

# Dialogue

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Preferred Dealer Protection

Cost Control Through Loss Control

## Uninsured Drivers Pose a Big Threat to Dealerships

The uninsured motorist is more than a problem to society at large. These individuals can have a direct economic impact on your business when they run into you – or anyone operating one of your dealership's vehicles.

Most of us assume that if someone else is at fault in an auto accident, their insurance will pay for the injuries and the damage to the vehicle. However, as the economy slows down and unemployment rises, the number of uninsured motorists incidents increase.



accident to your own insurance carrier to have your loss paid. In the dealership business, this gets complicated because your Uninsured Motorists Coverage covers EVERYONE who drives a dealership vehicle. This includes managers, salespersons, porters, technicians, and customers.

What can you do to protect the interests of the dealership?

Reduce your exposure by eliminating as many furnished vehicles, demos

### One in seven was involved with an at-fault driver who was uninsured.

The Insurance Research Council reviewed the number of individuals who were involved in accidents and found that one in seven was involved with an at-fault driver who was uninsured.

The report points out that the number of uninsured drivers varies by location. For example, Mississippi has the highest rate of uninsured drivers, 1 out of 4 or 26%. Maine has the lowest, with only 1 out of 25 or 4%. Here are some other state statistics: California is up there at 25%; DC has 21%, Florida 19%, and Texas 16%.

In addition to the high number of uninsured motorists, many drivers are under insured. Although they have the minimum insurance limits required by the state, this is not enough to cover the costs of a serious loss. (In either situation, think, "This is going to cost me \$\$\$.") In many cases, the only way to recover is to sue – but often the person who does not have insurance also does not have adequate assets to make a lawsuit worth pursuing.

So even though you or your driver is not at fault, you now have to report the

and personal use of vehicles as possible. It has been noted that some dealers are under the mistaken idea that allowing employees to drive used vehicles protects them or reduces their exposure. Remember that your liability and the uninsured motorists' exposure are the same regardless of which vehicle is driven.

With the exception of designated persons, reduce your amount of Uninsured Motorists Coverage. Most states allow you to carry the minimum limits to meet the Financial Responsibility requirements. You can designate certain persons that drive demos such as owners, family members, and managers to have higher uninsured motorists' limits. Why insure everyone who operates a vehicle with higher limits than are required by law?

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# Claim Summaries

## OK to Take the Car?

A well-dressed man carrying a briefcase came into the dealership and walked over to where several vehicles were waiting in line to be run through the car wash. He said he was in a hurry and could not wait; was it OK if he took his car? The key was in the car, so he calmly got in and drove off in the nice luxury vehicle. Later that day the real owner of the vehicle arrived to pick up his vehicle and was surprised to learn it had already been picked up. I leave it to your imagination to fill in what happened next but, in the dealer's words, "It was not pretty."

To prevent this from happening again, the technicians have been instructed to turn the vehicle key over to a car wash person rather than leave the key in the car. Porters have been instructed to turn the vehicle keys back to the service writer's desk; under no circumstances are they to give a customer a vehicle.

If a customer insists on taking a car, the employee is to direct the person to the service writer and inform the customer they can not release a vehicle under any circumstances. If the customer is in a hurry, the service writer can either get the vehicle or accompany the customer to the car wash. The dealer's closing comment was, "That was an expensive lesson."

## A Gap in GAP Coverage

A customer purchased a vehicle from a dealership along with GAP coverage that was listed on the contract for \$695. She was later involved in a collision. Her insurance carrier totaled the vehicle and sent a check for \$11,000 less than what she owed on the vehicle loan.

It turned out that the dealership had not processed the paper work or sent payment to the GAP provider. The claim was subsequently denied by the dealer's insurance company and the



dealer ended up writing a check for \$11,000 to the lender to pay off the loan. Make sure you have procedures in place to process all the paperwork on every deal.

## Driven to Distraction

An experienced technician was driving a customer service vehicle when smoke started pouring out from under the dashboard. While trying to determine the cause, he slammed into a vehicle stopped at a red light, driving that vehicle into a third vehicle. The resulting claim is serious. Four individuals are injured and there is \$5,000 in damage to the vehicle he was driving. All this could have been avoided if he had simply pulled over when the trouble started.

## Is the Dealership at Fault?

A claim just came into the dealership from a used car sold in 2005. The vehicle that was purchased caught fire in the claimant's garage, resulting in \$100,000 worth of damage to the house.

The owner of the vehicle did some research on the Internet and found out that in the same month, the manufacturer sent out a recall notice indicating that the speed control activation switch could catch fire. They allege that the dealership should have known about the recall and repaired the vehicle before it was sold.\*

The customer does raise an interesting (can you say liability) issue. Does the dealership have an obligation to review the vehicle recalls on each used vehicle they sell and make sure the repairs are done? It was fortunate that

the fire only resulted in property loss and no one was injured.

This claim is worth following to see to what standard the court will hold the dealer accountable. How far does the responsibility of the dealership extend in its role as the vehicle professional?

\*The dealership group did have a franchise that represents this vehicle brand, but it was not involved in any way with the sale.

## Uninsured Drivers Pose a Big Threat to Dealerships

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Your PDP producer can show you how coverage can be provided to those individuals where it is really needed.

### BOTTOM LINE

Auto Dealers do not have to take all the responsibility for others who drive without adequate insurance.

Make sure you have full limits for designated persons only, not everyone who might drive your vehicles.

Reduce the driving exposure as much as possible by limiting the number of demos and personal use of dealer vehicles.

In addition to protecting your insurance policy, you may realize a cost savings by carrying only your state's mandatory minimum financial responsibility insurance limits.

Discuss Uninsured Motorist limits with your producer to determine the best coverage for your dealership.

## Speeding Statistics

### Survey: Drivers Disregard Speed Limits



Many drivers believe they can drive safely while speeding – the only consequence would be the ticket if they are caught, according to researchers at Purdue University in West Lafayette, IN. Findings from a recent survey of 988 Indiana motorists showed 21 percent believed it was safe to drive up to 5 mph faster than the speed limit, 43 percent believed it safe to drive up to 10 mph faster and 36 percent thought it safe to drive up to 20 mph faster.

According to a university press release, the report, published in the journal *Transportation Research Part F: Traffic Psychology and Behavior*, also found that a media campaign to educate motorists on the dangers of speeding had little effect on drivers. Among the report's other findings:

- 25 percent of drivers who have been stopped for speeding in the past year believe that it is safe to drive 20 mph over the posted speed limit.
- A 25-year-old driver is 75 percent more likely than a 50-year-old driver to believe it is safe to drive up to 20 mph faster than the speed limit.

## Sad But True

Pittsburgh, PA- Randy\* was a very successful car thief who had stolen vehicles for over 10 years. When a vehicle got hot, he did not just abandon it; to help out the owners, he would set the vehicles on fire. He reasoned that this way they could collect on their insurance policy. This thoughtful consideration became his

## The Amazing Safety Bubble



PDP Loss Control experts are on the trail of a safety bubble that apparently surrounds some dealership car washes – that is, judging from staff procedures. Employees who maintain very good key control for new, used, and customer vehicles just leave the keys in vehicles while the car is in line to be washed and walk away.

In other dealerships where vehicles are hand-washed, keys are left on an open board unattended. Apparently, no one would even think of walking over to grab a key and drive off with one of these vehicles. After all, the cars are dirty. Yes, the safety bubble is amazing.

Research is ongoing to determine if it is the close proximity to soap, the dirt on the vehicles, the fact that the vehicles are lined up in a nice straight line, or another factor that protects these vehicles from theft.

We have not yet uncovered evidence to prove the existence of the amazing safety bubble. We have, however, found plenty of cases where vehicles were stolen in the short time they were waiting to be cleaned. Until our research is complete, we suggest that you secure the keys to all your vehicles – even dirty ones – at all times.

downfall. He set a stolen van on fire from the inside and got trapped. He didn't realize that the door handle was broken and could not be unlocked from the inside. His burned body was found inside the van.

\*Darwin Award Nominee

## Storm Duty

Each year the insurance industry pays out millions of dollars in storm (wind, rain, hail) losses and some of the resulting damage unnecessarily interrupts dealer operations. Although nothing can be done to stop catastrophic storms, losses can be mitigated by preventive action.

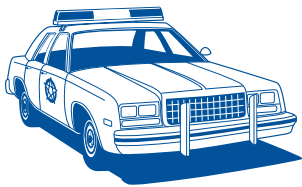
A claim that was just reported resulted from a light standard that fell over from a gust of wind and damaged several vehicles. An examination revealed the light post was rusted out at the bottom. Several other posts were also noted to be rusting through. Another claim resulted from the gutters and down spouts being blocked by debris so rain water covered the roof “like a swimming pool” and drained into the building.

Take steps to prevent losses:

- Make sure all the drains around your lot are clear of debris.
- Cut down dead trees and branches.
- Inspect the roof of each building to be sure it is intact in case of heavy wind or driving rain.
- Clean out and repair gutters and down spouts. It is not uncommon to see down spouts smashed in because a vehicle backed into them.
- Secure loose siding and signs.
- Determine how you will protect hazardous chemicals such as gasoline, waste oil and bulk oil and automatic transmission fluid from leaking into the environment if a flood occurs.
- Create a plan with designated individuals to move inventoried vehicles to a safe location.
- Designate a person who will turn off the water, gas and electricity in case of emergency.
- Have a planned escape route and alternate route in case you must leave the area.

The more contingences you plan for, the quicker you can respond, pick up the pieces, and get back to business.

## Street Smart - MOVE OVER!



**D**id you know that when you see an Emergency Vehicle stopped along the road you have to **SLOW DOWN AND MOVE OVER** if possible?

Fully 40 states have adopted “move over” laws that can result in fines from \$500 to \$10,000, depending on the state, and/or imprisonment for 30 days.

It is important to protect emergency workers while they are helping others or protecting us from dangerous situations.

**Be alert** while driving.

If you are unable to move over, **slow your speed down to 20 miles per hour BELOW** the posted speed limit.

**Do not stop** in the roadway or block traffic. One police officer said that when he was directing traffic in emergency situations, motorists would stop to ask, “What’s going on?” or “What’s the hold-up?” Since he was asked to direct traffic, he often had no idea but always gave the same response, “I don’t know; it looks like an accident to me.”

If an Emergency Vehicle is approaching with lights flashing, you must shift lanes, pull over and stop until the emergency vehicle passes.

The above two laws can be contradictory in real traffic situations. The goal is for the Emergency Vehicle to get by safely, so common sense applies. Get out of the way if you can. Sit still at an intersection so emergency vehicles can cross traffic lanes and drive around quickly.

## Shop Talk: It’s A Hot One Today!



**I**n the course of a day’s work in heat, you may sweat as much as three gallons, so it’s essential that your water intake equals the amount of sweat produced. Unfortunately, you can’t depend on thirst alone to let you know when and how much to drink. Usually by the time you feel thirsty, you’re already dehydrated and have to play catch-up. Instead of waiting until you feel thirsty, you should drink 5-7 ounces of fluids every 15-20 minutes to replenish the necessary fluids in the body. Cool water, as opposed to hot or

cold, seems to be the most palatable and easy to drink.

The challenge, then, is to make sure you and your workers have easy access to water, allowing you to drink a cup of water every 15-20 minutes without severely interrupting your work flow. The important thing is to consume the right amount of water on a regular basis.

The key to staying hydrated is having water always at hand. If you put off drinking water until your next break, you may end up in a deficit situation, which will degrade your performance and safety. Remember, if you’re feeling thirsty, you’re already dehydrated.

Adapted from *Safety + Health Magazine*

## For Your Safety

### Cable Barriers Save Lives and Money

**H**igh-tension cable barriers constructed along 700 miles of Texas roadways have apparently been doing their job. A recent study of the effectiveness of these barriers found that 18 fatalities and 26 injuries were prevented last year.

Cable barriers are becoming common fixtures along the nation’s highway system. They are designed to prevent vehicles from crossing into oncoming lanes of traffic – crossovers that often result in head-on collisions.

The Texas Department of Transportation studied the effectiveness of these barriers over a 12-month period. The preliminary figures mirror a similar study last year that showed fatalities dropped from 52 to just one. The studies focused on Texas medians that had cable barriers in place for at least one year.

“If you cross the median, chances are good that the resulting crash will cause a fatality or incapacitating injury because they usually occur at high speeds,” explained Texas Department of Transportation spokesperson Scott Cooner. “The studies make it clear that cable barriers are keeping people from crossing the median...and they are saving lives.”

Cable systems cost about one-third the cost of concrete barriers. However, on the downside, the study shows that maintenance costs for cable barriers are much higher than the costs to repair concrete barriers.

“That seems to be the only disadvantage,” Cooner said. “Over a 15-year lifespan of the cables, the maintenance costs will be higher but still less expensive overall compared to their concrete counterparts.”

# New FMLA Regulations Modify Obligations Imposed On Employers

On November 17, 2008, the Department of Labor (DOL) issued new regulations that modify the Family and Medical Leave Act (FMLA). These regulations, which became effective January 16, 2009, alter the rights and obligations of employees with respect to potential FMLA issues.

For those employers without an FMLA policy, now is the time to develop one.

Employers who currently have an FMLA policy should amend it to conform to the new regulations. It is clear that employers who fail to comply with the requirements of the new regulations may be exposed to significant liability. Following are some of the more significant changes:

1. Covered employers now must post a general FMLA notice, even if they do not have any employees eligible for FMLA leave.
2. Employers now must provide employees two types of notice when employees request FMLA leave: eligibility notice (either indicating that the employee is eligible for leave or explaining the reason the employee is not eligible); and designation notice (notifying the employee: a) whether the leave will be designated and counted as FMLA leave; b) whether paid leave will be required to be substituted for unpaid FMLA leave; and c) if the employer will require a fitness-for-duty certification upon return from leave).
3. Each time the eligibility notice is provided, employers now must provide employees a notice of rights and responsibilities detailing the expectations and obligations of the employee and explaining the consequences of a failure to meet these obligations.



4. Employers now must provide eligible employees with 12 weeks of unpaid leave for a qualifying urgent situation arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on active duty or has been notified of an impending call or order to active duty.
5. Eligible employees now may take unpaid leave, or substitute appropriate paid leave if the employee has earned or accrued it, for up to 26 work weeks in a single 12-month period to care for a covered service member with a serious injury or illness.
6. Employers have additional time for requesting certification from a healthcare provider that the employee is suffering from a serious health condition.
7. Employers may demand more detailed information from the employee's healthcare provider before they return the employee to work.
8. Employers may consider FMLA absences in determining bonuses and other incentive awards.
9. New forms have been implemented to assist employers in providing FMLA leave, including forms for employee eligibility, rights and responsibilities; designation of leave; certification of qualifying urgency for military family leave; and certification of serious injury or illness of the covered service member for military family leave.
10. There now are separate medical certification forms for an employee's serious health condition and for a family member's serious health condition.

11. Employees are now explicitly permitted to settle past FMLA claims.

These topics represent only a fraction of the changes arising from the new FMLA regulations. For more information on these new regulations and how they may affect your operations, please contact a labor attorney. To view the revised FMLA regulations and forms, please go to <http://www.dol.gov/federalregister/pdfDisplay.aspx?docId=21763>.

This article is courtesy of Ben Mathis of the Atlanta law firm of Freeman Mathis & Gary, LLP. If you have questions, you can reach Mr. Mathis at 770.818.1402 or [bmathis@fmglaw.com](mailto:bmathis@fmglaw.com).

## Did You Hear...

A mother called 911 very worried because her son had been eating ants. The dispatcher assured her that the child would be fine and that she could give him something to settle his stomach. The mother then said she gave the child some ant killer. The dispatcher instructed her, "Rush your son to the emergency room immediately!"

What can we say?

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DIALOGUE:

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## Leadership Quote

**“A pessimist sees the difficulty in every opportunity; an optimist sees the opportunity in every difficulty.”**

Winston Churchill

## Safety Quote

**“To ignore the facts does not change the facts.”**

Andy Rooney

## Quote of the Day

**“I’m choosing not to participate in the recession.”**

Dave Ramsey

## For What It’s Worth

**“My sister has a lifesaving tool in her car designed to cut through a seat belt if she gets trapped in. She keeps it in the trunk.”**

Quote from a safety engineer

### Preferred Dealer Protection DIALOGUE

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