

## **More Autofraud Scams: Prevalent Tricks of the Trade**

by Adam G. Taub

In preparing to write this article, I asked the paralegals at my office, “Since you started working here, what have you learned about a car sale that is most surprising and significant?” Both agreed. The answer was not a specific under-handed practice. It was the fact that there are *so many* ways to get cheated when purchasing and financing a vehicle. This fact cannot be overstated. Many consumers pay extra thousands of dollars and suffer other adverse consequences as a direct result of a systematic and deceptive process designed to maximize profits and misinform car buyers. From the first glimpse of the TV or print ad to the final payment and beyond, the effects of the myriad scams, swindles and chicanery are experienced by inadvisably trusting consumers. What follows then is a short, and certainly not exhaustive list, of eleven common car dealer shenanigans.

### 1. Failing to forward the service contract premium

In many cases, dealers charge consumers exorbitant prices for largely worthless service contracts<sup>1</sup>. Most consumer advocates already know that the service contract companies are generally very resistant to paying claims and the contracts are all weighted against the consumer and difficult to enforce. The car dealers liberally mark up the cost of the service contract – sometimes by up to 300% – extracting a tidy profit from the consumer who has been sold nothing more than false peace of mind. It is not uncommon for a service contract which costs the dealer \$400.00 to be passed on to the consumer for \$1,000.00 to \$1,200.00. All of this, by now, is common knowledge to the consumer advocate. Most galling, however, is the dealer practice of failing to forward the

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<sup>1</sup> The general consensus amongst consumer advocates is to avoid purchasing these service contracts.

service contract premium, thus pocketing the entire charge and, in effect, stealing the consumer's money and whatever paltry remedy the consumer may have had otherwise.

## 2. Fake down payments

In this scam, the dealer leads the consumer to believe that it is "giving" the consumer his or her down payment. Of course, this is not a gift at all, but a loan, usually at a very high rate because the dealer will then raise the price of the vehicle accordingly. In other words, the consumer will be promised \$1,000.00 toward his or her down payment from the dealer. What the consumer does not know is that the dealer will raise the price of the vehicle by \$1,000.00. This causes the consumer to have to pay extra sales tax and may throw off the Annual Percentage Rate by enough to create a violation of state and federal disclosure laws<sup>2</sup>. The fake down payment is of no benefit to the consumer. The consumer ends up paying more in sales tax and interest than he or she would have had to pay without it.

The other dupe in this scam is the prospective sub-prime finance company, which usually requires at least \$1,000.00 as a down payment in order to accept the car note on assignment. The dealer tells the consumer, "When the finance company calls you, tell them you put down \$1,000.00. Don't tell them we gave it to you." In this fashion, the dealer sells the consumer an over priced, unfit, unmerchantable vehicle with a worthless service contract and gets paid by the finance company right away, even when the consumer did not really meet the sub-prime lender's criteria.

## 3. Illegal credit pulls

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<sup>2</sup> 15 U.S.C. § 1640(a); M.C.L. § 492.101 *et seq.*; M.C.L. § 566.302 *et seq.*

Many are surprised to find out that the dealer has obtained the consumer's credit report without consent prior to the consumer ever setting foot on the car lot. This happens frequently when the consumer telephones and the salesperson asks for a name and address. It should be noted that the dealer can usually access a credit report without a social security number or date of birth. It should also be noted that this practice violates the civil and, in some cases, the criminal prohibitions of the Fair Credit Reporting Act.<sup>3</sup> Other illegal credit pulls occur when a person test drives a vehicle and specifically states that he or she is not interested in arranging financing through the dealer. When employees of car dealerships play fast and loose with federal privacy laws, rampant identity theft increases<sup>4</sup>. Unsuspecting consumers have had their good names ruined by car dealers who use their identities as co-buyers in order to sell vehicles to people who would otherwise not qualify for credit. In this case, the salesperson gets his commission and has usually moved to another dealer by the time the vehicle is repossessed.

One particularly malicious practice is that of dealers who pull multiple reports in the several days and weeks after a consumer decides not to purchase a vehicle. The effect of this is to drive down the credit score and prevent the consumer from obtaining favorable financing from a competitor. My office has seen examples in which a dealer will pull a consumer's credit report 20-

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<sup>3</sup> 15 U.S.C. §1681b and 15 U.S.C. §1681q

<sup>4</sup> See e.g. Auto Dealer Faces Third Suit citing False ID for Loan, by Christian Bottorff, *The Tennessean*, February 12, 2003.

30 times in retribution for choosing not to purchase.

#### 4. Yo-Yo Sales<sup>5</sup>

In this well-established practice of "spot delivery" or "yo yo sale", the dealer leads a consumer to believe that all the conditions necessary for the proper sale and finance of the vehicle have been met by the consumer, and that the vehicle has -- in fact -- been sold on credit. Usually, the purchasers and dealer have executed all the necessary documents to complete the transaction, including a buyer's order, retail installment contract, application for title, and odometer disclosures. At some point following the execution of these documents, the dealer informs the consumer that the financing -- which the consumer understood to have been completed -- has "fallen through." In turn, the consumer is brought back to the dealer as a yo-yo to the hand at the end of a string. Once, the consumer is back in the hands of the dealer, new terms are presented which ultimately result in deal which is less advantageous to the consumer than the original terms.

Dealers who are skilled in this practice may retrieve the customer several times, wearing down the consumer's sales resistance to these pressure tactics, until the dealer has maximized his profits from the consumer. All the while the dealer retains the full value of any down payment or trade in. Thus, the consumer is held captive to the seller and whatever terms the dealer can squeeze out of this victim.

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<sup>5</sup> For more on this subject, See Yo-Yo Sales: The Predatory Practice of Unscrupulous Car Dealers, by Adam G. Taub, *Consumer Law Newsletter*, Volume 8 Issue 2, August 2003.

As a result of this practice, the informed negotiation process mandated by the Truth in Lending Act<sup>6</sup> (“TILA”) is supplanted in favor of a dealer-controlled, high pressure sales ploy. In addition to the adverse effects that this fraud works upon individual consumers, the wilful concealment of the “actual” terms of credit fosters anti-competitive practices in the auto industry, and provides further incentives for artificially increased costs of credit. The consumer is given numerous disclosures of the cost of credit, but only the dealer knows which terms it will ultimately accept as binding. The improper use of the TILA disclosures combined with contradictory contractual language, becomes a tool for entrapping the consumer, and denying the ability to shop for credit. Effectively, this practice eviscerates the meaningful disclosures required by the TILA, because in the end, any disclosures which have been made may be – albeit illegally – revoked.

This entirety of the yo-yo sale is predicated upon false representations to the consumer about the nature of the transaction, the dealer's efforts to obtain financing, the conditions of the extension of credit, the consumer's rights following the execution of unconditional credit, and the ability of the dealer to rescind a fully executed transaction. These frauds are facilitated through the knowing presentation of false disclosures under the Truth In Lending Act- an Act which was enacted to thwart unfair practices in credit extension, enhance the consumer's knowledge of the financial transactions which they frequently engaged in, and improve consumer's confidence in these financial transactions. In addition to violating the TILA, “yo yo sales” are recognized by the State of Michigan's regulatory agencies as being in violation of substantive state law.

## 5. Forgeries

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<sup>6</sup> 15 U.S.C. § 1601 *et seq*

Forgery is a common practice at many unscrupulous car dealerships. It is seen most often on titles and on retail installment contracts. Dealers will sell a vehicle in spite of the fact that the floor planner or auction is holding the title as security for payment. Only after the finance company pays the dealer and the dealer, in turn, pays the floor planner or the auction house, does the dealer receive the title. By this time, the consumer has already taken delivery of the vehicle and the dealer will back date the transfer and forge the signature of the consumer. In other cases, where the dealer actually has the title, there may be something on the title which the dealer does not want the consumer to see *eg.* the true mileage, the fact that the vehicle has been in a wreck, the fact that the vehicle was a rental car, the identity of the previous owner etc. In these instances, the dealer will forge the consumer's signature on the title. A forgery on a title, when done with the intent to defraud, amounts to a violation of federal odometer law.<sup>7</sup>

A forgery on a retail installment contract is more risky for the dealer, but it is by no means a rare occurrence. When the terms of the contract are not as favorable to the dealer as it would like, a forgery can occur.

#### 6. In House Insurance Agencies

Car dealers sell other over-priced and largely value-less products besides service contracts. These products are Credit Life Insurance and Credit Disability Insurance. In many cases, the dealer will misrepresent to the consumer that he or she must buy these products in order to receive credit. At the same time, many consumers who buy these products are not eligible for coverage due to some pre-existing condition which the dealer does not disclose in the application.

In an attempt to avoid the prohibition in Michigan against car dealers taking a commission on

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<sup>7</sup> 49 U.S.C. § 32701 *et seq.*

such products in credit sales, many dealers have set up in-house insurance agencies. These are sham companies with no employees or agents, whose only business is to pocket up to half of the premiums charged to the marks who actually purchase single premium insurance.

#### 7. Disclaiming Implied Warranties and Selling a Warranty

This is probably the most common swindle around. At its core is the car dealer's attempt to close the deal by providing false peace of mind to the consumer and, at the same time, avoid all accountability for the unsafe and unreliable vehicle it sells. It cannot be over-stated just how fundamentally deceptive this practice is. The consumer leaves the dealer with a service contract – usually labeled “warranty” – and when the vehicle breaks down and the service contract company refuses to pay for the repairs, the dealer tells the consumer, “You bought the car AS-IS,” and refuses to fix the vehicle. At that point, the consumer is stuck with a worthless vehicle, a worthless warranty, a huge debt to a third party lender and no way to get to work to earn money to pay the debt. In short order, the vehicle is repossessed and sold for several hundred dollars at auction to another charlatan, who puts a few nickels into the vehicle and sells it, as-is, to another consumer, with, of course, a service contract. Along with predatory mortgage lending, the “as-is” with a worthless service contract scam is, perhaps, the most cost-effective means for shifting wealth away from the lower middle class and into the coffers of the sub-prime lenders. The consumer victims of this deceptive practice will be forced into bankruptcy or will, at very least, pay higher interest rates for decades. The investor victims of this scam, the suckers who have risked their savings buying shares of securities comprised of bundles of these sub-prime notes, may find themselves at the doors of bankruptcy court, having figured out, too late, that these car loans tend to be severely under-collateralized and the default rates, sometimes, under-stated.

## 8. Captive Consumers: Wearing Down Sales Resistance

The initial phone calls of most angry victims of car dealer fraud are precipitated by the mechanical failures of the subject vehicle. During the attorney intake interview, the majority of these potential clients reveal that they spent hours at the dealership, well into the evening and past the posted closing time for the business before they were able to sign the necessary documents – except for the title – and leave with the piece of junk the dealer foisted upon them. Many are surprised to learn that these delays are intentional. The longer the consumer is held in the dealership, the less time he or she has to go elsewhere and comparison shop. As the hours wear on, the consumer becomes more and more anxious. Periodically, the salesperson will appear, looking grim and assure the consumer that the manager is working hard to get the best deal possible. Then the salesperson will disappear for an hour or two. By the time the consumer sits down in the F&I manager’s office, he or she will sign anything and accept just about any year, make or model car, as long as the monthly payment is within a few hundred dollars of what the consumer can afford.

If the potential client has several children or is over sixty, it is a good bet that he or she spent more than six hours at the dealership. These victims of autofraud will all state, “I just wanted to get it over with. I was already late to pick up my kids/take my medication.”

## 9. Arbitration Clauses

In spite of the heroic and often successful efforts of Paul Bland and Trial Lawyers for Public Justice challenging pre-dispute, binding arbitration clauses, and in spite of the clear intent of Congress that these clauses violate the Magnuson Moss Warranty Act<sup>8</sup>, arbitration clauses are being

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<sup>8</sup> 15 U.S.C. § 2301 *et seq.*

enforced with impunity by the Courts and appear now in more and more retail installment contracts. Some appear in purchase orders and in service contracts. As a result of this, the swindlers of the world no longer have to fear the short term consequences of their blatant, wilful and systematic duperies. Instead, they rely on the fact that the major arbitration providers are pro-business, anti-consumer and beholden to the wrong-doers. Simply put, these arbitration companies exist only as a result of being included in the boilerplate contracts of the businesses. Imagine what would happen if word got out amongst business owners that one particular arbitration forum was even suspected of not demonstrating bias in favor of business, let alone of being fair and even handed; that forum would most assuredly be removed from many contracts. That's how business works. In addition, many arbitration companies require up front fees from the consumer which would not be required in a regular lawsuit. Often, it is cost prohibitive for a consumer to seek redress in arbitration.

The potential long term consequences of the prevalence of pre-dispute, binding arbitration foreshadow a less favorable outcome for legitimate businesses if consumers wake up and realize that they can be cheated with impunity – especially in Michigan – and the doors of the Courts are locked to them, even though the Legislature has promised them protection.<sup>9</sup> So, the fix is in for both cheats and legitimate business owners. As a result, it is open-season on consumers. *Caveat Emptor* is back and consumers are urged to read every line of every contract and never, ever sign a contract with an arbitration clause in it. However, if people actually realize that *Caveat Emptor* is the rule in Michigan, business will suffer. Consumer confidence will drop and that will be reflected in the bottom line. That's how business works. At this time, most consumers in Michigan still believe that if they are defrauded, there is meaningful redress in the Courts and as such, many still purchase

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<sup>9</sup> See *Smith v. Globe*, 460 Mich. 446 (1999)

products in this state with a false confidence that is at odds with the true state of affairs.

10. De-horsing

De-horsing is a method by which car dealers steal a consumer's trade-in. It is a variation on the yo-yo sale. In this scam, the dealer takes the trade and the consumer takes delivery of the subject vehicle. A few days later, the dealer calls the consumer stating that the financing has fallen through and the consumer must agree to resign documents at a monthly payment the dealer knows the consumer cannot afford. When the consumer asks for his or her trade to be returned, the dealer states that it has already been sold. Then the dealer repossesses the subject vehicle, making a tidy profit.

11. Window Etching/Fake "Security Systems"

This is a scam which allows dealers to cheat consumers and their own salespeople at the same time. Many dealers provide "window etching" or fake "security systems" with all of the vehicles they sell. Often, there is no trace of window etching or any "system" installed in the car. The only thing the consumer is assured to receive is an official looking document which usually and allegedly entitles the buyer, in the event the vehicle is stolen, to a discount if he or she decides to purchase another car from the same dealer. Some other benefits are also allegedly available. Usually, these products do not appear in the itemization of the amount financed on the retail installment contract, but they are added to the cost of most of the vehicles the dealer sells. The dealer pays little for these products and may mark them up 1,000%.

The consumer ultimately pays for this, and so does the salesperson. In most cases, the cost and the mark-up of these products are added to the dealer's cost of the vehicle. Salespeople are paid on commission, usually a percentage of the after cost revenue. Thus, the over-priced product serves

as a way for the dealer to increase its real profit, without having to share it with the salesperson in the form of commission.

## **Conclusion**

This list is certainly not exhaustive, and represents some of the more interesting and prevalent practices that my office sees on a regular basis. As a consumer advocate, one should be familiar with these practices and be able to identify them as common ways in which car dealers separate consumers – as well as salespeople and investors – from their wealth. The best way to advise clients as to how to protect themselves is to remember a few simple concepts. First, consumers should avoid buying anything else from the car dealer other than the car; they should not buy insurance, extended warranties, window etching or any other add-on. Second, consumers should always negotiate the cash price of the car with the dealer and get the finalized cash price in writing before discussing how and from where they will obtain the loan for the car. Then, the consumer should leave the car dealership with an agreement on the cash price and start credit-shopping -- approach at least two lenders to see if they can borrow the money to buy the car. Then, return to the dealership to buy the car and discuss with the dealership whether it can provide better terms for a loan than the consumer was able to obtain from the other lenders. Further, until the consumer can make an informed decision as to whether the dealer can provide better credit terms than these other lenders (and remember never talk about credit until the cash price is negotiated), the consumer should never sign any credit application or other document that allows the dealer to pull his or her credit report. Finally, consumers should not wait around at a dealership for more than ten minutes without contact from the salesperson or manager. There are plenty of dealerships and plenty of cars. Hopefully, this article will prevent some of the more common frauds which occur.