

Dealers rebel against liquidator

WHEN UNDERWRITERS Western Pacific Insurance Ltd was placed in liquidation, Link Warranties Ltd soon followed.

According to the first report by liquidators Chris Horton Associates, Link owed around \$530,000 to unsecured creditors, including \$420,000 to trade, many of which were tradespeople which had completed warranty work for Link.

Assets included debtors of \$67,000, much of which presumably is money owed for policies written, some in the days leading up to liquidation.

Always in the thick of it,

importer Steve Ward approached Autofile regarding payment demanded by the liquidator Chris Horton Associates.

He'd written a policy worth \$844 the day before Link were wound up. Like many former Link dealer clients spoken to, he's refusing to pay up, saying the policy is worthless, and that Link must have known they were going under at that stage.

Further compounding Ward's ire is what he terms 'creative accountancy' by the liquidator. He says that while on paper they owe for a single warranty, the

liquidator has "cocked up" the figures to show that he owes them \$3,000.

If the amount is more than \$1,000 then the company can be served with a statutory demand (see page 7).

"I went through and added up all the warranties, and what we've paid, and they've never taken into account that we made a payment on a certain date.

The receiver wouldn't accept it and said that we would have to prove it, so we emailed through bank statements."

Ward says he initially offered

to make a settlement of \$1,500, saying that while he doesn't owe on paper more than \$844 the legal costs would far exceed the difference. The liquidator declined to accept.

"I've now told him that I'm going to personally sue him for being incompetent if we have to go to court. He's trying to make out that the company is insolvent, which is an absolute joke.

"The ball's in his court now, we have said we will contest it, which means he'll have to file court proceedings to wind the company up.

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Competitive tenders under spotlight

READING THROUGH a string of recent disputes cases might leave one with the impression that understandings within the industry of what constitutes an auction or competitive tender are varied, if not flexible.

The case printed this week brings to light issues surrounding the trade's interpretation of

'competitive tender.' Vehicles sold by competitive tender are excluded from the guarantee of acceptable quality in the Consumer Guarantees Act (CGA). Despite this, the Act contains no definition of competitive tender, nor is one to be found elsewhere. Competitive tenders are set to disappear in the consumer law reform legislation

likely to be passed later this year, but as the law stands they remain for some a viable business practice, and for others a 'loophole'.

But problems surrounding the interpretation of auctions and tenders are by no means limited to smaller traders, as previous cases have shown. And Autofile knows of one major tender dealer currently

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Market
stats and
round-up

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TRISTAN HEIGHT 3.5 M WEIGHT 37 MT	6	Tue 31 May		Wed 1 Jun	Thu 2 Jun	Fri 24 Jun	Mon 27 Jun	Mon 27 Jun	Mon 27 Jun	Sun 26 Jun	Mon 27 Jun
	IMO 8507652										
HOEGH CHENNAI HEIGHT 3.5 M WEIGHT 12.5 MT	11	Thu 16 Jun		Fri 17 Jun	Sat 18 Jun	Thu 30 Jun	Sun 3 Jul	Sun 3 Jul	Sun 3 Jul	Fri 1 Jul	Sat 2 Jul
	IMO 8507652										
SINGAACE HEIGHT 5.5 M WEIGHT 70MT	17	Sun 26 Jun	Sun 26 Jun	Mon 27 Jun	Wed 29 Jun	Fri 15 Jul	Mon 18 Jul	Mon 18 Jul	Mon 18 Jul	Sun 17 Jul	Mon 18 Jul
	IMO 8313324										
HOEGH XIAMEN HEIGHT 5.1 M WEIGHT 120 MT	5	Tue 28 Jun		Wed 29 Jun	Thu 30 Jun	Sat 23 Jul	Tue 26 Jul	Tue 26 Jul	Tue 26 Jul	Mon 25 Jul	Tue 26 Jul
	IMO 9431848										
CUT OFF DATES											
HOEGH CHENNAI	11	Thu 9 Jun	Wed 8 May	Fri 10 Jun	Mon 13 Jun	- Please kindly place your bookings at each loading port: Nittsu, Isewan, Shinkyo and Auto Terminal Japan. - Cargo for vessels not calling Kawasaki, Kobe or Kisarazu will be transported to the nearest load port. - All Tauranga and Napier units will be land transported from Auckland - Schedules, Ports and Vessels are subject to change without prior notice					
SINGAACE	17	Mon 20 Jun	Mon 20 Jun	Mon 20 Jun	Wed 22 Jun						
HOEGH XIAMEN	5	Tue 21 Jun	Tue 21 Jun	Wed 22 Jun	Thu 23 Jun						

SALES JAPAN	OSAKA AREA	KOBE AREA	NAGOYA AREA	TOKYO AREA	AUCKLAND	TAURANGA	NAPIER	WELLINGTON	LYTTELTON
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Rugby World Cup phantasm or good business?

OUTSIDE OF the thrill of watching a World Cup match, there's the entirely academic question to be asked, Will it be good for our economy?

As always, reports have been released suggesting initial predictions were overblown, and that New Zealand taxpayers will end up footing the bill – though you'd think we'd be used to it by now.

Nevertheless, John Banks suggested Auckland host the Olympics (with a \$20 billion price-tag), and the initial cup plans suggested a giant stadium on Auckland's waterfront – incidentally smack bang on the spot where 70% of New Zealand's vehicles arrive.

The overseas experience is that if you build an enormous facility that is excess to ordinary capacity, then it's not going to be cost effective in the long run. Updating existing facilities, or fast-tracking needed development – that's okay.

To my mind it's always been a quirk of the capitalist system that when something gets destroyed and requires rebuilding, it results in growth, since there is extra economic activity.

Building a stadium is a bit the same – a large amount of money is chucked into a hole and buried.

But it's not always that way – it's clear that the value of something needs to be based on its enduring function – whether it is of long-term benefit to the community, or whether as in the case of the waterfront stadium – it ends up an entirely redundant shrine to short-sightedness.

The America's Cup in Auckland is a good example. It didn't require stadiums, but it still required facilities, and a decent number of restaurants so that Italian sailors wouldn't have to get drunk at the same place more than once a month.

And while in the short-term it only seemed to provide a host of over-priced eateries, in the longer term it can be seen as sparking major developments around the Viaduct and in the Tank Farm area, which is now a fairly vibrant area of Auckland.

For some businesses, the WRC should provide an opportunity to gear up and take on extra work. It might be fleeting, but in many cases the requirements of an international clientele and the increased demand result in permanent skill-sets.

Whether the WRC provides lasting benefit to New Zealand remains to be seen, but for some it will be an opportunity that will be rewarded.

For the rest of us it will just be a chance to cheer, and be thankful they're not playing on the waterfront. ☺

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Next issue: June 23

Border inspections – any takers?

AT A meeting held last week in Auckland, NZTA outlined their plan for the structural border inspections.

MAF currently check vehicles at the same time as they control for biosecurity, but want to discontinue doing the structural border checks by 1 January 2012.

The vast majority of used imports are controlled for biosecurity off-shore in Japan, and the structural border inspection is carried out at the same time.

Nevertheless a number of vehicles arrive each month in New Zealand unchecked, whether from Japan or other export locations, such as Singapore and the UK.

NZTA originally consulted with the industry over how to manage the process, and different proposals included to maintain independent third party inspection of used vehicles, or to merge the border

inspection into entry certification.

NZTA's decision is to replace 'like with like', and have commercial organisations perform the inspections on-shore. It is currently inviting applications from "interested and suitably qualified organisations" to undertake the inspections.

With importers currently paying around \$20 per vehicle checked, this cost is set to rise to perhaps \$80, though part of the application process will require any organisation interested will have to give details about their pricing. Nevertheless, it will be a commercially determined price. Presumably, the less companies, the higher the cost for importers of vehicles.

One issue that emerged out of the meeting was that an extra set of inspectors, in addition to MAF, would slow down vehicles being processed at ports, since vehicles

must be checked before they leave Customs areas.

Another detail that emerged is that TSDA's effectively won't be eligible to apply.

But questions are being asked by industry whether any commercial organisation will want to take on the role, especially given that volumes next year remain uncertain.

By far the majority of used vehicles arrive in New Zealand from Japan, and there is operational capacity there to check vehicles during dwell time, prior to being shipped.

However with currency fluctuations and the new emissions rule, importers may look to other markets to source vehicles. It's no doubt that some volume of vehicles will continue to arrive in New Zealand requiring border inspections, but there is little

certainty as to whether the numbers will be constant.

If there are no interested parties it's effectively back to the drawing board, to consider whether there are further options. Suggestions have included pressuring MAF to continue on that capacity on-shore, or looking at options with existing facilities such as rolling the border inspection into the entry certification process.

When asked whether there was a contingency in case there are no interest companies, spokesman Andy Knackstedt expressed confidence in the process.

"We'll be having further discussions with MAF and Customs to ensure continuity of border inspection services but given the level of interest expressed by industry we are confident we will get several applications." ☺

May I see your license, Sir?....

WHILE MANY of you may have heard that on the side of a state highway, wondering exactly why 110 km/ph is a crime, the "drivers license" is not as reliable as you'd think, as an increasing numbers of businesses subject to fraud and theft are finding out.

Take for example the MotorWeb customer who happily waived off a couple of prospective buyers after sighting their license, and even taking a photocopy!

They obviously loved the vehicle, since they never returned it. A quick call to the Police to report the vehicle stolen and it was discovered

that that license did not exist. As they say, Bugger.

NZTA is aware of the problem of forged licenses, and seeing how a 15 year old schoolboy recently recreated some with software and scanner, they are NOT something that should be relied on at face value as a valid ID.

But, the good news is that any license can quickly and easily be checked on MotorWeb. You will instantly know if the license is real. Reports from the Motorweb customers are that all their customers are now checked and none of them mind. If they don't want you to check, what does that tell you!

Count that as one back for the dealers.

In the meantime keep a look out for a sliver 2005 Honda Accord.

Kiwi raises \$25,800 for Japan

KIWI CAR Carriers has raised \$25,800 for the Japanese Red Cross, through a charity auction at a recent function.

The function was preceded by the opportunity to introduce customers to their new vessel the Hoegh Chennai, which is their mid-month loader.

And with a large number of young children taking part in the tours, it's a safe bet that for many it was their first time aboard a RoRo.

At the function, managing director Terry Riches spoke of the pleasure of again sailing under the Kiwi brand.

He also announced their sponsorship of the BNZ Save the

Kiwi Trust, which is committed to rebuilding populations of kiwi.

Through auctioning off lots of door-to-door packages, including one 10-car package, a significant amount was raised for victims of the Great East Japan Earthquake and Tsunami.

After the auction, Riches was joined by the Consul-General of Japan in Auckland, Hachiro (Hatch) Ishida, whose message was that despite the disaster, Japan remains very much open for business, with trade a great help.

He mentioned the earthquake in Christchurch, saying that for all businesses the wish is a return to normalcy as soon as possible. ☺



Kiwi's Terry Riches is joined by Ports of Auckland general manager ports services Wayne Mills

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Competitive tenders under spotlight

appealing a decision similar to the one printed this week.

Dealers who sell vehicles by tender incorrectly aren't only likely to lose at the disputes tribunal; contracting out of the CGA incorrectly, and misleading customers about their rights is an offence under the Fair Trading Act (FTA). Investigations by the Commerce Commission and subsequent prosecutions have in the past resulted in fines ranging from \$15,000 to \$52,000, and the maximum fine enforceable is \$200,000.

Dealers who employ what the Commission considers sham 'tender' processes to try and avoid their legal obligations, whether through ignorance of the law or through avarice, might take note that many of these cases which end up at Disputes could equally arrive at the Commission, depending on whom the purchaser complains to.

According to a statement given by a spokesperson earlier in the year, the Commission is unlikely to consider cases that have been through the MVD.

"The Motor Vehicle Disputes Tribunal does not pass details of their cases on to the Commission and the Commission does not monitor the results of other agencies such as the MVD. Some consumers may lay a complaint with more than one agency.

"The Commission uses its own enforcement criteria to assess which complaints it may investigate, and in general terms, if a consumer has had an effective response from another agency the Commission will not take further action."

Autofile contacted Eric Mustchin of E & H Auctions Ltd. He says that his gut feeling was that "I was done before I even walked through the door."

He disputes the damage to the vehicle, which the purchaser's mechanic diagnosed as a cracked head gasket, saying

My what a large fine that is

In 2006 the Commerce Commission prosecuted dealer Quinton Marchione in the Auckland District Court.

He was found guilty of 32 charges of breaching the Fair Trading Act, fined \$48,000 and ordered to pay \$4,160 in costs.

Marchione and his staff got more than 20 customers at the car yard to sign a form saying that, because they were buying on an "as is where is" and "tender" basis, they would not be protected under the CGA or FTA.

When buyers experienced problems with their cars and went back to Marchione, he said that the form they had signed meant he could not be held responsible for any problems.

The Director of Fair Trading at the time Deborah Battell said that car dealers could not 'contract out' of their legal obligations.

"Marchione may have thought he had found a legal loophole by selling cars through a so-called 'tender' process," she said.

"Such a loophole does not exist. Consumers have rights under the Consumer Guarantees Act and Fair Trading Act and traders can not deprive them of those rights."

Battell said the Commerce Commission was aware that car dealers were using sham 'auctions' or 'tender' processes to try and avoid their legal obligations.

"The practice has become widespread so the Commission is pleased that a substantial fine has been imposed to let other car dealers know that they cannot deny consumers their legal rights."

there was no way it would have done 1,800 km with a cracked or blown head gasket.

"When I spoke to the mechanic that looked at the vehicle I asked him a pertinent question, When you did the oil what was it like? He said 'Reasonably clean, no water in the oil.' Ditto for the radiator. So I asked where the hell he got the idea that the head gasket was checked, and he said they did a TeeKay test. I said that a TeeKay test is not the be all and end all, it could be a worn out water pump."

Mustchin says that with regard to CGA exclusions, he could not find out what the definition for a competitive tender was, despite his years in the trade.

"If a buyer came to me, gave me a tender offer on it, and at 4 o'clock you are the only tender, can I sell it to you or not? You can go to an

auction and it takes a number of people to make an auction, but if you've only got one bid and you sell it, what's the difference?"

He says the only explanation from the Tribunal given is that it must be 'competitive.' If the issue comes up again he will go to the district court first he says, where he believes with a judge who is more impartial he will get a better hearing.

The Motor Trade Association's Tony Everett says that in advice to members they stress the importance of demonstrating that the vehicle being sold is actually being sold by tender.

"Technically as it stands at the moment, you can contract out of the CGA if it's by competitive tender. Where dealers will fail is if they can't demonstrate that.

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Dealers talk... but who's really listening?

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Willett joins National Executive

THE NEWEST member of the IMVIA executive is an old hand at it – Frank Willett, has been elected as the North Island Vice Chairman of the Association.

Willett says he's had a passion for this industry ever since becoming involved in the early 90s, and brings to the Association's executive a wealth of knowledge about certification and compliance.

Ensuring compliance and certification of used imports is fundamental to the import trade, and Willett says it's important to have someone on the executive who knows all the ins and outs, as processes evolve and new challenges must be met.

ESC is one such issue. While Ministry of Transport officials are currently 'investigating mandating ESC, there is the possibility that this

will become a certification issue. Willett says whether it's importers having to meet mandatory standards or trying to source ESC-fitted vehicles, they'll need to know what they're looking for.

"One of the key potential issues we have now is a standards related matter, electronic stability control (ESC), and we can see it coming on the horizon. With ESC potentially we're going to be looking at having to comply with a certain standard.

"First and foremost it's like any certification process, if a vehicle's spec sheet says it's got it, importers have got to know exactly what variation it is, and whether it will meet any requirements. We've got to know here in New Zealand how to test it to ensure it meets the requirements as well."

It's the importance of issues like

these that have been part of the impetus to step forward says Willett.

"If you wanted to take a look at how I've come into the Association, it's from a personal position as to what can I offer the Association and the industry as a whole.

"The roles that I've held over the past 15 years have given me a well-rounded knowledge of how the certification side of the industry works, and I think that I bring another dimension, or skill-set, to the executive, so that the Association can further understand certification issues."

As the chief executive of an agent of NZTA – VINZ – Willett says it's no secret that he's in roles where there could be the perception of a conflict of interest.

"I took the opportunity of discussing the potential of my appointment with some of the officials within NZTA to find out if there were any concerns, or any perceived conflicts of interest issues, which would see them taking the position that this could not happen.

"They gave it due consideration, and came back to me and said, No, they understood my motivation, they understood my rationale as well, and that based on their previous dealings with me, in a number of roles, they're confident that I can manage any potential conflicts of interest which might arise."

Willett says nevertheless, these kinds of situations occur naturally in the industry on a day-to-day basis. He believes it's also a question of those individuals who are concerned about the future of the trade.

"We have an industry where a lot of people prefer to go about their daily business, and there is little to no interest for them to get involved in the bigger picture, and to look at the safety and security of the industry for the future.

"Seemingly less and less people are interested in getting involved in such roles, so a select few end up wearing many hats. This is another one of those cases." ☺



IMVIA North Island Vice Chairman
Frank Willett

Willett was trained by the Air Force as an automotive engineer, and is an A-grade certified mechanic.

He's had a variety of roles including inspection of used imports, running compliance shops, low-volume vehicle certifier, consultancy work looking at seat-belt anchorage testing, as well as consultancy work for the Fire Service Commission on their aerial fleets, and for the transport companies.

He was formerly the IMVIA's Technical Services Manager. He is currently the general manager of VINZ.


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Blain Paterson Ph.09 358 5515

The new Imported Motor Vehicle Industry Association executive announced after its recent North and South Island AGMs:

South Island and Joint National Chairman:

Lloyd Wilson, Dunedin.

North Island and Joint National Chairman:

Graeme Macdonald, Auckland

South Island Vice Chairman:

Colin Nichols, Christchurch.

North Island Vice Chairman:

Frank Willett, Auckland.

Co-opted member:

Martin Harcourt, Christchurch.

Secretary:

Alistair Sheard, Christchurch.

Chief Executive:

David Vinsen, Auckland.

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Dealers rebel against liquidator

"He won't be able to show that the company is trading insolvent, because it isn't. He'll have to spend \$4,000 to get it to court, and if we go to court I can prove that I don't owe the amount he claims."

Ward says he's interested to hear of any others who are receiving 'heavy-handed tactics.'

Autofile contacted a number of former Link client dealers, and while not all were being pursued, most were of the opinion that there would be "no-way" they would pay. One dealer did say that he had paid, having "no legal choice."

Kevin Cooper, a dealer in the Bay of Plenty, is one who wrote policies in the days leading up to the collapse, and says he's not going to pay – "You'd have to have rocks in your head."

"I've got two that they picked up more or less the day before, but they didn't know anything about those policies until they picked them up, and they would have known they were going then."

"I sought legal advice. My solicitor said 'tell them you're disputing it' and they can take me to the disputes tribunal."

"They threatened me with legal action and said the costs will be added on, I said knock yourselves out."

"We've already had to pay out for one policy. We didn't get any revenue from them we gave them away. One we gave away, we paid for that policy, then we had to spend another \$700 to fix the car because they accepted the claim, but haven't paid the company that did the repairs, which is the place that we deal with, so you want to stay in with your garages around town don't you."

One Christchurch dealer spoken to, who preferred not to be named, says he figured out what was happening with underwriters Western Pacific.

"I worked out about a week beforehand that they were

probably going to go bust."

He says he is absolutely not going to pay the liquidator.

He has since written with another supplier, and contacted customers to advise them they aren't covered. He's already had to pay out for one claim himself.

"Because it's a result of the earthquake, people down here are pretty understanding when it's anything earthquake related."

When contacted, liquidator Chris Horton of Chris Horton Associates says they haven't received any letters from lawyers that have been based on law. "What we've had is dealers not wanting to pay."

Asked whether they'll be initiating legal proceeding against those dealers who are refusing to comply, he says they've already commenced on some, and will continue that process. He says that the legal case is absolutely black and white.

"A number have paid, some of the very large dealers have paid, without any necessity of threat – they've read the letter, taken their own legal advice, and they've sent cheques."

"The law on the matter is very clear, and we did take advice before we wrote to any dealers, from day one, to ensure that the position was the correct position. And the advice that we received from a substantial firm in the city was quite unequivocal: that the funds are trust monies, and that they must be forwarded to the liquidators for the benefits of all creditors."

"This is the same message we have given to all dealers, unfortunately some dealers, for whatever reason, don't feel that they have an obligation to pass on monies that don't belong to them. That's unfortunate, but my job is to look after all the creditors of the company. I'm obliged to pursue as necessary, and an instruction has been given to our solicitors to do so"

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Statutory demands

A STATUTORY demand is a notice that may be served by the creditor of a limited liability company to seek to recover an overdue debt from a company. Certain circumstances apply, and the debt must be more than \$1,000.

A statutory demand seeks to recover the debt, or else declare the debtor insolvent.

Of extreme importance is the time-frame once a statutory demand is served: the debtor has 10 working days to dispute the debt by filing an application to set aside the Demand, or 15 working days to pay the debt.

If the debt is neither disputed nor paid, then after 15 working days the debtor is deemed to be insolvent and the creditor can apply to the Court to place the debtor company into liquidation. Liquidation would see the creditor paid out, and then any remaining assets distributed to the company's shareholders. However the debtor can either dispute the claim, or prove solvency in court. The cost of filing a claim at the High Court to satisfy the Court that it is solvent is \$900. If the debtor can show that a defence exists (the debtor does not have to prove the defence), not only will the demand be set aside but the creditor will be ordered to pay the debtor's costs and will be no closer to collecting the debt.



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Regional Roundup: SOUTHLAND

By Sandy Myhre

HOW MANY New Zealand cities can lay claim to fame through not one but two iconic movies where the major storyline centres on wheeled transport? Invercargill was the final destination for the battered yellow Mini in Geoff Murphy's 'Goodbye Pork Pie'. And, of course, the city spawned Burt Munro and 'The World's Fastest Indian', the 2005 biographical film by Roger Donaldson that set local film box office records.

Invercargill and its surrounds have other unique aspects that don't always make headlines. Yes it's a city, but substantially it operates as a rural centre, and in that sense it's almost pointless to statistically compare the number and type of cars sold in Invercargill with any other city in New Zealand. Dunedin, as an example, operates under an entirely different car-buying culture.

Car retailers in Invercargill can't rely on fleet or government sales; practically every Southland car purchase is by private citizens, farmers or small business owners. It means, though, that the motor industry here doesn't suffer quite the peaks and troughs of those dealers who do rely on government supply. The sales graphs reveal a more gentle rise and fall. So, how is the region faring generally?

Nearly everyone agrees the past eighteen months have been tough but there are signs that things are on the improve. In fact double cab utes

are 'flying out the door' according to Chris McPheat, dealer principal of Southern Automobiles, the multi-franchise new and used operation in Dee Street and there are several reasons why.

Dairy farmers, now in the majority in Southland, are happy to have Fonterra money to play with and the sheep chaps have had their best year in many a long year. Quite a few are buying double cabs or SUVs as a multi-purpose vehicle because they're not replacing the family large car. Well, not yet anyway.

Word is that if the lamb and wool producers have another good year like the past year they may loosen some of the spare change but only if the banks don't insist they retire some of the debt - and in Southland there's a bit of that about. It's a region once renowned as pure sheep country and, as an apocryphal aside, home to the whitest ovines in New Zealand. But a large percentage of those farmers crossed the divide to dairy over the past five or so years and that takes borrowed money that farmers are only now, perhaps, in a position to consider paying off to any great extent.

Even so, May and June are national field day months and traditionally excellent for Southland's vehicle retailers. Promotional prices across new and commercial vehicles are downright enticing to consumers



GRANT PRICE, MCCAULAY MOTORS: "Luxury cars aren't being bought in the same numbers in Southland but smaller cars and commercials are selling."

whether they live in Invercargill or Whangarei and buyers are astute enough to realise these prices won't be around forever. Southland's field days are biennial and won't be held again until February 2012 but this is another cause for a perceived slight optimism a bit further down the track.

Tractor sales are on the up. Grant Price, dealer principal of McCaulay Motors, says they are getting a lot of forward orders for tractors as dairy farmers decide to replace older equipment even as, globally, supply is still an issue. On the car side of things he echoes what other dealers are saying in Southland, that private buyers today prefer fuel-efficient smaller cars or SUVs over what

was once the ubiquitous Commodore or Falcon.

Setting aside supply issues and the impending change in emission rules, he believes that once winter has finished her famously furiously bite in Southland the car industry will 'ramp up'.

Part of that industry confidence is due to the aluminium smelter at Tiwai Point which, according to the Southland Times, has increased its capital expenditure to the tune of around \$80 million annually for the next four years.

As a result of securing a long-term electricity contract with Meridian Energy to ensure power for the smelter until 2030 New Zealand Aluminium Smelters expects to double its normal spend until 2015. Local contractors will pick up work and the domino effect will benefit the local car industry.

Furthermore, there are enormous reserves of lignite in the vast southern basin of Southland and beyond. Blocks have been leased, surveys have been done, and it's hard not to agree with the current President of the MTA, Invercargill man Richard Murrell, who says he can't see the country not doing anything with this area as a potential and hugely-rich energy supply source.

He cautions, though, that for this to happen red tape must not stymie exploration. If it can be made to work it would work for the whole country and allow the whole country to be less reliant on an agriculture base.

"If New Zealand is ever going to drag itself out of fiscal debt this is where it could happen as Southland becomes the country's energy heart."

But that's longer term. In the meantime he believes the motor industry in Southland is a good business to be in even if most used vehicle dealers spoken to in Invercargill have the same lament as the rest of the country - fewer

continued on page 10

RICHARD MURRELL: The Southlander and current President of the MTA will be standing for the position again at the next elections. "People now understand that cars are going to be more expensive and supply will be a problem."



When the **BIG BOYS** come to town

WHAT CAN automotive businesses learn from the likes of Google? Well, a lot. When the opportunity arose to attend the iStrategy Global Digital Media conference with keynote speakers from Google, Facebook, Microsoft, ESPN, MTV and Dell, I was not going to turn it down. One of the best attributes of the internet is that it is ultimately a scalable business model and what works for Dell (who earned \$10B US last year in online sales alone) can work for any NZ based car dealership.

Before I discuss the learning's and hopefully provide you with thoughts and ideas on improving your internet results, I would like to cover off the difference between tactic's and strategy. There is a lot of great information forthcoming from the US on internet based automotive sales and they do set the benchmark. When watching a pitch from a person with perfect hair, bright white teeth, a blue shirt and brown dockers, it is generally a vendor that has identified a revenue leak in your business which they can plug with a product. These are tactical solutions.

Understanding internet trends and merging this with your business direction is strategy.

While the internet is not owned by any single entity, it is shaped by a number of very large players. For most of us Google dictates what we see and the order we see it, Facebook provides access to the third largest country in the world (with 650 million virtual inhabitants), Microsoft powers the desktops and gaming consoles we use, Twitter distributes news and information faster than light and the online media companies are replacing broadcast TV in the supply of content. The world is changing rapidly.

At AutoBase we have an



advantage that most businesses do not have. The internet is our day job and we spend many hours ensuring our understanding of the above is translated into value for our customers.

LESSON ONE

Partner with a company that can keep you up to speed and provide advice on emerging trends within the internet environment. Your main focus should be on your strategy for results not buying more and more vendor solutions.

LESSON TWO

Presence is the key to strong internet sales. The internet is not a friendly place; it is very competitive and not free. This is the part Google loves as businesses want more and more presence on the web and they are prepared to pay for it. Organic search results (which are the ones where Google does not receive a dollar) are dropping further down on the first page and the sponsored searches and paid for advertising is increasing. With the Rugby World Cup coming up, try to Google 'Auckland Bars'. What you see is the face of the internet future with hotly contested competition for first page internet real-estate. We have a model that we share with our customers outlining that 70% of online spend



needs to be on gaining a strong web presence. In our unbiased view this should be directed to Trade Me Motors. A scattered spend on the web gets you nowhere, it needs to be focused to get you to the top of the page.

LESSON THREE

20% of online spend should be targeted at enhancing your listing to ensure a great click through rate. Using the Trade Me Motors example, a feature listing can be used to place your listings at the top of each relevant search category. While the internet can be a bit hostile the 80/20 rule applies. It is very easy to represent your business within the top 20% as 80% of businesses put very little effort into their web presence. Again, have a look at Google to see this.

LESSON FOUR

Treat anybody you communicate with as well read. The last Nielson automotive report found that after completing their online research 48% of customers were prepared to drive between one and two



By David Boshier
General Manager
AutoBase Ltd

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AutoBase Twitter: @DealerBaseNZ



hours to visit a dealership. There is also the Gen Y factor where they wish to have more and more of the transaction and discussion completed online.

LESSON FIVE

Social Media is the panacea. Well to be honest that is a lie. What social media or what now just seems to be called 'Social' provides

is access to a secondary customer base. In old school terminology we know it as referrals and repeat business. These tools and applications provide a great way to stay engaged with existing and potential customers. The

key is not to get too hung up on the hype and to choose what suits your business to communicate with your future customers the best. If you can write an entertaining and engaging blog relatively often (a few paragraphs a couple of times a week is good) - write one; if it does not come easy - don't. Twitter may be for you if your customer base is more niche and fast, quick communication is the goal. Facebook works well if you run community events or provide sponsorship as part of your business strategy. If you are a dealership, do not just blast your cars out there because as the young of today will say 'Epic Fail'. You want a conversation that leads to a sale.

If some of the above has been of interest we will be running seminars for our customers in the coming months covering these topics and more. On the chance you have read to here and been totally uninterested drop me a note and I will supply you a list of the best bars and restaurants we found in Melbourne. ☺

continued from page 8

Regional Roundup: SOUTHLAND

Japanese imports means the stock situation is tight, trades aren't as common as, say, three or four years ago, supply will be an issue out of Japan between now and the end of the year and all this, together with the new emission rule next year, will eventually hydraulic up prices.

Robbie Baxter of Robbie Baxter Autos says Southland has always been the last to feel any national pinch and subsequently the last to emerge out of it. But, he says, car dealerships aren't the only ones suffering. There are a few closed-down shops in town waiting for a brave or enterprising retailer but families too, like farmers, are trying to retire debt before splashing out on a family car and sales from this sector are down.

"I've never seen anything like this in all my years in business" he says. "If anything's selling it's those vehicles under about \$6,000."

His business imports regularly from Japan and on his latest trip two weeks ago he acquired 25 cars. Barely three of those, however, would qualify under the new emission rule.

"We can't circumvent it" he says ruefully "and it will make cars too expensive to buy here."

Having said that, he and many other dealers report their service departments are vibrant, even to the extent of subsidising the car retailing side of the business to a lesser or greater extent. Indeed, Chris McPheat has just employed a new workshop apprentice – and a vehicle sales person – giving strength to his reasonably rosy viewpoint of the industry and the region.

Robbie Baxter has promoted his service department aggressively and says the marketing is paying off. Richard Murrell is taking service to



ROBBIE BAXTER, ROBBIE BAXTER AUTOS
"Farming payouts are not affecting sales to any great extent, there's too much debt and they've only just received the payouts. So maybe we'll start to see something (positive to affect sales) in a while."

the people, particularly those who live out of town and says it's 'years' since he's had to do that. Again, the increase in business can be measured as a result.

Finally, no story on Southland would be complete without mentioning two other unique aspects the region enjoys.

Where else in the country can

you surf until 10 o'clock at night in summer and still see your toes hanging ten?

Then there are those succulent and slithery Bluff Oysters, one of the few things about Southland that can entice Aucklanders off their sub-tropical bums to fly south in winter. This year it looks like a bumper season and the traditional May Oyster Festival now has sufficient cachet to become Invercargill's bi-valve mollusc answer to the Beaujolais Run. And speaking of foreigners, the region will benefit from three games scheduled in the city for the World Rugby Cup in October.

There's no denying, though, that Southland's harsh winter is a deterrent to visiting a car dealer. No-one in their right mind begs to look at cars in what Richard Murrell calls 'horizontal hail'. To a potential charge of authorial bias as an ex-Auckland, it's worth mentioning he said it first. Besides which, my mother was born there. ☺

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INDUSTRY MOVERS

Protecta Insurance is proud to introduce Rene Bastkjaer as a new member of their experienced sales team.

Rene joins Protecta as Business Development Manager, which will see him work closely with the Protecta Sales Consultants, in maintaining the great customer service and looking after key accounts of his own.

Rene Bastkjaer is well known in the industry coming from similar roles with Lumley Business Solution, 4 years, and IAG (Swann/DriveRight) for 5 years prior.

With a back ground as dealership Business Manager, new and used vehicles sales and working for Toyota Finance, Rene brings not only practical knowledge to the role, but also the ability to assist Protecta dealers with maximising profit opportunities by analysing results and specialised training as needs arise.



Leaving his native Denmark some 23 years ago to come to New Zealand Rene quickly discovered a passion for the motor industry and gave up his initial career in banking. The exciting and varied industry has been a major part of Rene's life ever since.

Rene says he is looking forward to working with Protecta, a company dedicated to the motor industry and related insurance products, their high quality dealers and not least the very experienced and customer focused sales team. "It's like coming home."

TO FEATURE IN INDUSTRY MOVERS EMAIL EDITOR@AUTOFILE.CO.NZ



Kia launches first hybrid

THE FIRST-EVER Kia Motors hybrid model, the Optima Hybrid goes on sale this month in the United States.

The Optima Hybrid employs a Kia-developed powertrain that includes several innovations, such as advanced lithium polymer batteries that won't need replacing for up to ten years or 240,000kms.

It makes use of a 'full parallel hybrid system', where the 2.4-litre GDi direct injection petrol engine is mated to a small electric motor and drives the front wheels via a

six-speed automatic transmission – without the traditional torque converter.

Fuel economy sits at 6.2L/100km in the combined cycle, with combined emissions estimated to be 99g of CO₂/km.

The Optima Hybrid is currently only available in left-hand-drive, but if it does become available to right-hand-drive markets, Kia Motors New Zealand General Manager Todd McDonald says he would be very interested in considering it for our market. ☺

Keeping up with the Joneses just got harder

MASERATI'S NEW GranTurismo MC Stradale goes on sale this month, and with limited numbers it's expected to be a hot seller.

"From the moment it was announced we have had enthusiasts wanting to get behind the wheel of the first production Maserati to break the 300 km/h barrier," says Glen Sealey, General Manager of Maserati Australia and New Zealand.

The car boasts a top speed of 301 km/h – though only where legally permitted, Maserati are keen to stress.

Powered by a new variant of

the Maserati 4.7 litre V8 engine, which produces 331 kW and 510 Nm of torque, the car has shed 110kg from the GranTurismo S, including the two rear-seats, making it the first two-seat Maserati since the MC12.

Designed for the track as well as the road, Sealey says that while in the past it has been a case of either road or track, with the Maserati GranTurismo MC Stradale it's a definitive 'and' – a car he describes as uniquely capable on and off the race track, possessing as well as the refinement and comfort of a performance coupe. ☺



Safe lighting targets pedestrians

WITH THE risk of a pedestrian dying or being injured in a collision four times higher at night or at twilight than in daylight, BMW have developed a system which recognises pedestrians at an early stage and shines light on them, alerting the driver.

Called Dynamic Light Spot, it uses infrared to recognise the heat signature of humans or animals.

According to BMW, a conventional low beam light allows drivers a theoretical range of vision of about 50 to 85 metres at night. In tests, the recognisability of a darkly clad pedestrian at twilight was found to be just 29 metres – since at greater distances only the feet are illuminated. A danger since when travelling at 80 km/h the braking distance can be as much as 63m.

The system is designed to

recognise pedestrians at 100 metres. It then shines a light upon them. At the same time, a beam of light projected onto the road in front of the vehicle leading to the possible collision object draws the driver's attention to the object.



Price reductions for MINI

MINI HAS announced across-the-board price reductions, with pricing on all models dropping between \$4 -5,000. The top-priced Cooper S drops from \$57,500 to \$52,900.

They've also launched the new MINI Ray, with a RRP of \$27,900. That's \$11,000 less than the former bottom price for a MINI. The previous cheapest model was the Cooper, selling at \$38,900, which has been since reduced to \$34,900.

The new Ray comes in both manual and automatic. It's powered by a 1.6 litre petrol engine that develops up to 72kW of

power and 153 Nm of torque, its fuel economy a miserly 5.4 litres per 100km.

The car features ABS brakes, Dynamic Stability Control, Electronic Braking Force Distribution Control and Cornering Brake Control. Further contributing to its 5-star ANCAP safety rating are including driver and front passenger airbags, side airbags for front seats and curtain head bags



Thinking differently about your business needs

HCI has a proven record in the Automotive Industry in the Asia Pacific region and now they have permanent representation in NZ

IN AN interview with Brett Aspden – (HCI New Zealand, General Manager) we talked frankly about some of the challenges faced by leaders, managers and employees within the automotive sector and discuss some of the targeted solutions they prescribe.

With regard to automotive experience I understand that you started out as an Automotive Technician. You then held a GM role at DaimlerChrysler for nearly a decade and worked with the AA for a few years – what made you change to HCI?

Like all the team at HCI I love what we do...helping businesses grow. After completing my Master of Business Administration I enjoyed my time working in the industry and had some amazing experiences but now I find real satisfaction comes from partnering a wide range of businesses and helping them to grow their people and linking that growth to the bottom line. This is exactly what HCI is all about and so it's a natural fit. For me, there is nothing like facilitating those break-through moments in a workshop and working through how the outcomes can be applied back in the real world rather than keeping it to hypothetical situations. And given my experience in the automotive industry, I can relate to and understand exactly what the challenges are in that real world.

What is HCI all about?

Simply put...we grow business through developing people.

All too often we hear the cliché...“people are our greatest asset” but as the challenges of financial realities hit business...people development can be the first expense to get cut.

The focus of HCI and myself is the opposite...I believe that when your competitors are slashing their people development budgets you need to build a competitive advantage by investing in the one area that customers will always judge your business by – your people. Or as we call them at HCI – your thinking people.

Interestingly, there are many businesses that we deal with that have recognized that the effects of the GFC are slowly dissipating and they want to be in a position to take advantage of an anticipated economic up-turn. Accordingly, we have noticed an increased focus on strategic planning; developing employee skills and competencies especially in areas where competition for market

share is intense. And the best place to start with this development is in the leadership space so that today's leaders are prepared and equipped to deal with tomorrow's challenges.

So what do you see as common challenges within the industry?

Wow, that's a loaded question...my first thought is helping businesses to build and communicate an effective strategy. Unfortunately, the recent financial environment has led some organisations to be so focused on costs and restructuring to survive that value creation and innovative thinking has been temporarily lost.

Business must have a clear strategic plan that provides a pathway that employees understand and know their part to play. Ultimately, the plan should also be linked to some sort of competitive advantage that creates value in the mind of consumers.

Other common issues we see result from historical practices. For example, we have seen excellent sales people put into sales management or management positions with no training and little real support. While they display great individual sales skills in terms of sales volume and monthly retained gross – these skills may not be so relevant when you are in charge of a sales team who need a clear sales strategy underpinned with an effective sales process that is supported through regular sales coaching and motivation. Suddenly, the new manager can be overwhelmed by business demands from manufacturers, the Dealer Principal to dealership operations, logistics and administration...meanwhile your sales team are struggling with internal conflict, poor performance and issues of mistrust.

Another classic industry challenge... is taking a good technician off the workshop floor and expecting him or her to build a cohesive and productive workshop team with no real supervisory or management training.

In these situations the need for the newly appointed manager to understand the principles of building a highly effective team is critical. Having a clear understanding of the shift needed into management and leadership



responsibilities of the new role is essential. However, more importantly developing the knowledge, skills and competencies to be effective in their role is the actual key to success.

What examples could you share?

Recently, I worked with a group of technicians who were all responsible for apprentice training within their dealerships...most said that while they were confident in their technical ability, they were not prepared for the challenges of mentoring, coaching and relating to a younger person – often with different values and behaviors.

HCI created solutions for these challenges by helping the technicians understand the impact of different learning styles, creating awareness of the impact of different communication and personality profiles (Social Styles) in their day to day life. We identified and explored different inherent reactions to conflict and how to better deal with these reactions. Finally, we provided performance-coaching frameworks that gave the managers the ability to positively influence employees which increased employee engagement and ultimately lead to increased productivity – additional dollars in the bank.

Ok, so strategy and people development is your focus but what approach do you use?

Our approach is customised drawing across four areas – Consultation, Diagnostics, Coaching and Facilitation.

Consultation: In the automotive industry it is too easy to get drawn into operational challenges rather than focusing on the big picture. The focus becomes reactive “fire fighting” rather than applying a systematic and strategic approach to solving business challenges. Our clients often comment on how HCI brings





a different or fresh perspective and how that can make a significant impact. We will get to know your business, your people and often conduct interviews with key stakeholders (employees, customers, suppliers) to really identify what's going on. And at times we may need to present information back to senior business personnel that is difficult to stomach – as can be the case when you're so close to something that your objectivity can be lost.

But our role is to partner you and your business developing effective "joint" business solutions and creating long-term partnerships. And like all relationships, sometimes you need to hear the 'tough stuff' so we can move forward.

Diagnostics: Often we are brought into an organisation due to poor performance...our focus is to identify the root cause of the issue rather than deploying countless programmes or performance management directives that simply treat the business symptoms. We can deploy world-leading diagnostic tools that assist in uncovering the real issues. And some of what sets us apart is our exclusive access to the revolutionary assessment tool, Strengthscope™. It's a simple approach that is proven (by significant research) to increase employee engagement and productivity. We strive to retain a commercial focus and know that it's your people that ultimately drive the financial output of your business.

Coaching: How often have you heard the term... great event but nothing changed...! Coaching can often be the piece that supports real execution and application of new skills. This may involve us actively coaching individuals or teams and sometimes supporting existing senior managers as they develop this skill.

Facilitation: At HCI we're not about recycling and delivering programs. Everything we do is tailor-made to your specific needs and designed to deliver the exact results you're looking for. We agree with you on the objectives up front, set up the performance measures and then measure the outcomes.

While we will challenge your current thinking...

we don't come "guns blazing" with an approach of telling you and your team what to do. But we believe that often the best answers come from within the business...our skill is in bringing your talent together and ensuring that by being part of the solution they have a vested interest in making things happen. KPIs are then established to ensure the right activities take place within specific timeframes to deliver on agreed business outcomes...always linking what people are doing back to the commercial impacts.

Also, we assist with the development of internal organisational learning and development (L&D) programmes and then facilitate the programmes on behalf of the company. Comments we receive identify the benefits of external facilitation in terms of fostering high levels of employee engagement and developing fresh perspectives.

Tell us a little about what HCI have done and for who?

While we work with large organizations outside the automotive industry like the ANZ, BHP Billiton and IBM, as a consulting firm our involvement in the automotive sector goes back over a decade. We have worked with a wide range of clients ranging from manufacturer to retail dealer. Our client list ranges from manufacturers such as BMW, DaimlerChrysler, Nissan, Ford and Honda...to retail dealerships across Australia and NZ.

Some examples of programmes we deploy, range from delivery in Asia of the core senior level Leaders Programme for one major manufacturer (at Vice President level) – drawing participants from South Africa, Asia and Pacific; to facilitating building leadership capability from within the organisation; to partnering with a Melbourne University to develop and deliver formal Diploma of Management and Advanced Diploma courses for another major automotive manufacturer in Australia and their extended management team.

From a retail perspective, we have been involved in a number of engagements from building effective

teams and performance management to recently facilitating a strategic planning meeting for a retail dealership in Auckland.

We are developing a relationship with The University of Auckland Business School and will be delivering Short Courses with them as part of their Executive Education Programme later this year.

What do you see as the biggest opportunity for people that work within the Automotive industry in NZ?

Overall I feel that the opportunity is for business owners / managers to foster and grow their people. The correlation between people growth and performance is clear. In terms of the organisations we partner, when we observe an increase in engagement of staff because they feel they are growing and developing and are more confident in applying their skills then we see a significant lift in productivity. There are numerous studies that define conclusively that if you can foster engagement of your people you do the same with your customers and so on with results.

The challenge is how do you do it....that's where we come in..

So Brett, now we understand what you and HCI are about and how you've supported the automotive industry leadership development to date, how can someone learn more about you and HCI?

I'm always available to talk further, and our website has more information on all those things I've talked about previously.

Simply visit www.humancapital.com.au or better yet – pick up the phone and call me directly on 021 679 154 or email me at brett.aspden@humancapital.com.au I'll be more than happy to give you more information or come out and see you for a sit down discussion around your needs and how we can help. The automotive industry is an industry very close to my heart and I'm very excited about introducing HCI into the New Zealand market.

‘Tender’ not competitive and therefore was

Background

On 29 November Miss Dewar purchased a 1998 Nissan Pulsar \$3,500 from E&H Auctions Limited trading as Whangarei Car Auctions. The purchaser applied to the Tribunal to reject the vehicle and obtain a refund of her purchase price of \$3,500 and other costs because she says the vehicle was not of acceptable quality within the meaning of the Consumer Guarantees Act.

The trader said that the vehicle was supplied to the purchaser by tender and that accordingly the Act does not apply to the sale of the vehicle to the purchaser. In the alternative the trader says that if the Act does apply the trader considers that the vehicle was of acceptable quality at the time of supply.

The evidence

The purchaser went to the trader's premises in Whangarei in November 2010 where she inspected and test drove the vehicle but explained to the trader's salesman that her budget was \$3,000 to \$3,500.

The trader initially had a price of \$5,500 on the vehicle, which was subsequently reduced to \$4,000. On the morning of 29 November 2010 Mr Stewart telephoned the purchaser and offered to sell her the vehicle for \$3,500. The purchaser accepted that offer and went to the trader's premises on the afternoon of 29 November to complete the transaction.

Before she purchased the vehicle the purchaser was handed, read and signed a document headed "TENDER FORM" which had been filled in by the trader, describing the vehicle and the

purchaser's details, and containing the following:

"I/We hereby tender the amount of \$3,500 Plus \$10 (change of ownership) for the above vehicle.

I/We confirm that we are aware that this vehicle is being sold by tender and is accepted in an "as is where is" condition and as such carries no warranty and therefore is not subject to the "Consumer guarantees act 1993" Or the "Sales (sic) of goods act 1908".

There was also a second document headed "Disclosure", which in part included:

"E & H Auctions Ltd, trading as 'Whangarei Car Auctions Tender Site' Takes no responsibility for this vehicle once sold. [...]

"Any vehicle may be sold as a part or as parts; it may be sold for wrecking purposes or as an incomplete unit.

"All vehicles 'MUST' be checked and where possible test driven to make your own opinion as to what condition the vehicle is in and to make sure it is fit for your purpose."

The purchaser says that after she signed the Tender Form and the Disclosure Document documents she paid the trader \$3,510 in two EFTPOS transactions, arranged insurance on the vehicle with the assistance of Mr Stewart, and drove the vehicle away.

The purchaser noticed the vehicle's engine "stuttered" when she drove the vehicle that afternoon. She says that on 1 December while taking the vehicle out of town she discovered the radiator reservoir (header) tank was boiling. She estimates she would have only travelled about 100kms in the vehicle at that time.

The purchaser took the

vehicle back to the trader in early December 2010 and saw Mr Stewart who told her the "stutter" might be caused by moisture on the spark plugs from having the engine cleaned. He dried the spark plugs with compressed air. The purchaser says that fixed the vehicle's "stutter" but not the overheating in the radiator reservoir tank.

The purchaser took the vehicle to Oakleigh Service Station about one week later who sent the radiator to be repaired and flushed the engine block. The radiator top tank was replaced, the system was bled and checked for leaks, and the vehicle was returned to the purchaser about 20 December.

Soon after she had to stop the vehicle because the temperature gauge showed the engine was overheating. The vehicle was towed back to Oakleigh who did a TeeKay test on the engine and found combustion gases were present in the coolant. They informed the purchaser that there was either a crack in the cylinder head or the head gasket had blown. They recommended the vehicle's cylinder head needed to be removed and checked or a second hand engine fitted, with a cost of about \$1650.

The purchaser went to the trader and spoke to Mr Mustchin to see if the trader was prepared to work with her to help her resolve the problem. He told her he was not.

On or about 25 January 2011 the purchaser handed the trader a letter rejecting the vehicle and requesting a refund. This letter was acknowledged by the trader's solicitors on 25 January 2011 by letter to the purchaser. The

solicitors rejected her request for a refund for the vehicle. The trader's solicitor, George Swanepoel of Swan Law notified her that the tender document she had signed contracted out of the Act and the Sale of Goods Act 1908 and that the vehicle had been supplied to her by tender. The letter also stated that s 41(3) of the Act excluded supply by competitive tender. The trader's solicitors also informed her that she had bought the vehicle on an "as is where is" condition and that there was no warranty or guarantee with the vehicle.

The Tribunal on receipt of the purchaser's application on 10 February 2011 issued a Minute notifying the trader that the Tribunal wished the trader to produce evidence at the hearing – preferably by sworn affidavits from the other parties who lodged tender bids for the vehicle – regarding the tender offers they had made so as to bring the sale within the s 41(3) exemption in the Act. The trader has not done so and Mr Mustchin said at the hearing that there was no other tender received for the vehicle.

Mr Mustchin told the Tribunal that the appearance and name of his premises makes it obvious that the trader conducts auctions and sells vehicles by tender. He says he is an auctioneer. He says he is unaware of any legal requirement that prevents him from supplying a vehicle by tender unless there is more than one party tendering for the vehicle.

The decision

The Tribunal considered whether the vehicle was supplied to the purchaser by competitive tender.

law
bd

Bruce Dell Law – “problem solver”

Bruce Dell has been closely associated with the auto industry for 37 years, during this time he has handled many complex legal issues on behalf of dealers both in Auckland and Palmerston North

autofile are delighted to have Bruce as part of the Autofile team advising our readers on past Motor Vehicle Disputes Tribunal cases. If you require legal advice give Bruce a call on **09 570 5036**

no tender

The Consumer Guarantees Act states in s43 "No contracting out except for business transactions", subject also to section 41, which states (3) Nothing in this Act shall apply in cases where goods are supplied (a) by auction; or (b) by competitive tender. The words "competitive tender" are not defined in the Act.

Mr Mustchin for the trader claimed the vehicle had been supplied to the purchaser by tender. Mr Mustchin said that there was, in his opinion, no need for there to be another or other tenders for the exclusion in s 41(3) (b) of the Act to apply.

The evidence given by the purchaser and not challenged by the trader was that on 29 November 2010 the trader's salesman Mr Stewart had contacted her to advise her that the owner of the vehicle was willing for the trader to sell it to the purchaser for \$3,500. The purchaser also gave evidence that to her knowledge the trader had not referred her tender offer of \$3,500 to anyone else nor had any more than a few minutes elapsed between her signing the tender offer and the trader accepting it by receiving her EFTPOS payments and handing her the keys to the vehicle.

The Tribunal is therefore satisfied from the evidence that the supply of the vehicle to the purchaser did not take place by competitive tender in the sense that the tender offer made by the purchaser was not made or considered in a rivalrous or competitive situation. Accordingly the Tribunal finds as a fact that the vehicle was not sold by

competitive tender. The provisions of the Act therefore apply to this transaction because the exemption in s 41(3)(b) of the Act was not satisfied. The Tender Form and the Disclosure Document by which the purchaser appeared to purchase the vehicle by tender and on an "as is where is" basis on 29 November 2010 were both sham documents intended to create the false impression in the purchaser's mind that she had contracted out of the Act and had no recourse against the trader for the condition of the vehicle. The Tribunal considers the trader in having the purchaser sign the Disclosure Document which purported to exclude all warranties breached s 43(4) of the Act which provides:

"(4) Every supplier and every manufacturer commits an offence against section 13(i) of the Fair Trading Act 1986 who purports to contract out of any provision of this Act other than in accordance with subsection (2) or section 43A."

The Tribunal in a decision dated 2 November 2010 *Comrie v The Auto Group Limited T/A National Vehicle Tenders & Auctions* [2010] MVD 193 stated: "*Traders who attempt to exclude the provisions of the Consumer Guarantees Act by claiming that a purchaser was supplied with a vehicle by competitive tender or auction where there is no evidence of a bona fide competitive tender process or a genuine auction having been held prior to the sale of the vehicle should be aware that section 13(i) of the Fair Trading Act 1986 makes it an offence for a trader to make a false or misleading representation concerning the existence, exclusion,*

or effect of any condition, warranty, guarantee, right or remedy. The Tribunal considers that the trader in this case breached s.13(i) of the Fair Trading Act in representing, following the sale of the vehicle to the purchaser on 4 April 2010 by a negotiation which involved the trader accepting the purchaser's car as a trade in, that a "tender" had taken place and subsequently attempting to have the purchaser acknowledge that he had bought the vehicle by "tender" when quite clearly he had not done so. It is not possible for a trader to contract out of the statutory guarantees consumers have as of right under the Consumer Guarantees Act unless the sale agreement satisfies section 43(2) of that Act. Traders who use sham tender and auction documentation also risk prosecution by the Commerce Commission."

The Tribunal's view is that this is prima facie a breach of s 13(i) of the Fair Trading Act 1986. It is not possible for a trader to contract out of the statutory guarantees consumers have as of right under the Consumer Guarantees Act unless they do so in terms of s 43(2) of the Act and corporate traders who do so risk prosecution and a \$200,000 fine.

With regards to the vehicle, the Tribunal did not consider that the vehicle would have been acquired by any reasonable consumer fully acquainted with the fault this vehicle has, and accordingly was satisfied the fault with the vehicle was of substantial character.

The trader was ordered to refund the purchase price of \$3,510 and uplift the vehicle at its

The Case:

The purchaser wished to obtain a refund, while the trader maintained the vehicle had been supplied by tender

The Decision:

The Tribunal's view was that the trader's actions were prima facie a breach of section 13(i) of the Fair Trading Act 1986.

At: the Motor Vehicle Disputes Tribunal, Whangarei, 7 April 2011

own expense. The trader was also required to pay the reasonable costs of the hearing of \$650.

Bruce Dell's comment

The Purchaser sought to reject the vehicle and obtain a refund of the purchase price and other costs claiming breach of acceptable quality under The Consumer Guarantees Act as at date of sale. The Dealer argued that the sale was by Tender and that the Act did not apply. Failing that, the Dealer argued that the vehicle was in fact of acceptable quality at time of supply. The Tribunal considered whether there was a sale by competitive tender; was the vehicle of acceptable quality; if there was a breach, whether failure was one of substantial character and accordingly, whether the vehicle could be rejected.

The perennial case of *Stephens v Chevron Motor Court Limited* was considered. The Tribunal seems to have hardened on the fact that Dealers cannot try and avoid the provisions of the Act and a refund of the full price was required. This was rather interesting considering the very strong disclosure the Dealer had selling the vehicle "as is where is" and indicated that there was no warranty or guarantee with the vehicle. This case is an indication for future Dealers who try and avoid the provisions of the Act. ☺

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Around the country

Car sales - May 2011

Total New Cars

4535 2010: 4616 ▼ 1.8%

Total Used Cars

7013 2010: 7381 ▼ 5.0%

Whangarei

NEW: 85 2010: 78 ▲ 9.0%
Used: 119 2010: 127 ▼ 6.3%

Auckland

NEW: 2121 2010: 1988 ▲ 6.7%
Used: 3347 2010: 3619 ▼ 7.5%

Hamilton

NEW: 296 2010: 323 ▼ 8.4%
Used: 471 2010: 469 ▲ 0.4%

New Plymouth

NEW: 91 2010: 82 ▲ 11.0%
Used: 149 2010: 133 ▲ 12.0%

Wanganui

NEW: 41 2010: 56 ▼ 26.8%
Used: 42 2010: 51 ▼ 17.6%

Palmerston North

NEW: 113 2010: 129 ▼ 12.4%
Used: 152 2010: 189 ▼ 19.6%

Nelson

NEW: 60 2010: 47 ▲ 27.7%
Used: 103 2010: 122 ▼ 15.6%

Westport

NEW: 1 2010: 6 ▼ 83.3%
Used: 7 2010: 5 ▲ 40.0%

Greymouth

NEW: 11 2010: 10 ▲ 10.0%
Used: 28 2010: 25 ▲ 12.0%

Thames

NEW: 29 2010: 34 ▼ 14.7%
Used: 63 2010: 41 ▲ 53.7%

Tauranga

NEW: 192 2010: 217 ▼ 11.5%
Used: 261 2010: 280 ▼ 6.8%

Rotorua

NEW: 42 2010: 128 ▼ 67.2%
Used: 57 2010: 60 ▼ 5.0%

Gisborne

NEW: 18 2010: 42 ▼ 57.1%
Used: 38 2010: 45 ▼ 15.6%

Napier

NEW: 119 2010: 120 ▼ 0.8%
Used: 159 2010: 159 0%

Masterton

NEW: 43 2010: 38 ▲ 13.2%
Used: 33 2010: 38 ▼ 13.2%

Wellington

NEW: 519 2010: 524 ▼ 1.0%
Used: 622 2010: 671 ▼ 7.3%

Blenheim

NEW: 30 2010: 38 ▼ 21.1%
Used: 31 2010: 42 ▼ 26.2%

Christchurch

NEW: 457 2010: 542 ▼ 15.7%
Used: 986 2010: 926 ▲ 6.5%

Timaru

NEW: 40 2010: 37 ▲ 8.1%
Used: 74 2010: 87 ▼ 14.9%

Oamaru

NEW: 7 2010: 6 ▲ 16.7%
Used: 8 2010: 12 ▼ 33.3%

Dunedin

NEW: 144 2010: 108 ▲ 33.3%
Used: 206 2010: 210 ▼ 1.9%

Invercargill

NEW: 76 2010: 63 ▲ 20.6%
Used: 57 2010: 70 ▼ 18.6%



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LATEST SCHEDULE

Tristan V2

LOADING	Osaka	16 May
	Nagoya	1 Jun
	Yokohama	2 Jun
ARRIVING	Auckland	25 Jun
	Wellington	27 Jun
	Lyttelton	28 Jun

Hoegh Chennai V3

LOADING	Osaka	16 Jun
	Nagoya	17 Jun
	Yokohama	18 Jun
ARRIVING	Auckland	30 Jun
	Wellington	1 Jul
	Lyttelton	2 Jul

Hoegh Xiamen V5

LOADING	Osaka	28 Jun
	Nagoya	29 Jun
	Yokohama	30 Jun
ARRIVING	Auckland	23 Jul
	Wellington	25 Jul
	Lyttelton	26 Jul

TBN V1

LOADING	Osaka	16 Jul
	Nagoya	17 Jul
	Yokohama	18 Jul
ARRIVING	Auckland	30 Jul
	Wellington	1 Aug
	Lyttelton	2 Aug

PIONEERS AND INNOVATORS TO THE USED VEHICLE IMPORT MARKET

Used Passenger Vehicle Sales by Make - May 2011

MAKE	MAY '11	MAY '10	+/- %	MAY '11 MKT SHARE	2011 FULL YEAR	2011 MKT SHARE
Toyota	1916	1870	2.5	27.3%	9681	28.7%
Nissan	1094	1115	-1.9	15.6%	5207	15.4%
Mazda	905	964	-6.1	12.9%	4143	12.3%
Honda	749	990	-24.3	10.7%	3570	10.6%
Subaru	599	627	-4.5	8.5%	2858	8.5%
Mitsubishi	379	416	-8.9	5.4%	1813	5.4%
BMW	294	296	-0.7	4.2%	1443	4.3%
Volkswagen	202	219	-7.8	2.9%	930	2.8%
Suzuki	180	204	-11.8	2.6%	815	2.4%
Ford	131	139	-5.8	1.9%	636	1.9%
Audi	101	62	62.9	1.4%	422	1.3%
Mercedes-Benz	77	50	54.0	1.1%	330	1.0%
Peugeot	60	53	13.2	0.9%	241	0.7%
Chevrolet	47	57	-17.5	0.7%	264	0.8%
Jaguar	39	26	50.0	0.6%	121	0.4%
Hyundai	35	42	-16.7	0.5%	177	0.5%
Chrysler	32	42	-23.8	0.5%	134	0.4%
Land Rover	20	8	150.0	0.3%	68	0.2%
Volvo	18	40	-55.0	0.3%	139	0.4%
Holden	13	11	18.2	0.2%	51	0.2%
Opel	13	15	-13.3	0.2%	72	0.2%
Alfa Romeo	11	16	-31.3	0.2%	57	0.2%
Isuzu	11	10	10.0	0.2%	48	0.1%
Daihatsu	10	20	-50.0	0.1%	44	0.1%
Jeep	10	12	-16.7	0.1%	55	0.2%
Mini	10	13	-23.1	0.1%	64	0.2%
Dodge	6	5	20.0	0.1%	28	0.1%
Reliant	5			0.1%	7	0.0%
Cadillac	4	2	100.0	0.1%	25	0.1%
Citroen	4	1	300.0	0.1%	12	0.0%
Fiat	4	2	100.0	0.1%	22	0.1%
Lexus	3	7	-57.1	0.0%	30	0.1%
Porsche	3	2	50.0	0.0%	18	0.1%
Saab	3	6	-50.0	0.0%	26	0.1%
Smart	3	2	50.0	0.0%	15	0.0%
Buick	2	1	100.0	0.0%	13	0.0%
Ferrari	2			0.0%	7	0.0%
Kia	2	1	100.0	0.0%	15	0.0%
Pontiac	2	1	100.0	0.0%	22	0.1%
Other	14	9	55.6	0.2%	44	0.1%
TOTAL	7013	7380	-5.0	100.0%	33747	100.0%

Used market humming along

USED IMPORT registrations were 7013 for the month of May, and if it's a general rule of thumb that anything above 7,000 can be considered a good month, then the used market was 13 cars into the good times.

Nevertheless there was some bounce from a lower than usual April (6156 units), for which the mild weather may be to thank. Despite this May was still down 5% on last year.

Ken Young, sales manager at Keppler Vehicle Imports, says they're meeting targets.

"Like everybody else it's up and down, a bit of a rollercoaster, though we've been steady. Petrol prices affected it a little bit but that's coming right again."

He's expecting the impact of the emissions rule to make itself felt later this year, as dealers start bringing in vehicles to beat the January 1 cut-off date.

Rod Milner says business is

good. "Not flash, not booming.

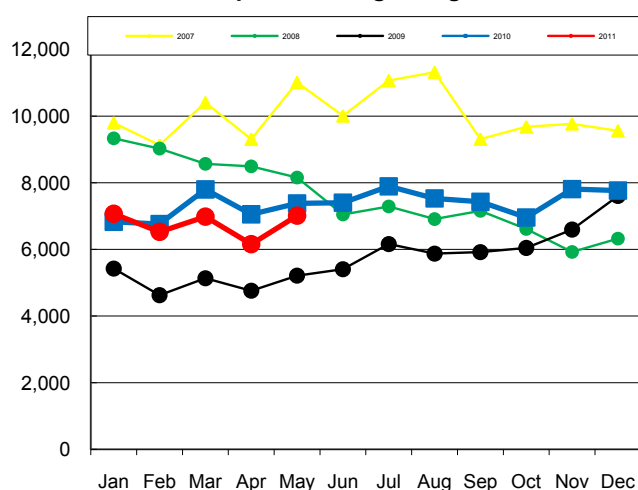
"March was good, April was crap, not aided by the abnormally wet weather, and also we had Easter and Anzac together, so in April they'd already put their mind to holiday mood. May, while not brilliant, was better than April."

Asked to compare with last year, Milner says the first 6 months of 2010 were far better. "For the first 6 months it was great, it was the last 6 months of last year that turned. That primarily came about because from June onwards we had World Cup soccer, the Commonwealth games, we had an abnormally wet winter, and we had the earthquake in September. Those factors really came into it."

Beavan Undrill, of J & B Motors in Blenheim, says sales are "pretty average, like everyone else probably."

He says since the days of selling larger volumes of used imports, he now has a large

Supplied by MTA **Used Import Passenger Registrations**



Get the competitive advantage

continued from page 5

Competitive tenders under spotlight

workshop, does salvage, as well as rental cars, to adjust to the overall change in the market.

"We do a lot of workshop repairs, and that's where the market has changed to, people repairing the old ones rather than trading them in."

He believes it's in part due to changes in the emissions rule, especially in the diesel market, and now prices are out of reach for the average buyer.

Nevertheless the market ticks along.

"Kiwi needs a car, and someone's got to be there to fix it, and someone's got to be there to sell it."

He says in Blenheim in recent years around five used import dealers have dropped out. "No-one's rushed in to take their slot."

However less dealers doesn't necessarily mean more sales for those remaining.

"Imports lasts that much longer now that people can go much longer with a car before they need to trade.

"We also get less in the workshop because they don't break down as often as the old cars used to."

Despite a generally sluggish market, Undrill says he keeps steady, whether it's salvage or workshop or sales of fresh imports.

"I do a whole raft of other things that are related to the motor industry. For us it's always just another string to our bow, so we run a fairly diversified business where you can cover a lot of other aspects beside selling them the car." ☺

"The difficulty when we provided advice to our members is that tender is not a legally defined process, so it's difficult to know exactly what you have to do to comply.

"But I think there are some obvious things – for example, the advertisement should make it clear that you're calling for tenders and there are some rules around that process. Did it state 'Tenders called for this vehicle, indicative value of x?' It seems clear that a tender has to be promoted and publicised as a tender. It's a case then of being able to provide an overt mechanism that clearly states the issues and requirements."

Lawyer Bruce Dell volunteered this observation:

"In all of the recent cases we have considered, it must become apparent to Dealers that not unlike Employers and Employees, the Employer is always wrong and seemingly, the Dealer is most often wrong.

"I again counsel all Dealers to dot their I's and cross their T's. Dealers should stop trying to avoid the provisions of The Consumer Guarantees Act and stop perhaps trying to have exclusion clauses that are only going to cause them grief.

"However, having dealt with the many car dealers I have acted for over the last 35 plus years, it is clear to me that some Dealers are willing to take a punt and have a percentage rejection which they are willing to accept as part of their business and put up with a hassle, stress and time waste of these Hearings.

"This comment does not have any connection to any particular case I have reviewed, this is just a general observation of mine!" ☺

Used Passenger Vehicle Sales by Model - May 2011

MAKE	MODEL	MAY '11	MAY '10	+/- %	MAY '11 MKT SHARE	2011 FULL YEAR	2011 MKT SHARE
Subaru	Legacy	341	353	-3.4	4.6%	1673	5.0%
Toyota	Corolla	311	350	-11.1	4.2%	1615	4.8%
Toyota	Vitz	278	194	43.3	3.8%	1224	3.6%
Mazda	Atenza	273	273	0.0	3.7%	1239	3.7%
Toyota	Estima	231	249	-7.2	3.1%	1081	3.2%
Mazda	Demio	185	218	-15.1	2.5%	836	2.5%
Mazda	Axela	170	167	1.8	2.3%	769	2.3%
Nissan	Wingroad	170	105	61.9	2.3%	738	2.2%
BMW	3 Series	168	199	-15.6	2.3%	881	2.6%
Subaru	Impreza	167	185	-9.7	2.3%	783	2.3%
Nissan	Primera	146	174	-16.1	2.0%	777	2.3%
Honda	Odyssey	145	197	-26.4	2.0%	704	2.1%
Honda	Stream	137	171	-19.9	1.9%	611	1.8%
Honda	Accord	136	173	-21.4	1.8%	603	1.8%
Nissan	March	118	94	25.5	1.6%	478	1.4%
Suzuki	Swift	118	135	-12.6	1.6%	480	1.4%
Mitsubishi	Lancer	115	109	5.5	1.6%	527	1.6%
Toyota	Ipsium	115	84	36.9	1.6%	556	1.6%
Toyota	Funcargo	109	81	34.6	1.5%	455	1.3%
Nissan	Bluebird	108	141	-23.4	1.5%	512	1.5%
Honda	Civic	102	182	-44.0	1.4%	547	1.6%
Toyota	Altezza	102	103	-1.0	1.4%	532	1.6%
Volkswagen	Golf	96	100	-4.0	1.3%	454	1.3%
Mazda	Mpv	95	92	3.3	1.3%	420	1.2%
Toyota	Ist	91	84	8.3	1.2%	525	1.6%
Honda	Fit	90	115	-21.7	1.2%	474	1.4%
Toyota	Caldina	78	70	11.4	1.1%	415	1.2%
Nissan	Skyline	76	80	-5.0	1.0%	375	1.1%
Nissan	Elgrand	70	68	2.9	0.9%	323	1.0%
Toyota	Platz	68	61	11.5	0.9%	344	1.0%
Mitsubishi	Colt	65	92	-29.3	0.9%	321	1.0%
BMW	5 Series	63	26	142.3	0.9%	219	0.6%
Subaru	Forester	60	60	0.0	0.8%	248	0.7%
Mazda	Tribute	56	68	-17.6	0.8%	276	0.8%
Mitsubishi	Pajero	56	40	40.0	0.8%	275	0.8%
Nissan	Tiida	56	80	-30.0	0.8%	302	0.9%
Toyota	RAV4	56	79	-29.1	0.8%	281	0.8%
Toyota	Allex	55	75	-26.7	0.7%	323	1.0%
Other		2137	2254	-5.2	29.0%	10551	31.3%
TOTAL		7013	7381	-5.0	95.0%	33747	100.0%

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New Passenger Vehicle Sales by Make - May 2011

MAKE	MAY '11	MAY '10	+/- %	MAY '11 MKT SHARE	2011 FULL YEAR	2011 MKT SHARE
Holden	560	480	16.7	12.3%	2514	9.7%
Hyundai	454	486	-6.6	10.0%	2455	9.5%
Suzuki	433	409	5.9	9.5%	2121	8.2%
Ford	422	571	-26.1	9.3%	2321	9.0%
Mazda	420	416	1.0	9.3%	2050	7.9%
Toyota	331	557	-40.6	7.3%	4311	16.6%
Volkswagen	232	153	51.6	5.1%	1119	4.3%
Nissan	219	224	-2.2	4.8%	1100	4.2%
Kia	213	177	20.3	4.7%	927	3.6%
Mitsubishi	204	198	3.0	4.5%	1258	4.9%
Honda	194	186	4.3	4.3%	1308	5.0%
Subaru	126	174	-27.6	2.8%	686	2.6%
Mercedes-Benz	109	104	4.8	2.4%	421	1.6%
Audi	107	101	5.9	2.4%	597	2.3%
BMW	101	99	2.0	2.2%	538	2.1%
Peugeot	67	62	8.1	1.5%	333	1.3%
Skoda	62	18	244.4	1.4%	248	1.0%
Lexus	29	30	-3.3	0.6%	192	0.7%
Jeep	28	22	27.3	0.6%	163	0.6%
Land Rover	28	21	33.3	0.6%	145	0.6%
Mini	25	15	66.7	0.6%	127	0.5%
Dodge	23	17	35.3	0.5%	115	0.4%
Chery	20	1	1900.0	0.4%	52	0.2%
SsangYong	19		0.0	0.4%	139	0.5%
Alfa Romeo	15	3	400.0	0.3%	61	0.2%
Factory Built	14		0.0	0.3%	94	0.4%
Great Wall	14	9	55.6	0.3%	55	0.2%
Porsche	12	7		0.3%	64	0.2%
Fiat	11	5	120.0	0.2%	36	0.1%
Renault	9	2	350.0	0.2%	32	0.1%
Volvo	8	12	-33.3	0.2%	77	0.3%
Citroen	6	12	-50.0	0.1%	89	0.3%
Chrysler	5	6	-16.7	0.1%	17	0.1%
Daihatsu	4	17	-76.5	0.1%	23	0.1%
Aston Martin	3	3	0.0	0.1%	20	0.1%
Geely	3	2	50.0	0.1%	33	0.1%
Jaguar	3	7		0.1%	25	0.1%
Ferrari	1	1	0.0	0.0%	6	0.0%
Maserati	1	1	0.0	0.0%	11	0.0%
TOTAL	4535	4616	-1.8	100.0%	25926	100.0%

Good news offsets slow month for Toyota dealers

WHILE MAY sales figures shows a significant drop for Toyota passenger vehicle sales, dealers spoken to around the country say they're largely managing okay.

James Crighton, CEO of Tasman Toyota (New Plymouth, Hawera, Westown) says the range of product is certainly diminished, with some impact.

Communication from Toyota New Zealand, he says is excellent. "As soon as they know, we know, and they feed us information constantly."

He says at the moment TNZ have put together a good package. "If delivery couldn't be taken by the end of June, then they're offering a 5-year, 75,000km service contract. And we've signed a few people up to that."

Commercial sales in May remained high for Toyota, a consequence of stock pre-ordered for Fieldays, which was already in the country or on the water when the disaster hit Japan.

Asked whether he is worried about sales post-Fieldays, he says that June production in Japan is at

much higher levels than expected.

"We should see those models arriving from what we think will be June production, which we think will be late July or early August, we hope."

Whether Toyota has lost significant sales from supply issues is an open question. Crighton says they've been working around the issue where they can, including extending leases, though private buyers don't necessarily have that flexibility.

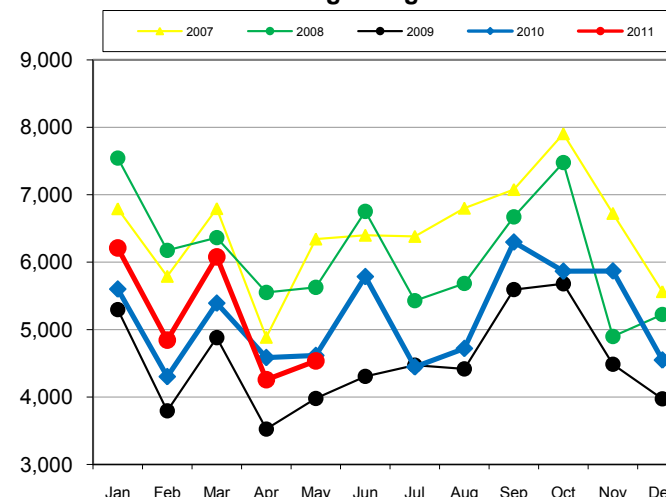
"The private buyers who generally come in and if they've made the decision to buy then they want to buy. But I don't think we've lost much business in terms of them going to other brands because we can't supply.

"We've got avid Toyota people who will generally only buy Toyota, and people are happy to wait."

In terms of the dealership he says they're also having the best year for used vehicles for a while, "Since probably the peak of 2007."

"We're going very strong on used vehicles, and our parts and service are all ahead of target. In

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terms of everything around the dealership we're actually going very well."

Craig McDermid, CEO of South Canterbury Toyota (Timaru) and Blenheim Toyota, says that stock shortages are obviously creating some supply issues which have to be worked through with customers.

"But generally most people are realistic, and accepting of the position through the tragedy that has created it."

McDermid says that the dealership is focusing on conducting business as normal, while working around problems where possible, including forward-ordering.

There is also some model and colour option swaps going on between the dealer network.

"We're just accommodating people's wishes and needs as best we can in what is a trying and unfortunate situation.

"Sales are still reasonable and enquiry on new vehicles is moderately strong given the strength of the rural economy, and I'm sure that as the product comes back on stream that the dealer network will capitalise on that."

Tom Barrow, new vehicle manager at Manukau Toyota, says that it's not so much a problem of supply, but one of customers.

"Things have slowed right down in the last 4-5 weeks. Yes we do have a bit of a stock issue, but that's not really the major cause of

the lack of sales, it's just that the enquiry's not there."

"I can't get my head around it. To be fair, we did have an exceptional March, we might have taken some sales up in March that we may have got in April-May. But apart from that I can't quite put my finger on the pulse of what's happening at the moment.

"We might be having a downward trend, but we've had a pretty serious upward trend January-February-March, so you've got to take the good with the bad."

Toyota New Zealand general manager of operations Steve Prangnell, in Japan to discuss sales targets, says that the news coming out of Japan with regards to production is much better.

"From June, production for TMC is basically back at about 90%, so it's quite an improvement."

"It was originally only going to be at 50% for July, August, September, but they're back at 90% now.

TMC president Akio Toyoda said in a statement in mid-April that they weren't expecting production to meet full capacity until November or December.

Prangnell says that previously it wasn't clear to them how they were going to recover, particularly with regards to some of the vital microcomputers.

"But they were being far more pessimistic than has actually transpired, so it's come back with a rush." ☺

New Passenger Vehicle Sales by Model - May 2011

MAKE	MODEL	MAY '11	MAY '10	+/- %	MAY '11 MKT SHARE	2011 FULL YEAR	2011 MKT SHARE
Suzuki	Swift	286	249	14.9	6.3%	1457	5.6%
Holden	Commodore	205	167	22.8	4.5%	1105	4.3%
Holden	Captiva	181	84	115.5	4.0%	585	2.3%
Hyundai	i30	173	217	-20.3	3.8%	941	3.6%
Ford	Mondeo	151	118	28.0	3.3%	547	2.1%
Mazda	Mazda3	144	159	-9.4	3.2%	799	3.1%
Mazda	Mazda6	127	138	-8.0	2.8%	559	2.2%
Ford	Fiesta	115	95	21.1	2.5%	455	1.8%
Holden	Cruze	91	159	-42.8	2.0%	435	1.7%
Toyota	Corolla	88	199	-55.8	1.9%	1711	6.6%
Ford	Falcon	85	160	-46.9	1.9%	659	2.5%
Hyundai	ix35	83	64	29.7	1.8%	417	1.6%
Hyundai	Santa Fe	76	80	-5.0	1.7%	427	1.6%
Kia	Sportage	75	14	435.7	1.7%	270	1.0%
Toyota	Camry	73	59	23.7	1.6%	312	1.2%
Honda	Jazz	72	31	132.3	1.6%	492	1.9%
Volkswagen	Golf	69	68	1.5	1.5%	376	1.5%
Suzuki	SX4	67	56	19.6	1.5%	229	0.9%
Mitsubishi	Outlander	66	85	-22.4	1.5%	423	1.6%
Nissan	Qashqai	66	58	13.8	1.5%	335	1.3%
Mazda	CX-7	62	65	-4.6	1.4%	285	1.1%
Mazda	Mazda2	59	27	118.5	1.3%	317	1.2%
Nissan	X-Trail	59	68	-13.2	1.3%	218	0.8%
Toyota	Yaris	54	56	-3.6	1.2%	646	2.5%
Volkswagen	Passat	48	36	33.3	1.1%	166	0.6%
Kia	Cerato	46	15	206.7	1.0%	197	0.8%
Mitsubishi	ASX	45			1.0%	272	1.0%
Skoda	Octavia	44	10	340.0	1.0%	137	0.5%
Subaru	Outback	43	44	-2.3	0.9%	189	0.7%
Suzuki	Kizashi	43	47	-8.5	0.9%	185	0.7%
Hyundai	i45	42	23	82.6	0.9%	292	1.1%
Kia	Rio	42	22	90.9	0.9%	132	0.5%
Ford	Focus	41	53	-22.6	0.9%	422	1.6%
Volkswagen	Polo	39	13	200.0	0.9%	238	0.9%
Honda	Insight	37			0.8%	277	1.1%
Hyundai	Getz	37	32	15.6	0.8%	210	0.8%
Toyota	Highlander	35	92	-62.0	0.8%	411	1.6%
Subaru	Legacy	34	47	-27.7	0.7%	179	0.7%
Other		1429	1706	-16.2	31.5%	8619	33.2%
TOTAL		4535	4616	-1.8	100.0%	25926	100.0%

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Dealers rebel against liquidator

Horton says that statutory demands are a standard practice for recovering funds.

"We've sent out a number of statutory demands, to serve a statutory demand on a company by law the amount needs to be for more than \$1,000. Our general policy is that if it's more than \$1,000 they'll get a statutory demand, and that will proceed all the way through to the High Court. And the costs of doing that will be added to the claim."

Horton isn't impressed by those who don't feel the need to pay. He says while he has sympathy for the plight of the Policy Holders, it is they that have a contract with Link, and the dealers are only holding funds on behalf of Link. "Frankly I'm disappointed with the attitude of some of the dealers, who feel that the money is in their pocket, therefore they don't have to pass it on. It's not their money, it belongs to the creditors of Link."

Craig Wall says they hadn't written a policy for three or four weeks before they went under. However he says that the Link sales rep visited his dealer the week before.

"The crazy thing is they were in a week before they went under, because we had a very good record with them and offered us an incentive to sell more warranties.

"If I had sold several policies that week and hadn't paid the rep, I'd would be calling customers and telling them we'd be putting them through another warranty company.

"We certainly wouldn't be paying money for something that wasn't happening. To me it just seems crazy that a policy that's worth nothing, they can demand that you pay for it, especially if it's in that week.

After seeing their balance sheet sent out by the receivers, he believes they were underfunded from the start.

"We got a little bit of a warning a while back because we had a couple of repair shops ring and tell me that they were slow paying, if not shocking

I asked our Link rep straight to her face, and she said yes we had a bit of a cashflow issue but we've sorted it."

He believes that regardless of intervening circumstances, they wouldn't have lasted longer than 12 months, the balance sheet adding to this impression.

"They would have struggled unless they had a huge premium increase. Let's face it, they've got to get big premiums in. They were building up a big book of dealers because they were competitively priced – probably a bit cheap in hindsight. You've only got to have a huge amount of claims come in, and as you know European vehicles are major on claims. We've since gone to another warranty company and there's a huge difference in premiums, but we now have a very strong underwriter to safeguard our customers in the future, and our reputation."

Steve Ward says he signed up with Link because he'd known Owen Randall for years. He believed the product and price looked good.

Ward believes that were it not for intervening factors, Link would have stayed solvent.

"They were right there on the line with claims, then when his underwriter went they couldn't find another.

"They were getting bigger and bigger each month, and it was going to turn around from not losing money to making money in the next 12 months, just through the sheer numbers and volume they were getting." ☺

New market round-up

NEW PASSENGER sales in May were relatively flat, down 1.7% on April 2010, with traditionally market leader Toyota falling to 6th place. It was Holden that was able to capitalise, with a market share of 12.3%. Hyundai were second with 10%.

The impact of lost production can also be seen starkly in NZ Customs figures. 2011 monthly entries of new passenger vehicles from Japan are 2398 (January), 2177 (February), 2886 (March), 1542 (April), 920 (May).

However arrivals are expected to rise in coming months as distributors look to make up for missed deliveries.

The commercial market in May remained strong with total registrations of 2,028, 12.6% ahead of May 2010.

Light commercial vehicles were in fact the top two selling models for the month – the Toyota Hilux on 450 and the Nissan Navara on 337.

Commercials have not been so affected by supply issues as Fieldays vehicles were ordered and delivered in advance.

Dave Pederson, procurement manager at LeasePlan, says supply issues are impacting now. However he believes that moving forward the picture is much more positive.

"What we can understand from the information that we get through from manufacturers, is that everything is pretty well sorted out, and everything is going to be back on-stream much quicker than they anticipated.

"I've just been to Europe and the feedback our sister companies are getting is exactly the same. Everyone thought there was going to be significant delays, but obviously the manufacturers have all sorts of work-arounds in place to get themselves back up to speed, and things seem good."

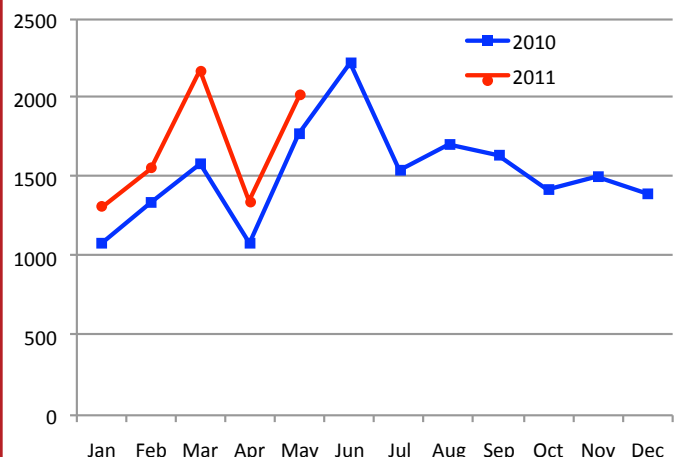
There have however been delays in the release of some new models says Pederson.

He doesn't believe it will have much of an impact on decision processes. Asked whether in terms of fleet sales the affected manufacturers have been scaling back discounts, he says that it's been largely business as usual.

"Some of the discounts have been pulled back, but for the strategic customers it's status quo.

"The affected marques have realized that some of the other manufacturers do have stock and can supply, so they're very mindful of that, and at the end of the day want to retain the business." ☺

New Commercial Sales - 2010-2011



New Commercial Vehicle Sales by Make - May 2011

MAKE	MAY '11	MAY '10	+/- %	MAY '11 MKT SHARE	2011 FULL YEAR	2011 MKT SHARE
Toyota	632	737	-14.2	31.2%	2483	29.4%
Nissan	347	237	46.4	17.1%	1121	13.3%
Ford	270	241	12.0	13.3%	1150	13.6%
Mitsubishi	159	87	82.8	7.8%	708	8.4%
Holden	114	142	-19.7	5.6%	559	6.6%
Mazda	92	97	-5.2	4.5%	399	4.7%
Volkswagen	72	18	300.0	3.6%	319	3.8%
Hyundai	62	31	100.0	3.1%	294	3.5%
Isuzu	58	22	163.6	2.9%	267	3.2%
Mercedes-Benz	34	30	13.3	1.7%	201	2.4%
Mitsubishi Fuso	28	34	-17.6	1.4%	119	1.4%
Great Wall	23	8	187.5	1.1%	129	1.5%
Hino	18	37	-51.4	0.9%	124	1.5%
Scania	14	13	7.7	0.7%	90	1.1%
Freightliner	13	2	550.0	0.6%	54	0.6%
Kenworth	13	1	1200.0	0.6%	40	0.5%
Fiat	11	19	-42.1	0.5%	59	0.7%
Other	68	45	51.1	3.4%	318	3.8%
TOTAL	2028	1801	12.6	100.0%	8434	100.0%

New Commercial Vehicle Sales by Model - May 2011

MAKE	MODEL	MAY '11	MAY '10	+/- %	MAY '11 MKT SHARE	2011 FULL YEAR	2011 MKT SHARE
Toyota	Hilux	450	477	-5.7	22.2%	1727	20.5%
Nissan	Navara	337	233	44.6	16.6%	1069	12.7%
Ford	Ranger	208	179	16.2	10.3%	909	10.8%
Toyota	Hiace	158	230	-31.3	7.8%	681	8.1%
Mitsubishi	Triton	125	60	108.3	6.2%	479	5.7%
Mazda	Bt-50	90	79	13.9	4.4%	380	4.5%
Holden	Colorado	88	120	-26.7	4.3%	468	5.5%
Hyundai	H1	59	31	90.3	2.9%	288	3.4%
Ford	Transit	56	45	24.4	2.8%	197	2.3%
Volkswagen	Amarok	50			2.5%	167	2.0%
Mitsubishi	L300	34	26	30.8	1.7%	228	2.7%
Mercedes-Benz	Sprinter	28	16	75.0	1.4%	156	1.8%
Toyota	Landcruiser	24	29	-17.2	1.2%	75	0.9%
Great Wall	V240	23	5	360.0	1.1%	128	1.5%
Isuzu	F Series	20	6	233.3	1.0%	55	0.7%
Isuzu	D-Max	19			0.9%	105	1.2%
Holden	Ute	16	13	23.1	0.8%	44	0.5%
Other		243	252	-3.6	12.0%	1278	15.2%
TOTAL		2028	1801	12.6	100.0%	8434	100.0%

New and used commercial sales by region - May 2011

	NEW			USED		
	MAY '11	MAY '10	+/- %	MAY '11	MAY '10	+/- %
Whangarei	54	60	-10.0%	5	5	0.0%
Auckland	688	619	11.1%	93	110	-15.5%
Hamilton	208	160	30.0%	10	16	-37.5%
Thames	18	22	-18.2%	2	2	0.0%
Tauranga	90	78	15.4%	11	9	22.2%
Rotorua	43	43	0.0%	3	5	-40.0%
Gisborne	26	25	4.0%			0.0%
Napier	64	89	-28.1%	4	4	0.0%
New Plymouth	48	43	11.6%	3	3	0.0%
Wanganui	8	14	-42.9%	2		0.0%
Palmerston North	71	78	-9.0%	5	9	-44.4%
Masterton	13	19	-31.6%			0.0%
Wellington	152	126	20.6%	17	15	13.3%
Nelson	36	49	-26.5%	4	4	0.0%
Blenheim	24	13	84.6%	2	2	0.0%
Greymouth	18	15	20.0%			0.0%
Wesport	8	1	700.0%	1	1	0.0%
Christchurch	232	159	45.9%	40	24	66.7%
Timaru	31	20	55.0%	3	1	200.0%
Oamaru	8	9	-11.1%	1	1	0.0%
Dunedin	116	97	19.6%	8	11	-27.3%
Invercargil	72	62	16.1%	3	2	50.0%
NZ TOTAL	2028	1801	12.6%	217	224	-3.1%

Used Commercial Vehicle Sales by Make - May 2011

MAKE	MAY '11	MAY '10	+/- %	MAY '11 MKT SHARE	2011 FULL YEAR	2011 MKT SHARE
Nissan	75	90	-16.7	34.4%	418	36.4%
Toyota	67	57	17.5	30.7%	302	26.3%
Mazda	23	20	15.0	10.6%	113	9.8%
Chevrolet	13	6	116.7	6.0%	41	3.6%
Isuzu	13	23	-43.5	6.0%	80	7.0%
Mitsubishi	6	7	-14.3	2.8%	26	2.3%
Ford	4	4	0.0	1.8%	37	3.2%
Other	16	17	-5.9	7.3%	17	1.5%
TOTAL	217	224	-3.1	99.5%	1148	100.0%

Used Commercial Vehicle Sales by Model - May 2011

MAKE	MODEL	MAY '11	MAY '10	+/- %	MAY '11 MKT SHARE	2011 FULL YEAR	2011 MKT SHARE
Toyota	Hiace	38	90	-57.8	17.5%	185	16.1%
Nissan	Caravan	36	57	-36.8	16.6%	185	16.1%
Nissan	Vanette	33	20	65.0	15.2%	184	16.0%
Mazda	Bongo	15	6	150.0	6.9%	85	7.4%
Isuzu	Elf	10	23	-56.5	4.6%	58	5.0%
Mazda	Titan	8	7	14.3	3.7%	27	2.3%
Toyota	Liteace	8	4	100.0	3.7%	18	1.6%
Other		69	17	305.9	31.8%	406	35.3%
TOTAL		217	224	-3.1	100.0%	1148	99.9%

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