1965 Pontiac GTO Convertible

December 2015

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Calendar of Events and Education

All classes start promptly at 8:30 AM and end at 4:30 PM. Classes are usually held every other week on Friday’s. Call the office for the latest updates.

Calendar & Schedule

Dec 18  Wilsonville Holiday Inn, GAP Insurance Training. 9am and 11 am, call to schedule class.
Approx 1 hr class time.  North Wilsonville I-5 Exit 286, on West side of Freeway. 25425 SW 95th Ave, Wilsonville, OR 97070

Jan 8  Wilsonville Holiday Inn, 8:30am to 4:30 pm. North Wilsonville I-5 Exit 286, on West side of Freeway. 25425 SW 95th Ave, Wilsonville, OR 97070

Jan 9-10  National BPH Boot Camp, Charlotte, NC Call 832-767-4759

Jan 15  Appraiser training 9am to 1 pm, Wilsonville Holiday Inn, 8:30am to 4:30 pm. North Wilsonville I-5 Exit 286, on West side of Freeway. 25425 SW 95th Ave, Wilsonville, OR 97070

Feb 12  Wilsonville Holiday Inn, 8:30am to 4:30 pm. North Wilsonville I-5 Exit 286, on West side of Freeway. 25425 SW 95th Ave, Wilsonville, OR 97070

April 10-12 2016 Consumer Financial Services Conference. Baltimore Marriott Waterfront Hotel.
Call 877-212-5752

April 10-11 Special One-Day Program with Merchant Cash Advance and Small Business Lending sessions.
Also at 2016 Consumer Financial Services Conference. Baltimore Marriott Waterfront Hotel.
Call 877-212-5752

May 24-26 National BHPH Conference in Las Vegas. Call 832-767-4759

Classes are usually held every other week on Friday’s. Call the office for the latest updates.
Here is your Link to the December issue for Motor Carrier News:

News in the current issue:
Unified Carrier Registration fees for 2016
Moving oversize loads during adverse weather conditions
Weight-restricted bridges on state routes in Oregon
More services coming to OregonTruckingOnline for Over-Dimension permit holders
Holiday oversize load restrictions
CVSA is exploring a new level VIII roadside inspection
Know before you go
Are you prepared for wintry conditions
Minimum chain requirements
Civil and field enforcement actions from June through September 2015

Please pass this on to others that may be interested in receiving the Quarterly Motor Carrier News, or they can sign up to receive an e-mail when a new issue of the Motor Carrier News is published.

1965 GTO Already sold:
Same Portland, Oregon owner for 38 years. First time this GTO had been for sale since 1977.
If you know GTOs then you know how rare a REAL tri-power, 4 speed, factory red convertible is.
This is that car and it comes with the original Broadcast Sheet and PHS documentation which shows several rare options. The original 389 is long gone and was replaced with a 1971 455 back in the mid-1970s. It has been completely rebuilt and still wears the correct 389 tri-power set-up. M22 4 speed transmission, 3.90 positracktion rear-end, power steering, dual “splitter” exhaust, rally gauges with tachometer, simulated wood wheel, remote left mirror, original AM radio, power rear antenna, power convertible top, console with vacuum gauge, nice original black upholstery, newer black convertible top, correct Rally I wheels (5), original jack and spare wheel, new Coker redline tires, rock-solid body with nice fit, detailed undercarriage with new gas tank, highly detailed engine bay with much new, beautiful chrome, glass and trim. One older repaint in the original “Montero Red” exterior color in base/clear which we recently color sanded, cut and polished. Runs, drives and performs outstanding. Books, manuals and owner history included. Sold by OVDA member Northwest House of Hardtops.
"Vehicles 14 Years & Up Soar
"Cars and light trucks 14 years and older will be the fastest growing vehicle age group in the U.S. between now and 2020. Lang Marketing projects more than a 16% surge in light vehicles at least 14 years old during a time when the total light vehicle population will increase less than one-third this amount."

"Lang Marketing projects approximately 15 million additional vehicles 14 years and up on U.S. roads by 2020, changing the mix of aftermarket products installed on cars and light trucks in the U.S. and infusing the light vehicle aftermarket with much of its growth."

Jim Lang

Ten years ago (2005) cars and light trucks 14 years and older comprised less than 21% of light vehicles on U.S. roads.

With the unprecedented downturn in new car and light truck sales across the U.S. beginning in 2008, the age profile of vehicles in operation (VIO) began to rapidly shift.

Americans Hold On To Vehicles

As new vehicle sales in the U.S. plunged between 2008 and 2011, Americans held on to their vehicles, rather than replacing them.

As a result, the population of vehicles 5 years and younger imploded as the older vehicle population surged.

Between 2007 and 2013, the number of cars and light trucks 5 years and younger fell more than 17 million.

Consequently, their share of vehicles in operation (VIO) plunged from approximately one-third to only one-quarter of cars and light trucks in the U.S., over this six-year span.

At the same time, vehicles 14 years and older surged in number.

During 2005, there were approximately 51 million cars and light trucks 14 years and up, comprising over 20% of the total VIO.

By 2013, this older vehicle group (14 years and up) numbered more than 72 million and held 29% share of vehicles in the U.S. Vehicles at least 14 years old accounted for more than 78 million cars and light trucks by 2015, nearly 31% of vehicles in operation.

Lang Marketing projects vehicles at least 14 years old will top 91 million by mid-year 2020 and comprise over 34% of total light vehicles in the U.S.

This means between now and 2020, vehicles 14 years and up will be the fastest growing vehicle age group in the U.S. population mix, accounting for most of the VIO increase.

Domestic nameplates will account for a majority of this fast-growing older vehicle population.

Lang Marketing projects that by 2017 domestic cars and light trucks will represent over 67% of light vehicles 14 years and up, much greater than their 54% share of all vehicles in operation at that time.

Lang Marketing expects foreign nameplates will expand their share of vehicles 14 years and up. However, domestic nameplates will still account for a much larger portion of this older vehicle age group than they will of all vehicles in operation at mid-year 2020, approximately 63% versus 50%.

The growing number of vehicles 14 years and older will change the sales mix of light vehicle products over the next five years. More products will be replaced on older vehicles (the result of an extra replacement cycle), particularly among cars and light trucks 14 years and up.

Winning Products:

Product categories which will benefit most from the growing number of vehicles 14 years and older in operation (as well as the increasing miles these vehicles are driven) include exhaust system parts, water pumps, fuel pumps, brake parts, chassis & suspension parts, ignition parts, belts and hoses, as well as engine components, among others.

Continued on next page
TESLA Warned In California

SACRAMENTO, Calif. — Two years after the (New Car Dealer) state dealer association began notifying the Department of Motor Vehicles (DMV) of numerous state and federal advertising violations by Tesla Motors Inc., the state agency issued a warning to electric vehicle makers that it will begin enforcing those laws and will refer cases it brings against marketers to local, state, and federal prosecutors.

The warning was contained in a memorandum issued this month by Timothy Corcoran, the DMV’s occupational licensing compliance unit chief. Although Tesla wasn't named in the notice, the agency warned that advertising only a “‘net price’ for the purchase of electric vehicles (EVs)” violated multiple California advertising laws and Regulation Z, a federal rule that carries a fine of up to $1,000 per individual action, among other penalties. Violations of the state’s advertising laws carry a fine of up to $2,500 per person exposed to the false advertisement.

“…Manufacturers of electronic vehicles are advertising prices, which are not the manufacturers’ suggested retail price (MSRP) or cash price, but rather the ‘net price’ after deducting a potential federal tax credit, California rebate and other ‘savings,’” the memo states, in part.

In September 2013, the California New Car Dealers Association (CNCDA) requested that the DMV begin investigating the way Tesla marketed Model S leases on its website. It charged that such advertisements included the availability of incentives, gas savings, and tax savings in the final payment quotes for customers. The ads even claimed the true cost of owning a Model S — with a base price of $71,070 — was $114 per month.

“While we are gratified that the DMV has issued this blanket advertising warning, we are still waiting for decisive and public action by the DMV against Tesla for advertising that seriously misleads its customers and the public going back at least two years,” stated CNCDA President Brian Maas in a press release.

The association said it believes the DMV’s recent memo may be an indirect way of addressing Tesla Motors’ “referral program,” which the EV maker launched this past July. The promotion, which runs through the end of this month, promises to give Model S buyers a $1,000 discount if they were referred by a current owner, who would also be rewarded with a $1,000 discount on their next purchase or service visit.

In late August, the CNCDA called on the DMV to investigate Tesla’s referral program. The agency responded in a Sept. 29 letter to Tesla, which warned the EV maker that its promotion was in violation of multiple laws, including offering “bird dog fees.”

“Whether or not the referral program referred to above remains published on Tesla’s internet website at this time, this is a written warning regarding future referral program participation,” read the DMV’s September letter. “Any repetition of the violations may result in an administrative accusation being filed against your corporation’s manufacturer and dealer licenses, and referral of the matter to prosecutors without further warning.”


OVDA Note: Many of the points covered in the above article about Tesla are also true in Oregon.
FREE GAP WAIVER Program
Training for dealers and staff

LIMITED EXCLUSIONS
ALL-RISK PROTECTION
DEDUCTIBLES COVERED
BENEFITS UP TO $50,000
WEB-BASED ENVIRONMENT
GAP PLUS PROGRAM OPTION
PROTECTION IS FULLY INSURED
SIMPLIFIED RATING STRUCTURE
VEHICLES VALUED UP TO $100,000
AVAILABLE FOR NEW AND USED VEHICLES

Classes scheduled based on need

JANUARY 1, 2016 YOU NO LONGER NEED LICENSING TO SELL GAP

WHAT DOES THAT MEAN FOR YOUR $?
JOIN US AT OUR NEXT CLASS TO LEARN WHAT IS A GAP WAIVER?
DOJ COMPLIANCE .....AND MORE

CONTACT J CLARK OR MONTY KING TO SIGN UP OR EMAIL OVDA@ORDEALERS.COM

STANDARD PROGRAM HAS NO MSRP OR ACV RESTRICTIONS

For Sign Up Call
BJ Clark of Dealer Net Solutions, Sponsor
503-810-1181 or
Monty King at OVDA 503-399-9199
KICK OFF 2016 WITH TWO BIG SALES

JANUARY 13-14

Go to daanw.com and daaseattle.com to view our 2016 promotional sale schedules
QUESTION FROM A DEALER 1 – Question: A dealer-only auction I bought cars at provided the title and other documents, but did not provide a Bill of Sale. I thought I needed that on every transaction of buying a vehicle?

Answer: Generally you do. But, at an auction, where you are buying from an agent of the seller (public or dealer only auctions) as long as you get an invoice or other document describing the transaction with all the same information as a BOS, you are OK.

QUESTION FROM A DEALER 2 – Question: If I bought a vehicle in a California Dealer Auction, and later sold it back to California, with no titling in Oregon, How do I get a letter from Oregon DMV saying there was no Oregon title issued? (this is required from California DMV on this resale by a dealer).

Answer: You need a form 735-7226, on the form mark ‘other’ And in the remarks section, say something like: “We ask if this vehicle has ever been titled in Oregon, and we need a letter stating that fact to our dealership so we can provide that to California DMV.”

QUESTION FROM A DEALER 3 - Question: I have a quick question. I haven’t sold a vehicle with an inoperable odometer in some time, but I got one on trade and will be selling it retail tomorrow. I have already disclosed the fact that it was inoperative to the customer of course. And I will do so in writing on both the odometer disclosure and the as-is agreement, and will have them sign an acknowledgement of the fact that they are paying less for the car because it has an inoperable odometer. Both the title app and the odometer disclosure will have the NOT ACTUAL mileage boxes checked. My question is ‘what do I write as far as digits go on the Oregon title app’? It is a ’00 model with a digital odometer currently showing nothing on it.

Answer: On this one, I would just NOT put any numbers in the odometer box. It is older than 9 years old, so Oregon DMV does not require any odometer reading on it when the title changes.

The disclosures should be informative that the odometer is not showing any odometer reading. Make sure you take a photo of the actual odometer showing no numbers, (with your phone?) and have them sign that also, for your deal jacket.

Also, I would have the customer say in writing they are taking responsibility for repairing the odometer and speedometer.

QUESTION FROM A DEALER 4 - Question: I have a question for you! We sold a vehicle consignment to a dealer and gave the dealer our consignment disclosure. We also have a Buyers Order that is written up that shows that our dealership sold the car to the buying dealer. However on the title itself it shows our consignor (our customer) owner on title selling directly to the dealer without our dealership on the title as an interim owner.

The bank will not take this because they say they need a Bill of Sale from the consignor to the buying dealer on an official buyers order since the title shows this. Does this sound right? Am I doing something wrong?

Do we have to go back to our customer and have a Bill of Sale filled out from our consignor to the buying dealer. Is this how it always should be? Do we have to have a Bill of Sale from the person we are consigning the vehicle for?

Answer: It would make it easier to have a bill of sale ready to go from the consignor to the buyer of the consignment. You could do this with a regular POA (not a secure one).

The title does go from the consignor to the buyer without having the selling dealer on it as an interim owner. DMV is quite happy with just providing a copy of the purchase order as proof. (Be sure on the 226 to mark the ‘Dealer Trans’ box and write ‘Consignment Sales’ in the Remarks box near the top of the form).

The bank is doing this as part of their policies, not because of policies required by the state of Oregon.
National Quote

... concerning proposed bills on recalls, Wes Lutz, chairman of NADA’s Government Relations Committee (New Car dealer national organization), urged dealers to ask their members of Congress not to cosponsor H.R. 2198 and H.R. 1181, saying the legislation “misses the mark by requiring recalled vehicles be grounded instead of actually fixed.”

Lutz pointed out there are 46 million vehicles on the road today under open recall, but many of the defects have nothing to do with vehicle safety.

“Imagine what would happen if dealers could only offer a fraction for customer trade-ins, or couldn’t accept them at all. This could be the reality if the Blumenthal amendment is passed,” said Lutz, a dealer in Jackson, Mich. “Dealers support a 100 percent recall completion rate. Congress should focus on legislation that helps increase recall completion rates.”

OVDA/OPSA note: Used car dealers, over 120,000 strong, also should oppose those two House Resolutions in Congress (not the state legislature in Salem) and let your US Senators (Wyden and Merkely), and our 5 Congresspersons know also.

Question from a Dealer 5—Question: Do I have to declare in my advertisements if a vehicle has been a rental car previously?

Answer: No. While it would be good to inform the customer of the rental car history, you don’t have to make that kind of declaration. You also cannot say that because it was a rental car, it had excellent upkeep that makes it more valuable to the buyer.

Question from a Dealer 6—Question: If I put a person on my dealer license as a ‘Member/Manager’, who is not a member of our LLC but manages our business and staff, can they do the continuing education for the owners??

Answer: No. There was some confusion at DMV about this but that has been resolved, and there was an Attorney General opinion on how that cannot be true, or accepted on Oregon dealer licenses (certificates). If your dealership put somebody on as a ‘Member/Manager’ and the person is not a member of your LLC (see your paperwork you had drafted up with your attorney or if you registered with the Secretary of State who is listed on the business registry), it might be permissible for DMV to have you redo your 12 hours of continuing education or get your license suspended or cancelled. Phone calls and letters from the Oregon DMV Business Regulation office on this subject should be taken seriously.

Bend Council Sends Gas Tax to Voters

The Bend City Council approved a resolution Wednesday to put a fuel tax to voters.

The 5 cent per gallon local tax would fund an $80 million backlog of necessary street maintenance and repairs.

The gas tax resolution was supported by five of seven city councilors. The measure will go before voters in a March 2016 special election.

Councilors discussed the option of including the measure on the ballot during the May primary, which would be less expensive for the city than a special election. But the councilors who support the measure said that street maintenance needs are urgent enough that the fuel tax warrants a special election.

If voters approve the measure, Bend would be among 22 Oregon cities that impose a gas tax.
OREGON DEALER ADVISORY COMMITTEE MEETS

Once again, the industry met at DMV headquarters in Salem to help 'advise' Oregon’s DMV Administrator on their activities. Monty King, President of OVDA opened up the meeting with comments directed at Tom McClellan, DMV Administrator (works for the Department of Transportation whose leader was just urged to be fired by the governor for lying to the legislature about 2015 legislation). Monty King’s comments were (as reported in the official minutes)

Monty King said he would like to see some changes. He wants data from DMV on Business Regulation results concerning investigations and compliance reviews. Monty also requested periodic press releases and public service announcements relating to investigative activities and successes in imposing penalties when people are caught violating dealer statutes and rules.

Monty distributed information that showed illegal dealer citations for the last three (should have been 14) years. He focused on the data showing southern Oregon only had 3 citations in 14 years. He said DMV needed to have full-time illegal car dealer investigators.

DEQ issues were reviewed, with three DEQ staff attending the meeting and talking about what is coming in the future for car dealers, both franchise and independent dealers.

DEQ noted they have about 70 dealers who have the DEQ testing van go to their dealership lots to do the testing on vehicles in dealer stock. There are also self service kiosks at some DEQ stations where people can do their own testing.

The problems with DEQ rounding odometer records upwards should be going away by next spring, as they will try to put in actual odometer readings, not the rounded up figures. IN answer to one dealer comment about not putting any odometer readings in the record, DEQ noted they are required to have the readings by the federal EPA.

Gary Sargent, newly appointed motorcycle dealer representative replacing OPSA member Jimmy Smith of Salem, asked when vehicles are exempt from DEQ, and the answer is 1975, but there will be testing for diesel vehicles coming in the future.

DMV was asked by members of the committee to announce though press releases and notices at the DMV offices the hiring of new investigators for Eugene and Southern Oregon. There are now over 2000 dealers, and there are 104 transporters, 300 appraisers and 199 dismantlers. Rob McCracken, investigator, asked that dealers be made aware of people copying dealer web sites in order to try to fraudulently get payment from the dealer’s customers.

DMV is starting to image title and registration forms. The old equipment is worn out and cannot be repaired. John Brueggeman from Motor Vehicle Software gave an update on what they are doing, and said the federal government NHTSA rule that there be a wet signature on titles for odometer purposes still remains a major stumbling block. Federal legislation is being looked at to help dealers with that requirement. The effort is to get an electronic signature to replace a wet signature on some transactions.

DMV will check local DMV offices to see if they are posting information from Business Regulation (about who has to be a dealer, etc.).

Monty King
President
The CARLAWYER® By Thomas B. Hudson and Nicole Frush Munro

Hello again! This month, we feature developments from the Consumer Financial Protection Bureau and the Federal Trade Commission we thought might interest those in the auto sales, finance or leasing business. We also recap some of the auto sale and financing lawsuits we follow each month. Remember – we aren’t reporting every recent legal development, only those we think might be particularly important or interesting to industry.

Note that this column does not offer legal advice. Always check with your own lawyer to learn how what we report might apply to you, or if you have questions.

This Month’s CARLAWYER® Compliance Tips

1) Do your deal jackets look like rats’ nests? Believe it or not, imposing order on the contents of your deal jackets will improve your compliance and reduce risks. If you have a checklist for each document you require for a deal jacket and every deal jacket has a specific place for each required document, you will be more likely to have complete files. Also, if there is no specific place for a document that someone’s trying to put into a deal jacket, that will raise the issue of whether the document is one that actually needs to be retained in the jacket. The result will be tighter compliance all the way around.

2) Did you know that the federal disclosure rules are very specific about how dealers handle “deferred down payments” (also called “pickup payments”)? Many dealers who accept deferred down payments do so by using so-called “side notes” or postdated checks. These arrangements usually don’t comply with the federal rules, raise other unpleasant legal issues and leave dealers on the hook for class action liability risks. If your lawyer hasn’t blessed your pickup payment disclosures and practices, tack that chore onto the end of your to-do list.

Federal Developments

Reforming the CFPB? On November 18, the U.S. House of Representatives approved H.R. 1737, titled the “Reforming CFPB Indirect Auto Finance Act,” by a vote of 332-96. The bill, supported by all 244 Republicans and 88 of the 184 Democrats voting, nullifies CFPB Bulletin 2013-02, dealing with dealer participation, and requires the CFPB to satisfy certain procedural steps before issuing future guidance related to indirect auto financing.

House Committee Fires a Shot Over the CFPB’s Bow. On November 24, the U.S. House Financial Services Committee chaired by Rep. Jeb Hensarling of Texas, released a report titled, “Unsafe at Any Bureaucracy: CFPB Junk Science and Indirect Auto Lending.” The 54-page report is a broadside attack on the Bureau’s attempt to regulate auto financing practices of dealers exempt from its jurisdiction.

CFPB Targets Auto Finance Companies’ Collection Practices. On October 1, the CFPB announced a consent order with Westlake Services, LLC, an indirect auto finance company, and Wilshire Consumer Credit, LLC, a wholly-owned subsidiary of Westlake that offers and services auto title loans. The CFPB alleged that the companies used illegal debt collection tactics, changed due dates or extended the terms of title loans without the customers’ consent while misrepresenting to customers that the changes would be beneficial, and failed to clearly disclose the APRs of title loans in their advertisements. The CFPB also claimed that the companies provided false caller ID information, falsely threatened to refer customers for investigation or criminal prosecution, falsely implied that customers’ repossessed vehicles would be returned if the borrower made a partial payment, disclosed customers’ loan information to third parties, and paid a third-party repossession company to make debt collection calls to customers when the defendants allegedly had no intention to repossess the customers’ vehicles. Under the consent order, the companies must pay $44.1 million to customers and $4.25 million as a civil penalty, and must end deceptive debt collection practices, protect customers’ private information, end unlawful advertisements, and give customers truthful information about their extensions of credit.

Goodbye, Arbitration Agreements. To no one’s surprise, on October 7th, the CFPB announced that it is considering proposing rules to ban consumer financial companies from using the sorts of arbitration agreements currently employed by creditors to reduce the risk of class action lawsuits. The Dodd-Frank Act required the CFPB to study the use of arbitration clauses in consumer financial markets and gave it the power to issue regulations to protect consumers consistent with the study’s findings. The CFPB claims that its study - released in March - shows that arbitration clauses restrict consumers’ relief in disputes with financial service providers by allowing companies to block class action lawsuits and that, in the consumer finance markets studied (notably not including vehicle lease and financing), very few consumers seek individual relief through arbitration or the federal courts, while millions of consumers are eligible for relief each year through group settlements. The proposals would not ban arbitration clauses altogether, but the clauses would have to say explicitly that they do not apply to cases filed as class actions unless and until class certification is denied by the court or the class claims are dismissed in court. The proposals would also require that companies choosing to use arbitration clauses for individual disputes submit to the CFPB the claims filed and awards issued. The Bureau is considering publishing claims and awards on its website so the public can monitor them.

Litigation

Car Buyers Who Relied on Oral Statements that Contradicted Written Documents Entitled to Proceed on Fraud Claims: Consumers buying an SUV told the salesperson they could not afford payments greater than $300 per month.
The salesperson told them their payments would be about $300 per month for 36 months. The finance person also told them that their payments would be around $300 per month and then asked them to sign various documents while hiding the text of the documents except for the area requiring a signature or initial. When they got home, they reviewed the documents and noticed they were obligated to make 12 monthly payments of $882. They sued the dealership, alleging violations of the federal Truth in Lending Act and the Maryland Consumer Protection Act, fraud, and negligent misrepresentation, among other claims. The dealership moved for summary judgment, and the court granted the motion in part and denied it in part. The buyers alleged that the dealership violated TILA’s requirement to provide certain disclosures before credit is extended by preventing them from reading the documents they were asked to sign. The court granted summary judgment to the dealership on this claim with respect to statutory damages, finding that statutory damages are not available for timing violation claims, but did not grant summary judgment with respect to the claim for actual damages. The buyers also alleged that the dealership committed fraud, made negligent misrepresentations, and violated the MCPA by orally representing that their payments would be significantly less than the documents provided. The dealership claimed that the buyers could not prove they reasonably relied on oral statements that were directly contradicted by documents. The court refused to grant summary judgment to the dealership on these claims, finding that it was reasonable for relatively unsophisticated buyers allegedly prevented from reading the documents to rely on the dealership’s oral representations about the monthly payments. See Price v. Berman’s Automotive, Inc., 2015 U.S. Dist. LEXIS 129823 (D. Md. September 28, 2015).

**Defendant Required to Pay Damages for Failing to Return Car after Dealer Rescinded Sale to Protected Individual:** A protected individual who was not legally able to contract bought a car from a dealership. The individual’s wife and conservator instructed him to return the car, which he did a few days after the purchase, although he later reclaimed the car. After receiving a bill for the monthly car payment, the wife informed the dealership of her status as conservator and of her husband’s inability to contract. The dealership rescinded the contract and demanded return of the car by May 15. The car was finally returned in December, with 12,000 miles on it. The dealership sued the wife for unjust enrichment for the car’s depreciation and her unjust retention and use of the car, and the trial court awarded damages to the dealership. The Court of Appeals of Michigan affirmed. The wife argued that her retention of the vehicle was not unjust under the circumstances and that the dealership acted with unclean hands by selling the car to a protected individual. The appellate court found that even though the dealership was at fault for selling the vehicle, it remediated that problem. As a result, the wife was not justified in refusing to return the car or make payment after the dealership rescinded the sale. Furthermore, the appellate court found that to the extent the dealership acted with unclean hands, it did so only until it rescinded the contract. Because the trial court only awarded damages for the period after the dealership rescinded the contract, the appellate court found that the wife did not have a claim that the dealership acted with unclean hands.

**Dealer Lacked Duty to Investigate Driving History or License Status of Co-Buyer:** Two individuals bought a car from a dealership. One of the buyers did not have a driver’s license, but produced a state ID as a form of identification. Eight days after the sale, that buyer hit another individual with the car. The injured party sued the dealership for negligence and negligent entrustment. The dealership moved for summary judgment, arguing that it owed the injured party no duty to investigate the co-buyer’s driving record and did not know or have reason to know that the buyer was likely to use the car in a risky manner. The trial court granted summary judgment for the dealership, and the injured party appealed. The Court of Appeals of Colorado affirmed, finding that the dealership did not owe a duty to the injured party to investigate the co-buyer’s license or driving history. As a result, the injured party had no negligence claim. Next, the court decided that the dealership did not know or have reason to know that the co-buyer was likely to use the car in a way that would cause an unreasonable risk of physical harm to others simply because he did not produce a driver’s license when he bought the car. As a result, the dealership did not have a duty to prevent the sale. See Beasley v. Best Car Buys, Ltd., 2015 Colo. App. LEXIS 1535 (Colo. App. October 8, 2015).

So there’s this month’s roundup! Stay legal, and we’ll see you next month.

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800,000 MORE LEASE RETURNS AND MORE NEW PRODUCTION = ? The lease returns for 2016 are estimated to be about 800,000 more in 2016 than in 2015, setting up a bonanza for dealers, both used and franchise dealer. Will this cause a decrease in pricing wholesale or retail values? Time will tell. The good news though, is more late model products will be available to the industry (according to NADA) as the manufacturers are looking at increasing production beyond historical records over the next two years, and hopefully the trickledown effect will help all the players at all the levels.

SELF DRIVEN CARS TO TAKE OUT DEALER INDUSTRY? That’s what some people are saying, including a new research report titled ‘Disruptive Mobility’ by analyst Brian Johnson, of Barclays. He says the impact of driverless cars would drive US sales of new vehicles below 9.5 million, even worse than it was in 2009.

Why, you ask? The need for three vehicles in the family diminishes and many car trips needed by a household overlap, making new sales drop 40% and overall car ownership dropping to 50% of what is now the norm.

SAFETY RECALLS TO BE TOP PRIORITY Auto Nation last September announced it would no longer sell vehicles with open safety recalls. They now say they are withholding out from sale about 14% of their inventory under this restriction. I figure since they are pretty picky about what they buy anyway, the percentage is likely higher than that in the ranks of regular, non-franchised, dealers in Oregon and around the country. Oregon Department of Justice will likely soon be proposing rules that clarify it would be an unlawful trade practice to not declare such a safety recall to a buyer BEFORE they sign the purchase order and take delivery of a vehicle from a dealer (or unlicensed curber). One more thing dealer buyers should watch out for when at the dealer only auctions or anytime they are thinking about acquiring a vehicle for resale.

Another thing the industry will look towards is whether independent auto shops will be able to do safety recalls, not just the franchised dealers. The franchised dealers and the manufacturers have not done a good job on recall repairs, and if they don’t fix it soon, they may lose their monopoly. There are probably a million repair facilities out there in America and other countries that would love to have the business. Time for the franchisees and the manufacturers to wake up on this issue.

Monty King, OVDA, OPSA & AAO President
He is lying? Below is an article that was on Seattle TV in November, where the state is penalizing a dealer who was trying to fool the public.

The dealer is trying to say that after a car reaches 10 years old, he is exempt from tracking and other responsibilities when selling old cars, and he does not have to explain those problems to the buyer if the car is 10 years or older. Wrong.

Dealers must tell customers about EVERY odometer discrepancy (among other things), not just odometer discrepancies that happened in the first 9 years of the car’s existence. (We didn’t do it, but we could have inserted pages of Oregon Department of Justice language on all non conformities or material defects, which has no age limits either) The federal requirement of the first 9 year odometer reporting is that it has to be on a ‘secure’ form accepted by states and the states put into their records. **ALL odometer discrepancies during the entire life of the vehicle must be reported to any prospective buyer.** There is no limitation of 9 or 10 years old in the federal laws or rules, or in Oregon’s.

This Washington dealer was likely taught in a dealer school that he only has to do odometer reports to the government. But, Washington also accepts odometer statements for state recordkeeping for vehicles over 9 years old, the same is true in Oregon (thanks to legislation requested by OVDA) This helps to cut down consumer fraud, such as that fraud the below Washington dealer is trying to perpetrate.

Oregon would be better off as a place to buy and sell vehicles, for businesses and consumers, if we switched to a requirement for all ownership changes of vehicles be accompanied with an odometer reading, when possible and the state records those in their data bases. California does this, as well as other states, because their DMVs and legislatures have read the federal rules and laws properly. Oregon’s DMV and legal advisors are resisting policy changes in Oregon that would result in less fraud and deception by unscrupulous dealers, mostly unlicensed, but a few licensed dealers, such as the one below. We wonder if he was wholesaling cars to Oregon dealers, also.

Don’t get lured into his argument that dealers responsibilities on odometer readings expires when the vehicle reaches 10 years old, even on dealer to dealer transactions. Do what OVDA teaches: Do an odometer reading on every vehicle every time you buy it or sell it. It is the ‘Right’ way to do business and try to keep the bad dealers and the criminals out of the car sales industry.

This report is also a message to Oregon DMV that the press will report criminal behavior among bad dealers if they know about the activity. Oregon’s DMV policy of ‘no press releases, the press never prints anything we send them’ is a bad policy, and does nothing to help the situation in Oregon. Oregon’s DMV just needs to foster a better relationship with the media.

**Oregon newspapers are printing articles about odometer fraud in other states, but are not getting information from Oregon DMV about consumer and business odometer fraud in Oregon.** Why?

YNNWOOD, Wash. — State officials say a Lynnwood car dealership swapped out the odometer on a used vehicle before selling it so the vehicle appeared to have lower mileage.

The Washington Department of Licensing tells KING-TV in a story Friday that Car Craft Auto Sales in Lynnwood made the switch on a 2003 Subaru Outback purchased by Lauryn Bates.

Bates says when she tried to sell the vehicle several years later the odometer said 163,954.

A prospective buyer obtained a vehicle history and found the vehicle had 181,289 miles three years earlier, and opted not to buy the car.

Car Craft Auto Sales owner Gus Trefault says he thought he was exempt from odometer laws or telling customers because the car was 10 years old.

State officials say he’s not exempt.

-- The Associated Press, 11-7-2015
Winter comes every year

Seasons change every year, and yet each year people seem surprised and suffer losses because of this predictable change. Every business should survey their property to determine what steps can be taken to help prevent wintertime losses. Some items to consider:

- Condition of entrances and exits: Are they in good condition or could snow, water or wind cause problems? Repair them now instead of waiting for an emergency.

- Heating, ventilation and air-conditioning systems: Don’t wait for a breakdown or even a sign of trouble. Make checking the condition of the system part of your operating plan. For businesses using waste oil heaters, it is important to follow the manufacturer’s service recommendations. Scheduled maintenance may help prevent costly breakdowns and save money.

- Businesses using waste oil heaters should also check the storage facility for safe conditions and to ensure that trash hasn’t accumulated that could pose a fire hazard. Inform your oil supplier of your projected requirements for the season.

- If you are in an area where there may be significant snowfall, review your snow removal plans and procedures. Responsibilities and personnel may have changed over the year. Check your own equipment and confirm that contract service providers are familiar with your location.

- Items that pose no hazard in good weather may become a problem in bad weather. Check your premises for potholes, uneven curbs or sidewalks, or obstacles that might become hidden under snow or ice. Fix these items and avoid potential losses.

- If employees use portable electric space heaters to warm office cold spots, the heaters and cords should be inspected for condition and the stamp of approval from a national testing laboratory should be visible. Establish controls so that heaters don’t overload your building’s electrical circuits.

- Vehicles should be checked for safety related items such as tires, brakes, lights and windshield wipers. In bad weather, it is important that drivers make sure that their vehicles are in top condition before being dispatched.

- Review driver responsibilities and the company safety policy with your employees. Communicate that safety takes priority during bad weather situations.
When printing multiple copies, always check for legibility and confirm the information is aligned in all the fields.
Business Regulation Sees Some Staff Changes

The DMV Business Regulation Section is undergoing changes this fall. Retirement congratulations! Rick Parsons, Compliance Specialist/ investigator for the Business Regulation Section, Dealer Investigation Unit, is retiring on Jan. 1, 2016. Rick has been with the Business Regulation Section since 1998, assigned to work in the Eugene area. Prior to coming to DMV, Rick was involved with financial institution investigations.

Rick is also a member of the adjunct faculty at both Lane and Umpqua Community colleges, and plans on continuing to teach after retirement from DMV. In his spare time, he plans to work on his fishing, golfing, boating, and RV driving skills, all of which need vast improvement. Thanks, Rick, for all your years of service to the citizens of Oregon. You will be immensely missed by your peers and all the friends in the industry you've cultivated over the years.

We wish you well as you move into the next phase of your life.

Ready for Duty

As Rick prepares to retire, the Business Regulation Section has hired Dan Liu to step in and take on the Eugene area. Dan has been with DMV for a little over a year, first working as a Public Service Representative with Customer Assistance for the first six months. The last seven months have been spent in a developmental rotation with the Business Regulation Section as a Compliance Specialist/ Investigator.

Prior to coming to DMV, Dan spent 21 years in law enforcement, which when combined with the experience in Customer Assistance, has given him the ability to quickly adapt and learn the responsibilities of the Compliance Specialist/investigator position. Dan has a personality that never tires of meeting and helping people, and is grateful to be able to continue serving in a role that allows him to put that personality to work. Dan officially started with Dealer Investigations on Oct. 26 and is enthused to be permanently joining the team. (Our thanks go to the Customer Assistance Unit for finding a great employee, allowing him to work for us in a rotational position, and then allowing us to steal him!)

New to DMV

The Business Regulation Section has also hired Kelly Garcia as a Compliance specialist/investigator to fill a vacancy in the Medford area. Kelly is currently a branch manager with the Oregon Department of Justice, where she has provided leadership and oversight to the Division of Child Support office in Bend since 2013. For two years prior to becoming the branch manager, Kelly worked in the Bend office as a child support case manager.

Prior to working for the State of Oregon, she worked for two years as a physical Security assistant with the Department of Defense. Kelly spent 13 years in the Army as a military police officer which included a one year tour of duty in Iraq. During her tenure as an MP she had assignments in New York City, Maryland, and Texas with duties including personal security details, traffic accident investigations, and firearms instructor. She has a bachelor's degree with a focus on criminal justice and a graduate certificate in forensic science and crime scene investigation. She is originally from Southern Oregon and is looking forward to working in the communities where she grew up. Kelly began her new assignment Nov. 16 and will be working out of an office in White City. Welcome aboard, Kelly!

Larry Purdy
Business Regulation

Did you Know?

In 1913, there were 13,957 vehicles registered in Oregon but only 25 miles of paved road. The following year, the newly created State Highway Commission approved Oregon's first State Highway Plan. By 1916 there were 33,917 vehicles registered in the state.
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