Consumer Reports Warns Buyers of Dealer 'Gotchas'

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In August, *Consumer Reports (CR)*, a consumer magazine that publishes reviews and comparisons of consumer products, published an article that included a list of certain "dealership fees" consumers should be on the lookout for when buying or leasing a new car. The article, "Watch Out for These Dealership Fees When Buying a Car," is available to read free online at http://bit.ly/Consumer-Reports-Dealership-Fees-Article.

Although the article is geared toward consumers purchasing cars, many of the recommendations *CR* gave consumers would be equally applicable in RV transactions. *CR* described some of these dealer fees as legitimate but listed others it felt were questionable or entirely unnecessary. In true consumer-advocate fashion, it also labeled some dealership fees as "gotchas."

In reviewing the article, we have a few comments to offer about the accuracy of the advice the piece provides. Our thoughts here might serve you well should a consumer come to your dealership with this article in hand.

Relating to documentation (doc) fees, *CR* claims it found it impossible to get its local dealers to reduce or eliminate the fee. The article says, "Instead, we make it part of the price negotiation: Try to get the dealer to reduce the price of the car by a similar amount, and let the fee stay on the purchase agreement. As a fallback negotiating tactic, ask that some accessory, such as floor mats, wheel locks, or a cargo organizer, be thrown in free of charge."

Making the doc fee a negotiating tool is a Truth in Lending Act (TILA) concern. We typically advise dealers that if they are going to charge a doc fee, they should do so in *all* deals. Then dealers can defend against a charge that the doc fee is a finance charge under TILA by responding that the fee is charged in comparable cash transactions. Additionally, charging a doc fee on some transactions but not on others is a fair-lending concern. For fair-lending issues, we advise dealers not to discriminate in requiring or charging a doc fee on a prohibited basis.

CR advises consumers to try to get the dealer to reduce the price of the car by an amount similar to the doc fee. *CR* says that, depending on the state, a doc fee can run from $100 to $500. Note that on the article's "Unavoidable Closing Fees" chart, *CR* advises that a documentation fee of $150 to $300 is "reasonable" and that a consumer should question any charges higher than $300. If you're charging a doc fee, you should be concerned about this advice. Remember that little doc fee litigation in South Carolina in 2015? The dealership couldn't substantiate the amount of the doc fee it was charging and was therefore on the losing end of a $2.9 million verdict. If state law permits charging a doc fee, you still need to be able to support the amount of the fee you're charging.

The *CR* article includes a "Dealership Fees You May Need to Pay" chart that lists extended warranties as a "fee." We don't view an extended warranty as a dealer fee. We view it as an optional charge the consumer can agree to or not. The article makes it sound like a "fee" is imposed by the dealer on the consumer, and the consumer has no say in the matter. Purchasing an extended warranty is entirely optional for the consumer; the consumer is free to agree to purchase the extended warranty or reject the offer.

The article also includes a chart called "Avoid Paying These Dealership Fees," in which it recommends consumers avoid paying the following: dealer preparation fee; credit life insurance; disability insurance; pinstriping; rustproofing/undercoating; VIN etching; fabric protection; paint sealant; and security/anti-theft system. If you offer pinstriping, undercoating, VIN etching, etc., you should read through the "What It's About" description of these optional charges (not "fees") to see why *CR* claims these types of services are more expensive at the dealership.

In its rationale for why consumers should avoid paying credit life insurance, *CR* includes a blanket statement that term life insurance is cheaper. In some cases, it might be cheaper, but not always. Some buyers might not be able to buy individual term policies, because they have health issues. Older buyers might have to pay more for individual policies than they would pay for group credit insurance.

In its rationale for why consumers should avoid paying disability insurance, *CR* includes another blanket statement that disability insurance can be less expensive if purchased elsewhere. Again, this is not always the case; a consumer might not be able to purchase disability insurance more cheaply somewhere else and, in some cases, might not be able to purchase it at all.

The article describes credit life and disability insurance as "fees," rather than optional charges the consumer is free to accept or reject.

The article also advises consumers financing a car through the dealer to make sure the right interest rate (or "money factor," in the case of a lease) is used to calculate monthly payments. *CR* gives this advice notwithstanding that, in many cases, an interest rate will not be described on the Retail Installment Sales Contract; only the APR will be disclosed, and the APR can be, and often is, different from the rate of finance charge.

Consumers in the market to purchase or lease a new car have been using the internet more now than ever to become better educated about their car-leasing/car-buying choices, models, features, financing offers, and fees a dealer could charge them. Your customers could be reading this article, too, and using *CR*'s advice to challenge you on your fees.

If you haven't read the article yet, we encourage you to do so. Forewarned is forearmed, as the proverb goes.

Hudson Cook, LLP. For legal advice on a matter, one should seek the advice of counsel.