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Used and Salvage Vehicles: Title Washing and Illegal and State-Sanctioned Branding Avoidance and their Role in Consumer Fraud

By Howard Nusbaum, Administrator, National Salvage Vehicle Reporting Program

Hurricane Katrina hit the Gulf Coast in August 2005, leaving destruction, death, flooding and over \$100 billion dollars of property damage in its wake, including approximately 500,000 flooded vehicles. After Katrina, authorities reported truckloads of flooded vehicles being taken out of Louisiana to other states as far away as the upper Midwest, where they were dried out, cleaned, and readied for sale to unsuspecting consumers.

This was able to happen in large part due a practice known as “title washing.” According to the FBI, “title washing” is the fraudulent process through which a vehicle’s title is corruptly altered to conceal information that should normally be contained on the title, such as a previously salvaged title or a financial lienholder.

Title washing is prosecuted as a federal crime, and is often investigated cooperatively among federal and local law enforcement officials and motor vehicle administrators. Operation Title Sweep, a joint effort between the FBI, the Texas Department of Public Safety, the U.S. Postal Service and the National Insurance Crime Bureau (NICB), led to two federal grand jury indictments, charging over a dozen people from Texas, New Jersey and Arizona in a title washing scheme to defraud consumers. Evidence presented revealed that the group requested and filed fraudulent paperwork to obtain clean Texas vehicle titles and then sold those vehicles to unsuspecting consumers or third parties without disclosing the past “certificate of destruction,” “salvage title,” or “parts only” title histories of those vehicles. The scheme affected about 800 Texas vehicles. Two defendants in the case were sentenced to three years in federal prison and ordered to pay a total of more than \$600,000 restitution.

In a separate case, two former employees of the California Department of Motor Vehicles and another person were prosecuted in 2011 for a title-washing scheme for fraudulently processing vehicle registration transactions. In June 2011, all three were sentenced to time in prison and are responsible for \$1.4 million in court-ordered restitution.

Another recognized related form of abuse is title skipping, the practice in which a party acquires a vehicle and then resells it while keeping their identity out of the chain of documented ownership. Title skipping often can assist in title washing by hiding an intermediate transaction, including one where a title branding is made on the physical paperwork but is never subsequently recorded in any official records.

Improvements have been instituted, but state-sanctioned loopholes and exemptions and illegal title branding avoidance mean undocumented wrecks are still on the road

Many improvements have been put into place since Hurricane Katrina to address weaknesses in the used and salvage automobile dispensation system, including getting the National Motor Vehicle Title Information System, or

NMVTIS, operational. NMVTIS is designed to protect prospective buyers of used cars and trucks from concealed vehicle histories, while also assisting states and law enforcement in deterring and preventing title fraud and other crimes. Created by federal law, this system is the only publicly available system in the country that requires all insurance carriers, auto recyclers, junk and salvage yards and states to report vehicle history information, and misreporting carries federal fines of up to \$1,000 per incident as well as other penalties imposed by states.

The federal Truth in Mileage Act (TIMA), better known as the Odometer Act, also provides critical consumer protections but, unlike NMVTIS, it is coupled with even greater investigative authority and criminal penalties. In addition to protecting consumers from the under-reporting or misreporting of mileage when vehicles are sold or ownership is transferred, TIMA includes a proscription on the seller to provide a written disclosure in addition to mileage – namely a declaration by the seller as to the identity of the seller and of the buyer, and the date of transfer.

Making this failure to disclose by way of not declaring the transfer of ownership on the vehicle a federal violation is an extremely important tool in identifying, investigating and prosecuting title skipping and other exploitations of commerce in used and salvage vehicles that can support subsequent resale fraud upon the public.

While not commonly recognized by many investigators, title skipping is actually a violation of TIMA. This provision of the Odometer Act was clearly communicated to the largest insurance companies after Hurricane Sandy by the National Highway Traffic Safety Administration (NHTSA) Office of General Counsel. (Here is a link to the notice issued to the nation’s largest insurance companies by NHTSA on December 20, 2012, shortly after Hurricane Sandy.)

http://nsvrp.org/uploads/Warning_Letter_from_NHTSA_to_major_insurers_regarding_title_skipping.pdf

However, even with the federal reporting and recording requirements of NMVTIS and the Odometer Act in place and increased vigilance by state and local authorities regarding title washing scams, Carfax reported in August 2013 – less than one year after Hurricane Sandy ravaged the mid-Atlantic – that more than 212,000 flood damaged cars were being driven on U.S. roads. While information and statistics on title brands were not provided in the Carfax report, link below:

<http://news.carfax.com/2013-08-02-More-Than-200-000-Flood-Damaged-Cars-Back-On-U-S-Roads>



It's a good bet that most of those owners were unaware of their vehicle's flood history.

Improperly branded and unbranded flood cars represent a special risk to consumers. These vehicles tend to be subject to progressive corrosion, electrical failure, unhealthy mold and other problems, but they do not show any obvious indications of being damaged after they are superficially cleaned up prior to a sale. Flood cars often show no signs of the insidious and progressive nature of water damage until electrical systems or transmissions fail, or anti-lock brakes or airbag systems malfunction.

However, experts agree that the problem goes well beyond flood vehicles. As NICB states, "the presence of total loss or salvage vehicles masquerading as perfectly reliable used vehicles presents tremendous opportunity for fraud within the used car resale environment. . . [and] could be a potential safety hazard to the purchaser and other motorists." NICB goes on to warn that, "if a used vehicle's history is not disclosed, then consumers are at risk of buying a potential death trap."

When prior damage history is not available, consumers' health, safety and finances are put at significant risk. Carfax's Chris Basso reports deaths resulting from instances of title washing. Furthermore, clean-title vehicles with undisclosed damage history are worth much less than the fair market value consumers typically would have paid. When the effects of the prior damage begin revealing themselves through mechanical failures, consumers find themselves on the line for extensive, unplanned repairs.

Title washing is typically framed as a scam committed by criminal groups and smaller secondary resellers of vehicles who physically alter branded titles or register branded vehicles in multiple states until the salvage brand is removed from the title.

The truth is, however, that the largest instance of harm to the public occurs not from small-scale title washing by criminal groups or individuals operating in the single digits, tens or even hundreds of vehicles, but rather by major businesses involved in various aspects of the total loss and bulk



The insurer underestimated the damage of this obviously unrepairable 2004 Honda Pilot to avoid a non-repairable title designation. Today, a vehicle with the same VIN is registered in Michigan. It appears the original burnt-out but under-branded Pilot was purchased for the paperwork by what is now known to be an international organized crime group.

Examples of Dangerous State-Sanctioned Loopholes and Exemptions

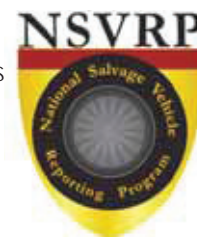
- 1) Exemption from any branding on vehicles older than a given cut-off year or under a certain dollar amount
- 2) Exemption from any branding if the insurer determines that the vehicle damage is below a certain (high) fixed dollar amount
- 3) Exemption from including classes of parts (such as airbags), or classes of repair work (such as painting) in calculating the cost of repairs
- 4) Linking the calculation of non-repairable salvage to the economic return from the sale of the salvage
- 5) Allowing 'sight totals' to be classified as anything but a non-repairable vehicle
- 6) Giving insurers and other owners the latitude to declare unwarranted self-exemptions when making branding determinations

wholesale used and salvage marketplace that typically would not be viewed as impacting this sort of fraud. In fact, it is these groups which have control at the earliest point in the damage chain, and are handling the largest numbers of such vehicles that can effectively create an environment in which tens of thousands of severely damaged vehicles avoid branding regardless of the level of damage or have their branding hidden from the title records even before the stage in the process at which the vehicles are available to be resold to the public or are repaired.

Branding of titles when vehicles have been subject to accident or loss represents a key form of consumer protection. If a vehicle has a brand, total loss, or salvage history, then the consumer is warned that the vehicle may no longer be safe or roadworthy. Consumers expect their title and branding laws to protect their safety and welfare, and their pocketbooks, by properly documenting prior damage and especially by requiring non-repairable wrecks to be taken off the road. The public fundamentally expects of their state government that virtually all total-loss vehicles are branded as salvage, and that when they are severely damaged they are tagged as non-repairable. They expect that when a vehicle is non-repairable it cannot be legally repaired, and that if a salvage vehicle is repaired the title will retain some indication as a rebuilt salvage vehicle.

Unfortunately these expectations are not uniformly met. Sometimes this can be as a result of title washing – which industry and law enforcement groups decry as illegal. In other instances, the breakdown occurs as a result of questionable actions by elements of the insurance and salvage disposal infrastructure resulting in title branding avoidance.

The National Salvage Vehicle Reporting Program (NSVRP) is a law enforcement support organization dedicated to reducing auto theft and title fraud and abuse. NSVRP's research into improper titling has



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uncovered structural deficiencies in the process of the sale of used and salvage cars, including branding avoidance due to improper and in some cases fraudulent initial valuation of the extent of damage by insurers and other owners offering badly damaged cars for sale; NMVTIS non-compliance by insurers, self-insured fleet operators, salvage auto auction companies, tow companies and other entities that handle five or more salvage automobiles each year to avoid or delay salvage history information availability; and title skipping – a federal offense – which has been detected at all levels of the salvage vehicle dispensation chain.

Ironically, it is some of the states themselves are substantially responsible for the greatest deficiencies in the protections for their own citizens. Over the years, often due to lobbying efforts by interests including some insurers and salvage auction companies, a number of states have instituted laws that strip the public of a significant portion of the protections that would result from proper titling and branding. Some states have removed the non-repairable brand requirement, some allow branding to be based upon subjective, non-testable criteria, and some even allow the owner – which in most cases is the insurer that has obtained the vehicle in a total loss pay-off and is looking to recoup as much as it can in the resale – to make a subjective determination as to the branding.

Worse, in some states all vehicles older than a certain number of years old – typically six to seven years – are exempted from branding regardless of the level of damage. Since the average age of a car on the road today is more than 11 years old, 75 percent or more of all total loss vehicles might be exempted from branding. More than anything else it is these legislative deficiencies that are responsible for a large fraction of significantly damaged vehicles never receiving a salvage brand in the first place or avoiding a non-repairable brand even if the vehicle was massively damaged.

Just as title washing serves to “conceal from potential buyers the fact that vehicles have been

Flood Vehicles and VINCheck

VINCheck is a service provided by NICB to assist the public in determining if a vehicle has been reported as a salvage vehicle. NICB relies on reporting by member insurance companies, and most insurers are listed by NICB as fully participating in the VINCheck program. VINCheck is widely used and is referred to in some state DMV websites as one potential tool for consumers.

Based upon NSVRP’s preliminary research of a significant number of vehicles damaged in Hurricane Sandy, NSVRP found a substantial proportion of those insurance flood loss vehicles also did not appear in VINCheck as total loss vehicles – even though they were claims paid by VINCheck-reporting insurers and they were reported into ClaimSearch. Our preliminary review of insurance total-loss reporting of Colorado flood vehicles into VINCheck does appear to show enhanced reporting compliance.

NSVRP cautions against relying on the VINCheck database as a primary warning indicator of flood loss vehicles, at least until such time as the extent to which insurance total-loss flood vehicles are not showing up in the database is better understood.

NSVRP also cautions that a majority of the vehicles involved in natural disasters are not covered by property/casualty insurance either due to the age of the vehicle, or as a result of being part of a self-insured fleet, or just as a result of a lack of such coverage based upon cost considerations. As a result, those flood loss cars would not be reported into VINCheck, even if all participating insurers fully reported into the system.



This truck was featured in the ABC News story investigating the fraudulent sale of a Hurricane Sandy flood loss vehicle.

damaged,” as NICB President and CEO Joe Wehrle has cautioned, title skipping, illegal and state-sanctioned title branding avoidance and neglect or delay in NMVTIS reporting result in severely damaged vehicles with unbranded or under-branded titles being offered for sale to an unsuspecting public.

When this happens, the consumer loses and the seller is positioned to receive much more than the car is actually worth as a result of the undisclosed or under-reported damage history.

Insurers have claimed that recovering more on the disposal of total losses is needed to keep costs low for customers. In fact, insurance companies accept premiums to cover their losses. Just as Ford and General Motors include overhead and production costs, in addition to profit, in setting the price for the cars they offer for sale, insurers sell premiums and set their prices based upon overhead and expected losses, less what they can recover through legitimate disposal of total losses, plus profit. Insurers should not need to recoup additional money by generating unwarranted recovery on totaled vehicles funded on the expectation of the intermediate buyer selling a consumer a vehicle likely to result in large financial loss and risk of potential physical harm.

Artificial immunities from branding and non-repairable status under various state laws are based upon factors such as year model (age of vehicle), the value of a vehicle, exclusion of classes of parts in calculating the repairs and others simply legalize and sanction the sort of behavior that can lead to badly damaged vehicles being offered for sale with clean and under-branded titles and undisclosed damage. NSVRP’s Best Practice Guidelines

http://nsvrp.org/uploads/Best_Practices_Guidelines_for_Total.pdf

for titling and branding recommend minimal – if any – exemptions to branding classifications. As the American Association of Motor Vehicle Administrators affirms, “Keeping an accurate brand history ultimately results in protecting the consumer. Brand designations can have a heavy impact on the safety and value of a vehicle.”



Extra profit on unbranded and under-branded vehicles provides the motivation for branding avoidance and efforts to encourage state branding exclusions

Salvage vehicles have value beyond the sum of their reusable parts when they can be sold with unbranded – or ‘clean’ – titles, or with ‘under-branded’ titles that allow flood-damaged, badly burnt or otherwise significantly damaged vehicles to be classified as repairable rather than destined only for scrap or dismantling.

NSVRP’s monitoring of salvage vehicles clearly shows that under-branding can lead to enhanced bidding, thus providing increased returns for the sellers and the auction companies that receive a percentage of the final sale price.

NSVRP’s research and recent documented history of insurers, fleet operators, salvage auctions and others clearly show that this extra profit provides the motivation to exclude many salvage cars from branding, regardless of the impact on consumers.

In 2005, 49 states joined into an agreement with State Farm Insurance, which admitted to illegally avoiding branding and then reselling as many as 30,000 or more damaged vehicles. As a result, vehicles were cleaned up, resold and passed along to new owners who, without disclosure of prior damage, were unaware of their vehicles’ histories.

Recently, ABC News followed the fraudulent sale of a single Hurricane Sandy flood loss vehicle, and traced it to titling and branding issues that originated with both an insurer and its contracted salvage auction company. An undercover ABC reporter purchased a used truck from a used car dealer in New Jersey for approximately \$20,000.

Further investigation by ABC revealed that the truck was sold with a clean title despite having been submerged in corrosive salt water for two days after Hurricane Sandy’s devastating storm surge hit the Mid-Atlantic states in October 2012, despite the likelihood that – as with many of the vehicles flooded in Hurricane Sandy and given the condition of the vehicle at the point it was offered for resale to consumers – it stood unremediated for many months following the total loss incident and before it was sold at auction in April 2013, and despite the fact that the insurer had declared the truck a total loss and paid the claimant approximately \$32,000.

This fraud was facilitated partly as the result of mandated title transfer and brand documents not being filed by the insurer, and the vehicle then subsequently being sold at auction without a title document under a bill of sale – also apparently in violation of state law. As a result, the prior owner was still listed in the state’s records with a pre-flood clean title, and the dealer then submitted fraudulent paperwork to request a duplicate title as if he was the original owner of the vehicle. Since the state records had never been updated to note the vehicle as a salvage vehicle in the insurer’s name as required, the state issued a clean replacement title under the name of the prior insured. That replacement title was then used to record a direct transfer from the insured to the dealer who bought it at the salvage auction and the intermediate

transaction of a title transfer and branding was permanently skipped.

The types of violations uncovered highlight local, state, federal, criminal and civil violations by parties involved in various stages in the vehicle disposal chain, including insurers, auction companies, towing companies, Internet junk car buying sites and used car dealers. Some of the potential violations might include:

- Failure to obtain salvage certificate within ten days of acquiring the vehicle;
- Failure to brand the title as a “flood” vehicle;
- Auctioning the vehicle under a bill of sale;
- Filing forged/fraudulent documents (to acquire a lost title);
- Failure to disclose TIMA information at each time of transfer; and

Failure to report into NMVTIS when required by law.

Rather than getting perhaps a \$1,200 recovery for the legitimate scrap value for this unsafe saltwater flood total loss vehicle, or potentially as much as \$3,500 if the vehicle were purchased for parts and scrap – the insurer and salvage auto auction took in \$8,600, or roughly an additional \$5,000 to \$7,000 more than they would have had the vehicle been disposed of responsibly. The party that purchased the vehicle at auction then offered the superficially cleaned-up total-loss truck to unsuspecting consumers as a prime used vehicle for approximately

\$20,000. Clearly, there is a strong economic incentive for parties involved in each step of the vehicle disposal process to overlook or violate state salvage title statutes and federal regulations regarding title transfers and odometer recording and reporting of salvage vehicles into NMVTIS.

This kind of increase in recovery is not limited to these sorts of scenarios. In fact, in testimony before the Florida Senate Committee on Transportation, the salvage auction companies who sell damaged vehicles on behalf of insurers and others – and keep a percentage of the sale price for their efforts – revealed that a repairable vehicle typically sells for \$1,500 to \$2,000 more than one with a non-repairable title.

In its seven-month investigation, ABC found Sandy-damaged cars turning up on used car lots across the country. The insurance company that handled the vehicle identified in the ABC News story finally admitted to handling roughly 174 other New Jersey vehicles in the same manner, but refused to comment on whether any or all of the remaining 3,698 Hurricane Sandy-damaged cars the company insured and declared as total losses were also sold with unbranded titles.

In conducting research for its submission to the Federal Trade Commission urging the Commission to strengthen its Used Car Rule,

http://www.ftc.gov/sites/default/files/documents/public_comments/16-cfr-part-455-used-motor-vehicle-trade-regulation-rule-project-no-p087604-563688-00109/563688-00109-85692.pdf

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NSVRP tracked and documented another Hurricane Sandy flood damaged vehicle offered for sale by a national rental car fleet operator in an online New Jersey auction on Nov. 29, 2012. The vehicle was a NY titled car, and was required to have its original title surrendered and to be issued an MV-907a salvage certificate for resale. In addition, the rental fleet owner was obligated to report the total-loss flood into NMVTIS and did not do so. The vehicle was transferred from NY to NJ and offered for sale at a NJ location of the auction company under improper NY clean title paperwork. The auction was also obligated to report the vehicle into NMVTIS to acknowledge that they acquired control of it for the purpose of offering it for resale and they did not. In this case the buyer that purchased the vehicle for resale was based in Miami, Florida, and the vehicle was posted on websites including Craigslist and Lemonfree.com as a prime vehicle being offered for sale for about \$12,000.

While these are only a few examples, they appear to typify many of the other title and branding problems that have been uncovered in the disposal of Hurricane Sandy damaged vehicles – impacting upwards of 350,000 self-insured and privately owned vehicles in addition to the insurance industry estimates of the 250,000-plus vehicles that were fully insured – and other total loss and salvage vehicles across the country.

Investigations into exploitation of the multi-billion dollar salvage and used vehicle markets should focus on the structural issues that contribute to the problem

Salvage auto auctions sell approximately 3.5 million vehicles each year in the United States. Insurance companies provide approximately 80 percent of the vehicles sold at auction, but the salvage auctions also acquire vehicles from banks and financial institutions, charities, car dealerships, fleet operators, vehicle rental companies and private parties. New research into improper titling and branding and structural corruption in the process of the sale of used and salvage cars shows that these factors create an environment in which it is easy for criminals to exploit this multi-billion dollar market for illicit ventures ranging from consumer fraud and domestic organized crime to international organized crime and even trade-based money laundering.

In some states, legislators continue to

bend to lobbying efforts to introduce and pass dangerous exemptions in titling and branding laws. Other states, however, are beginning to understand and address the consumer impact of these dangerous loopholes and exemptions. Just last month, Colorado's governor signed into law a bill to repeal that state's exemption on branding of vehicles six years and older. After seeing severely flood-damaged yet clean-titled vehicles reentering the salvage vehicle marketplace in the wake of Colorado's late summer floods, this was a powerful acknowledgement of the fallacy of creating artificial exemptions on vehicle branding.

In the interest of public safety, these types of exemption and loopholes need to be eliminated, and nearly all total loss vehicles should be branded as salvage and subject to inspection before they can be restored to road use, ideally with a designation as 'rebuilt', and the most severely damaged should be branded as 'non-repairable' and prohibited from ever being placed back on the road.

Traditional vehicle investigations have been focused on the theft, recovery and identification of the vehicles themselves rather than on the structural issues that contribute to the problem. NSVRP urges law enforcement officials to also pay close attention to the laws of their states, and to get involved to support bills that address dangerous loopholes and to work against passage of bills that will harm the public while providing unwarranted returns for insurers, auto auctions, self-insured fleet operators and others.

Furthermore, investigators should understand that lower level leads can uncover enterprise level crime activity in a surprising number of cases. When you see a cloned car, or see a car that has been title washed, consider how it happened.

Quite often, this can lead back to a pattern problem and can serve as an entry point into a larger structural problem.

The National White Collar Crime Center offers a course to help law enforcement officials identify problems in the sale of used and salvage vehicles that are contributing to defrauding consumers and enriching criminal organizations. We urge you to contact NW3C and attend one of these classes. If you would like more information on auto salvage auction fraud, or resources you can use to help identify and prosecute it, you can also visit www.NSVRP.org or contact NSVRP at Administrator@NSVRP.org. ■

About NSVRP

The National Salvage Vehicle Reporting Program (NSVRP) is a leading not-for-profit law enforcement support organization dedicated to reducing auto theft, title fraud and abuse and to helping control criminal activities related to the exportation of stolen and fraudulently obtained vehicles. NSVRP works closely with the U.S. Department of Justice (DOJ), the FBI, U.S. Customs and Border Protection, state governments and other parties to help further our mutual objectives. In addition, NSVRP is recognized by DOJ as an independent third party voluntary standards body for the National Motor Vehicle Title Information System (NMVTIS), which was created as a result of the Anti-Car Theft Acts of 1992 and 1996. NSVRP's board is comprised of representatives of local and national law enforcement organizations.

Howard Nusbaum is the Administrator of the National Salvage Vehicle Reporting Program (NSVRP) a leading law enforcement support organization chartered to lessen the burdens of government and to reduce auto theft, title fraud, the fraudulent resale of used and salvage vehicles as well as the use of vehicles for trade based money laundering and the support of terrorism. NSVRP is heavily involved in supporting the National Motor Vehicle Title Information System (NMVTIS), and is recognized by the U.S. Department of Justice as an independent third party voluntary standards body for NMVTIS. The board of NSVRP is made up of law enforcement related organizations and law enforcement agencies, and NSVRP works closely with State, Regional and National agencies to help assist in efforts to control title fraud and auto theft.

Mr. Nusbaum is also Vice-Chairman of the North American Export Committee and chairs the NAEC international data standardization committee and is also a member of the NMVTIS Federal Advisory Board. He has been honored by both the Federal Bureau of Investigation and the Department of Justice Bureau of Justice Assistance for his work on NMVTIS, and has received the NAEC chairman's award for his efforts in support of NMVTIS.

Editor's Note: Thanks to IAATI ATPA Committee Chair Reg Phillips for sending this in.