Class Action Cases on Rise

Here is what dealerships can do to avoid those group suits

BY MICHAEL J. MUELLER

Many dealers have been sued at one time or another. A negotiated payment often resolves the situation, and the dealership goes on with its business.

But are dealers prepared for aggressive class-action lawsuits that can cost the unwary hundreds of thousands of dollars? With proper planning and legal guidance, a dealership may be able to ward off a class-action suit or, if one is filed, be better prepared to prevent an expensive payout.

Class-action complaints against automobile dealerships have increased since the early 2000s.

Invoking consumer-protection and labor laws, plaintiffs' attorneys use class actions to transform individual small-dollar claims into million-dollar cases. Members of the plaintiffs' bar do not sit back and wait for clients to appear.

Instead, they solicit individuals or scour department of motor vehicle records for potential plaintiffs and creatively devise claims against dealerships.

California is among the hotspots for these lawsuits. For example, its supreme court recently let stand a ruling that dealership mechanics could pursue minimum-wage claims.

The most prevalent allegations involve excessive or undisclosed fees in sales or financing paperwork, typically for document preparation, handling and delivery. Consumers also sue dealerships over warranties. Most of these plaintiffs allege warranties are illusory because they rarely pay out. Some of them accuse the dealer of the unauthorized or improper sale of insurance.

Some class action plaintiffs have sued dealerships for not disclosing used cars once were short-term rentals. Other lawsuits challenge guaranteed auto protection insurance and the handling of registration, transfer, title and license fees.

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On the employment side, plaintiffs have filed class-action lawsuits under the federal Fair Labor Standards Act (FLSA). Most of these assert a failure to:

- Pay salespersons or mechanics a minimum wage.
- Pay employees overtime.
- Pay employees for all hours worked.

Like other employers, dealerships are vulnerable to complaints about untimely payments and inaccurate or non-existent wage statements.

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Certification is court approval of a process that allows many individuals to be informed about the lawsuit, prosecute the claims jointly and ultimately share in the proceeds.

U.S. Supreme Court Justice Antonin Scalia recently drove the point home, saying: "Certification of the class is often, if not usually, the prelude to a substantial settlement by the defendant because the costs and risks of litigating further are so high."

Once a class complaint results in a payout, similar lawsuits (copycat cases) often are filed against nearby dealerships. It is important that dealerships be aware of and minimize vulnerability to currently popular claims.

But such awareness will not necessarily deter the plaintiffs' bar. Lawyers are quick to devise theories to avoid failed lawsuits. The labor-related class actions are good examples. Although FLSA exempts certain employees – such as salespersons, parts workers, and mechanics – from overtime requirements, plaintiffs' lawyers creatively draft lawsuits to avoid these exemptions or to redefine employee roles.

Work closely with your controller and outside legal counsel to minimize vulnerabilities. Review the statutes governing document and registration fees, the extension of financing, disclosure requirements, and other dealership-specific laws. Become familiar with the FLSA exemptions. Be sure job descriptions of exempt employees fall within the act's definitions, and that those employees' actual work corresponds to their job descriptions.

It is not always possible to avoid class certification. But chances of preventing class-action treatment will likely improve if you take the appropriate steps early on. ■

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