



**NIADA UPDATE:**  
**ISSUES IMPACTING THE  
INDEPENDENT DEALER**

Presented by:

Adam Crowell, President & General Counsel



# JUNK/SALVAGE VEHICLES

- Starting in the Summer of 2017, vehicles in Ohio with otherwise clean titles suddenly started receiving “salvage” designations on the certificates of title when ownership was assigned and transferred after typical transactions.
- Impacted
  - Vehicles with a single previous owner
  - Vehicles with multiple previous owners
  - Trade-in vehicles
  - Retailed vehicles
  - Wholesaled/auctioned vehicles
  - Private transactions
  - Dealers
  - Consumers
  - Lenders

# So What Changed?

- The Ohio BMV started using data from the National Motor Vehicle Title Information System (NMVTIS) to designate vehicles as “salvage.”
- If it was ever reported to NMVTIS that the vehicle was “salvage” or a “total loss”, the Ohio BMV was automatically designating the vehicle as “salvage.”

# Federal Anti-Theft Act

- Under the Anti-Theft Act, certain businesses are required to report information to NMVTIS about “salvage” automobiles:
  - Insurance carriers (including some self-insuring entities)
  - Auto recyclers and junk and salvage yards (including scrap vehicle shredders and scrap metal processors, as well as “pull- or pick-apart yards”)
  - Salvage auctions, and
  - Other types of auctions, businesses, and individuals that handle salvage vehicles (including vehicles declared a “total loss”)

# What is a “Salvage” Automobile/Motor Vehicle?

28 CFR § 25.52:

Salvage automobile means an automobile that is damaged by collision, fire, flood, accident, trespass, or other event, to the extent that its fair salvage value plus the cost of repairing the automobile for legal operation on public streets, roads, and highways would be more than the fair market value of the automobile immediately before the event that caused the damage. Salvage automobiles include automobiles determined to be a total loss under the law of the applicable jurisdiction or designated as a total loss by an insurer under the terms of its policies, regardless of whether or not the ownership of the vehicle is transferred to the insurance carrier.

O.R.C. § 4738.01(B):

"Salvage motor vehicle" means any motor vehicle which is in a wrecked, dismantled, or worn out condition, or unfit for operation as a motor vehicle.

# Example

In Ohio, a salvage motor vehicle is:

- "any motor vehicle which is in a wrecked, dismantled, or worn out condition, or unfit for operation as a motor vehicle."

2001 Subaru Forester with 135K miles:

- MMR value of \$1535 (high-end)
- Salvage value of \$350
- If vehicle sustains damage in the amount of \$1,185, the vehicle automatically qualifies as "salvage automobile" under federal law

# Lawsuit

- The Ohio Independent Automobile Dealers Association filed suit against the Director of Public Safety in August of 2018 in the United States District Court, Southern District of Ohio, Eastern Division
- Lawsuit sought declaratory judgment and an injunction prohibiting the Ohio BMV from using certain NMVTIS information to brand titles as “salvage”

# Lawsuit Continued

- Testimony established issues with information received by NMVTIS
  - Total losses included:
    - Safe vehicle that were declared total losses for monetary reasons (hail damage, theft recoveries, etc.);
    - Safe vehicles that were improperly declared by an insurance company to be total losses when they did not meet the federal definition; and
    - Many vehicles that were sold at particular auctions that held salvage auction licenses were “automatically” declared as “salvage.”



# While the Injunction/Declaratory Judgment Action was Pending

- Ohio Senate Bill 263 was passed and (effective March 20, 2019) banned the Ohio BMV from using NMVTIS reports and data to brand titles as salvage until at least January 1, 2021:

Beginning on the effective date of this section and until January 1, 2021, a clerk of court shall not issue a salvage certificate of title for a motor vehicle under sections 4505.08 and 4505.11 of the Revised Code, or enter any notation on a certificate of title under those sections, based solely on information reported by an entity pursuant to 49 U.S.C. 30504 and regulations promulgated under it unless one of the following applies:

- (A) The clerk receives information from the automated title processing system indicating that a previously issued certificate of title in this state was a salvage certificate of title.
- (B) The vehicle was previously titled in another state and the previous certificate of title indicated that the vehicle was considered or categorized as salvage.
- (C) An entity that is authorized under section 4505.11 of the Revised Code to apply for a salvage certificate of title applies for a salvage title pursuant to that section.

# National NMVTIS Utilization Study & Committee

(A) There is hereby created the National Motor Vehicle Title Information System Utilization Study Committee.

(B) The Committee shall consist of the Director of Public Safety or the Director's designee who is not the Registrar of Motor Vehicles and the following members appointed by the Director:

- (1) A representative of the Attorney General's Office;
- (2) A representative of the Ohio Automobile Dealers Association;
- (3) A representative of the Ohio Insurance Institute;
- (4) A representative of the salvage automobile auction industry;
- (5) A representative of the Ohio Clerks of Court Association;
- (6) A representative of the auto finance industry;
- (7) A representative of AAA Ohio Auto Club;
- (8) A representative of the National Auto Auction Association;
- (9) A representative of the Ohio Independent Automobile Dealers Association;
- (10) A representative from the salvage dealer industry; and
- (11) Up to two additional stakeholders from organizations or industries not specified in divisions (B)(1) to (10) of this section.

# National NMVTIS Utilization Study & Committee

(E) The Committee shall study the following:

- (1) The advantages and disadvantages of utilizing information reported pursuant to 49 U.S.C. 30504 that is included within the National Motor Vehicle Title Information System for making decisions on the issuance of salvage certificates of title in Ohio;
- (2) The accuracy of that information; and
- (3) Allowing the public to access this information in the same manner as motor vehicle title information is accessed under section 4505.141 of the Revised Code.

As part of the study, the Committee shall evaluate how other states utilize this information.

(F) Not later than January 31, 2020, the Committee shall complete its study and submit a report of its findings and any recommendations to the Governor and the General Assembly in accordance with section 101.68 of the Revised Code.

(G) Upon submission of its report, the Committee shall cease to exist.

# National NMVTIS Utilization Study & Committee

- OIADA'S lawsuit was dismissed for jurisdictional reasons
- Three other states use NMVTIS information for salvage automobiles, but there are different definitions of what is a "salvage vehicle":
  - Nevada
  - Virginia
  - Wyoming
- However, there are differing definitions of "salvage vehicle"

# Nevada Salvage Definition

Nevada Code § 487.770 “Salvage vehicle” defined. “Salvage vehicle” means a motor vehicle that at any time has been declared a total loss vehicle, flood-damaged vehicle, nonrepairable vehicle or had “salvage” or a similar word or designation placed on any title issued for the vehicle.

# Virginia Salvage Definition

Virginia Code § 46.2-1600: "Salvage vehicle" means (i) any late model vehicle that has been (a) acquired by an insurance company as a part of the claims process other than a stolen vehicle or (b) damaged as a result of collision, fire, flood, accident, trespass, or any other occurrence to such an extent that its estimated cost of repair, excluding charges for towing, storage, and temporary replacement/rental vehicle or payment for diminished value compensation, would exceed its actual cash value less its current salvage value; (ii) any recovered stolen vehicle acquired by an insurance company as a part of the claims process, whose estimated cost of repair exceeds 75 percent of its actual cash value; or (iii) any other vehicle that is determined to be a salvage vehicle by its owner or an insurance company by applying for a salvage certificate for the vehicle, provided that such vehicle is not a nonrepairable vehicle.

# Wyoming Salvage Definition

WY Stat § 31-2-107:

(a) When a motor vehicle is declared a total loss by the insurance company or, in the event an insurance company is not involved in the settlement of the claim, sustains damage in an amount exceeding seventy-five percent (75%) of its actual retail cash value, as set forth in any current edition of a nationally recognized automotive appraisal guide or other source approved by the Wyoming insurance department, the owner or insurance company, if it obtains ownership of the vehicle through transfer of title as a result of a settlement of an insurance claim, shall forward the properly endorsed certificate of title to the office of the county clerk that issued the certificate of title together with an application for a certificate of title branded salvage and payment of the fee required under W.S. 31-3-102(a)(vii) to obtain a properly branded certificate of title. \* \* \*

\* \* \*

(n) Any vehicle that is titled pursuant to this section may be reregistered if the owner complies with the provisions of this section and W.S. 31-2-108. Any vehicle branded "salvage" as a result of hail or theft with no damage, other than cosmetic, or vehicles titled "rebuilt" or "reconstructed" by any other state and that brand is carried forward on a Wyoming title, are not required to go through the rebuilt title process and may be reregistered pursuant to this act after obtaining a Wyoming title branded "salvage" or "rebuilt", as applicable.

# **ILLINOIS WHOLESALERS TITLES**

On August 1, 2019, the Illinois Secretary of State issued a bulletin stating that Illinois is now requiring Illinois licensed dealers and Illinois licensed auctioneers to stamp the following message in 36 point font on the front and back of all titles (with the exception of salvage or junk titles) if the vehicle was sold to out-of-state dealers or out-of-state wholesalers:

**“NOT FOR RESALE WITHIN ILLINOIS”**

**Or**

**“NOT FOR RETAIL SALE WITHIN  
ILLINOIS”**



# To Clarify the Confusion

- These vehicles may be resold or retailed in Illinois, however, they must be titled in another state first
- This requirement is aimed to prevent a problem that surfaced with out-of-state dealers/wholesalers that are curbstoning (selling in Illinois without an Illinois dealer license)

# Resale or Retail Sale Within Illinois

- Bulletin specified:

“No out-of-state dealer or wholesaler is permitted to sell direct to Illinois resident’s within the border of Illinois. Any vehicle sold to an out-of-state dealer or wholesale that is sold directly to an Illinois resident will be investigated for failure to obtain an Illinois dealer’s license.”
- Bulletin also states that temporary registration permits will not be issued to dealers or wholesalers, and that vehicles should be removed from the selling dealer’s or auctioneer’s premises with dealer plates, in-transit plates, or by trailer

# RECENT ENFORCEMENT ACTION

- Uptick in enforcement actions against used motor vehicle dealers by state attorney generals
- September 2019 Consent Judgment between the Arkansas Attorney General and Arkansas dealers that were operating from the same lot, resulting in:
  - \$1.5 million in credits to consumers
  - \$238K paid to Consumer Education and Enforcement fund for reimbursement of investigative and prosecution costs
  - \$2.5 million in civil penalties were suspended, until and unless there is a material breach

# Arkansas Enforcement Action

- Other important terms:
  - No fictitious names
  - Develop an underwriting process to assess applicant's ability to make payments, and maintain files
  - No selling vehicles to customers that they are currently garnishing
  - Must allow consumers the opportunity to test drive the vehicle (unless no license or insurance)
  - Must provide the dealership's internal inspection report and available service records
  - Must provide opportunity to have vehicle inspected by a 3<sup>rd</sup> party

# Arkansas Enforcement Action

- Must notify customer that the customer will receive a vehicle history report, upon request, at the customer's expense
- Shall display Used Car Buyers' Guides and obtain customer's signature
- All written documents will be translated if a material part of the oral communication during the sales process was in another language
- Physical or electronic copies of transaction will be maintained
- Notice and a 3 day right to cancel (with full return of down payment and/or trade-in)
- No varied payment schedules
- Cease from providing current service plan or extended warranty plan
  - Any future plan shall disclose all terms, not require a deductible, and not allow the dealership to swap vehicles

# Arkansas Enforcement Action

- Cease from providing current service plan or extended warranty plan
  - Any future plan shall disclose all terms, not require a deductible, and not allow the dealership to swap vehicles
- Provide written notice of default before repossessing
- Not repossess vehicle within 30 days of sale and attempt to collect a deficiency
- Only use towing agencies licensed for repossessions that will return personal effects
- Cannot purchase a repossessed vehicle at a private sale
- Properly apply disposition proceeds
- Maintain all records, bid sheets, notices, and advertisements

# Arkansas Enforcement Action

- Not report late payments or defaults to any credit bureaus
- Not contact consumers before 8 am or after 9 pm, or engage in other deceptive or harassing behavior
- Not file cases in small claims court
- Not sell vehicles to customers that they are garnishing
- Create a complaint response procedure:
  - Designate a representative to handle consumer complaints, log all steps to resolve complaints, act in a timely manner, and work in good faith with the AG's Consumer Protection Section to resolve

# COMPLIANCE

According to the *Supervisory Highlights* that have been published by the CFPB, an effective compliance management system (CMS) should have 4 interdependent control systems:

- Board of directors and/or management oversight;
- A compliance program;
- A consumer complaint management system (CCMS); and
- An independent compliance audit.

“When all of these four components are strong and well-coordinated, a supervised entity should be successful at managing its compliance responsibilities and risks.”



# Oversight

- Board or senior management should obtain recurring reports of compliance risks, issues, and resolutions
- Staffed with qualified chief compliance officer, and other compliance managers who have authority and accountability necessary to implement the compliance management program
- Clear visible support from senior management
- Must communicate clear expectations and adopt clear policy statements, internally, and to service providers

# Compliance Program

- Compliance program should include:
  - Policies and procedures;
  - Training;
  - Monitoring; and
  - Corrective action.

# Consumer Complaint Management System (CCMS)

- CCMS should do all of the following:
  - Invite complaints
  - Log complaints
  - Resolve complaints
  - Record and categorize complaints
  - Analyze complaints

# Independent Compliance Audit

- CCMS should do all of the following:
  - Invite complaints
  - Log complaints
  - Resolve complaints (if reasonable)
  - Record and categorize complaints
  - Analyze complaints

# Keys to an Effective CMS

- Re-ordered, these 4 tenants are the keys to an effective CMS, whether it be in the areas of Environmental Health & Safety compliance, Sales & Finance compliance, Information Security compliance, or Human Resources compliance:
  - Policies, procedures, trainings, monitoring, and corrective actions;
  - Channel for complaining (internally and externally);
  - An independent compliance audit; and
  - Management oversight.



**THANK YOU!**

**Adam Crowell**

**614.634.8843 (cell)**

**[adam.crowell@complynet.com](mailto:adam.crowell@complynet.com)**