

Testimony of

Donald L. Hall

On Behalf of the

National Automobile Dealers Association

Before the

**Consumer Affairs, Product Safety, and Insurance
Subcommittee of the Senate Commerce Committee**

On

**“Protecting the Consumer from
Flood and Salvage Vehicle Fraud”**

November 16, 2005

SUMMARY OF THE TESTIMONY OF DONALD L. HALL

THE PROBLEM – The complicated 51-jurisdiction state motor vehicle titling regime invites fraud. Any unscrupulous rebuilder can repair or refurbish a wrecked or flood damaged car (typically a late model car “totaled” by an insurance company) and obtain a “clean” or “washed” title in a state with weak title disclosure rules. The new title will not reference the damage, leaving the buyer (consumer or dealer) to rely only on a physical inspection of the vehicle to expose any damage.

DMV title data and vehicle history reports are not timely or complete. DMV’s document transactions after the fact, and vehicle history services do not have access to current title information. Worse, DMVs and title history services may never get information about vehicles totaled by insurance companies, which have an incentive to withhold the damage of totaled vehicles to obtain higher prices at salvage auctions.

THE SOLUTION – More transparency, more timeliness, and more technology to provide buyers more complete, reliable title histories before a sale, and penalties for intentional circumvention of disclosure of severely damaged vehicles.

Transparency: More complete vehicle history data is needed. All states should “carry forward” prior brands when issuing new titles and states should brand registrations as well as titles. States should at least brand vehicles within four basic categories to capture the most relevant data on severe: salvage, rebuilt salvage, flood, and non-repairable. Congress should require the Department of Justice to issue a rule (delineated in the 1992 Anti-Car Theft Act) requiring insurance companies to submit to National Motor Vehicle Title Information System (NMVTIS) VIN-based information on total loss vehicles and salvage auctions and junkyards to submit to NMVTIS VIN-based information for vehicles sold at salvage auctions and junkyards. The rule should require private information industry involvement.

Timing: More current vehicle data is needed. All states should make existing title data available on a cost structure that reflects electronic records rather than paper records and work with the private sector to reduce the timeframe that the data reaches consumers.

Technology: More accessible vehicle history data is needed. The information industry in the private sector should have access to insurance company information for total loss vehicles and salvage auction sales data. Additionally, DMVs should make title data commercially available in bulk on a daily basis to the information industry. This information, marketed to consumers by private sector companies, would enable consumers to have more information before buying a vehicle. Finally, all states should be encouraged to move to electronic titling of motor vehicles.

Penalties are needed to prevent attempts at circumventing disclosure. In the 1992 Anti-Car Theft Act, Congress established penalties for failure to disclose total loss and salvage vehicle data to NMVTIS. These penalties should be enforced once DOJ implements the reporting requirements for insurance companies, salvage auctions and junkyards.

Any buyer should have pre-purchase access to information about significant vehicle damage that may affect safety, drivability, durability, and market value. All public and private sector stakeholders need to work together to increase vehicle history transparency and lay the foundation to end title fraud.

DEALING WITH FLOOD CARS: LAYING THE FOUNDATION TO END TITLE FRAUD

My name is Don Hall. I am President of the Virginia Automobile Dealers Association. I am appearing on behalf of National Automobile Dealers Association (NADA) and its 20,000 franchised auto and truck dealerships involved in the retail sale, service and repair of new and used motor vehicles, both domestic and import. The majority of NADA's members are small family owned and community-based businesses that employ more than one million people nationwide.

I am also a member of NADA's Title Integrity Task Force, a group of representatives from state dealer associations that seeks to combat title fraud and to identify solutions that will create more transparency in the title history process to protect vehicle purchasers.

I applaud the Subcommittee and the leadership of Senators Allen and Pryor on this important national issue. While motor vehicle titling is traditionally the province of the states, by nature motor vehicles are mobile and are frequently titled across state lines. Several years ago, we passed legislation in Virginia to require permanent branding on titles for seriously damaged vehicles. Unfortunately, because vehicles cross state lines, vehicles purchased and sold in Virginia do not come only from Virginia. Because of the inherent mobility of vehicles, title fraud is a national problem that requires a national solution.

Amid the personal devastation of the gulf coast hurricanes this year we are faced with an unprecedented number of flood vehicles that may result in a dramatic increase in title fraud. It is estimated that more than 500,000 vehicles were damaged by flooding in the Southeast region and many will be cleaned up and sold to unknowing vehicle purchasers.

But the problem goes beyond flood vehicles from the Gulf region hurricanes. Flooding in New England and North Carolina and other areas of the nation has led to countless other flood vehicles. And this barely scratches the surface of salvage vehicles, which result when insurance companies deem a car to be "totaled" as a result of collision, theft or fire damage. These vehicles can be rebuilt and given a clean title that does not disclose damage.

The National Automobile Dealers Association is pleased to be included in your hearing to discuss the problem of flood and salvage cars. Each year new car and truck dealers buy millions of used vehicles at wholesale auctions or in trade. Dealers and consumers, as purchasers of vehicles, must rely on the accuracy of the titles of used cars. NADA's Chairman, Jack Kain, spoke to the Automotive Press Association on October 6 on the issue, outlining many of the strategies that I will present today for laying the foundation to stop title fraud.

The Risk to Car Buyers

THE PROBLEM – The complicated 51-jurisdiction state motor vehicle titling regime invites fraud. The large-scale damage of three major hurricanes highlights the flaws in our current motor vehicle titling laws. Hundreds of thousands of flooded vehicles in the Gulf Coast region may be wholesaled and retailed without fundamental disclosure of the severity of the flood damage. Because 51 jurisdictions title vehicles 51 different ways, many opportunities for fraud exist. Under the current system, any unscrupulous rebuilder can repair or refurbish a wrecked or flood damaged car (typically a late model car “totaled” by an insurance company) and obtain a “clean” or “washed” title in a state with weak title disclosure rules. The new title will contain no reference to the damage, leaving the buyer (consumer or dealer) to rely on a physical inspection of the vehicle to expose flood damage. NADA’s website at www.nada.org contains tips on how to spot a flood vehicle.

Vehicle purchasers believe they can rely on the title history and vehicle history reports, which are currently incomplete. Vehicle history services can only report information to which they have access. Recent court cases and settlements illustrate that insurance companies receive higher sale prices for these totaled vehicles at salvage auctions if the titles are not branded.

The current unreliability of information creates a blanket suspicion of all vehicles from a particular region due to an inability to obtain information for individual vehicles. The current system creates an environment where all vehicles from Louisiana, Mississippi, Alabama and other states in the Gulf region are inherently suspect as flood damage vehicles, penalizing all sellers in those states, even those whose vehicles have not suffered damage. We have specific information that this is already occurring in Louisiana.

THE SOLUTION – More transparency, more timeliness, and more technology is necessary to provide buyers a more complete and reliable title history before the sale, and penalties must be created for intentional circumvention of damage disclosure. We are not talking about how states title vehicles; we are talking about sharing information they currently collect. All buyers of a used vehicle (consumers, businesses, and even automobile dealers taking a vehicle in trade) have the same economic interest – determining fair market value prior to purchase. A more complete, near real-time title history would provide a more accurate picture of a vehicle’s prior condition/use.

- Transparency: More complete title history data is needed. Most states departments of motor vehicles (DMVs) are collecting the necessary title data about damaged vehicles, but there are exceptions. The motor vehicle title laws of each should provide a threshold level of disclosure to capture significant damage to a vehicle. Also, the states should move to more uniform classification of the title data.

- Timing: More current title history data is needed. Title histories provide key data that dramatically affect fair market value and may raise safety-related concerns. Yet, as many as 30 to 60 days may pass between the time that a vehicle is damaged and the time that data reflecting that damage are publicly available. This delay facilitates criminal activity.
- Technology: More accessible title history data is needed. The information industry in the private sector should have access to insurance company information for total loss vehicles (VIN, odometer reading, and date of declaration of total loss) and salvage auction sales data (VIN, odometer reading, date of salvage auction sale). Additionally, DMVs should make title data commercially available in bulk on a daily basis to the information industry. This information, marketed to consumers by private sector companies, would enable consumers to have more information before buying a vehicle.

Existing penalties are needed to prevent attempts at circumventing disclosure. In any system there exists an opportunity and incentive to circumvent the system. As described below, Congress has already enacted applicable penalties; they should be enforced.

Background On Motor Vehicle Titling Laws

The laws of fifty states and the District of Columbia govern the titling and registration of motor vehicles, which creates a systemic lack of uniformity. A motor vehicle title documents ownership of a specific vehicle, while a motor vehicle registration provides permission to operate a specific vehicle. Although the trend in state titling laws has been toward more uniformity during the past several years, the 51 jurisdictions still conduct business 51 different ways. Each jurisdiction has created a distinct paper title, different computer programs to issue and track titles and registration, and a separate, extensive body of statutes and regulations to govern the titling and registration of motor vehicles within their respective borders. Additionally, these discrepancies can be complicated by the informal policies and procedures used by title clerks, which may vary even within jurisdictions.

One purpose of a motor vehicle title is to provide public notice about certain characteristics of a specific vehicle. A motor vehicle title has a unique title number assigned by the issuing jurisdiction and a unique Vehicle Identification Number (VIN) assigned by the manufacturer to the specific vehicle. The 17-character VIN conveys information about the vehicle, such as year, make, model, body type, and engine type. The unique identifiers facilitate the tracking of vehicles for a variety of purposes. For example, state or local taxing authorities may rely on VIN information to assess personal property taxes. The paper title includes the name and address of the owner, existence of a lien holder, and other information about the specific vehicle's prior condition or use.

Federal and state privacy laws strictly limit the use of personal information obtained in the titling process. The federal Driver Privacy Protection Act and similar

state statutes limit the distribution of names and addresses included in title databases. The distribution of VIN-based title branding data does not include vehicle ownership identifiers

In common usage, a “title brand” is a notation of the face of a certificate of title that provides notice to all subsequent purchasers of the damage, condition, or prior use of a vehicle. A “brand” is a word, symbol or abbreviation printed on the title itself. The 51 titling jurisdictions use a wide variety of brands, such as reconstructed, salvage, rebuilt salvage, rebuilt, restored, reconditioned, junk, non-repairable, taxi, police, flood damage, fire damage, unsafe, and repaired. The complete list is extensive and confusing.

While state titling laws and procedures are becoming more uniform, no single database contains all of the data necessary to obtain a completely accurate title history. In recent years, the American Association of Motor Vehicle Administrators (AAMVA), the trade association of state motor vehicle administrators, has encouraged the adoption of uniform definitions and procedures for dealing with title brands. Despite these efforts, four fundamental problems remain:

- Some states still do not brand all vehicles that sustain major damage. Most states typically brand vehicles that sustain significant damage from accidents, floods, etc., especially if an insurance company declares a total loss. The most significantly damaged vehicles are covered by the following brands in most states: salvage, rebuilt salvage, flood, and non-repairable. However, some of the current databases are still incomplete. As a practical matter, some states need to be more aggressive in branding vehicles, especially to ensure that total loss vehicles are branded.
- The current databases provide conflicting information. While many states have consistent concepts for title branding, the specific definitions and symbols are inconsistent and confusing. For instance, the percentage of damage required for a salvage brand varies from state to state. The private sector will interpret and summarize the information so that consumers can understand the significance of this information.
- Not all states “carry forward” the brands of other jurisdictions, and some states carry forward the brands of other jurisdictions to a limited extent. Even worse, some jurisdictions re-issue titles without carrying forward the brands of their own jurisdiction.
- No single database captures current state titling information. (It is impossible to search all of the databases simultaneously.) Currently, title data reside in 51 databases that are not accessible by one search engine. Private vendors provide access, but their databases have a 30 to 60 day lag time. The absence of near real-time title histories literally invites fraud.

Technology – The Essential Element of Any Solution

Congress has recognized that technology should play a critical role. The Anti-Car Theft Act of 1992 authorized the creation of the National Motor Vehicle Title Information System (NMVTIS). As envisioned, NMVTIS would become the single source for title history data from all 51 jurisdictions. AAMVA has attempted to link all 51 databases in real-time using a combination of federal funds, state funds, and internal resources. The system envisioned would provide real-time, title clerk-to-title clerk linkage and then provide third party access to title histories. NMVTIS has not been completed because state resources are required to reconfigure state DMV systems to communicate with NMVTIS. AAMVA’s attempts to design and implement a system to provide third-party access to NMVTIS have failed.

The challenge facing NMVTIS is funding – initial costs to configure the system and continued operating costs. Unless the system can generate income through the sale of data to third parties (VIN-based information that does not include vehicle ownership identifiers), the future of the system is in doubt. The existing economic model of NMVTIS – relying exclusively on public funding – is not sustainable.

Private sector information vendors are essential to the distribution of data to consumers. Private sector vendors already buy DMV data in bulk and provide title history reports to consumers, but the vehicle histories are not accessed in as timely a manner as they should be. However, incumbents in the market are well-positioned to leverage technology to the advantage of consumers. Any NMVTIS-based solution must rely on the private sector to package and market title histories to the general public. These vendors already buy title data in bulk, usually every month. If the states simply provided daily electronic updates instead of monthly, the private sector could use technology to close the window for fraud. The end result would be an efficiently administered, up-to-date system that would provide consumers with more timely information.

Potential Legislative Solutions

All states should “carry forward” prior brands when issuing new titles. This requirement is one of the first steps necessary to provide a “closed loop” system. Once any state brands a vehicle, every subsequent jurisdiction titling and registering that vehicle must carry forward all previous brands of all previous jurisdictions. For example, if Virginia brands a title as a flood vehicle and the car is re-titled in Kentucky, the Kentucky title should carry the notation “VA-FL” (an abbreviation for Virginia-Flood Damage). Just as important, this carry forward requirement would require every state to carry forward previous brands on duplicate titles issued within the same jurisdiction. In short, interstate and intrastate brand carry forward is critical.

In addition to placing the brands on titles, states should brand registrations as well. Owners often do not see a title if the vehicle is subject to a lien, but every owner receives a registration document.

Congress should encourage all states to, at a minimum, brand vehicles within these four basic categories to capture the most relevant data for vehicle purchasers: salvage, rebuilt salvage, flood, and non-repairable. The most significantly damaged vehicles are covered by the following brands in most states: salvage, rebuilt salvage, flood, and non-repairable. To avoid needless confrontation over the exact wording of definitions, the states should retain flexibility in defining these terms.

All states should make existing title data readily available on a cost structure that reflects electronic records rather than paper records. Currently, private sector information vendors such as CarFax and Experian buy title history data in bulk and aggregate the data from various states to provide title histories to consumers. The states sell this data in bulk to these vendors and the lag time may be as long as 60 days. The laws of some states have not been updated to reflect economic commerce. Congress could encourage the states to make title data more available so that data vendors can obtain daily downloads of active title and registration and brand files.

All states should be encouraged to move to electronic titling of motor vehicles. If every state DMV issued electronic titles, the benefits to the consumer would be significant. Title histories would be more readily available, and the perfection and release of liens, an essential element of motor vehicle commerce, would be more efficient. An electronic titling regime does not mean the elimination of paper titles, because paper titles will be necessary for years to come to facilitate consumer-to-consumer transactions.

The National Motor Vehicle Title Information System, authorized in the Anti-Car Theft Act of 1992, should be reconfigured to focus on providing consumers transparency prior to a transaction. The vast majority of the resources of NMVTIS have been used in an attempt to link DMVs so that title clerks can talk to title clerks electronically before issuing new titles. Unfortunately, most title fraud occurs before a title clerk ever sees an application for a new title. Most DMVs exist to document motor vehicle ownership after a transaction has occurred. Moreover, DMVs do not have the statutory authority, the expertise, or the financial resources to package and market VIN history data in the general public.

In contrast, there is an active, innovative, and highly competitive information industry that could provide more complete, timely and accurate vehicle title histories. The DMVs and the private sector must work together more aggressively to enhance consumer access to title history data.

Congress should require the Department of Justice to implement the Anti-Car Theft Act for the benefit of consumers. DOJ has existing statutory authority to create more motor vehicle title transparency in a matter of months. 42 U.S.C. §§ 30501-30505.

Congress should compel DOJ to initiate the rulemaking that was originally intended and enforce the penalties under existing law for failing to submit data to NMVTIS. The rule should: 1) recognize that NMVTIS has been created; 2) require insurance companies to submit to NMVTIS VIN-based information on total loss vehicles; 3) require salvage auctions and junk yards to submit to NMVTIS VIN-based information for vehicles sold at salvage auctions and junk yards; 4) require NMVTIS to engage a private sector joint venture partner to market the NMVTIS data to consumers no later than June 30, 2006; and 5) encourage state DMVs to submit VIN-based motor vehicle title and registration data to NMVTIS in electronic batch form every 24 or 48 hours. NOTE: All data marketed to the public must comply with Federal and state privacy protection statutes.

Any federal remedies must reflect federalism. Motor vehicle titling laws fall within the jurisdiction of the states. Federal preemption of this state-based regulatory regime could be challenged under the Tenth Amendment to the U.S. Constitution. To limit such a challenge, Congress could use incentives (provide grant money) or penalties (withhold certain Federal funds) to encourage states to change their respective motor vehicle titling laws promptly.

Conclusion

Vehicle purchasers should have the right to know about significant vehicle damage that may affect the safety, drivability, durability, and value of a car or truck. Only if armed with fully disclosed information regarding a prospective vehicle can a purchaser make an informed buying decision. Only when armed with this information will a purchaser know what repairs to inspect prior to purchase.

Any solution to the title fraud problem must be viewed through the pre-transaction lens. The technological solution to the problem of flood vehicles – and all other title fraud – lies in creating near real-time, pre-transaction access to the vehicle history data that DMVs, insurance companies and salvage yards currently collect.

The solution employs existing private sector companies. A vibrant third-party information industry already exists using the limited information currently available. Adding to that information would add value to the industry and value to the information currently available to vehicle purchasers.

Our focus is on creating accessibility to this information, not providing it directly. We seek to take a currently antiquated element of what states do and encourage states to bring that function into the information age for the benefit of vehicle purchasers, not to dictate to states how they do it.

On a final note: the Coordinating Committee for Automotive Repair recently introduced a report on the health hazards of many flood vehicles since "contaminated vehicles and their parts are likely to be distributed over a much larger area than was directly impacted by the hurricane." Flood cars only highlight a broken title system. If we work together to

solve flood vehicle problems, these same solutions will reduce all types of title fraud, such as odometer fraud and VIN cloning.

It is now time to modernize the titling system and bring the titling system into the 21st Century. Congress can take simple steps to help notify vehicle purchasers that their vehicles have been seriously damaged. Complete and timely title information benefits us all. Congress should take this opportunity to take action that helps prevent scam artists from “washing” titles and keeps damaged vehicles from ending up back on the road.

NADA and automobile dealers in Virginia and throughout the country are prepared to assist with efforts to eliminate title fraud. Thank you for the opportunity to present our views, and I look forward to your questions.