Prior Vehicle Damage
Creates Consumer Problem

By Michael W. Dunagan

Dealer Question: Is there a law that makes it illegal to sell a car that had prior body or frame damage without disclosing the fact?

Answer: If the information about prior damage is "material" information, then there is potential liability for non-disclosure under the Texas Deceptive Trade Practices Act (DTPA). You won't find a law that specifically refers to legal requirements regarding disclosure of prior damage or frame damage to a motor vehicle. However, the DTPA creates a cause of action for seller misrepresentation of any product sold -- whether a manufacturing defect on a toaster or frame damage to a motor vehicle.

In addition to addressing affirmative misrepresentations of material fact (such as saying that a vehicle is a 2005 model year when in fact it is a 2004), there is a DTPA action for failure to disclose a known material fact. The fact that a vehicle has repaired frame damage will probably be found to be a material fact by a jury. While a slight bump to a fender, or a ding on a door, probably don't constitute material damage, more serious collision damage, especially involving straightening or welding a frame, probably does. The final determination of whether the prior damage is material -- that is, whether the average reasonable person would find that the information would have an effect on the buying decision -- is to be made by a judge or a jury (if either party has demanded a jury trial).

A recent case in Houston demonstrates how this works. A woman purchased a used Lincoln Continental from a dealer. The vehicle had come from a rental car company which had expended over $3600 in repairs after a rear-end collision. This fact was never disclosed to the retail purchaser.

After she found out about the previous damage, the woman sued the dealer claiming fraud and misrepresentation under the DTPA. A jury found that the dealer had committed fraud and had misrepresented the vehicle and assessed damages. The Court of Appeals agreed with the trial court that the buyer's testimony that she had relied upon the misrepresentation of the dealer and would not have entered into the purchase but for the seller's misrepresentations was sufficient to establish that the misrepresentations were the producing cause of the purchaser's damages.

Each purchaser, including a dealer, has a similar cause of action against its seller. If, for instance, a dealer purchases a vehicle from another dealer, and subsequently finds out that there had been undisclosed material damage (such as frame damage), the purchasing dealer has a potential DTPA cause of action against the selling dealer. The same would apply to a vehicle taken in trade from a consumer.

DTPA damages for misrepresentation are not covered by a dealer's bond (unless there is a failure of title). Thus, a dealer who has been damaged by a prior owner's misrepresentations about the condition of a vehicle due to prior undisclosed frame damage has to worry about whether he'd be able to collect damages from the seller even if he obtained a judgment.

The universal rule here is that the dealer who buys inventory only from dealers who are honest and solvent, and take care of their problems, has little to worry about. On

the other hand, when vehicles are purchased from individuals and dealers who don't have the inclination or financial ability to protect their buyers from losses, the dealer is on his own.

The second rule is that a selling dealer should always disclose in writing, even to another dealer, any known fact about a vehicle that might affect its value. If the disclosure is made orally, there is a high likelihood that the buyer will "forget" about the disclosure (or claim that any disclosure was inadequate) when the time comes to sue. The dealer in the chain of title who disclosed the defect in writing to his buyer will probably not have any liability when someone down the line who wasn't given notice decides to file suit.

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