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**Recreation Vehicle Dealers Association of BC**

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A personal message from Ken Smith  
President/Registrar

## **RV dealer victimizes consumers and the Motor Dealer Customer Compensation Fund**

Media and industry information networks have related the ever-expanding disaster left in the wake of failed Vancouver Island dealer Southwest RV and Sport Ltd.

The investigation began when consumers who had left vehicles on consignment complained to the VSA that they were unable to locate either their RV or their money. VSA compliance officers would soon discover a proverbial can of worms - 80 active files, some with six figure losses to report. There was even a complaint from one consignee that their RV had been rented out, without any of the proceeds paid to the rightful owner.

Finally, after multiple complaints, I sought a court order freezing the assets of the company and putting a Receiver into the dealership. Amid calls from customers, the VSA and media, the dealer principal Kersti Clark fled the country. The matter is currently the subject of a RCMP investigation.

VSA compliance officers have been able to reunite many of the complainants with the vehicles they had left with Southwest RV on a consignment basis, but it is expected that there will be several large claims to the compensation fund. By the time all of the eligible losses and related administrative expenses are tallied, the cost to the fund for this and other smaller matters during 2008 could be as high as \$1 million.

### ***"Why didn't VSA stop Southwest RV sooner?"***

This is a fair question and, with hindsight, it could be argued that they should not have had a dealer licence in the first place. After the business failure and the raft of consumer problems, our investigators determined that information on Kersti Clark's application for a licence in 2006 was false, and that she had been involved in a commercial scandal and investigation years ago in California.

At the time of the application she complied in full with all of the VSA requirements, including references. Southwest RV was represented by a respected solicitor. Ms. Clark and the company joined the Recreation Vehicle Dealers Association of BC and used that membership as a credential during every encounter we had with her.

If Southwest RV stuck to the terms of its licence, this problem would unlikely have occurred. The complaints were entirely related to consignment sales which the company conducted in defiance of VSA orders.

Kersti Clark was first denied permission to conduct consignment sales shortly after the company obtained a dealer licence in 2006. This new dealership lacked the obligatory three years of experience and demonstrable credibility.

Ms. Clark unsuccessfully challenged the Registrar's right to deny approval for consignment sales, losing at every round in a lengthy and costly process through different courts, but defying the lack of consignment approval and continuing to conduct this fashion of business.

One outcome of this long fight has been the confirmation by Mr. Justice Wong of the B.C. Supreme Court of the Registrar's authority to deny permission to conduct consignment sales to those who fail to meet the criteria.

It is unknown at this point what the final damage will be. Not all of the RVs have been recovered. Some were sold without the proceeds being paid to the owners. In some instances, there are disputes between insurers and the owners as to the vehicle value. Others, who got their RVs back, claim that damage has been severe. In the case of each eligible claim, the fund can pay out up to \$20,000. The criminal investigation by the RCMP will take some time and it is expected that there will be civil litigation as well.

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The Compensation Fund legislation, which predates the formation of the VSA by almost 10 years, puts the burden for this squarely upon the shoulders of licensed dealers. It should be recalled that industry asked government to create such a fund, modelled after Ontario legislation, to replace a previous requirement that all dealers post a \$15,000 bond. The bond was found to be inadequate because customers needed a court order to collect and the amount was insufficient in situations where there were multiple claims.

Announcing the Fund in March, 1995, the Minister of Consumer Services, Hon. Joan Smallwood, said: "This protection covers buyers from registered dealers . . . one more reason why consumers should deal with licensed dealerships rather than unlicensed motor dealers."

A government news release added:

*". . . the fund protects consumers if the new- or used-car dealership fails to return a trade-in, full payment, deposit or down payment when the dealer refuses to*

*deliver a vehicle, can't deliver it because of a business failure, uses dishonest conduct or fails to provide clear title to the vehicle."*

An independent Board of Directors, consisting of industry, public-at-large and government appointees has managed the Fund since it began in 1995.

The forerunner of the Motor Dealer Customer Compensation Fund, in the consumer field, was the Travel Agents Registration Act, a response by government to multiple scandals in the package tour travel business. Everyone engaged in marketing travel was obligated to pay into a government managed fund. This is now part of the mandate of an independent agency similar to the VSA.

Similar mechanisms are in place within most of the autonomously managed professions such as medicine, law, accounting, chiropractic and engineering, in most cases insurance funds to satisfy valid claims from aggrieved clients.

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One of the lessons that should emerge from this case is the clear understanding that the Compensation Fund legislation places the burden upon all dealers.

When it is suggested that VSA ought to be more diligent in investigating applications for new dealer licences, it should also be understood that licence revenues (dealers and salespeople) covers this cost as well. If our budget increases significantly in the processing of new applications and if we more frequently inspect all dealerships in efforts to catch problems before they expand, licence fees would increase. And we would also get complaints from the vast majority of dealers who do things properly about the frequency of visits by VSA officers.

Finally, consignment selling means running all or part of a business using other people's assets. If approved by our office to do so, be meticulous in how you manage this public trust.

The rules governing consignment sales constitute Directive 6 in the VSA "Dealer Directives" which can be found in the "INDUSTRY" section of the VSA web site.