

FAILURE TO DISCLOSE DAMAGE COSTS DEALER A BUNDLE

Dealer Liability

Here's an ethical issue for you. You have a truck in inventory that you know has been damaged and repaired to an extent requiring you to tell any potential buyer about the damage. If you don't tell you can probably clear another \$1,500 for the truck. If you do tell, you're down \$1,500. What's an ethical dealer to do?

Now, let's turn it into an economic question rather than an ethical question. If you don't tell, and you get caught selling a repaired truck without making the disclosure, how many times would you have to get away with not telling to make up for the one time you got caught? What's a conniving dealer to do?

The first answer is easy. The ethical dealer makes the disclosures and ends up with \$1,500 less in the till for the day. How does the conniving dealer do? Let's take a look.

Ryan Lockhart sued Community Auto Plaza, Inc. after he discovered that Community failed to disclose damage to the used truck he bought, as required by Iowa state law. A jury awarded Lockhart \$14,800 in actual damages and \$35,000 in punitive damages. The trial judge then awarded Lockhart \$44,152 for attorney's fees. If you've misplaced your Radio Shack calculator, that's a total of \$83,952, and that total doesn't include the amount the dealer had to pay his or her own lawyer. Ouch.

Community appealed only the award of punitive damages and attorney's fees. The Iowa Court of Appeals found no error of law or abuse of discretion by the trial court in awarding those damages in affirming the punitive damages award, the appellate court concluded that the record contained sufficient evidence to establish that Community acted with "legal malice" when it told Lockhart the vehicle had no damage. The court noted that the jury considered expert testimony, the vehicle title history, and Community's testimony about its inspection prior to sale, and properly found that Community acted with willful and wanton disregard for Lockhart's rights when it did not disclose the apparent damage.

The appellate court also upheld the trial court's conclusion that Community violated the federal Magnuson-Moss Warranty Act, entitling Lockhart to recover attorney's fees. Although the purchase agreement contained a warranty disclaimer, it also contained an exception that negated the disclaimer whenever Community "provided" a service contract to a purchaser.

Community disputed that it "provided" a service contract to Lockhart because it did not actually render any services in connection with the contract, but the appellate court disagreed. The appellate court relied on the language in Community's contract to conclude that its disclaimer was ineffective and that the MMWA applied, which allowed the trial judge to properly award attorney's fees. The appellate court affirmed the attorney's fee award and remanded the case for an additional award of appellate attorney's fees to Lockhart.

The cost to the dealer in this case was \$93,952 to the plaintiff

and the plaintiff's lawyer, plus some undisclosed amount the dealer paid to its lawyer, plus court costs, plus lost management time. If you assume that the dealer paid as much in legal fees as the attorney's fee award to the plaintiff - \$44,152 - the total cost to the dealer was something in the neighborhood of \$138,104.

If you divide that number by the hypothetical \$1,500 our hypothetical "conniving" dealer saves by not disclosing the damages, you'd conclude that the dealer would have to "nondisclose" in over 90 cases, and get away with it, just to break even.

So disclose! You'll sleep better at night not worrying about trying to beat odds like these. Lockhart v. Community Auto Plaza, Inc., 2004 WL 2952002 (Iowa App. December 22, 2004)

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