

Dealer

F&I Special Section

by *Gil Van Over*



The Evil Empire Declares War - Strike Back!

Some bullets to help defend yourself

I know. I promised to deliver an article this month that discusses menu manipulation. In fact, the article is complete and in the archives for next month's issue. However, as I was putting the finishing touches on the article, I kept getting e-mail alerts from hundreds of friends, dealers and associates. The panic started as soon as the August 23 issue of Automotive News hit everyone's desk with Donna Harris' front page article, "Whistle-blower Targets Dealers." Apparently, Duane Overholt and the rest of the Fellowship of the Evil Empire "is declaring war - in court - on many of the nation's largest dealership groups." It seemed more newsworthy then this month to provide you with weapons for this war.

As you may recall from previous articles, my dad is a retired history professor. His doctoral thesis was on the Korean War. He is a history addict. Some of his passion evidently made it through the gene pool to me. The History Channel is the closest thing I have to a home page on my television. I stay at hotels that offer the History Channel whenever possible.

One of the many things I learned from my dad and the History Channel is that in order to defeat your opponent, you must study your opponent. General Grant seemed to know what General Lee was going to do next. Monty and Ike aptly predicted what the High Command's next move was. Woody Hayes versus Bo SchembechlerNapoleonwait a minute, did the French ever win a war?

Consider loading your defense six-shooter with the following bullets.

Bullet One - study your opponent

Defeating the Fellowship of the Evil Empire is to understand how it intends to attack you in court.

Duane has a web site: www.stopautofraud.com. Here are some tidbits of information from his web site.

- Consumer Fraud Consultants (CFCI) offers services and products to attorneys in

support of their automotive consumer litigation. Duane Overholt, an CFCI expert, can assist in identifying elements of deception in automotive cases and provide supporting documentation. CFCI experts have reviewed thousands of cases and found proof of deception or fraud in over 65 percent of them.

- · The key to proving an automotive case is documentation.
- · Mr. Overholt has developed a detailed step-by-step process that can identify elements of litigation in consumer's automotive sales documentation. He then acquires additional documentation, to prove a case, from the dealership, lending institution, warranty company, and other after market companies.
- · Litigation document checklist. This is a detailed list of over 190 internal documents (with examples), where to find them, and when in the discovery process they are needed with samples of the requested documents attached. Many of these documents have been previously unattainable by litigators and government agencies, because of the lack of knowledge that they exist. This document checklist involves many never before requested items in discovery like internal accounting documents from lending institutions, warranty companies, and automotive dealerships. The document trail can prove a case without supporting individual testimony.
- · A detailed questionnaire that can be sent to your current and past clients, and/or for mass mailings to obtain additional clients.
- · If you are litigating auto fraud cases - you need The Attorney's Litigation Support Package
- · The Attorney's Litigation Support Package is a wealth of information designed to support attorneys with their automotive consumer litigation.
- · The following information is and has been acquired through first-hand knowledge and current litigation support. Backed with over 20 years of hands on documentation experience[.]"

Duane is touting the fact that he has been there, done that. He proudly asserts that he likely bilked consumers out of \$33 million in his career and is now willing to share that information (for a fee).

The primary thrust of his attack is the fact that the customer's file contains documentation that can be used to litigate a claim. I'm not sure where he came up with over 190 documents, but even a small fraction of that amount can be damaging if they are not properly completed.

Bullet Two - identify the battalions

Duane is but one general in the Fellowship of the Evil Empire. Other existing groups that are looking at auto dealers' sales and F&I practices to further their claims, reputations or bank accounts include:

- · Consumers For Auto Reliability and Safety
- · Rainbow Push Coalition
- · National Association of Attorneys General
- · National Association of Consumer Advocates
- · Federal Trade Commission
- · Public Citizen

Their motivations differ, but they are all flyspecking the way dealers conduct the sales and F&I transaction with consumers, looking for deceptive practices. I applaud their pursuit of the miniscule percentage of crooked dealers; I object to their broad-brush depiction of the industry.

Bullet Three - a litigation defense strategy

Face it. The battle is escalating. Dealers have been attacked before, fought the fight, and

are stronger than ever. I remember when the manufacturers started to trespass on your franchise rights. Did you give in and give up? Absolutely not. I remember when the pundits lounging in their ivory towers predicted that the dot com revolution was going to replace your bricks with clicks. Did you give in and give up? Absolutely not.

This battle is no different. Someone is after the money that you rightly earn as a small business. Someone is attacking your processes and practices.

Anyone who tries to tell you that you can avoid lawsuits is lying to you. If McDonald's can be sued because its hot coffee was too hot for someone who splashed it in their own lap, you can be sued because a customer is not happy.

Ironically, many of the F&I practices lawsuits I see and am involved in started with a service problem. The customer was not pleased with the news he received from the dealer's service manager and consulted with an attorney. The attorney reviewed the paperwork and found what appeared to be a technical Truth in Lending Act (TILA) violation and filed the paperwork with the courts.

I firmly believe that the vast majority of dealerships want to do the right thing. You want to sell a customer a vehicle, offer ancillary products that offer value and create a customer-for-life relationship. After all, happy customers generate referrals and repeat business, a more fiscally prudent approach to generating traffic than four-color, full-page ads in the Sunday paper.

The problems arise when the pieces of paper in your files do not reflect that the transaction was as up front as it truly was. A properly implemented litigation defense strategy creates a paper trail that even Duane would have problems finding fault with. This strategy includes:

- 1. Risk assessment
- 2. Procedures
- 3. Inspection
- 4. Training and certification

Risk assessment

Start your litigation defense strategy with an honest risk assessment that includes:

- · A thorough forms review to confirm that the protection you are looking for is evident in blank forms, including dispute resolution clauses and spot delivery agreements.
- · A comprehensive process review from the time the customer walks on your lot until she leaves with a shiny vehicle.
- · An honest inspection of completed forms looking for programmed TILA and Consumer Leasing Act violations.

Procedures

Next, lay out your expectation for both your employees and the Fellowship of the Evil Empire on exactly how employees are to handle and document each transaction in your dealership. This involves creating a written sales and F&I procedure that reflects your expectations of how the process of selling and financing a vehicle is to work. All sales and F&I employees must be trained on your procedure manual. Obtain a signed acknowledgement of this training and the employee's affirmation that he will follow the rules. Retain this acknowledgement in the employee's personnel file.

Inspection

Have you ever witnessed a rollout of an initiative by a manufacturer at your dealership?

Often, the introduction of this initiative starts with a huge breakfast meeting, complete with donuts and coffee. The suit stands in front of the assembled mass and outlines in full color charts and graphs and three ring binders how this initiative will cure cancer, bring world peace and eliminate taxes. The mass applauds once the suit completes a canned presentation; the suit smiles and leaves.

Three months later, the largely ignored, incomplete color chart that is supposed to track your dealership's progress in this important initiative is still pinned to the break room wall.

You must take the appropriate steps to ensure that your employees do not view a litigation defense strategy as the latest "Program of the Week." You do this by continuously inspecting the results of your processes. Inspection includes:

- A compliance checklist that is completed on every deal by your billing clerk
- An in-depth monthly review of selected files by your office manager
- An in-depth quarterly review of selected files by an independent third party.

Training & certification

Most of the depositions I read preparing as an expert witness fighting the Fellowship of the Evil Empire have a number of common themes. One theme that always seems to help the dealer's defense is that the employees involved in the transaction are certified in their field. Certified mechanics' opinions are more credible than the opinion of Larry Lugwrench from the local gas station. CPAs are more highly regarded in court than are the account temp work force.

The training and certification of sales and F&I managers in both AFIP and Institute For Ethical Behavior is a must to help your attorney assemble the best possible defense on your behalf.

Bullet Four - support your local sheriff

Earlier I identified some of the battalions assembling on the front lines. As an industry, we are not as organized to fight this threat, but help is on the way. The National Association of Dealer Counsel (NADC) "provides a forum for members to share information, common experience, advice, help and answers to question on manufacturer franchise issues, lemon laws, vehicle finance and regulatory complexities and many other issues facing dealers and their counsel today". Send an e-mail to Jack Tracey at jtracey@dealercounsel.com to see what you can do to help NADC. It looks like NADC intends to be there to help you down the road.

Bullet Five - bar Duane from your dealership

Rumor has it that a dealer's attorney successfully prevented Duane from entering his client's dealership during a class-action litigation's file review process. If the rumor is true, a dealership employee overheard Duane telling one of the dealer's customers that he and the attorneys were there because the dealer was defrauding customers.

Whether this rumor is true or not, the point is that if you can't keep Duane from being onsite, look into assigning a shadow. Not being an attorney, I can't pass judgment on whether your shadow can be involved in Duane's conversations with the attorneys he is working with. However, once Duane leaves the private conference room where he and the attorneys are reviewing files, determine if your shadow can keep him or any other expert witness within sightline or earshot and report any irregularities.

Bullet Six - do it right

Sometimes in my zealotry about preaching that the proper documentation tells the right story, I tend to overlook that the right story creates the proper documentation.

Most of you reading this article are doing so because you want to do things the right way, not because you are looking for shortcuts to kink your customers. Insist that your

employees do things the right way.

Load your guns. The Fellowship of the Evil Empire is assembling for an attack. Fight back!

Gil Van Over is the president of gvo3 Consulting, LLC (www.gvo3consulting.com). He assists dealers in developing and implementing a litigation defense strategy for the F&I Office.

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 or e-mail him at gvanover@Dealer-magazine.com.

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