



September 3, 2013

Rosemary Shahan
President
Consumers for Auto Reliability and Safety
1303 J Street, Suite 270
Sacramento, CA 95814

Dear Ms. Shahan:

The National Salvage Vehicle Reporting Program (NSVRP), 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, recently received a request from Consumers for Auto Reliability and Safety (CARS) to provide our analysis of the actual and potential titling and branding violations uncovered in ABC's recent investigation of a Hurricane Sandy damaged vehicle, and our analysis of the responses to the investigation by the insurer (USAA) and salvage auction company (IAA) involved. While we believe the analysis that follows to be true and accurate, it is not a formal legal opinion, and neither CARS nor any other party should rely upon this document as a formal legal opinion, which it is not intended to be.

NSVRP works closely with the U.S. Department of Justice, the FBI, Customs and Border Protection and other federal, state and local agencies to help further these objectives. In addition, NSVRP is recognized by DOJ as an independent third party 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.



[Click here](#) to watch the ABC News Hurricane Sandy vehicle fraud investigation.

In fulfilling its mission, NSVRP routinely monitors the sale of used and salvage vehicles, tracking vehicles that are inappropriately and sometimes illegally offered for sale with unbranded or 'clean' titles, vehicles whose titles are 'skipped' when owners take possession through purchase and fail to retitle the vehicles in their name, when sellers avoid required reporting, or when titles are cleared of their prior branded status by 'title washing' through forgery or abuse of state loopholes that often involve interstate transfers. In many cases, NSVRP is able to track these potentially unsafe and fraudulently or improperly branded total loss vehicles from sources such as insurers, rental car fleets and other parties through the salvage auctions and middlemen as they ultimately pass into the hands of unsuspecting consumers, or when their paperwork is used to

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‘clone’ stolen vehicles.

On Wednesday, July 31, ABC aired an investigative story on ‘The Lookout’ in which 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 – 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 USAA had declared the truck a total loss and paid the claimant approximately \$32,000.

ABC’s investigation follows the fraudulent sale of this single vehicle and then traces it backwards to titling and branding issues with both an insurer (USAA) and its contracted salvage auction company (IAA). Approximately 475 additional cars from same dealer are being researched and initial results show additional examples of violations taking place in the branding, titling and registration of vehicles – including some Hurricane Sandy flood vehicles. The types of violations being uncovered highlight local, state, federal, criminal and civil violations by parties involved in various stages in the vehicle disposal chain, including insurers, auctions, towing companies, Internet junk car buying sites and used car dealers, including:

- Failure to obtain salvage certificate within ten days of acquiring the vehicle;
- Failure to brand the title as a “flood” vehicle;
- Filing forged/fraudulent documents;
- Failure to disclose mileage information at transfer;
- Transferring ownership/possession of the salvage vehicle without obtaining an ownership certificate; and
- Failure to report into NMVTIS when required by law.*

(*Note: used car dealer as NMVTIS junk/salvage reporting entity on salvage vehicle.)

[Click here \(https://files.secureserver.net/0sMVPvnR5BWJ5j\)](https://files.secureserver.net/0sMVPvnR5BWJ5j) for an analysis of the ABC vehicle transaction prepared by NSVRP detailing apparent multiple violations that may have taken place by the insurer, the salvage auto auction company, and the used car dealer exposed in ABC’s story that allowed a Hurricane Sandy flood-damaged total loss insurance payout vehicle to be offered for sale to consumers as a prime used vehicle. This analysis is not a legal opinion but may serve as a guideline you can use in evaluating other similar situations. This analysis shows that, despite USAA’s apparent unwillingness to admit wrongdoing on its part, steps that USAA took, or did not take, were integral to allowing a vehicle that mechanics determined was unsafe and non-roadworthy – and that USAA had already declared to be a saltwater flood damaged total loss – to be offered for sale to unknowing consumers.

Furthermore, NJ Salvage Title Law Section 39:10-6 clearly states that every person (defined broadly to include persons, firms, copartnerships, corporations and others, and that unquestionably includes insurance companies) “shall have for each motor vehicle in his possession in this State: (a) certificate

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of ownership therefor in conformity with this chapter..." Despite USAA's Aug. 1 response to ABC's investigative piece that, "*USAA did not break any laws,*" the insurer seems to be in violation of that statute, in addition to potentially violating additional regulations when it failed to note on the title a transfer into its name, failed to obtain a salvage certificate of title in its name and assigned the vehicle to IAA for sale without providing a title, with the result that no title transfer took place and the vehicle title remained in the name of the original insured party. Based upon a communication from the National Highway Traffic Safety Administration (NHTSA) general counsel's office to USAA's general counsel and the counsel of seven other major insurers dated December 20, 2012, it also appears likely that USAA may have been in violation of the Federal Odometer Act regarding a failure to transfer and execute an odometer disclosure signed and executed at the time of transfer. [Click here \(https://files.secureserver.net/0sPMAMkD8spCe0\)](https://files.secureserver.net/0sPMAMkD8spCe0) to access NHTSA's communication to insurers.

USAA also states, "*USAA did not profit in any way from the disposition of this vehicle. We paid the full claim of \$32,213.04 to our insured member, and then we received \$6,645.58 for the sale of the parts which is a fraction of the claim paid.*" USAA may not have made a "profit" on this particular vehicle, but it did profit in that it received an enhanced return as compared to what would have been received had it properly disposed of the vehicle. Obviously, when a total loss claim is paid out, the payout is greater than the value of the wrecked vehicle. Otherwise, people would not be buying car insurance to insure against a loss. The insurance business works because all of its customers pay premiums under the premise that not everyone suffers losses. The premiums cover payouts and operating costs for the insurance carrier. Of course there was no profit on the transaction. However, through this failure to follow the law, the vehicle that should have been scrapped for roughly \$1,200 with a shredder, or sold for at most a few thousand dollars to a recycler for parts and scrap, was instead sold to a used car dealer, thereby generating \$8,600 to USAA and its agent IAA. While it is true that no net 'profit' was gained as a result of the transaction, this is a disingenuous claim of innocence since the relevant fact is that an unwarranted enhanced recovery was made on the asset – and one that was funded on the expectation of the salvage auction buyer making a sale to an end consumer of a vehicle that was going to result in a large financial loss and risk of potential physical harm to that end purchaser.

USAA made many other claims in its responses to ABC's investigation that do not stand up to scrutiny. In its latest position statement the company noted that USAA did not want to "go back to the member and request a duplicate title during that difficult time." This claim by USAA is unsupportable when in fact New Jersey allows the insurer to apply for a salvage title in its name by providing a declaration of ownership and other sale paperwork and NJ explicitly notes on the application for salvage title form that a prior title is not required to make such application for a salvage title by the insurer. It is also hard to reconcile the company's claim that, "USAA is committed to policies and practices that protect consumers," while it failed to take the very steps necessary to protect consumers, including applying for a salvage title in USAA's name as required by law, voluntarily applying for a junking certificate of title in USAA's name which would have branded the vehicle as usable only for resale for parts and scrap, or even selling the vehicle directly to a scrap processor or automotive recycler for dismantling for immediate processing. Instead, USAA claims it was protecting consumers by noting on the internal paperwork to its agent IAA that the vehicle

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should be for parts only – an action that does not carry any force of law and clearly was not effective in meeting USAA’s stated intent. In fact, USAA, through its agent IAA, sold the vehicle to a used car dealer that is licensed in NJ to resell complete cars to the public.

[Click here](#)

(<https://files.secureserver.net/0soXkS6z8qs2HD>) for NSVRP’s analysis of USAA’s statements regarding ABC’s Hurricane Sandy flood vehicle investigation.

[Click here](#)

(https://www.usaa.com/inet/ent_blogs/Blogs?action=blogpost&blogkey=newsroom&postkey=usaa_s_state_ment_on_july) for USAA’s statements. [Click here](#)

(<https://files.secureserver.net/0syUYpTCme6jqu>) for NJ form OS/SS-37 “Salvage Title Issuance for Vehicle (in) Insurance Company Possession” that enables an insurer to apply for a salvage title in its name even when having misplaced the original title.

In the end, a used car dealer paid \$8,600 to USAA and IAA at the auction and then resold this inherently unsafe vehicle. In terms of the profit aspect as raised by USAA, this insurance company that in 2012 saw its yearly net profit increase 33 percent over 2011 was mitigating some of the loss on this vehicle – for which it has already been compensated through its pool of premium payments – by passing it along to a consumer being defrauded by being sold a totaled and non-repairable vehicle improperly devoid of any salvage branding history and with a skipped title that hid the ownership by the insurer in the chain of custody of the vehicle.

Rather than getting a \$1,200 recovery for the legitimate scrap value for this unsafe saltwater flood total loss vehicle, or perhaps as much as \$2,500 if the vehicle were purchased for parts and scrap – USAA and IAA took in \$8,600 which is roughly an additional \$6,000 to \$7,000 from the sale than it would have had the vehicle been disposed of responsibly. This is in addition to the premiums that were paid by the original insured and other USAA customers over the life of their insurance policies. The party that purchased the vehicle at auction then offered the superficially cleaned-up total-loss

BUYER BEWARE: Poor Public Policy in Titling and Branding

One of the key forms of protection available to the public comes in the form of state mandated branding of titles when vehicles have been subject to accident or flood loss. The ideal form of branding to notify and protect the public is achieved in those states that require salvage branding for vehicles that have had a total-loss claim paid on the vehicles, and that require extensively damaged vehicles be assigned a brand of ‘non-repairable,’ making them usable only for parts and scrap. The non-repairable brand protects the public from unsafe vehicles being put back on the road, as well as protecting the public from cars being bought for the paperwork to reuse to cover the identity of stolen vehicles under that ID.

Over the years, often due to lobbying efforts by interests including some insurers and salvage auction pool companies, a number of states have instituted laws that strip the public of these protections, removing the non-repairable brand requirement or allowing branding to be based upon subjective, non-testable criteria. Furthermore, in some states, once a vehicle is older than a number of years old – typically 6-7 years – the vehicle is exempted from having any provision for branding. Given that the average car on the road today is about 11.5 years old, if Hurricane Sandy had taken place in one of those states, at least two-thirds of all the flood cars would have automatically been excluded from any branding whatsoever.

In the interest of public safety, these types of exemptions 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.

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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 the National Motor Vehicle Title Information System (NMVTIS).

While this is one single example, it appears to typify many of the other title and branding problems that have been uncovered in the disposal of Hurricane Sandy total loss vehicles. NSVRP estimates that upwards of 350,000 self-insured and privately owned vehicles not carrying collision/comprehensive coverage were impacted by Hurricane Sandy, in addition to the insurance industry estimates of the 250,000-plus vehicles that were fully insured.

BUYER BEWARE: Hurricane Sandy 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 – including USAA – are listed by NICB as fully participating in the VINCheck program.

Despite the fact that VINCheck is widely used and is referred to in some state DMV websites as one potential tool for consumers, NSVRP cautions against relying on the VINCheck database as a primary warning indicator of flood loss vehicles at this time for a number of reasons.

First, we estimate that a majority of the vehicles damaged in Hurricane Sandy were 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 simply as a result of a lack of such coverage based upon cost considerations. Therefore, it is likely that a majority of Hurricane Sandy flood loss cars would not be reported into VINCheck, even if all participating insurers fully reported into the system.

Second, although USAA is noted on the NICB VINCheck website as a reporting carrier, as of Aug. 1 of this year, a VINCheck search of the vehicle purchased by ABC News shows as not listed as having any adverse history as a total loss hurricane Sandy vehicle. Based upon our preliminary research of a significant number of vehicles damaged in Hurricane Sandy, NSVRP has found a substantial proportion of those insurance flood loss vehicles also do not appear in VINCheck as total loss vehicles – even though they were claims paid by VINCheck-reporting insurers and they were reported into ClaimSearch, an internal database for use by insurers.

Unfortunately, natural disasters are not the only times these types of scenarios occur. Many online salvage auctions that NSVRP has monitored have offered severely damaged cars with clean titles and many vehicles purchased at these auctions are later resold to consumers with undisclosed prior damage and no salvage branding history through various means.

[Click here](#)

<http://www.ftc.gov/os/comments/usedcarrulenprm/563688-00109-85692.pdf>) to read NSVRP's detailed comments submitted to the Federal Trade Commission (FTC) in response to its Regulatory Review of the Used Motor Vehicle Trade Regulation Rule in which NSVRP details the serious and willful misconduct of nearly all segments of the vehicle disposal chain, including insurers, fleet operators, salvage pools, towing companies, domestic resellers and exporters and the dire consumer and law enforcement consequences of those activities.

In many cases, groups taking advantage of abuses in the sale of used and salvage vehicles remarket badly damaged, clean title vehicles to unsuspecting consumers who have no idea the true extent of the prior damage, the potential for compromised safety and the likelihood that additional extensive repairs will be required in the not so distant future.

Furthermore, in many of these cases the consumer

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has no way of researching past history, since the title skipping and lack of reporting means damage information is never reported, or is incompletely reported, to the vehicle history databases. [Click here \(https://files.secureserver.net/0sRPzODVh5jZtA\)](https://files.secureserver.net/0sRPzODVh5jZtA) for a NMVTIS history report on the vehicle purchased by ABC as of the effective date of the story, with NSVRP's notations in red.

Carfax says that, historically, more than 50 percent of cars damaged by floods get resold. To protect themselves, consumers should follow advice issued by the Federal Trade Commission and others when purchasing a used vehicle. [Click here \(http://nsvrp.org/uploads/Combined advisory on the estimation and repair of flood and water damaged vehicles.pdf\)](http://nsvrp.org/uploads/Combined_advisory_on_the_estimation_and_repair_of_flood_and_water_damaged_vehicles.pdf) for NSVRP's advisory on the estimation and repair of flood and water damaged vehicles.

There are reports of Hurricane Sandy flood vehicles showing up as clean title used vehicles being offered for sale in states across the country. NSVRP believes that it is important for consumers to be aware that Hurricane Sandy-damaged cars are making their way back into the consumer marketplace, and that similar practices by virtually all organizations involved in the vehicle disposal process allow for other severely-damaged cars with clean titles to be offered for sale to consumers.

Furthermore, we believe that the insurers, salvage auction companies and others in the vehicle disposal chain may bear a responsibility to the consumers to the consumers who are led to unknowingly purchase under-branded or unbranded total loss flood vehicles due to the insurers' and auctions' activities. Any waiver of claims that may have been signed between the auction companies and the first buyer should in no way waive the rights of subsequent buyers who were not aware of the violations of law.

Sincerely,

A handwritten signature in black ink, appearing to be "H. Nusbaum", written in a cursive style.

Howard Nusbaum
Administrator
National Salvage Vehicle Reporting Program (NSVRP)

BUYER BEWARE: Consumers and Salvage Auto Auctions

Many vehicles sold at auction are flood damaged vehicles. Flood vehicles represent a special risk to buyers as 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 water damaged when they are viewed in a photograph over the Internet. Furthermore, in many states, the vehicle will not have its title branded if either the insurer estimates that the damage to the vehicle is below a certain value, or if the vehicle is sold under the original insured paperwork.

Some states are now allowing salvage auto auctions to sell directly to the public. Many of these sales take place over the Internet, often in just one minute of bidding. There is no opportunity for detailed inspection of the vehicle, and a condition of signing up to bid at these auctions is typically a waiver of rights in which the bidder must agree to purchase the vehicle on an 'as is, where is' basis, regardless of any undisclosed problems, misstated mileage, or virtually any other reason whatsoever.

The lack of controls, the inability to inspect and test vehicles before an auction, the lack of disclosures, the lack of protections for the buyers, and the use of 'as is, where is' terms of sale make the concept of opening these auctions to the general public without a legally guaranteed retail buyer's cancellation period highly inappropriate.

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