855-477-REPO (7376)

Texas' Complete Recovery Solution

ASSET RESOLUTIONS NEWS

Automotive Bubble Forming In The U.S.

The Case for Unifying Standards in the Recovery Process

How Recent FDCPA Supreme Court Decision Affects You

How A Recent FDCPA Supreme Court Decision Affects You

3

4

The Case for: Unifyng Standards in the Recovery Process

6

SUMMARY

Asset Recovery News Magazine
Address; 9506 Brown Ln Austin 78754
Phone Number. 855.477.REPO (7376)
Director
Name James Waldron
Editor
Name Glenn Pieper
Credits
AFN
ARA
TARP

EDITORIAL

"With this ruling...a security-enforcement firm is a debt collector only when it meets what the Supreme Court dubbed the "limited-purpose definition" of a debt collector. A limited-purpose debt collector is subject to far fewer FDCPA requirements and restrictions."

Dave A. Kennedy
President A.R.A.
American Recovery Association
"One Voice - Strong and United"

The ARA Legal Committee will continue to keep you informed about legal and regulatory changes of interest to the Repo and subprime auto finance industry.

Dave A. Kennedy is also CEO of First Credit Resources in Johnstown, PA and can be reached at dave@firstcreditresources.com. This article is provided for informational purposes and is not intended nor should it be taken as legal advice.

©Copyright 2019 Dave A. Kennedy All rights reserved

Source: Brian Frontino and Kingsley Nwamah - law.com November 05, 2019 at 10:21 AM

LAW

How A Recent FDCPA Supreme Court Decision Affects You

Fellow Members of the Repossession Industry,

I am reaching out today to ensure that you are all aware of the recent Supreme Court Decision ruling that Repossessors are NOT debt collectors under the law, and its positive implications for your business.

Over the last 10 years, and in particular the last 5 years, the recovery industry has come under attack with an onset of nuisance Fair Debt Collection Practices (FDCPA) lawsuits.

In Obduskey v. McCarthy & Holthus, the Supreme Court ruled that businesses whose sole purpose is to enforce security interests that secure underlying debt, like automobile repossession agents and nonjudicial foreclosure firms (in states that maintain nonjudicial foreclosure procedures, unlike Florida), are not always "debt collectors" under the Fair Debt Collection Practices Act, 15 U.S.C. Section 1692 et seq. (FDCPA). The FDCPA imposes many requirements and restrictions on consumer debt collectors. After Obduskey, a security-enforcement firm is a debt collector only when it meets what the Supreme Court dubbed the "limited-purpose definition" of a debt collector. A limited-purpose debt collector is subject to far fewer FDCPA requirements and restrictions.

With this ruling, automobile repossessors are now only bound one section of the Rule [§808(6) of FDCPA]. The Court determined that firms whose business is limited to the ENFORCEMENT of security-interests, such as automobile repossessors, will NOT be subject to ALL of the restrictions under the FDCPA.

The Court's ruling allows our agents to be exempt from majority of the FDCPA's restrictions. Repossessors are only subject to one section of the Act, which forbids actions prohibited by the Act (such as threatening violence or repeated phone calls) only in situations where the (1) repossession is not valid, (2) there is no intention to repossess at the present time, or (3) the repossession collateral is exempted.

This, ladies and gentlemen, is great news for the industry.

The American Recovery Association is committed to bringing timely news to our members and the collateral recovery Industry. For more on this case, visit Law.com. Please sure to send it to your legal counsel and your insurance companies.

FEATURED I

There Is An Automotive Bubble Forming In The U.S.

PAUL SIMONS - WEALTH INSIGHTS

For as dynamic and innovative that humans have proven to be throughout history, it's difficult to eliminate the emotional behaviors that occasionally cause trouble every now and then. Think back a decade ago when the meltdown of the housing markets helped fuel one of the worst financial crises in decades. For as wonderful as our modern day economy is for giving us the freedom to buy that dream home, it's those same freedoms that sometimes fail to provide a "check" and protect us from potentially destructive impulses. People seeking out unaffordable/impractical homes were greeted by creative banks/people able to find a way to finance them in ways that were irresponsible in hindsight.

This isn't a history lesson on the financial crisis (it's more complicated than that), but it does remind me of some current trends going on in the automotive industry. As consumer demand is dictating a direction away from sedans (and towards trucks and SUVs), American automotive companies such as General Motors (NYSE:GM) and Ford (NYSE:F) are happily obliging. Various sedan models are being retired, and the remaining trucks and SUVs are shooting higher in cost. Because of how expensive living costs have become (rent and healthcare costs continue to rise), the only way that many consumers can afford these vehicles is to utilize poor financial tools to finance them. We dive into this trend and what the downside could be for automotive companies if this continues to escalate.

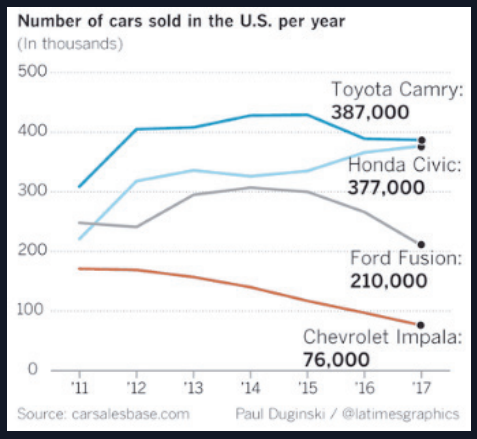
US Car Sales Declining

The gravitation of US consumers towards larger vehicles is a very real phenomenon, but it does come with an important caveat. That being that the decline of sedan sales is not an industry-wide problem,

rather a US company problem.

In other words, while Ford and GM are witnessing failure in the sedan segment, foreign competitors Toyota (NYSE:TM) and Honda (NYSE:HMC) are seeing sales remain stable.

There is no doubt that American consumers are trending to larger vehicles on a macro level. Larger cars offer better safety (physics are on your side when you're the larger object in a collision), more room, and utility. However, the continued success of Toyota and Honda indicates that in addition to this large-scale shift to bigger vehicles, they are also simply taking market share away from US makers. It has been stated numerous times in media and in earnings calls that trucks and SUVs are more profitable for Ford and GM than sedan models. Ford has been happy thus far with how things have gone since transitioning away from sedans.



With technology such as adding turbo to smaller engines, the continually improving fuel economy of these cars has automakers thinking that this is a permanent market shift. However, there has been a side effect of this change, which is on the consumer's side of the financials.

These Larger Vehicles Come With A Price - Literally

As demand has surged for trucks and SUVs, automakers have happily provided with models that come with continually more complicated trim options that can easily incentivize consumers to wander into pick-up trucks and SUVs that cost more than shoppers initially intended. Complicated options packages can cause consumers to buy three extra features in order to get the one that they actually want. That "executive package" to get navigation comes with leather seats, a moon roof, and heated seats for example.

This has incentivized manufacturers to continue raising prices to consumers. While car prices have stagnated in efforts to hold onto the attention of consumers, the prices of larger vehicles have skyrocketed. Full-size pick-up trucks have appreciated 21% just from 2012 to last year.

The trend of lowering car sales and increasing (higher margin) SUV/truck sales has created an influx of cash for Ford and General Motors. While revenues have increased, the higher margin sales have given an outsized boost to operating cash flow.

When we look at the average price of new cars, costs continue to climb as a whole. From May 2018 to May 2019, compact SUVs, mid- and full-size pick-up trucks have each seen prices climb over 3%. Overall, vehicle prices are up almost 4% cumulatively year/year.

Astonishingly, a new full-size pick-up truck (the "working man's vehicle") now costs on average $50,000. A full-size SUV - an underrated family vehicle because crossovers are too small with families of more than two children - will set you back $63,000 on average. When 80% of millennials blame student loans for not being able to buy a house, vehicles are becoming the "wolf in sheep's clothing" when you consider that these large vehicles outweigh the average student loan balance in America of $29,800.

The Dollars & Cents Of What's Happening

When you further peel back layers of these trends, it becomes even more troubling. Financial advisers will often tell you that you shouldn't spend more than 20% of your gross annual income on vehicles, and an absolute max of 50%. Based on the current median US household income of approximately $61,000, the typical consumer is overspending on these vehicles. This doesn't even factor in households with multiple vehicles.

Wealth Insights
Dividend growth investing, long-term horizon, dividend investing, portfolio strategy
SEEKING ALPHA Member Since 2013
- Bachelor's degree in Business Administration with a concentration in Financial Analysis. Been investing and following the markets for more than a decade.

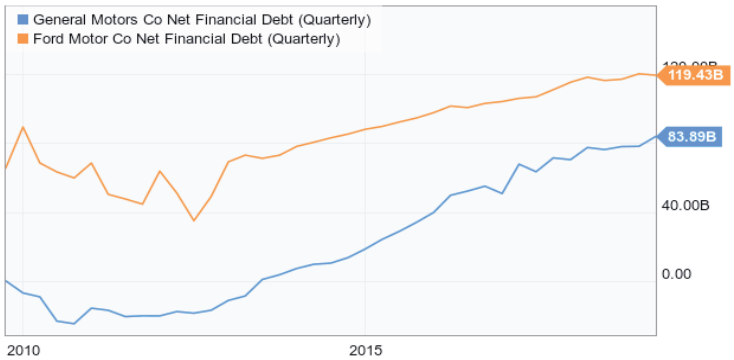
- A good hockey player plays where the puck is. A great hockey player plays where the puck is going to be.

- Wealth Insights is an investor, and investment author. His content is not geared to anyone's specific investment goals, time horizons, or risk tolerance. Content is for illustrative purposes only, and is not intended to displace advice from a fee based financial adviser. Accuracy of data is not guaranteed.

The Future of Auto Sales:

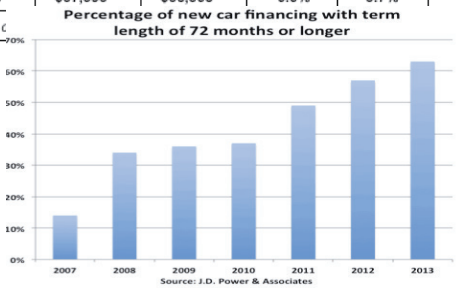
THINKING FOR THE NEXT 30 YEARS

Credit Score	Average APR
720 or higher	5.33
680-719	6.61
660-679	8.36
640-659	13.08
620-639	13.83
580-619	17.41
560-579	19.63
Less than 560	21.10
All borrowers	8.35



Segment	May 2019 Transaction Price (Avg.)*	April 2019 Transaction Price (Avg.)*	May 2018 Transaction Price (Avg.)*	Change April 2019 to May 2019*	Change May 2018 to May 2019*
Compact Car	$20,830	$20,780	$20,540	0.2%	1.4%
Compact SUV/Crossover	$29,421	$29,460	$28,476	-0.1%	3.3%
Electric Vehicle	$55,028	$52,483	$61,269	4.8%	-10.2%
Entry-level Luxury Car	$42,975	$43,230	$42,065	-0.6%	2.2%
Full-size Car	$35,250	$35,358	$34,664	-0.3%	1.7%
Full-size Pickup Truck	$49,997	$50,149	$48,401	-0.3%	3.3%
Full-Size SUV/Crossover	$63,043	$63,217	$63,440	-0.3%	-0.6%
High Performance Car	$99,108	$99,760	$102,671	-0.7%	-3.5%
High-end Luxury Car	$101,242	$100,242	$100,033	1.0%	1.2%
Hybrid/Alternative Energy Car	$27,223	$27,398	$27,510	-0.6%	-1.0%
Luxury Car	$58,515	$59,128	$59,136	-1.0%	-1.1%
Luxury Compact SUV/Crossover	$44,912	$45,163	$44,899	-0.6%	0.0%
Luxury Full-size SUV/Crossover	$89,581	$90,256	$89,645	-0.7%	-0.1%
Luxury Mid-size SUV/Crossover	$59,443	$59,822	$55,986	-0.6%	6.2%
Mid-size Car	$25,775	$25,859	$25,741	-0.3%	0.1%
Mid-size Pickup Truck	$34,387	$34,665	$33,394	-0.8%	3.0%
Mid-size SUV/Crossover	$38,017	$37,846	$37,801	0.5%	0.6%
Minivan	$35,600	$35,680	$34,234	-0.2%	4.0%
Sports Car	$36,499	$36,883	$35,846	-1.0%	1.8%
Subcompact Car	$16,538	$16,590	$16,538	-0.3%	0.0%
Subcompact SUV/Crossover	$24,320	$24,185	$24,446	0.6%	-0.5%
Van	$35,453	$35,335	$34,746	0.3%	2.0%
Grand Total	**$37,185**	**$37,393**	**$35,865**	**-0.6%**	**3.7%**

**Kelley Blue Book average transaction prices*



THE BEST INDICATORS OF OVERSPENDING THAT WE CAN LOOK AT ARE THE TRENDS OF VEHICLE FINANCING OVER THE YEARS. FOR EXAMPLE, CONSUMERS ARE GENERALLY FINANCING VEHICLES WITH INCREASINGLY LENGTHIER LOANS. Despite the US economy being in its longest economic expansion ever, the majority of consumers are continuing to finance vehicles at loans with six-year terms - or longer. This wasn't the case prior to the recession a decade ago. There are loans out there that go 7-8 years in length. The only real reason anyone would finance a depreciating asset for that long is that they cannot afford the monthly payments at a shorter term. The average new vehicle loan in the US today is termed at 65 months.

When you finance over that long of a time frame, consumers are paying more in interest. These interest charges can really add up depending on your credit score. While the average APR rate among all borrowers is 8.35%, consumers with lower credit scores are taking on vehicle loans at credit card similar interest rates.This means that between the vehicle price and lengthier financing, monthly payments continue to skyrocket. The average new car monthly payment is now a whopping $530 per month. If we look at median credit scores distributed by income brackets, we can see that all of these negative circumstances are impacting those with lower incomes the most. In other words, these poor buying decisions (and often predatory lending practices) are aimed at those least financially equipped to work through them.

How Long Can This Last? To this point, it has likely become clear why the state of the automotive industry in the United States sounds similar to the housing crisis a decade ago. There is a bubble forming that many automakers are currently riding the wave of. Automakers such as General Motors and Ford often handle the lending when it comes to financing leases and purchases of vehicles. The lending arms of these companies are large profit centers for each. As part of that, these balance sheets absorb huge quantities of future receivables on their balance sheet (they finance the car at point of purchase, and you pay them back with your monthly payment). These operations have pushed total debt levels well pass pre-recession levels (both Ford and General Motors operate with little/no actual debt from day-to-day operations; it's virtually all from the financial arms).

While each company will point to low charge-off rates (between 1% and 2%) as a sign of stability within their lending units, the reality is that this is a strong economic environment. Wage growth has ballooned over the past five years, and unemployment is at generational lows in the low single digits.The economic environment is essentially at peak condition for consumers - wages are growing, and everyone is working. What happens when this reverses course? We are already in the longest economic expansion in our nation's history. Nobody has a crystal ball, and nobody is calling US automakers a potential General Electric (NYSE:GE) type of disaster waiting to happen. However, these lending arms do occasionally get too big and can get the company into trouble when a recessionary event causes a surge of instability in these institutions (General Motors DID require a "bailout" a decade ago).Wrapping Up

What is the take-home point of this deep dive into the US automotive industry? General Motors and Ford are changing course as they lose market share to foreign competitors in the sedan segment. As Americans embrace trucks and SUVs, Ford and General Motors are going "all in" on the shift, and enjoying stronger revenue growth and margins because of it.

However, investors should remain cautious should they choose to hold stock in US automotive companies - specifically General Motors and Ford. Earnings reports will point to growth and expanding margins, but the underlying currents of how the automotive market operates today only make these manufacturers more vulnerable to disaster should the bottom fall out. Ultimately, the spending (and borrowing) patterns of consumers are trending in directions that are unsustainable. That sure sounds like a bubble to me.

The Case for Unifying Standards in the Recovery Process

In 2018, the National Automotive Finance Association (NAF Association) joined forces with the American Recovery Association (ARA) and assembled a working group of banks and finance companies that created a baseline set of common standards by which recovery agents can be managed and evaluated. Jack Tracey and I presented these common standards at last year's Annual Non-Prime Auto Financing Conference.

As the NAF Association looked at next steps, we found that there was a service provider that was not included in the conversation: forwarders. For those that don't know, forwarders enable lenders to effectively outsource their entire recovery process, and in some cases even the subsequent activities around asset disposal.

The cost of assigning a repossession through a forwarder includes the fees to the forwarder and the recovery agent, often at a discount to the alternative of assigning directly to a recovery agent. Lenders have adopted the forwarder model at different levels – many use mostly forwarders for their recoveries, while many others use forwarders only for special cases, such as geographic locations where none of their existing recovery agents can reach.

Structural changes/technology

The process and economics for the recovery industry have changed. Using a forwarder, lenders can assign to a vast array of recovery agents and have that all managed by a single vendor manager. This configuration also allows lenders to dictate contract and compliance standards more broadly and have them accepted by any recovery agent that picks up the assignment. So, to the lender, this model can be a powerful proposition that can streamline internal operations and reduce operating expense in the servicing department, which for most financial services companies is where most of the operating expense lies.

Technology and communication requirements have evolved for the recovery function just as it has for all other facets of our overall industry. Recovery agents being dispatched by several forwarders and direct lender relationships found themselves utilizing many more varied systems and protocols in doing their work. Recovery agents find themselves at the back-end of an array of various unique requirements, technologies, and compliance standards.

Regulatory pressures and changes rolled out by the CFPB and states' AGs have forced lenders to make material changes to the revenue model that recovery agents had relied on for years prior. Many fees and practices that are still legal and within compliance for the state, such as collecting fees directly from the customer (handling consumer payments) have been eliminated out of concern that the finance company cannot ultimately manage that transaction. For example, while recovery agents must manage consumer personal property according to an array of finance company mandated procedures and regulatory guidelines, the revenue from personal property storage fees may have been eliminated by the lenders.

The pressures from regulation, technology, and third-party brokers has changed the economics for the entire recovery industry. Whether recovery agents are taking assignments through forwarders or staying strictly direct, revenues for recovery agents have dropped to less than half of what they were 10 years ago. As a result, we see only half as many recovery agents in business as we did 10 years ago.

The recovery "service provider" industry has also seen significant changes in terms of market consolidation. Recently, the following consolidations have occurred: • MBSI consolidated RISC and VTS (training and compliance systems) • CARS acquired by Primeritus • KAR Auction Services, part of ADESA and PAR purchased Clear Plan •DRN acquired by Motorola

The consolidation now underway may continue on to impact the major forwarding companies, ultimately resulting in fewer forwarders and recovery agents.

The perfect storm

Lenders know all about the demands of delivering increased efficiencies, and managing the rising cost of compliance, all while trying to improve loan performance. The forwarder model was borne out of the need to assist with ameliorating these pressures. In large part, lenders and forwarders have operated with open lines of communications, and pushed requirements down to the recovery agents. Economic pressures driven by regulation, technology and third--party entrants are supplemented by the need for lenders to continually find lower cost providers. This is where we are today:

JOEL KENNEDY

Joel Kennedy is chief operating officer of TruDecision.

As NAF Association board member, Joel is passionate about growing and improving auto finance ecosystem.

He has over 23 years' experience helping big banks down to start-up finance companies to build, grow, improve, and repeat.

"...revenues for recovery agents have dropped to less than half of what they were 10 years ago. As a result, we see only half as many recovery agents in business as we did 10 years ago."

Take the example of a single lender, their associated forwarder (assume only one), and the downstream recovery agents associated with this relationship. This scenario would be the perfect-candidate for a vendor management-based process improvement project (i.e. Six Sigma, or any other process improvement methodology). The problem here is that to the recovery agents in the scope of this example would have to embark upon Six Sigma projects for every one of their forwarder and lender relationships as well for them to experience wholesale efficiencies. In order for real change to happen, the kind of change that is required to deliver the substantial impact that is required, we have to operate as an industry in a boundaryless fashion.

Positive signals

Last year, the recovery industry saw a significant trade group consolidation driven by the ARA. This is meaningful for lenders and forwarders because there is more or less a single body with which we can work to implement these standards. During 2018 as well, the ARA and a group of forwarders met to open the lines of communication and acknowledge the issues and its impacts to recovery professionals. So, if there were ever a time for the lender contingent to rally around a set of common standards that can be pushed through the supplier network of forwarders and recovery agents – now is the time.

The NAF Association was invited to the most recent ARA Conference – the North American Repossessors Summit to facilitate a "voice of the customer" session of lenders. The session included nearly 60 participants representing 20 lenders, which I had the honor or facilitating. Overwhelmingly, lenders are in search of standardization and improved communication – both of which will improve with lenders getting behind a common set of standards. The great news is that we already have a baseline set of standards that we can use as a starting point. I was thrilled to get more people excited and on-board.

Additionally, at the ARA Conference, the NAF Association was invited to moderate a panel on "Unifying the Standards in our Industry", and the panel was made up of leadership in the forwarder industry. The message to recovery agents was:

1) acknowledgement of the issues (all outlined in the article above)

2) notice we have lenders, forwarders, and recovery professionals all at the table – like never before, and

3) together we can own the overall process, and we can drive improvements if we work together The session was extremely well received by an enthusiastic, packed house.

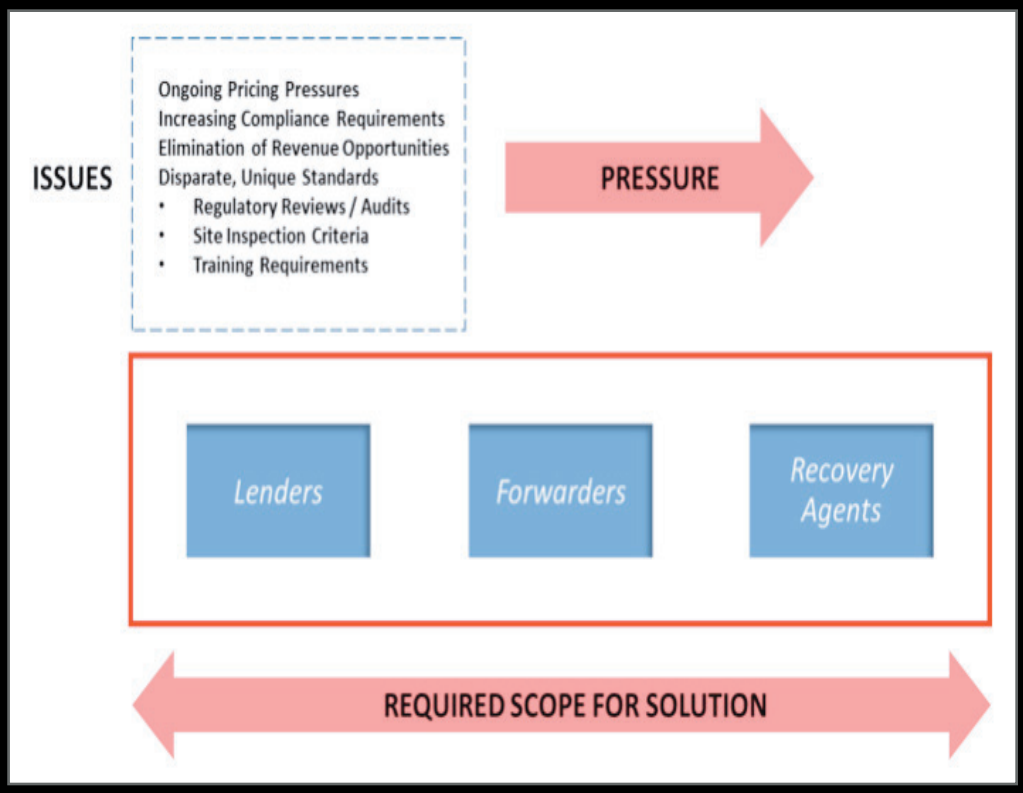
Call to action

The common, baseline standards have been set by the NAF Association and are nothing more than the minimum set of agreed-to criteria from 50-plus lenders (both NAF and non-NAF members represented). Getting the standards adopted by our members is a critical next step to getting these standards deployed through the value-chain of forwarders and recovery agents. Whether lenders use forwarders or go direct the standards are equally relevant. Without lenders getting behind these standards, the process fails to launch.

There are a myriad of ideas for streamlining and efficiency presently on the table that can drive substantial economic benefits to all parties throughout the value-chain. These will simply not be realized unless and until we as lenders get on the same page with standards. If we do not, we may be confronting a future very different from the one we know today, and that future could be sooner than any of us would wish to believe.

Joel Kennedy is chief operating officer of TruDecision. As NAF Association board member, Joel is passionate about growing and improving auto finance ecosystem. He has over 23 years' experience helping big banks down to start-up finance companies to build, grow, improve, and repeat.

Joel can be reached at 240-308- 2169 or joel.kennedy@trudecision.com.



ASSET RESOLUTIONS

855-477-REPO (7376)

- Repossession
- Impound Retieval
- Secured Storage
- Skip Locate
- Licensed P.I.
- Plate Recognition
- Locksmith Services
- Asset Auction
- Liquidation
- Transport

LICENSED

BONDED

INSURED

cfpb COMPLIANT

Texas' Complete Recovery Solution

ASSETRESOLUTIONS.COM