

In The Crosshairs: Plaintiffs Lawyers Take Aim at Auto Dealers with Consumer Class Action Suits

Keen observers of the legal landscape for automobile dealers across the nation are seeing a troubling trend—a growing wave of class action lawsuits against automobile dealers under state consumer protection laws. These cases typically involve the allegation that a dealer or group of dealers improperly charged customers hidden or excessive fees, such as fees for services associated with processing titles and tags.

In New Jersey, three such suits have settled in the past three years and several are currently pending, including one that involves 110 named plaintiffs and around 500 dealers and has been dubbed the “mother of all class actions” against auto dealers by consumers. In Tennessee, a large auto dealer group recently settled a class action in which the plaintiffs alleged that the defendant added points to the base interest rate for financing offered by a third-party creditor without telling its customers, resulting—according to the plaintiffs—in the plaintiffs paying a higher rate of interest for their vehicle purchase or lease than they would have otherwise paid. In Florida, two of the nation’s largest auto dealers are defendants in class actions by consumers claiming that the dealers fooled them into buying extended warranties at inflated prices.

Why the Upswing in Cases?

In many states such as New Jersey, a plaintiff suing under the state consumer protection law does not need to prove that the dealer *intended* to defraud the consumer in order to make out a case. The lack of any element of intent on the part of the dealer not only lowers the bar for proving liability, but also makes the case more susceptible to treatment as a class action.

What does this state of the law mean for dealers? In the short run, it means that dealers will likely see consumer class actions against them continue to flourish. Dealers who find themselves a target of one of these cases need to seek out experienced counsel skilled in the nuances of class action cases, as such cases involve a unique set of procedural and substantive issues not typically presented in standard commercial litigation.

Defenses Are Available

The fact that a case is filed as a class action on behalf of hundreds or thousands of consumers does not mean that the case automatically becomes a class action that includes all of those individuals. For a case to go forward as a class action, the court must first determine that the issues that all members of the potential class share (referred to in legal terms as the “common issues”) predominate over issues that are unique and individual to each member of the potential class. There are many examples of cases in which defendants have prevailed in convincing the court that the case should not proceed as a class. Moreover, even if the case is certified as a class by a court, the defendant is likely to have many factual and legal defenses to the claims.

In the meantime, dealers may want to review their company policies and practices with counsel, particularly with respect to fees for titles and tags, the cost of extended warranties and interest rates on loans, to make sure that they are not exposed to potential claims for nondisclosure or fraud. To limit their exposure to class actions, dealers may also wish to consider including in their sales contracts arbitration clauses that specifically prohibit class actions.

About the Author

J. Manly Parks is a partner in the Philadelphia office of Duane Morris LLP and a member of the firm's Dealer Services Group, which provides a full range of legal services to automobile and truck dealers. He represents clients nationally before federal and state courts and in arbitrations and mediations in the areas of dealership and franchise law, antitrust law and class action litigation.

For Further Information

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