



# NYSADA Legal Topics of 2017

## The Year in Review

Presented by:

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# Chevrolet “3 Strike” Program

- Issue:

- Letter to dealers dated January 9, 2017, GM announced it would:
  - Debit dealers for selling vehicles with open recalls;
  - Require dealers to submit remediation plan in-person;
  - Possibly terminate franchise agreements for repeated violations.

- Problem:

- This violates five sections of the VTL as well as federal law.
- There is no law prohibiting the sale of used vehicles with open recalls.



# Chevrolet “3 Strike” Program

- Current Status:
  - Discussions with GM resulted in them backing off from their original position.
    - Recognized prohibition against selling new vehicles with open recalls, not used.



# Chevrolet “3 Strike” Program

- Reminder:

- All dealers should follow recommended best practices for selling used vehicles:
  - Engage with consumers as early as possible regarding the possibility of open recalls;
  - Place stickers on used vehicles and hotlinks on each vehicle advertised online directing consumers to [www.safercar.gov](http://www.safercar.gov); and
  - Have the customer sign and date a disclosure form at the time of purchase.
- Dealers in New York City must disclose recall information to consumers in writing when selling automobiles, parts, or equipment that are the subject of a recall by the National Highway Transportation Safety Administration.



# NY Attorney General Assurance of Discontinuance

- Issue:
  - Early 2016, the AG issued subpoenas to dealers who had advertised and sold used vehicles with open recalls.
  - May and July 2016, NYSADA's efforts to engage the AG went unanswered.
  - February 2017, the AG sent certain (not all) previously subpoenaed dealers an AOD seeking a "final resolution."



# NY Attorney General Assurance of Discontinuance

- Problem:
  - The sale of used vehicles with open recalls is not prohibited by state and federal law.
  - The AG never notified dealers that it would consider the advertisement of used vehicles a false and deceptive sales practice.
    - It could have easily done so by updating its *Advertising Guidelines for Auto Dealers* prior to issuing subpoenas.



# NY Attorney General Assurance of Discontinuance

- Current Status:
  - While many dealers have chosen to sign the AOD, most have not.
  - The AG's office recently attempted to push dealers in the Syracuse area to sign.
  - Dealers have three choices at this point:
    - Do nothing further
    - Seek a declaratory judgment; or
    - Sign a slightly modified AOD.
      - e.g. Dealer does not admit wrongdoing, etc.
      - Note that the AG is unwilling to remove the lookback provision and the \$1,000 fine.



# General Motors: Sale of Aftermarket Parts/Warranties

- Issue

- August 10, 2017, GM sends a letter out regarding two of its existing bulletins:
  - 17-12: GM has determined as a matter of “integrity and communication” that “it is essential that consumers are fully informed and aware when they are purchasing a vehicle with non-GM or non-GM approved Parts, Accessories or Service Contracts.”
  - 17-13: GM reminds dealers “of their responsibilities concerning New Vehicle Alterations and Incomplete Vehicles.”



# General Motors: Sale of Aftermarket Parts/Warranties

- Problem

- The bulletins do not comply with
  - The GM Dealer Sales and Services Agreement (the “DSSA”),
  - Six specific provisions of the New York Vehicle and Traffic Law (the “VTL”), and
  - The “Dealer’s Day in Court Act”.
- It appears that the purpose of the bulletins is to persuade GM dealers to sell, on an exclusive basis, GM parts, service contracts, and accessories.

# General Motors: Sale of Aftermarket Parts/Warranties

- Current Status:
  - NYSADA has developed a disclosure form that complies with GM requirements.
    - Adds an additional disclosure that even GM's warranty is administered by a third party.
  - Recommended use of the form will be taken up by the Board at this meeting.



# Cadillac Signage: Project Pinnacle

- Issue:

- Members notified NYSADA of a document from Cadillac dated August 11, 2017:
  - Pertains to “DEALER NETWORK – PROJECT PINNACLE DEALERSHIP SIGNAGE”
  - Dealers must refrain from displaying any other automotive branding alongside Cadillac branding.

- Problem:

- Standards are not uniformly applied.
- This program violates the VTL.



# Cadillac Signage: Project Pinnacle

- Current Status:
  - Rumored to have been resolved – at least for now – over a round of golf.
  - Issue could surface again next year.



# Hyundai Two-Tier Pricing

- Issue:

- Letter to dealers outlines a Dealer Performance Bonus (DPB) program effective September 1, 2017.
- DPB payments are calculated based on:
  - Dealer Retail Sales Efficiency (RSE); and
  - Dealer Year-Over-Year Sales.

- Problem:

- RSE's structure violates the Beck decision.
- DPB structure creates two-tier pricing which violates:
  - Five sections of the VTL;
  - The Dealer Day in Court Act; and
  - The Common Law.



# Hyundai Two-Tier Pricing

- Current Status:
  - NYSADA sent letter out to Hyundai and Hyundai dealers expressing concern over the program.



# Volvo Facility Upgrade Program

- Issue:

- In a letter to dealers dated May 19, 2017, Volvo announced a “Facility investment and bonus program.”
- 3% of bonus structure that is “Operations Support” will be available only to dealers who satisfy the brand standards.

- Problem:

- The program creates two-tier pricing which violates:
  - The VTL;
  - The Dealer Day in Court Act; and
  - The Common Law.



# Volvo Facility Upgrade Program

- Current Status:
  - Concerns over this issue have been raised by two dealers.





# CDK / Reynolds Class Action Lawsuit

- Issue:

- CDK and Reynolds entered into a formal agreement in 2015:
  - To not compete against each other
  - To work together to eliminate competition in the data integration market.

- Problem:

- These actions show evidence of a conspiracy for the purpose of reducing competition and raising prices.



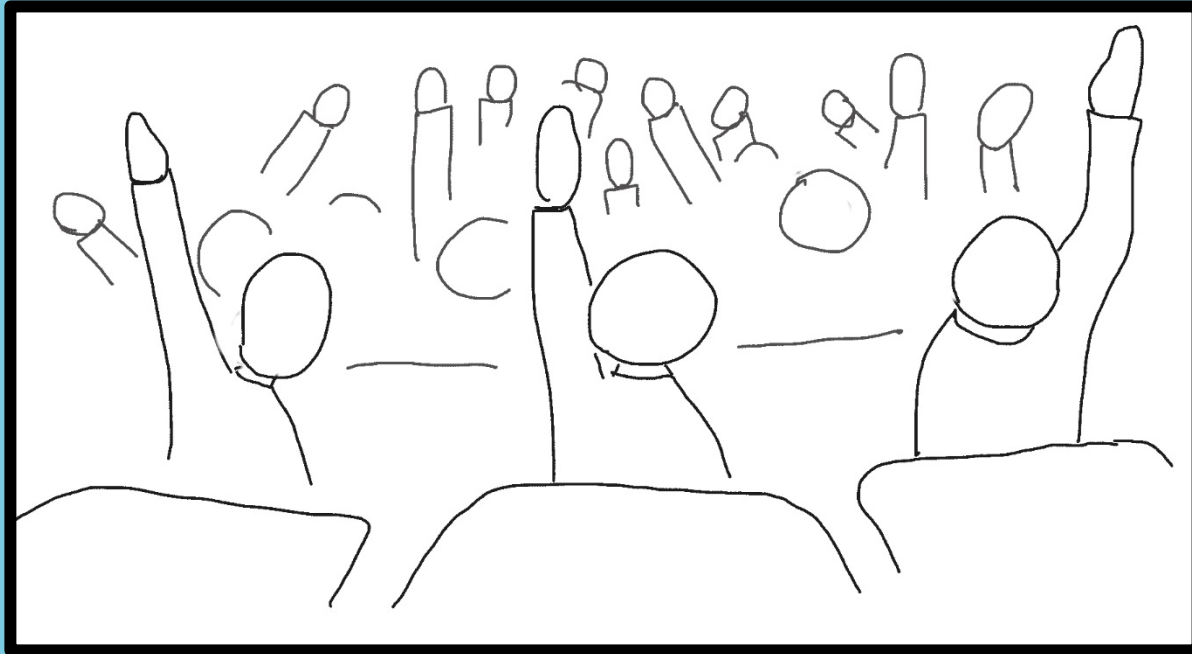
# CDK / Reynolds Class Action Lawsuit

- Current Status:

- A dealer class action lawsuit was filed on October 19, 2017.
- The named plaintiff is a dealer utilizing DMS services provided by Reynolds.
- Any dealer contracted with CDK may wish to become a named plaintiff.



# Questions?



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**THANK YOU FOR JOINING ME  
FOR THIS PRESENTATION**

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