

A Matter Of Mileage

Chicago Dealer Found "Not Guilty" In Odometer Tampering

by Lawrence Savell

One of the factors that may be considered in deciding whether to purchase an old car is the vehicle's mileage. But how do you know that the mileage indicated on the odometer accurately reflects how often the car has "been around the block?" Some assistance to purchasers has been provided by laws and regulations requiring accuracy in odometer readings. An analysis of such legislation in the context of the purchase of an old car was recently provided in *Diersen vs. Chicago Car Exchange*, decided on March 31, 1997 by the United States Court of Appeals for the Seventh Circuit.

According to the Court, on July 23, 1997, David J. Diersen purchased a 1968 Dodge Charger R/T from the Chicago Car Exchange (the CCE) for \$16,790. The CCE provided Diersen with a written odometer disclosure statement indicating that the actual mileage of the Dodge was 22,633. The statement was made pursuant to the federal Vehicle Information and Cost Savings Act (the Act), which requires all persons transferring a motor vehicle to give an accurate, written odometer reading to the purchaser or recipient of the transferred vehicle. Under the Act, those who disclose an inaccurate odometer reading with the "intent to defraud" are subject to a lawsuit by the purchaser or recipient, and may be held liable for treble (three times the) damages or \$1,500, whichever is greater. The CCE also provided Diersen with an appraisal document stating that the car had 22,600 original miles, as well as a fact sheet stating that the car had 22,600 miles and just one prior owner.

The CCE had purchased the vehicle in question from an individual who certified to the CCE that the mileage on the car was approximately 22,600 miles and stated that the vehicle had but one prior owner.

After acquiring the vehicle but before selling it to Diersen, the CCE inspected the car visually, test drove the car, and looked at the car's engine. The CCE concluded that the car was in good condition and did not suspect that the odometer reading was inaccurate.

Diersen, after purchasing the Charger, conducted an extensive investigation into the car's title history and discovered that the vehicle had previously been described in title documents as having mileage of 75,000. However, when Diersen telephoned two of the car's prior owners, they informed him that the high mileage noted on the title documents was a discrepancy, arising from a clerical error, and asserted that the vehicle was in fact a low-mileage car.

Before Diersen filed this lawsuit, the CCE offered to have Diersen return the car for a complete refund. Diersen refused and instead sued the CCE for fraud under the Act. The CCE brought a motion for summary judgment, asking the court to dismiss Diersen's claims. The trial court ruled for the CCE, relying on a regulation promulgated by the National Highway Traffic Safety Administration which purported to exempt vehicles at least 10 years old (such as the Dodge) from the Act's odometer disclosure requirements. Diersen appealed.

In its decision, the Seventh Circuit affirmed the ruling for Diersen, although on different grounds from the lower court. The Court agreed with Diersen that the regulation which exempted old vehicles was invalid, as there was no evidence that Congress intended for there to be or authorized such an exclusion. Examining the Act's broad purposes to prohibit tampering and provide safeguards to purchasers, the Court concluded that "[t]here is nothing in this statement of purpose to suggest that the purchasers of older vehi-

cles are less deserving of protection than consumers who buy newer vehicles."

Although the court opined that "[t]here may be good policy reasons for exempting older vehicles from the requirements of the Act," it also opined that "[o]n the other hand, one might argue that the odometer disclosure requirements of the Act are all the more crucial for buyers of older cars, who would like to know whether they are purchasing an old car with low mileage or one which, consistent with its age, has been driven extensively."

The Court therefore concluded that the lower court erred in relying upon the exemption when granting summary judgment to the CCE.

Having ruled that the Act's odometer disclosure requirements apply regardless of the age of the vehicle, the Court then examined whether Diersen had produced sufficient evidence that the CCE had provided an inaccurate disclosure statement with the intent to defraud. The Court found Diersen had not: "There is, in short, no evidence to suggest that the CCE knew or suspected that the 22,600 mile figure was mistaken, much less that it intended to defraud Diersen by providing an inaccurate odometer reading...Indeed, the plaintiff's allegation of fraudulent or evil intent is belied by the fact that the CCE, in good faith, offered to allow Diersen to return the car for a full refund..." The Court thus ruled for the CCE.

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