

Hall of Shame

“Nothing starts in this office until the dealer sends a credit application over this fax machine.”

I vividly recall my Assistant Branch Manager emphasizing this on my first day on the job as a collector with a major captive finance company. This was back when credit apps came over thermal paper fax machines, buy rates were one tier and priced at 19%, and Lee Iococca was on the television saying *“Buy a car, get a check!”*

But, the phrase is true today for a multitude of businesses within three industries that would not be alive today to earn the billions of dollars they earn annually. These industries do not have a product or a service to sell unless the dealer sells a car. Their livelihood is predicated on a dealer selling a car and allowing these businesses to participate in the sale of the vehicle.

The three industries I’m referring to are Indirect lenders, F&I product providers and Dealership Management Systems (DMS) providers. These three are my nominees for the “Hall of Shame”.

Here’s why. Each of these three industries owe their cushy bottom line to the fact that dealers allow them to participate in the vehicle sale process. Lenders receive contracts from dealers as a low cost distribution channel. They then make money on the vehicle financing. F&I product providers receive certs from dealers as a low cost distribution channel. They then make money on the sale of F&I products in concert with the vehicle sale. DMS providers have elaborate, yet widely disjointed systems in the dealerships to facilitate the vehicle sale and financing, while receiving their money either through air time or forms distribution.

Yet, even as each of these three industries is making a handsome living off of the dealers, none of them go the distance to help the dealers insulate themselves from litigation or governmental inquiries. That is why I am nominating these industries for the “Hall of Shame”.

I am in the business of helping dealers keep the money they make. The lenders, F&I product providers and DMS providers could all help dealers do this as well, yet they apparently have decided to not take the risk or appear to accept the potential liability.

Lenders

Every indirect lender a dealer does business with, whether it is the manufacturer’s captive or an independent, includes a warrant in the dealer-lender agreement whereby the dealer asserts that he has complied with all federal and state regulations surrounding the sale and financing of the vehicle. They interpret this to mean that the dealer is responsible for Truth In Lending Act (TILA) violations, even though the violations are evident on the face of the contract the lender is buying!

For example, Regulation Z (which interprets and periodically updates TILA requirements) requires a creditor to state to whom certain payments (premiums) are being paid, what the payment is for and that the creditor may be retaining a portion of the payment. This simply means that if a dealer is selling Gap on a contract, the contract must state to whom the Gap premium is being paid, that it is for Gap, the amount of the Gap premium and a notation that the dealer may be retaining a portion of the premium. You would be surprised at the number of contracts I review where the Gap provider is not listed on the contract. This is a technical TILA violation, and since it is programmed into the DMS, it is consistently violated, leading to a potential class action lawsuit.

Why don't the lenders alert the dealers to this violation? Hall of Shame nominee.

F&I Product Providers

Another issue I see too often while reviewing customer files at dealerships is product forms that either do not have a place for the price of the product, or where remitted certs are not signed by the customer (or worse yet denoted as "Signature on file"). These two issues are at the heart of the dark side's conspiracy theory that the dealership is stuffing products into deals without the customer's knowledge. After all, they reason, if there is no price listed on the cert, then obviously the nefarious F&I Manager told the customer that the product was either included or free. Continuing with this theory, the dark side then further asserts that since a significant portion of the certs are not signed (or SOF), they were simply printed after-the-fact and the customer is not aware that they even have the product.

Why would an F&I product provider either provide product forms that do not have a place for a price or accept certs that do not have a signature or signature on file? Hall of Shame nominee.

DMS Providers

Two of the issues I covered above, technical TILA violations and no price on F&I product forms, are issues that the DMS providers know about, since they typically perform the system programming to print the contract and the product cert. Yet, the programmer apparently accepts whatever changes the dealer wants to make to the programming without an eye on the potential litigation issues. Unfortunately, since these violations are programmed, and consistently print incorrectly, the violations quickly fill a class for a potential class action lawsuit.

Why doesn't a DMS provider consult with the dealer about potential TILA violations when accepting program changes? Hall of Shame nominee.

A dealer has enough to say grace over: OHSAs, employee issues, manufacturer relations, advertising, community relations, banking relationships, etc. Shouldn't a dealer expect help from the business partners that rely on his selling a car? I think so.
Make sure we put his name on this.