



NJ AUTO INDUSTRY ALERT

AUGUST 4, 2014

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NEW JERSEY AUTOMOBILE INDUSTRY TRENDS AND TOPICS: NEW REGULATIONS, CASE LAW, AND RECENT ENFORCEMENT ACTIVITY THAT CAN IMPACT YOUR DEALERSHIP

[Eckert Seamans Cherin & Mellott, LLC](#) is pleased to partner with the [New Jersey Independent Auto Dealers Association](#) to provide an update to you on a number of important and trending issues affecting New Jersey automobile retailers. Eckert Seamans is a national law firm with over 350 attorneys located in offices throughout the eastern United States. The needs of our clients involve us in virtually every area of the law and most industries. The NJIADA is an organization designed to give independent dealers a unified voice and to provide them with information about how to operate successfully in New Jersey.

NEW REGULATIONS

On July 21, 2014, the New Jersey Motor Vehicle Commission (MVC) approved publication of regulations authorizing a program for optional limited use of electronic titles. The MVC will allow for electronic lien titling for new and used vehicles independent of and in addition to traditional paper certificates of title. *Dealers will benefit because the use of electronic liens: (1) may reduce the amount of time a customer has to wait to receive a title in situations when a bank or finance company lost or destroyed the title; and (2) may reduce fraud by making it harder to launder a NJ Certificate of Title.* The new rules establish the form and use of the optional electronic titles and manner of notation, creation, satisfaction and transfer of security interests and requirements for third party providers and participating lien holders. We anticipate the new regulations will most likely be published in August and the procedures will probably not take place for a number of months.

RECENT CASE LAW

Appellate Court says arbitration provision in a “Retail Buyer’s Order form” used by many dealerships too confusing to be valid

In *Rotondi v. Dibre Auto Group, LLC, d/b/a North Plainfield Nissan* a New Jersey Appellate Court found a retail buyer’s order form used by many dealers contains an unenforceable provision. The Court found it too confusing for a retail consumer to agree to: (1) arbitrate all claims relating to their purchase; and (2) waive their ability to represent or participate in a class action in arbitration. This finding was made despite the fact that the provisions are not mutually exclusive and were written in plain language. The opinion was not officially published and therefore it is not binding precedent. A number of commentators view the decision as inconsistent with reported federal and state decisions holding similar provisions valid, binding and enforceable (and may be overturned on appeal). Nonetheless, the decision highlights that



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dealers should conduct annual or periodic reviews of their forms to insure that they comport with all appropriate legal standards.

RECENT ENFORCEMENT ACTIVITY BY THE ATTORNEY GENERAL

As noted in our November 2013 and March 2014 NJ Auto Industry Alerts, the New Jersey Office of the Attorney General, Division of Consumer Affairs was aggressively following up on consumer complaints against Dealers and looking for violations within the industry in situations where no complaints had been filed. Recently, the Division of Consumer Affairs obtained a *\$1.8 million settlement, plus consumer restitution, from eight related new car dealerships and their owner*. The settlement resolved complaints of alleged deceptive tactics including failure to disclose existing mechanical defects or past damage to used cars; charging for supplemental warranties and other "after-sale items" without customers' consent, and failing to honor the negotiated or advertised prices for vehicles.

Other complaints included alleged failure by the dealerships to refund deposits in a timely manner after consumers either canceled the sales or were denied financing advertising vehicles without including vehicle identification numbers, and the purported failure to provide consumers with motor vehicle titles and registrations in a timely manner. In light of these types of actions, Dealers, even those that are vigilant in trying to adhere to the myriad of regulations that govern their business activity, should annually take steps to ensure that their employees are properly trained and following the law. Failure to review standard operating practices can be expensive in the long run.

By: Anthony Bush and Grace S. Power of Eckert Seamans Cherin & Mellott, LLC

Anthony Bush is a Member in Eckert Seamans' Trenton Office with over two decades of experience with automotive issues. He counsels a wide spectrum of clients including automobile dealerships, operators of wholesale motor vehicle auctions, auto parts distributors, finance companies, and auto body repair facilities. Tony and Eckert Seamans have expertise representing dealers in consumer and corporate litigation, land use matters, business counseling, employment matters, franchise disputes, before the New Jersey Motor Vehicle Commission and New Jersey Department of Law and Public Safety, Division of Consumer Affairs, and in legislative and regulatory issues affecting the automotive industry. Grace Strom Power is an Associate in the Trenton Office and has over 10 years of government affairs experience in both the public and private sectors, advising and representing clients before the New Jersey State Legislature, Office of the Governor, state and local agencies, commissions and regulatory authorities.

For more information about the NJIADA, contact Paula Frendel at njiada.pfrendel@gmail.com

For more information about any of the issues above, or any other legal issues impacting your dealership, contact [Tony Bush](mailto:abush@eckertseamans.com) at (609) 989-5056 or abush@eckertseamans.com or [Grace S. Power](mailto:gpower@eckertseamans.com) at (609) 989-5008 or gpower@eckertseamans.com.

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