

**JURISDICTION:** OKLAHOMA TAX COMMISSION  
**CITE:** 2011-08-23-02 / NON-PRECEDENTIAL  
**ID:** SJ-11-002-K  
**DATE:** AUGUST 23, 2011  
**DISPOSITION:** SUSTAINED  
**TAX TYPE:** MOTOR VEHICLE, JUNK TITLE  
**APPEAL:** NO APPEAL TAKEN

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

Protestant, PROTESTANT appears pro se. The Motor Vehicle Division of the Oklahoma Tax Commission ("Division") is represented by OTC ATTORNEY, First Deputy General Counsel, Office of the General Counsel, Oklahoma Tax Commission.

### STATEMENT OF THE CASE

On or about September 7, 2010, Protestant purchased a 2004 Chevrolet Cavalier, VIN ###, from AUCTION HOUSE of CITY, Oklahoma. The vehicle in question was the subject of an insurance loss (date of loss – July 8, 2010). A “Junked” title to the vehicle was issued to INSURANCE COMPANY on September 14, 2010 pursuant to the insurance company’s September 7, 2010 declaration of loss. By letter dated April 19, 2011, Protestant protested the title type issued on the vehicle.

A hearing was scheduled for May 17, 2011, by *Notice to Show Cause why the Issuance of a “Junked” Certificate of Title is Incorrect* mailed April 22, 2011.

An open hearing was held as scheduled<sup>1</sup>. Protestant gave a statement as to the condition of the vehicle, and was cross-examined with respect to the purchase of the vehicle and subsequent discussions with the insurance company. Division’s Exhibits A and C were identified, offered and admitted into evidence. ADMINISTRATOR, Administrator-Title Section of the Division testified with respect to the records of the Division. Copies of three (3) photographs of the vehicle at issue were identified, offered and admitted into evidence without objection. Upon conclusion of the hearing, the record was closed and the case was submitted for decision.<sup>2</sup>

### FINDINGS OF FACT

Upon review of the file and records, including the exhibits received into evidence, the undersigned finds:

1. On March 15, 2004, OWNER 1 or OWNER 2 applied for and obtained certificate of title number ###A, a transfer title to the vehicle in question upon presentment of an Odometer Disclosure Statement, Lien Entry Form, assigned certificate of title number ###, an original title

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<sup>1</sup> See 68 O.S. 2001, § 205, as amended.

<sup>2</sup> OAC, 710:1-5-39(a).

issued to DEALERSHIP and purchase agreement between DEALERSHIP, and OWNER 1 and OWNER 2. The vehicle was subject to the lien of BANK. Division's Exhibit B.

2. On August 2, 2010, a duplicate title to the vehicle was issued to OWNER 1 or OWNER 2 upon presentment of an Application for Replacement Certificate of Title for Vehicle/Boat/Motor executed by one POA on behalf of OWNER 2 by Power of Attorney and the Power of Attorney issued by OWNER 2 to INSURANCE COMPANY for purposes of signing her name to any forms necessary for a transfer of her right, title and interest to the vehicle. Division's Exhibit B.

3. On August 11, 2010, a salvage title to the vehicle was issued to INSURANCE COMPANY upon presentment of a loss declaration executed August 10, 2010, the assigned duplicate title of OWNER 1 or OWNER 2, and the Power of Attorney issued by OWNER 2. The loss declaration shows that "the cost of the repair for the safe highway operation exceeds 60%, but is less than 80% of the fair market value". Division's Exhibit B.

4. On September 14, 2010, a junked title to the vehicle was issued to INSURANCE COMPANY upon presentment of the assigned salvage title of INSURANCE COMPANY and a loss declaration executed September 7, 2010. The loss declaration shows that "the cost of the repair for the safe highway operation exceeds 80% of the fair market value". Division's Exhibit B.

5. Protestant purchased the vehicle on or about September 7, 2010 from AUCTION HOUSE of CITY, Oklahoma. Protestant's bid amount for the vehicle (\$525.00) was a little more than 10% of the actual cash value of the vehicle (\$4,973.00). Division's Exhibit C.

6. Protestant purchased the vehicle through a bid over the internet. He stated that he did not know at the time of purchase that the vehicle had a junked title, but does not dispute that it may have been advertised on the internet as a junked vehicle. He also stated that auto auctions are not required to list the title brands of the vehicles being sold, but most of the time the title brands are listed.

7. A letter from REPRESENTATIVE of INSURANCE COMPANY dated October 14, 2010 indicates that the vehicle in question, "was paid as a total loss due to flood damage", "[t]he date of loss is 7/8/10" and "this vehicle is still roadworthy." Protestant stated that according to ADMINISTRATOR, INSURANCE COMPANY has recanted this letter. Protestant further testified that upon learning that the vehicle had a junked title, he contacted INSURANCE COMPANY and was told that they would not change the loss declaration.

8. Protestant owns and operates a salvage yard outside of ANYTOWN, Oklahoma and has experience with buying and selling cars since 1965.

9. Protestant stated that he fixed the vehicle at a cost of \$6.97 by replacing the air in-take filter. He testified that the air in-take filter had been saturated with water which prevented the engine from receiving air and prevented the engine from starting.

10. By letter dated April 19, 2011, Protestant protested “the type of title issued by the Oklahoma Tax Commission [on the vehicle] and requested a hearing to clarify the Oklahoma law regarding types of titles for automobiles.” Division’s Exhibit A.

11. ADMINISTRATOR testified that subsequent to receipt of the protest letter, personnel of the Division contacted INSURANCE COMPANY and were advised that the letter dated October 14, 2010 from REPRESENTATIVE was “produced in error”, that a field claims representative inspected the vehicle, that the vehicle was sold with a junk title, that the title type was published at that time and known by the purchaser, and that the vehicle should remain as a junk title due to damage from the loss. ADMINISTRATOR further testified that the loss declaration used to obtain INSURANCE COMPANY’S salvage title to the vehicle was issued in error and that the October 14, 2010 letter was not accepted because it didn’t state the percentage of loss to the vehicle.

12. The e-mail correspondence from SALVAGE MANAGER, CPCU, API, National Salvage Manager for INSURANCE COMPANY to DIRECTOR, Deputy Director of the Division indicates that: “[f]rom my research, this vehicle was one that could have been justified as either a Salvage or Junk unit and to ensure consumer protection we [INSURANCE COMPANY] elected to proceed with a Junk title.”

### ISSUE AND CONTENTIONS

The issue presented for decision is whether the provisions of the Oklahoma Vehicle License and Registration Act (“Act”)<sup>3</sup> prevents the Tax Commission from issuing a marketable title to the vehicle in question to Protestant?

Protestant contends that the junked title on the vehicle in question was issued in error. In support of this contention, Protestant argues that the statute requires three (3) elements in order for a junked title to be issued on a vehicle and in this case, the vehicle is capable of operation or use on the highway and has a resale value exceeding that of a source of parts or scrap.

The Division contends that it properly titled the vehicle based on INSURANCE COMPANY’S loss determination. In support of this contention, the Division argues that the insurance company is the responsible party for establishing the level of damage to the vehicle and the Division is not in a position to overrule the insurance company’s declaration of loss. The Division further argues that the title type to the vehicle was published and known by Protestant at the time of purchase, that INSURANCE COMPANY explicitly determined what loss had been incurred with the vehicle and has been actively involved in the process of titling the vehicle.

### CONCLUSIONS OF LAW

1. Jurisdiction of the parties and subject matter of this proceeding is vested in the Oklahoma Tax Commission. 47 O.S. Supp. 2004, § 1106(A)(1); 68 O.S. 2001, § 207(c) and (d).

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<sup>3</sup> 47 O.S. 2001, § 1101 et seq., as amended.

2. “The owner of every vehicle in this state shall possess a certificate of title as proof of ownership of such vehicle”. 47 O.S. Supp. 2008, § 1105(B)<sup>4</sup>. The certificates of title types issued by the State of Oklahoma are:

1. Original title for any motor vehicle which is not a remanufactured, salvage, unrecovered-theft, rebuilt or junked vehicle;
  2. Salvage title for any motor vehicle which is a salvage vehicle<sup>5</sup> or is specified as a salvage vehicle or the equivalent thereof on a certificate of title from another state;
  3. Rebuilt title for any motor vehicle which is a rebuilt vehicle<sup>6</sup>;
  4. Junked title for any motor vehicle which is a junked vehicle<sup>7</sup> or is specified as a junked vehicle or the equivalent thereof on a certificate of title from another state;
  5. Classic title for any motor vehicle, except a junked vehicle, which is twenty-five (25) model years or older;
  6. Remanufactured title for any vehicle which is a remanufactured vehicle;
- and
7. Unrecovered-theft title for any motor vehicle which has been stolen and not recovered.

3. “The application for a certificate of title for a vehicle which is within the last seven (7) model years shall require a declaration as to whether the vehicle has been damage by collision or other occurrence and whether the vehicle has been recovered from theft and the extent of the damage to the vehicle.” 47 O.S. Supp. 2008, § 1105(C)(2). The “declaration” is required to be made by the owner of the vehicle if: “(a) the vehicle has been damaged or stolen, (b) the owner did or did not receive any payment for the loss from an insurer, or (c) the vehicle is titled or registered in a state that does not classify the vehicle or brand the title because of damage to or loss of the vehicle similar to the classification or brands utilized by this state.” *Id.* The declaration shall be based on the best information and knowledge of the owner. *Id.*

4. Subsection B of § 1111 of the Act, entitle “Salvage title – New title” provides in pertinent part:

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<sup>4</sup> See, 47 O.S. 2001, § 1103 which provides: “[i]t is the intent of the Legislature that the owner or owners of every vehicle in this state shall possess a certificate of title as proof of ownership and that every vehicle shall be registered in the name of the owner or owners thereof.”

<sup>5</sup> The phrase “salvage vehicle” is defined to mean “any vehicle which is within the last ten (10) model years and which has been damaged by collision or other occurrence to the extent that the cost of repairing the vehicle for safe operation on the highway exceeds sixty percent (60%) of its fair market value, as defined by Section 1111 of this title, immediately prior to the damage. For purposes of this section, actual repair costs shall only include labor and parts for actual damage to the suspension, motor, transmission, frame or unibody and designated structural components”. 47 O.S. Supp 2008, § 1105(A)(1).

<sup>6</sup> The phrase “rebuilt vehicle” is defined to mean “any salvage vehicle which has been rebuilt and inspected for the purpose of registration and title”. 47 O.S. Supp. 2008, § 1105(A)(2).

<sup>7</sup> The phrase “junked vehicle” is defined to mean “any vehicle which is incapable of operation or use on the highway, has no resale value except as a source of parts or scrap and has an eighty percent (80%) loss in fair market value”. 47 O.S. Supp. 2008, § 1105(A)(6).

Any insurance company that pays a total loss<sup>8</sup> on a claim for any vehicle<sup>9</sup> including, but not limited to, a flood-damaged vehicle<sup>10</sup> \* \* \* shall receive the certificate of title from the current holder of the certificate of title, shall detach the license plate from the vehicle, and shall return the license plate and the certificate of title to the Oklahoma Tax Commission \* \* \* within thirty (30) days from receipt of the certificate. The Tax Commission shall cancel the certificate of title to the vehicle used for junk or parts and shall preserve the vehicle identification numbers on the certificate of title in the computer files for at least five (5) years. No certificate of title may be reissued on a junked vehicle as defined in Section 1105 of this title, unless reissued pursuant to paragraph 3<sup>11</sup> of subsection C<sup>12</sup> of this section. \* \* \* The Tax Commission shall transfer ownership of a vehicle damaged by flooding or other occurrence to the insurer by an original title, salvage title, or junked title, as may be appropriate, based upon an estimate of the amount of loss submitted by the insurer.

5. “When the insurance company pays a loss on a vehicle which is registered at the time of mishap, accident, burning, or flooding, the appropriate certificate of title shall be issued without the payment of additional registration fees or excise taxes, upon the submission of a police report or insurance adjuster’s report and a declaration by the insurer that the vehicle is held for sale to a dealer.” 47 O.S. Supp. 2010, § 1111(K).

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<sup>8</sup> Defined for purposes of § 1111 to mean: “a loss which is equal to the fair market value of the vehicle immediately prior to the damage to or theft of the vehicle”. 47 O.S. Supp. 2010, § 1111(A)(4) “Loss” is defined to mean “the cost, in dollars, to repair or replace a vehicle which has been damaged by collision or other occurrence. The amount paid by an insurer to a holder of the certificate of title for repair of a damaged vehicle shall be prima facie evidence of the amount of loss. The amount paid by an insurer to a holder of the certificate of title for replacement of a damaged vehicle less the resale value of the damaged vehicle shall be prima facie evidence of the amount of the loss”. 47 O.S. Supp. 2010, § 1111(A)(1). “Fair market value” is defined to mean: the value of a vehicle as listed in the current National Auto Dealers Association guidebook or other similar guidebook or the actual cash value, whichever is greater”. 47 O.S. Supp. 2010, § 1111(A)(2).

<sup>9</sup> Defined to mean “a vehicle, as defined in paragraph 29 of Section 1102 of this title, manufactured within the last seven (7) model years. 47 O.S. Supp. 2010, § 1111(A)(5). A “vehicle” is now defined at § 1102(38). Laws 2010, c. 312, § 1, eff. Nov. 1, 2010.

<sup>10</sup> Defined as “a salvage or rebuilt vehicle which was damaged by flooding or a vehicle which was submerged at a level to or above the dashboard of the vehicle and on which an amount of loss was paid by the insurer”. 47 O.S. Supp. 2008, § 1105(A)(3).

<sup>11</sup> This paragraph provides in part: “If the actual documented cost of repairing the vehicle for safe operation on the highway does not exceed sixty percent (60%) of the fair market value of the vehicle \* \* \* the certificate of title shall be reissued to the holder and the vehicle shall not be subject to inspection as required under this section. The actual documented cost of repairing the vehicle \* \* \* shall be certified by the insurance company paying the loss.”

<sup>12</sup> Subsection C is applicable when the cost of repairing a vehicle for safe operation on the highway exceeds sixty percent (60%) of the fair market value of the vehicle, but is not a total loss. In those situations, the holder of the certificate of title is required to return the certificate of title to the Tax Commission within thirty (30) days from receipt of payment for the loss and the Tax Commission is required to issue a salvage title for the vehicle with either a designation on the title of “Flood Damaged” or “Recovered Theft” depending on the circumstances resulting in the damage to the vehicle. 47 O.S. Supp. 2010, § 1111(C)(1) and (2).

6. Subsection L of § 1111 of the Act provides in pertinent part:

Any insurance company that pays a claim for a loss where the cost of repairing the vehicle for safe operation on the highway exceeds sixty percent (60%) of the market value of the vehicle or pays a claim for a flood-damaged vehicle \* \* \* shall notify, in writing, the holder of the certificate of title of the requirements of this section and shall notify the Tax Commission of the payment of such claim. The notice shall include the estimated total damage percentage determination of the actual cash value made by the insurance company to repair the vehicle for safe operation on the highway. The Tax Commission shall provide notice to the owner of the vehicle in writing requiring the owner to surrender the title along with the fee to the Tax Commission \* \* \* within thirty (30) days from the receipt of notice for the issuance of the appropriate title based on the amount of loss. The Tax Commission shall reissue the appropriate title with the words "Flood Damaged" on the face of the title in case of a flood-damaged vehicle.

7. First, the only evidence that the vehicle in question was "flood-damaged" is contained in the letter of October 14, 2010, which letter was recanted as "produced in error". The other loss declarations issued by INSURANCE COMPANY either don't specify the damage or provides "fresh water" as the cause of the damage. Accordingly, the vehicle was not "flood-damaged" as defined by § 1105(A)(3).

Here, INSURANCE COMPANY sought and obtained a "junked" title to the vehicle pursuant to § 1111(B). This provision refers to § 1111(C)(3) and recognizes that a vehicle designated as a junked vehicle on the certificate of title can be made roadworthy and a certificate of title reissued. Section 1111(C)(3) provides in part:

If the actual documented cost of repairing the vehicle for safe operation on the highway does not exceed sixty percent (60%) of the fair market value of the vehicle \* \* \* the certificate of title shall be reissued to the holder and the vehicle shall not be subject to inspection as required under this section. The actual documented cost of repairing the vehicle \* \* \* shall be certified by the insurance company paying the loss.

What happens if the cost of repairing the vehicle for safe operation on the highway exceeds sixty percent (60%) or the insurer paying the loss refuses to document the cost of repairing the vehicle? The statute implicitly provides that the vehicle is subject to inspection and the appropriate certificate of title issued. In this case, the title type to be issued is either a "salvage" or "rebuilt" title notwithstanding that the cost to make the vehicle roadworthy did not exceed sixty percent (60%).

Further, INSURANCE COMPANY sought and obtained a "junked" title for the vehicle based on their loss declaration. However, the loss declaration also states, "[t]he vehicle now being stored for sale to a dealer." This statement was presumably made to obtain title without the payment of additional registration fees or excise taxes in accordance with § 1111(K). This

statement also contradicts their request for a “junked” title since a junked vehicle “has no resale value except as a source of parts or scrap”, 47 O.S. Supp. 2008, §1105(A)(6); and a “dealer” is someone who “sells, solicits or advertises the sale of new and unused motor vehicles”, 47 O.S. Supp. 2010, § 1102(10). See, 47 O.S. Supp., §§ 562(2) and 581(16). Additionally, INSURANCE COMPANY did not detach the tag from the vehicle and return it to the Tax Commission for destruction.

### **DISPOSITION**

Based on the above and foregoing findings of fact and conclusions of law, it is ORDERED that the protest of Protestant, PROTESTANT, be sustained.

### **OKLAHOMA TAX COMMISSION**

CAVEAT: This decision was NOT deemed precedential by the Commission. This means that the legal conclusions are generally applicable or are limited in time and/or effect. Non-precedential decisions are not considered binding upon the Commission. Thus, similar issues may be determined on a case-by-case basis.

NOTE: The distinction between a Commission Order designated as “Precedential” or “Non-Precedential” has been blurred because all OTC Orders resulting from cases heard by the Office of Administrative Law Judges are now published, not just “Precedential” Orders. See OKLA. STAT. ANN. tit.68, § 221(G) (West Supp. 2009) and OKLA. STAT. ANN. tit. 75, § 302 (West 2002). See also OTC Orders 2009-06-23-02 and 2009-06-23-03 (June 23, 2009), which also conclude the language of the Statute is “clear and unambiguous.”