

## Avoid Miscommunication to Stay Out of Court

January 23, 2018 | [Thomas B. Hudson](#) and [Eric L. Johnson](#)

We frequently see cases involving insurance coverage issues arising from misunderstandings and less-than-careful sales and delivery practices by automobile and RV dealers. Sometimes a dealer's representatives will promise a buyer something they aren't supposed to promise, and sometimes buyers hear promises that weren't made. A recent Pennsylvania court decision dealt with a dealer's duty to assure that the vehicle it sold was insured in the face of a claim by the buyer that the dealer promised to take care of certain insurance duties. Here's what happened in that case.

Barry Stein bought a used Toyota Camry from Kenny Ross Toyota Inc. During the sales transaction, Stein gave his car insurance card to a Kenny Ross representative. The insurance information was included in the sales agreement for the car. The sales agreement also included an integration clause, which provided that the sales agreement encompassed the complete agreement between the parties and superseded any prior discussions or agreements.

Stein had a car accident that resulted in injuries to James Hohman. Stein's insurer, Mutual Benefit Insurance Company, notified him that the Camry was not a covered vehicle under his policy. As a result, Hohman's insurance company paid Hohman on an uninsured motorist claim and sued Stein. Stein settled the lawsuit with Hohman's insurance company.

Stein sued Kenny Ross for negligence, negligent misrepresentation, breach of contract, violation of the Unfair Trade Practices and Consumer Protection Law (UTCPL) and for violating the Girl Scout oath (just kidding). All of Stein's claims were based on Stein's allegation that Kenny Ross promised to add the Camry to Stein's existing insurance policy. Note that Stein did not claim that the dealer's promise was contained in any written agreement, but, rather, claimed that the promise was made orally. Stein's contract contained what lawyers call an integration clause - language that says, in effect, "this document contains all the promises of the parties." Stein argued that the contract was ambiguous, and that for that reason the integration clause did not bar the introduction of oral, or parol, evidence to support his claims.

The UTCPL claim was dismissed based on preliminary objections. Kenny Ross then moved for summary judgment. The trial court granted the motion, and Stein appealed.

The Superior Court of Pennsylvania affirmed the trial court's decision. The appellate court

noted that Section 1318 of the Pennsylvania Motor Vehicle Code requires a dealership to verify financial responsibility prior to the issuance of temporary registration on a newly purchased vehicle. A dealership must determine that the applicant has the appropriate financial responsibility by examining one of the applicant's relevant insurance documents for a vehicle that is traded in for the new vehicle or another vehicle owned by the applicant. The requirement to examine one of these documents does not require the dealership to verify the information submitted unless it has reason to believe the document is fraudulent.

In this case, the appellate court decided, Kenny Ross properly verified the existence of Stein's insurance policy by examining Stein's insurance documents for another vehicle owned by Stein. The court noted that the sales agreement contained no promise by the dealer to add the Camry to Stein's existing insurance policy with Mutual Benefit. The sales agreement merely contained an insurance section that listed Stein's existing insurance policy with Mutual Benefit. Because the insurance section did not include any language to suggest Kenny Ross's assumption of Stein's duty to obtain insurance for the Camry, there was no ambiguity to allow introduction of any parol evidence to support Stein's claims. The appellate court reiterated that Kenny Ross's only duty was to ensure that Stein had an existing insurance policy, which it fulfilled.

Some states have laws that address the extent of an auto dealer's insurance duties relating to cars the dealer sells. Some don't. Many RV dealers' sales are subject to these laws, as well. If your dealership has not already done so, you should consider having a sit-down with your lawyer and your insurance company to make sure that you know what those duties are and that those duties are reflected in the dealership's policies, procedures, and training. And speaking of training, your salespeople could probably use a reminder about the risks that arise from promises they make, or promises that buyers think they are making.

\*See *Stein v. Kenny Ross Toyota Inc.*, 2017 Pa. Super. Unpub. LEXIS 3027 (Pa. Super. August 9, 2017).

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