records of the Ministry of Transportation will forever show the registration history of the vehicle as going from our member dealer to the consumer, and not showing the leasing company at all, thus giving a false impression of the vehicle's true ownership history.
- The *Motor Vehicle Dealers Act, 2002*, and its Regulations, do not contemplate the transfer of ownership in a vehicle by "assignment", only by sale, and set out the requirement of the use of a compliant wholesale bill of sale between motor vehicle dealers.
- How does the dealer complete the garage register for this vehicle? If they show a "sale" to the leasing company, where is the wholesale bill of sale?
- Does the way this transaction proceeds make the dealer an "agent" of the leasing company, with all of the potential liabilities that come with that status?
- Is the dealer potentially liable to the consumer for any wrongful acts that may be done by the leasing company such as tax evasion, improper finance / lease charges or any other illegal conduct?
- Is the dealer potentially liable for insurance, product liability or other civil or criminal exposure of some kind for appearing, on paper, as the seller / lessor to the consumer?
- Is the dealer engaged in the business of leasing without realizing it and do they require insurance to cover them in that event?
- What are the potential tax implications in how this deal is structured?
- If a registered dealer leases vehicles without registering

them in its name; does the company even need a dealer's licence?

On the other hand, in the face of ongoing silence from OMVIC, it would be hard to imagine them taking action against any dealer entering into such a transaction with this leasing company or any other. But what about other authorities from tax enforcers to courts?

Until we have answers from OMVIC, we can't do more than point out these concerns and suggest to our members that they proceed with caution when doing this kind of deal.

Let's Get Real

Just when we think we've heard it all, along comes a complaint that opens our eyes to a problem we did not even realize existed.

Apparently some dealers are advertising "leather" interiors on vehicles that don't actually have real "leather".

Just to be clear here … real leather is a natural material coming, most often, from cows (or bulls).

What is NOT leather is what we call vinyl or other such synthetic products or fabrics that might look like leather or mimic in some way the texture of leather … let's call them "faux leather".

Faux leather can look and feel like the real thing, the technology has come leaps and bounds, and it has some advantages over leather, no doubt.

Beyond the technical differences, and the specifications, however, is a more down to earth difference … price. Real leather is costly and can be worth hundreds or thousands more depending on leather quality, the vehicle or its applications.

So consider, when you advertise or represent your vehicle as having a "leather interior" if it really does or if it has faux leather instead.

Most faux leather will have a brand name associated with it and you may choose to advertise that instead as in "leatherette", "V-Tex leatherette", "MB-Tex" (for Mercedes-Benz vehicles), "pleather" or "Alcantara" or so on.

We have little doubt in this age of full disclosure that OMVIC would consider that question to be a "material" (pardon the pun) fact.

Compliance Quiz

Here's this month's compliance quiz. The answers are on page 4. Good Luck!

1. A dealer wants to be able to sell its own warranty to customers as part of the services the dealer offers on the sale of a vehicle. Which of the following is true?
- (a) dealers are not allowed to sell extended warranties
- (b) the warranty must be underwritten by an Ontario insurer or the dealer must post a secured line of credit for $100,000 with OMVIC
- (c) a secured line of credit for $500,000 must be posted with OMVIC
- (d) all extended warranties must be insured or they cannot be sold by anyone
- (e) extended warranties are considered an insurance product and cannot be sold by dealers

2. A pick-up truck is considered a commercial vehicle, like cargo vans, ambulances and hearses, because the cargo area is separate from the driver and passengers. Dealer plates may be used on commercial class vehicles, but not for personal use and not to carry cargo of any kind.

True False

3. A dealer may sign a permit transfer or plate renewal for an individual or a business at a Service Ontario office as long as they have, in the proper form, a:
- (a) will
- (b) notarized affidavit
- (c) power of attorney
- (d) a driver's licence
- (e) a passport or birth certificate from the customer

4. New notice provisions under the *Repair and Storage Liens Act* came into effect on July 1st. Now, if you receive a vehicle for storage from someone other than its owner or someone with the owner's consent, you must provide proper notice to the owner that you have their vehicle, within:
- (a) 5 business days
- (b) 10 days
- (c) 15 days
- (d) 30 business days
- (e) 60 days

5. Under Canada's Anti-Spam law you cannot contact a customer by email unless you have their written permission.

True False

Safety Inspection Forms

Considering the sweeping changes recently made to Safety Inspections in Ontario, the first in decades, the transition since July 1st has been quite smooth.

Much of the credit for this has to go to the work the MTO did on the ground, in seminars and on-line, laying the foundation for the changes and giving stakeholders, like the UCDA, a long lead time to help members get their affairs in order.

This also gave the UCDA time to develop and roll out our Passenger and Light Duty Vehicle Inspection Form. Now, six weeks into the inspection form requirements, we have had nothing but positive comments.

Simple in design and use, the form has been well received, with the MVIS station keeping a copy for their files and giving one to the customer every time they do a safety on a passenger vehicle or light duty truck. It's not needed for motorcycles.

One question we have struggled with is posed by dealers who are also MVIS stations and who do their own safety inspections on their own inventory for sale.

Since we know most dealers do not actually do a safety on inventory until it is sold, in cases where the customer is buying the vehicle certified, are they the "customer" for the purpose of being provided the form?

After consulting MTO, we think the answer is "Yes".

In those cases a copy of the form should be given to the purchasing customer along with a copy of the safety certificate and the bill of sale.

In cases where a dealer uses a third party MVIS to safety their vehicles, the answer is easier, because in those cases the "customer" is clearly the dealer. The dealer is given the form and does not have to pass it on to anyone … just keep it in the deal folder.

For more information about this, or any safety related issue, feel free to call Jim Hamilton at 416-231-2600 or 1-800-268-2598 or email him at j.hamilton@ucda.org

Quiz Answers

1. **The answer is "b".** Since the dealer is offering its own warranty for sale, the warranty must be insured by a licenced Ontario insurance company OR the dealer must post with OMVIC an irrevocable $100,000 letter of credit from its financial institution.

   Third party extended warranty products sold by dealers must be insured or the warranty provider must post a $500,000 letter of credit with OMVIC.

2. **The answer is "True".** Generally, pickup trucks are considered to be "commercial class" vehicles under the *Highway Traffic Act*. Dealer plates may only be used for the purpose of sale on a commercial class vehicle.

3. **The answer is "c".** A power of attorney, authorizing the dealer to perform registration transfers on behalf of the registered owner or lessee can be used to eliminate the need for the vehicle owner to visit a Service Ontario office each time.

4. **The answer is "c".** The previous requirement to provide notice within 60 days had led to many instances of abuse by storers looking to rack up huge storage fees.

5. **The answer is "False".** Dealers are permitted to contact anyone with whom they have a "commercial relationship" for up to two years after that relationship has ended.

   For example, a dealer could contact a customer, to whom they sold a vehicle, for two years after the sale. If the customer had come to the dealer for service or repairs, the two year period would run from the date of the latest work order. A dealer leasing a vehicle can contact a customer leasing a vehicle for two years following the termination of the lease.

   In all cases, dealers must give customers the option of not receiving emails.

Upcoming Certification Course Classes

Here's a list of scheduled **OMVIC certification classes** through to the end of November.

Monday, August 29th	Wednesday, October 12th
Tuesday, August 30th	Tuesday, October 18th
Tuesday, September 13th	Friday, October 21st
Wednesday, September 21st	Thursday, November 3rd
Friday, September 23rd	Tuesday, November 8th
Tuesday, October 4th	Wednesday, November 23rd
Thursday, October 6th … Ottawa – Hilton Garden Inn	Friday, November 25th

Classes are taught by the UCDA's Dave Aelick and held at Wye Management's training facility, 55 Winges Road, Unit 1, in Woodbridge unless otherwise noted.

Wye Management – Basic Sales Techniques Class

Three Wye Management Basic Sales Training courses have been scheduled as well. Students taking the in-class Certification course, receive a discounted rate for the sales training course.

These courses are also offered at Wye Management's training facility.

Tuesday, September 6th
Monday, October 3rd
Friday, November 4th

Contact Sachin at s.choudhary@ucda.org, to register for any of these classes.

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