

Dealer



F&I

Develop Your Defense Strategies for the Coming F&I Suits

Read more to learn about two premises to protect your assets

[By Gil Van Over](#)

I received a particularly disturbing piece of mail yesterday, a "Notice of Proposed Class Action Settlement and Hearing Thereon" in the case of Hoffman, et al. vs. American Express Travel Related Services Co. Apparently I am part of a wronged class of citizens and this notice is asking me to consent to a proposed settlement.

The crux of the lawsuit alleges that AMEX engaged in false advertising and unfair and unlawful business practices when it added travel insurance to my AMEX account as a result of the purchase of an airline ticket.

While AMEX explicitly denies any wrongdoing, it has agreed to the following settlement:

1. For the members of the class, AMEX will change its internal processes and procedures so that the alleged deceptive practices cannot happen again. That's it, no cash for me.
2. The class representatives (two people) will share \$10,000 for their efforts in representing the class.
3. An amount not to exceed \$2.99 million for Plaintiff's counsel to award them for their costs and fees!

Wow!

Another recent high profile case involves New York's Attorney General Elliot Spitzer. Mr. Spitzer is suing various mutual funds for unfair and deceptive practices in their alleged preferential treatment for certain institutional investors. Now, if and when Mr. Spitzer decides he wants to live in the governor's upstate mansion, the hundreds of people that work at the mutual fund companies whose careers were sidetracked may not cast a ballot for him. It is highly likely, though, that the thousands of individual investors who may receive some restitution will thank him with their votes.

Finally, word is out that the Federal Trade Commission has sent letters to some auto dealers in the Northeast asking for documentation that the dealer has implemented the Safeguards Rule that has been in effect since May 23, 2003. The FTC is asking the dealers to provide volumes of documentation that many industry observers believe is a fishing expedition to support a high profile public whipping to show the public that the FTC is taking identity theft seriously.

Are there any questions remaining as to the motivation of the people that are attacking auto dealers on an increasing frequent basis? With your dealership potentially under attack from these various sources, how are you supposed to get any sleep without medicinal help?

While there is no silver bullet to prevent lawsuits and governmental inquiries, prudent dealers are developing and implementing litigation defense strategies to assist their attorneys and garage keeper insurance companies in the defense of these lawsuits and inquiries.

Litigation defense strategy

A comprehensive litigation defense strategy is based on two basic premises:

1. Do it right (sell vehicles, aftermarket items and F&I products in a open and fully disclosed manner) and
2. Document and retain that documentation in the customer's deal jacket.

Using these two premises as the foundation of building your strategy, begin framing it out by:

1. Conducting a forms review,
2. Understanding your sales, aftermarket and F&I processes
3. Publish policies and procedures
4. Train your employees on the policies and procedures
5. Create a corporate diary and keep it current
6. Audit selected deal jackets for procedural and legal compliance
7. Require industry certification

Let's take a closer look at each of these steps.

Forms review

Ask your sales and F&I manager to gather the 20 forms used to negotiate and document the vehicle, aftermarket and F&I sale. Then take this stack to your attorney (or other outside source) to conduct a thorough review with an eye on the various disclosures, reps and warrants. Do the forms provide you with the protection you are looking for in your discussion and negotiation with customers? Does your Spot Delivery Agreement assert that you will make a best effort to secure financing and outline the responsibilities of both parties if you are unable to do so? Is the appropriate Fair Credit Reporting Act safe harbor language included on your Adverse Action Notice? Do all of your F&I product enrollment forms have a space to disclose the price of the product?

Process review

Now that you are comfortable with your forms, take an hour and walk the walk your customer walks. Start by arriving on your lot and approach a sales person and tell her you are interested in purchasing a car. Find out when information is gathered and listen to the sales pitches you hear. Ask about that protection package that is shown on the addendum window sticker. Can you buy the car without it? Question the items that are preprinted on the sales worksheet, such as doc fee and etch. Try to get the sales person to waive or cancel these fees or products. Ask if the rate used to calculate the payment on the first pencil is the best rate available. See if the F&I manager will lower the APR you have already agreed to if you will buy a vehicle service contract. Tell the F&I manager that you'd like to take the contract home so that your spouse can review it before you agree to sign it and take delivery of the vehicle. The answers to these questions could be the basis for charges of unfair and deceptive trade practices.

Publish policies & procedures

Once you are comfortable with your forms and understand your processes, the next step is to publish a policies and procedures manual that outlines your expectation. This comprehensive manual serves two purposes:

1. It tells employees exactly how to negotiate and document the sale of a vehicle, aftermarket items and F&I products to every customer, and;
2. It serves as an excellent reference in the defense of potential litigation or governmental inquiry to document how you expect every sale to be handled. Don't shortchange this manual. The manual I help dealers publish is over 50

pages long.

Train on policies and procedures

You cannot take the time and effort to perfect your forms, understand your processes, publish a policies and procedures manual, and then let the manual gather cobwebs in the corner of your office. Train your employees. Require that they read the manual. Obtain a signed certification letter from all employees asserting that they have read the manual, agree to abide by the policies and procedures set forth and understand that non-compliance is grounds for disciplinary action, up to and including termination.

Create and keep a corporate diary

A corporate diary serves a single purpose. It, along with a policies and procedures manual, is intended to provide documentation to assist in the defense of litigation or governmental inquiries. Let's face it; some lawsuits can go back as far as four years to try to right a perceived wrong. How many F&I managers have you employed over the last four years? How many have been terminated? How many of those terminated F&I managers do you suppose would be a favorable witness?

Some of the information that should be included in your corporate diary include your policies and procedures manual, including all revisions, correspondence from the factory, lenders and service providers, rate letters and lenders' underwriting guidelines, manufacturer's incentive programs and your Safeguards procedure and audits.

Audit deal jackets for compliance

With more than 20 potential FTC rules, laws, unfair and deceptive trade statutes and other governmental inquiries that the F&I manager must be compliant with, the daunting task of reviewing deal jackets is your best weapon to ensure that your expectations are being followed. Your office manager, controller or outside consultant should be looking at a selection of deal jackets from each F&I manager on a monthly basis. This review should be looking for the 18 or so prohibited practices that will spell trouble for you if it can be proved that these abuses are a pattern in your dealership. Some of these prohibited practices include payment packing, trading rate for product, forging customers' signatures, stuffing products, improper Truth In Lending disclosures, and the lack of a Spanish translation Used Car Guide in the deal that was negotiated in Spanish. It takes me about 20 minutes to thoroughly review a clean file for compliance, up to 40 minutes on a dirty file.

Require industry certification

Industry certification is another step in the overall defense strategy that has two objectives. The first objective is that industry certification through the Association of Finance and Insurance Professionals (www.afip.com) and The Institute for Ethical Behavior (www.theinstituteforethicalbehavior.com) serves as an excellent exhibit to show a judge and jury that you spend the time and money to ensure that your employees are properly trained. Objective number two is that the employees are properly trained and will treat your customers with respect if the manager follows the training received in these two outstanding programs.

Following these steps should help you in your goal of doing it right and document that you are doing it right. Maybe you can even stop taking that medicine to get some sleep.

If you wish to discuss this article with other dealers, or with the author, please go to the "Discussion Forums" at www.DEALER-magazine.com and enter the "F&I" forum.

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