

New Jersey Automobile Industry Trends and Topics

CASE LAW AND LEGISLATION THAT CAN IMPACT YOUR DEALERSHIP

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RECENT CASE LAW CONCERNING THE CONSUMER FRAUD ACT

A number of lawyers that specialize in suing car dealerships typically allege violations of the NJ Consumer Fraud Act and proceed as if the mere allegations entitle their clients to three times their damages and attorney's fees. The cases below make clear that not all courts agree.

Appellate court affirms decision compelling dealer to return vehicle purchase price to consumer but refusing to award consumer treble damages or attorney's fees under consumer fraud act:

In *Williams v Wilson Family Auto Center*, the consumer argued the dealer failed to make required disclosures about an alleged salvage history of the vehicle and that a bi-weekly installment payment plan violated the Consumer Fraud Act, entitling her to three times compensatory damages and attorney's fees.

The consumer's claims arose out of her "as is" purchase of a vehicle and an added 50/50 power churning warranty. The suit was filed after a mechanic was unable to repair the car's stalling and leaking oil, and the plaintiff returned the car to the defendants and removed its tags.

The court found that there was no unlawful conduct under the act, nor was there any loss caused by the conduct because: (1) although the dealer purchased the vehicle from a salvage company, there was no evidence that it had a salvage history and (2) although the administrative code makes it unlawful to advertise the vehicle for sale for installment payments on any basis other than monthly, the act does not make it illegal to enter into such a contract, only to advertise it. The court also found that the retail consumer failed to properly allege a warranty violation where the car was purchased "as is" and she then bought an extended warranty.

Notwithstanding this opinion, to reduce the possibility of future lawsuits brought by retail consumers and to limit potential damages, dealers are best protected by disclosing as much information as possible about a used car's history to the extent known by the dealer.

Appellate court affirms judgment for dealer when consumer failed to deliver clear title on a trade-in vehicle: In *Mall Chevrolet, Inc. v Robert Collier*, the appellate court rejected the consumer's claims that the dealer committed numerous Consumer Fraud Act violations based on the events surrounding a vehicle exchange agreement because it determined the exchange was not a sale within the meaning of the act and even if it was a sale there were no ascertainable damages suffered by the consumer.

receive back the 2010 Avalanche and have his original car loan reinstated. The agreement also reserved the dealer's right to sue the defendant for any damages.

NEW JERSEY POLITICAL LANDSCAPE

In February, Governor Chris Christie proposed a \$34.5 billion budget for fiscal year 2015, which is \$1.6 billion greater than he proposed in fiscal year 2014. As revenue numbers have come in, the state now anticipates a \$1.7 billion revenue shortfall in fiscal year 2015.

The New Jersey constitution requires that the legislature must approve and the governor must sign a balanced budget by June 30. With such a large shortfall, the next few weeks will be crucial to finding a solution, and much legislative activity is expected before the legislature breaks for the summer.

LEGISLATIVE BILLS THAT COULD IMPACT YOUR DEALERSHIP

Bill bans employers from basing hiring decision on an applicant's employment status: On June 16, 2014, the General Assembly passed bill A2910/S1440 (53-22-3) authorizing the commissioner of labor and workforce development to collect civil penalties from employers that base hiring decisions on an applicant's employment status.

The bill does not prohibit employers from inquiring about the circumstances surrounding an applicant's unemployment, consideration to possession of certain credentials or experience level of applicants or limiting the candidacy for a job to those already working for the employer. Violators are subject to civil penalties of \$1,000 for the first violation, \$5,000 for the second and \$10,000 for each additional violation.

The bill had previously passed the Senate (22-14) on May 12, 2014, in a different form. The Assembly version of the bill is ready for a vote in the Senate, though it has not yet been scheduled for consideration.

"Ban the Box" Bill Advances, Limits Employer's Interview Questions Concerning Criminal Records: Senate bill S2124, commonly referred to as "ban the box" legislation, would prohibit



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The consumer had appealed from a judgment awarding Mall Chevrolet \$15,000 in damages based on the court's finding that he breached his contract to purchase a 2012 Chevrolet Avalanche and trade in his 2010 Chevrolet Avalanche. The retail consumer failed to deliver clear title to the 2010 Avalanche, which he jointly owned with his then-wife, while the two were in the midst of a divorce.

When he could not deliver title to his vehicle, the dealer and consumer entered into a vehicle exchange agreement requiring the consumer to return the 2012 Avalanche,

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employers from asking job applicants about their criminal background until after the first interview. The amended version of the bill was dramatically improved from earlier versions, which required employers to complete a form explaining why an applicant with a criminal record was not hired. It also would have barred employers from inquiring about an applicant's criminal record until after there was a conditional offer of employment.

The amended bill would only apply to employers with 15 or more employees. The bill will not subject employers to civil lawsuits as it clarifies that the bill would not create a civil cause of action.

The legislation would allow employers to inquire about an applicant's record after the first interview, although there are limitations, despite an employer's well founded safety and financial concerns. The bill establishes a \$1,000 penalty for the first violation, \$5,000 for the second and \$10,000 for each subsequent violation, collectible by the commissioner of labor and workforce development.

Bills authorizing auto manufacturers to sell or purchase zero emission vehicles directly to and from retail consumers, bypassing franchise dealerships and giving rights to dealerships against manufacturers: The Assembly passed A3216, commonly referred to as the Tesla bill, on June 16. It allows for

direct sales of motor vehicles to and from consumers of zero emission vehicles ("EVs") by manufacturers. The bill additionally requires manufacturers and franchisees to annually report to the Division of Taxation the number of EVs sold in state each calendar year because the vehicles are exempt from sales and use tax.

In 2012, the Motor Vehicle Commission gave two conditional dealer licenses to Tesla, an EV manufacturer, to operate at multiple locations knowing that those conditional licenses were in conflict with the New Jersey Franchise Practices Act as it mandates new cars can only be sold at franchise dealerships. In April of this year, the MVC revoked those conditional licenses and adopted stringent regulations barring Tesla's business model in the name of consumer protection.

Tesla filed suit in court to reverse the MVC's actions and this legislation was also introduced. On the same day that the Tesla legislation passed the assembly, and in an apparent attempt to mollify franchise dealers because the bill allows Tesla and other manufacturers to compete with them for EV sales, a second bill benefiting dealers passed the assembly.

That bill, A-2035, amends the Franchise Practices Act to include a provision that would allow auto dealers to collect triple compensatory damages and attorneys if they win a lawsuit against a manufacturer. Treble damages have been generally reserved for

consumer lawsuits against corporations, not business-to-business lawsuits. Passage of this bill would set a precedent in New Jersey.

Both bills now go to the senate for consideration. The Tesla bill, although primarily geared towards new car sales, could have far ranging implications for a growing market segment of used car sales as technology improves and price becomes more competitive. Recent trends suggest sales of EV vehicles are increasing as hybrid sales decrease. Also, the bill, if enacted, could potentially impact online sales. The status and potential impacts of these bills on used car sales is still evolving. 🚗

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MARKET WATCH

How Many Miles Until a Car Loses All Value?

A UNIQUE STUDY FROM MOJOMOTORS

Multiple studies have been done on the reliability of various vehicles and car brands. MojoMotors.com recently conducted a unique study in which they looked at how much mileage a vehicle could accumulate before it becomes worthless.

The company analyzed over 500,000 cars, model years 1995 to 2014 listed on MojoMotors.com to determine the average selling price depending on a vehicle's mileage. Using a linear regression model, they calculated the dollars of value lost as mileage increased and, ultimately, the number of miles until a car lost all value.

According to the company's blog, less reliable brands will lose value quicker since they have a greater chance of breaking down with fewer miles on the odometer. However, the blog points out, "Just because a car is considered valueless beyond a certain number of miles in this study doesn't mean it won't drive for another 100,000 miles."

"The public perceives Toyota as one of the most reliable automakers and our study concurs with this perception," said MojoMotors. Toyota topped the list, rated at 210,705 miles until worthless.

Honda came in next at 209,001 miles. The site points to Honda's versatility: "Honda excels at pretty much everything."

Straggling behind the two leaders, come Ford (198,409), Dodge (198,266) and Chevrolet (195,754). Honda and Toyota boast a 10,000 mile lead over Ford alone. According to the site, much of Dodge's ranking comes from the strength of Ram pickups.

Rounding out the top 10 are Nissan (195,593), Subaru (189,370), GMC (188,584), Acura (178,947) and Mazda (177,729).

For the complete blog post, visit www.mojomotors.com. 🚗



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