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THE STATE OF SOUTH CAROLINA

In the Supreme Court

APPEAL FROM PICKENS COUNTY

Court of Common Pleas

The Honorable Doyet A. Early, III

Case No. 2012-CP-01554

Appellate Case No. 2014-000642

Julie Freeman, Appellant-Respondent,

v.

J.L.H., LP a/k/a Hendrick Honda of Easley, Respondent-Appellant

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Vol. II

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Page 45

these composes the whole, right, when you add it up -- I mean, when you sell a car, there's the base price of the car and then there are things you add on, right? I mean, people want -- I don't know whether you charge extra for air-conditioning or for rust-proofing or for Sirius Radio. There's pieces that go into that price of the car.

A. Options, right.

Q. Options, that's what y'all call them, options.

Well, so the guide is sitting there figuring out how much they're going to charge them for the car, he takes those things, does a little adding machine, and then he says the price is X, right?

A. Right.

Q. These are the things that you considered in reaching that 225 or 350, whatever the number is. Did somebody sit there with a calculator and say, preparation for logs is X, or 50 bucks, or receipt of money is 20, and add it up and come up to 225?

A. Quite honestly, I think --

Q. Could you say yes or no and then explain? Did anybody do that? And if so, who? And if so,

Page 46

when? I'm sorry.

MR. HAMM: Compound.

MR. HARPOOTLIAN: I'm not excited.

MR. HAMM: I'm not either.

MR. HARPOOTLIAN: I'm hungry, but I'm not excited.

MR. HAMM: There's cookies and fruit in there.

MR. HARPOOTLIAN: I know. A little sugar will help me.

THE WITNESS: Restate, please.

BY MR. HARPOOTLIAN:

Q. Did somebody sit down and go item by item and assign a numerical value, a dollar value, to each one, add it up and get to 225 or 350 or whatever the number was?

A. I think some of the answer would be yes, but I think it would be an estimate. I don't think anyone did an analysis that would be, you know, exact.

Q. Somebody sat down, did an estimate of each one of these items?

A. I'm assuming so.

Q. Who was that?

A. Probably, again, discussions between the

Page 47

sales manager, accounting manager, office manager, controller. You've got -- you've got financial statement information. Yeah, you see the categories and all that.

So I would think, again, numerous discussions, and, you know, surely some -- there was a total, but again, I wouldn't want to insinuate this was an exact science.

Q. I'm not saying exact science, but --

A. You said exact several times so I want to make sure I'm clear on that.

Q. What I'm saying is, who sat down and assigned a value to each one of these and added it up?

A. It was discussionary. I would say it would be the people I've mentioned.

Q. Huh?

A. The people I've mentioned: the controller, the manager at the dealership. It was a group decision on what are we -- what are we able to say is the total cost for the items that we're -- that we are in effect going to look at getting some sort of reimbursement for, well within the law.

And, you know, it's been authorized a good

Page 48

while, and we just simply were -- felt it was time to have to charge for some of that.

Q. You agree that you can't charge more --

A. I agree.

Q. -- than what you're -- let me finish the question -- than what you're being reimbursed for? You can't make a profit on it, can you?

A. Right. That's our understanding.

Q. Now, I'm going to go into this area one more time, then I'm going to leave it alone.

You said it was a group effort, all these people met. Is there a single piece of paper, which -- or several pieces of paper or a dozen pieces of paper where these items were assigned numeric values and added up -- that would be Exhibit B -- and added up to come up to a number of 225, 350, 2,000? And yes or no and then you can explain your answer.

A. No, I don't believe so.

And if it were, it would be the higher amount that, again, was written down in correspondence.

Q. But you know of no such document?

A. No.

Q. You never saw such a document?

Page 49

A. No.
Q. And you would agree or disagree -- you can answer this yes or no -- that -- look through the list. Are any of these costs -- strike that.
When dealing with a customer, you're required to distribute contracts to various finance companies so you can get a response from them as to what they'll charge the customer to loan the money. Is that what that is?
A. Yes.
Q. And that's done typically by fax?
A. Yes. There's some -- there's some electronic applications, but yes, typically.
Q. But a lot of them by fax?
A. Right.
Q. You fill out what I would call a loan application, y'all call it something else.
A. Right.
Q. What do you call it? There's a name for it.
A. Loan application.
Q. Loan application. And you fax it to five different banks or four --
A. Not necessarily. If we know we're getting an excellent rate from one source or another --

Page 50

typically there are those banks that do a better job than others on certain types of -- whether it be a lease, whether it be a purchase. Oftentimes a captive finance company is best for, for example, a lease. Finance company works more with the manufacturer and you get a price advantage with the customer.
But other times you end up, like you say, sending it to multiples, particularly if a person is difficult to get financing.
Q. And when you send that, do you sometimes fax it, sometimes e-mail it?
A. Right.
Q. Do you attempt to -- do you keep track of your charges for faxes? Are there telephone charges?
A. No.
Q. Are there charges for e-mails?
A. Are there telephone charges, yes, but no, we don't keep up with those individually.
Q. So when you attempt to get reimbursed for your costs for doing that, you have no way to know what that fax would have cost, the actual -- the actual distributing the contract to the various finance companies. The actual process of doing

Page 51

that is a fax or e-mail, but y'all don't keep up with the cost of doing that?
A. No.
Q. Now, let me ask you this: And when you fax that contract to the finance company, they fax a document back to you with an interest rate on it, correct?
A. Yeah, the whole -- the terms of the loan, interest, length of term.
Q. What is a buy rate?
A. The buy rate is the rate that we as a dealer would be able to get the financing for the purchase of the vehicle.
So, in other words, if the buy rate is 7 percent, that is what they will approve, and --
Q. And is there another rate the customer's charged?
A. Well, just like any source that's financing anything, they allow a margin. Some do, some don't. Some of our factory rates do not. You know, if there's an advertised, an obvious low rate, like we'll see on a lot of vehicles today, our experience is usually there's nothing -- other than there could be a small flat fee, and it varies.

Page 52

Sometimes there's nothing, sometimes there's a flat fee. But the other rate you're speaking of is the retail rate.
Q. And is it disclosed to the customer what the buy rate is?
A. I don't believe so.
Q. So the bank -- and the different --
A. If it varies?
Q. If it varies. But where it does vary, it's not disclosed?
A. I don't believe so.
Q. And where it does -- and when it varies and it's not disclosed, the bank pays some portion of the difference between the buy rate and the retail rate to the dealer in a lump sum or some -- not a lump sum, but a -- you'll get a lump sum up front and maybe something down the road?
A. Sometimes -- you're right. Sometimes there is a lump sum, not as a big a lump as we might like, but sometimes there's that.
Other times they charge you back. If, for example, the customer sells the car early, or certainly if they default and that type thing, there's a time frame that in effect you're at risk or your lump sum is at risk, if you will, when you

Page 53

are getting a markup on the rate.
Q. Do you still charge the -- today, do you still charge this administrative fee?
A. Yes.
MR. HARPOOTLIAN: I want to mark that e-mail from Gary Palmer as Exhibit Number 4.
(DEPO. EXH. 4, E-Mail from Gary Palmer, was marked for identification.)
BY MR. HARPOOTLIAN:
Q. This is from Gary Palmer, who we've established was a consultant that worked for you during '05. He no longer works for you. Is that correct?
A. Right.
MR. HAMM: Can you tell me what exhibit number that is?
MR. HARPOOTLIAN: Four.
BY MR. HARPOOTLIAN:
Q. He is who?
A. He is a -- someone who consulted with us, with the group, for a few years, I guess, really, and worked with manufactures. And he was very objective and, you know, good with what we were trying to do, which was to improve our business processes, and again --

Page 54

Q. Sorry, improve what?
A. Our business processes and, you know, trying to develop consistency between the stores, because I'm only in one place at one time, as you can imagine.
Q. And who's Gwen?
A. Gwen is our controller.
Q. It says, thanks, Gwen. Right, guys and gals. Just remember, as Gwen says in her note, we do not -- and that's in all caps -- start this until I give you the go-ahead, which I will only do when Gwen and I have completed all the legal obligations, et cetera.
What is he referring to?
A. He was referring to the closing fee until we, you know, file with the State, have the permitted approval back, and, you know, the postings handled, the buyer's order, the disclosure on the buyer's order, all -- everything had to be, of course, in order. I think this is just an example of how we're just trying to comply with the law.
Q. And this goes on to say, just to remind everybody what we agreed yesterday regarding doc fees, one -- number one -- one set fee across the

Page 55

group of 289 for doc fee new and used; two, I will provide and talk to centres guides -- that would be your salespeople. Is that right?
A. The centres guides. Yeah, he's referring to the sales guides.
Q. So as to ensure this is positioned the right way to them and their customers. Thanks, Gwen, for getting this ready for us. Regards Gary.
And that is Gwen -- in response to an e-mail from Gwen where she says, I've attached the document of Consumer Affairs application guidelines for the when, where, and how-to questions we had yesterday. Please wait until I let you know we are authorized to start charging this fee. Please read the disclosure rules. Thanks, Gwen.
Now, where's Gary now?
A. Gary's from Florida. I haven't had conversations with Gary in, I guess, about a year or something like that.
Q. Before he worked for you, who did he work for?
A. Well, he was continuing to work for a number of manufacturers and --
Q. Which manufacturers?
A. I believe he worked with Porsche, maybe

Page 56

Kia or Hyundai, but he worked with Jaguar and Land Rover.
I say worked with, consulted for, you know. It was not he was an employee of theirs.
Q. Was he recommended to you by them?
A. Well, basically, not formally, but, you know, he was involved in analysis for the manufacturers. And I don't know, one thing led to another, and we felt like we, you know -- it would add potentially some more --
Q. And who is rover507@aol.com?
A. Me.
Q. And gpalmer@landrover, we know who that is.
Who's gbebtz@landrovergreenville?
A. He is the manager of the Greenville dealership.
Q. What's his name?
A. Greg Babetz.
Q. Is he still there?
A. Yes.
Q. And joconner@landrovercolumbia, who is that?
A. He was the former manager.
Q. Jim O'Connor?

Page 57

A. Right. You know Jim.
Q. Right. And where's he now?
A. I believe he's operating on his own. He's maybe in the car business on his own, not with a dealership.
Q. And fchilders@landroverasheville.com?
A. The former manager of the Asheville dealership.
Q. And where's that person now?
A. I have no idea.
Q. And cc ispivey@landrovergreenville.com. Who's that?
A. She works in the accounting office.
Q. Now, when you've had these discussions, were these the people that were in the discussions?
A. I would say more than likely everyone -- perhaps not L. Spivey, Lizette Spivey. But otherwise, yes.
Q. Anybody else?
A. No, I don't think so.
Q. Now, does Gwen still work for you?
A. Yes.
Q. And where is she? Is she here in Columbia?
A. She's in Greenville.

Page 58

There are certain accounting functions we have that are common to the dealerships, and those are done -- she manages that from Greenville.
Q. Now, in terms of how you presented this closing administrative fee, it was listed as a separate item in the closing documents?
A. Yes.
Q. Are you aware of some dealers who just include it in the price or --
A. Again, I've heard the depositions, but I -- I'm really not very aware of what's going on at the other dealerships.
Q. I understand. But were you aware of it, that they were doing that when you -- when y'all called around and found out what they were charging?
A. No.
Q. Why do you -- do you believe it's required that you break it out as a line item?
A. Well, yes, I mean, that was how we interpreted the law.
Q. In discussing these fees at any point, have you ever e-mailed or had any written communication with other dealers about their fees and how they charge them?

Page 59

A. No, I don't think so.
Q. What about letters?
A. No, I don't think so.
Q. Did you have bulletins from the SCADA about these fees?
A. You know, the Automobile Dealers Association --
Q. Excuse me one second.
If you would answer yes or no and then explain, then I'll know where you're going --
A. Okay. Repeat the question because I want to be sure I'm answering what you're asking for.
Q. Do you have any documents -- we went through the letters and e-mails that reflect how you or why you or should you charge administrative or closing fees. We went through -- you said there were no e-mails from other dealers about it.
A. Yes.
Q. No letters from other dealers and you have not in your possession any of those.
Do you have any bulletins from the Automobile Dealers Association about that?
A. There may be an old bulletin giving instructional things, you know, again, to comply with the law.

Page 60

But as far as discussing to do it or not do it or how to do it, other than just making sure you comply with the law, we've had -- there was a meeting they -- I guess that was, though, after the lawsuit was filed to make sure dealers understood and complied with the law.
Q. In terms of -- we've discussed at length how you came up or guesstimated the fee.
A. Right.
Q. Whose idea was it to charge that fee? Who had the initial idea to do that?
A. I don't know. I do know that it became a discussion over the years. And, you know, many people bought cars elsewhere, and it just became common knowledge. And of course we got memos, I guess, periodically about, you know, if you are charging a --
Q. Memos from who?
A. From SCADA or whatever, the automobile dealers. South Carolina --
Q. When you say SCADA or whatever, I want to make sure I understand.
A. Well, I'm not sure I can tell you for sure who. But, in effect, it may be the National Automobile Dealers Association, correspondence, if

Page 61

you are charging a closing fee, documentation fee, giving guidelines or suggestions. And, you know, for years this didn't -- this was not relevant to what we were doing, but it was common knowledge.

Q. Now, I asked you a moment ago who participated in the decisions to come -- how this was to be done, and in response to Interrogatory Number 12 on Exhibit Number 3, it says, set forth a list of all persons who participated in the decision to charge administrative fee and all persons who participated in any decision to charge the amount or location of the administrative fee. For each person indicate whether they have an ownership interest.

And you listed, I guess, you and Jim O'Connor.

A. Jim O'Connor was the manager of the Columbia dealership at the time. As far as the decision, though, I was the one that made that.

Q. Well, it asks who participated in the decision, not who made it.

A. I sought input, but as far as --

Q. Well, it says you and Jim O'Connor.

A. Well, I think that's basically an attempt to say regarding Columbia, Jim O'Connor's the

Page 62

manager. I didn't stuff anything down anyone's throat, so to speak. He was fully engaged on that and very much aware that it was a -- you know, a fair fee.

Q. But today you're apparently saying that this decision was made after participation by the people on -- that are in the e-mail, Exhibit Number 4, some who are in addition to Mr. O'Connor and you, including Gwen Patton, this guy Babetz, Childers, I think -- now, who's Chuck?

A. Where is Chuck?

Q. Chuck, up at the top, right before I. Spivey. Who is that?

A. Chuck took over for Frank Childers up in Asheville as the manager at some point.

You know, you got me there. I'm not -- I mean, I would assume that's -- I could be wrong there. That could be -- this is '05. That is probably -- and it must have not -- I don't know why it would not continue along, but basically that would probably be -- well, you know how e-mails are. I would think Chuck may be -- I'm probably mistaken. I would think this is Chuck who was in Hilton Head at the time.

Q. And what was in Hilton Head?

Page 63

A. We had a dealership there for a while.

Q. So I guess when we asked this Interrogatory and we said who participated in coming up with -- who participated in the decision to charge an administrative fee and all persons --

A. Right.

Q. -- whom -- I don't know whether that's correct or not -- participated in any decision to charge the amount or location of the administrative fee, you put down O'Connor and you. Today you're saying there were more people involved?

A. Columbia, Jim would have been the implementer, but I've told you over and over we looked at it as a group, yes.

Q. For all the dealerships together?

A. Right.

(DEPO. EXH. 5, E-Mail from Gary Palmer to Chuck, was marked for identification.)

BY MR. HARPOOTLIAN:

Q. Have you seen this e-mail before?

A. Yes.

Q. Obviously from Gary Palmer, that would be your consultant, to Chuck, who we think was in Hilton Head, right?

A. Right. That's who I think that was.

Page 64

Q. Frank, who's that?

A. That would be Asheville.

Q. Is he on the --

A. Yeah, he was F. Childers. He was the former manager at Asheville.

Q. Greg?

A. Manager of Greenville.

Q. What's his last name, Babetz?

A. Babetz.

Q. And you and Gwen, and it says doc fees. And Gary says, can I ask that you send me details of what your areas, other than tier one brands, charge their customers in the way of doc fees, and tier one being BMW, Mercedes, Lexus, Audis, et cetera.

So Palmer -- you've seen this -- was it sent to you?

A. I was copied on this. This is the first time I've really --

MR. HAMM: Dick, you missed -- you added a word that was not in there. Take a look again at the question.

BY MR. HARPOOTLIAN:

Q. Can I ask you to send me details of what your areas other than tier one brands --

Page 65

MR. HAMM: There is no "other than." That's what I'm just --
BY MR. HARPOOTLIAN:
Q. Other -- I'm sorry -- other tier one brands charge their customers. Not other than, you're right. I was trying to exclude it. He was including it. Tier one brands charge their customers in the way of doc fees, tier one being BMW, Mercedes, Lexus, Audi, et cetera.
So Palmer's asking the people in Hilton Head, Asheville, Greenville -- and is he here in Columbia?
A. At that moment, let me see, he may have been sitting in Columbia.
Q. But he's asking all the other dealers that you have what -- your areas, what does that mean?
A. I would imagine region.
Q. It says, can I ask that you send me details of what your areas other tier one brands -- that would be other dealers in their areas?
A. Right.
Q. Charge their customers in the way of doc fees?
A. Yeah. And again, I wasn't aware of this, but that's what it is. I'm assuming based on what

Page 66

you --
Q. It was e-mailed to you.
A. I understand what you're saying, but our -- in our review, I don't remember the specific -- this specific e-mail.
But it's -- I guess it goes in line with the document you were furnished with where there were some estimated prices.
But again, at this point, I'm starting -- you know, the first e-mail you had from him was February. We didn't implement this until the following January. So again, they're trying to basically get me to buy in at this point, and I'm asking, you know, questions that are, you know -- make me comfortable, make me real comfortable.
Q. So what we see in Exhibit Number 4 is an e-mail where everybody -- one set fee across the group of 289 per doc fee new and used. That's in February?
A. Right.
Q. Less than two weeks later, on March 9th, he's asking these folks to go out and find what other people charge, right?
A. Right.
Q. Now, does that, what other people charge,

Page 67

is that a factor? Is that something you considered when you came up with your 225? Please answer yes or no and then you can explain your answer.
A. Yes. Are you going to let me explain the answer?
Q. You've got a right to talk as long as you want.
A. Okay. Basically, again, we felt like we were coming up with expenses higher than what we ended up charging, and I was just continuing to ask for more feedback, make me feel more comfortable, and that's how the delay occurred, you know, in implementing.
(DEPO. EXH. 6, Document Titled Doc Fee, was marked for identification.)
BY MR. HARPOOTLIAN:
Q. We're referring to Exhibit Number 6, which says doc fee at the front -- at the top.
Who prepared this?
A. I don't know.
Q. Where did it come from?
A. Well, obviously discussions and some data somewhere.
Q. No, where --
A. The first time I saw this was a few days

Page 68

ago.
Q. You don't know where it came from in your -- whether it came from your dealership or not?
A. Oh, I would assume it came from information that people in our dealership were gathering back in probably '05. A lot of variability obviously.
Q. Well, is there a file this came out of about doc fees?
A. I don't know. I know that I basically told our people, you know, just give the information that they're asking for and provide it to our lawyer.
Q. I guess what -- I mean, this is on notebook paper. It's got holes punched in it. Is there a notebook somewhere?
A. Well, I was told there was not, okay, but then I would say there is probably a file with doc items in it.
Q. There is?
A. I would assume there would be some things, but, you know, this obviously is --
Q. Who got this? Who produced it? Do you know?

Page 69

A. I don't know.
Q. No, I mean, somebody went to your dealership and got this?
A. No, I think the dealership -- I may be wrong. Again, they would know more than me.
I think our dealership provided information they were asked, give us the information you have regarding doc fee, documentation fee.
Q. Well, sir, you've been designated as the person most knowledgeable on how these administrative fees were calculated or designed or whatever, and you're telling me you didn't see this document, Exhibit Number 6, until just a couple days ago?
A. That's my recollection, yes.
Q. And you don't know where it came from and what dealership?
A. I would assume Accounting gave it to them.
Q. You would assume.
Is there a file in Accounting labeled doc fees?
A. I don't know.
Q. Did you check before you came or in your dealership other than document --

Page 70

A. No.
Q. Did you sign off on documents or see them before they were furnished to your lawyer?
A. No.
Q. Who was in charge of that at your dealership?
A. Well, Gwen, my controller, furnished -- you know, got the information together, and --
Q. And what's her last name?
A. Patton.
Q. Spell that.
A. P-A-T-T-O-N.
Q. And she's here in Columbia?
A. She's in Greenville.
Q. But available to be deposed in Greenville. When I say available, she's still in the country, she's still in Greenville.
A. She is in Greenville.
Q. Now, have you talked to anybody about this document other than your lawyer?
A. No. I mean --
Q. Do you know who drew it up?
A. I do not.
Q. Do you know when it was drawn up?
A. As best I can figure, '05, but I don't

Page 71

know.
Q. Tell me how you figure that.
A. That's when we were trying to research what would be, you know, the fair price.
Q. But you have no idea where this came from in your dealership, whether it came from Greenville or Columbia, whether there's a file or no file?
A. Well, I think the towns are listed here. Some are, you know, North Carolina, some are --
Q. Asheville, Columbia, Savannah -- or not Savannah. Charleston, Hilton Head.
So can you tell me here today where this came from?
A. You saw an e-mail that was requesting something like that. I would assume that's where it came from.
Q. But you can't testify under oath where it came from?
A. No.
Q. You have no idea, you're just making assumptions based on that e-mail?
A. Right.
Q. Did you attend any Automobile Dealers Association meetings? Have you ever attended them?
A. Well, yes. I mean, you know, normal

Page 72

meetings. But as far as the ones relating to the lawsuit?
Q. No, let's not talk about the lawsuit. Let's talk about the doc fee, the closing fee. Did you ever attend meetings -- prior to charging that fee, did you ever attend a meeting where it was discussed?
A. No.
Q. Do you have any --
MR. HAMM: Dick, my client just indicated he'd like to use the rest room.
MR. HARPOOTLIAN: Let's take a break.
(A recess transpired.)
BY MR. HARPOOTLIAN:
Q. You had an opportunity to read Section 37-2307, which is the Notice of Closing Fees on Motor Vehicle Sales Contract, Registration Fees.
Have you read that before? That's the law that says this -- let me read it to you --
A. That's the statute, the original?
Q. Right.
Every motor vehicle dealer charging fees on a motor vehicle sales contract shall pay a one-time registration fee of $10 during each state

Page 73

fiscal year to the Department of Consumer Affairs. The closing fee must be included in the advertised price of the motor vehicle, disclosed on the sales contract and displayed in a conspicuous location in the motor vehicle dealership.

A. Right.

Q. Now, are you aware of any legislative efforts to change the statute? There have been no discussions -- now, you're going to have to say yes or no because she can't record a nod.

A. No.

MR. HAMM: Dick, are you going to -- he does not have a copy of the statute.

MR. HARPOOTLIAN: That was my question. I wanted to make sure he understood what the statute was before I asked him if it had been changed or if it was ever changed. That's all.

MR. HAMM: I thought you were going to continue and I was going to try to maybe get him a copy of it.

BY MR. HARPOOTLIAN:

Q. In terms of -- this is probably the last question I'm going to ask you on how you came up with this fee, but other than this consultant and the people in your organization, did you consult

Page 74

with any expert, other than that consultant we talked about, about what the appropriate amount was and how to calculate it?

A. No.

Q. Accountants? Other than people employed in your entity, any outside accountant?

A. No.

Q. Lawyers?

A. No.

Q. And we've seen that you didn't consult with any -- any other dealers, did you?

A. No.

Q. No conversations with -- do you know other dealers?

A. Oh, yeah, I know some other dealers.

Q. Do you see them socially?

A. I can't think of one I see socially. I see maybe at a meeting or something you might run into --

Q. Have you ever had any discussions with any of them about the closing fee?

A. No.

Q. After the lawsuit?

A. There may have been a couple of discussions. I'd certainly think at the one

Page 75

meeting we attended where the Automobile Dealers Association was going over things, we're all sitting around in a room, it would have been hard to not have a discussion or a chat or loose mention. But as far as any real discussions other than that, no.

(DEPO. EXH. 7, Retail Buyer's Order, was marked for identification.)

BY MR. HARPOOTLIAN:

Q. This would be Exhibit Number 7. Have you seen this document before, Number 7?

A. Yes.

Q. And what is this, please?

A. This is a retail buyer's order where the Plaintiff purchased a vehicle, a preowned vehicle, from our dealership in Columbia.

Q. And you see that the recording and processing fee is what it says, that's what's listed here, recording and processing fee is 225?

A. Yes.

Q. And that recording and processing fee is the same fee we've been talking about that these other factors went into, the 20 something that were listed on Exhibit B?

A. Yes, sir.

Page 76

Q. And recording, what do you have to record? What has to be recorded on this deal?

A. Well, this is just one piece of paper. There's a lot of different documents.

Q. Well, what has to be -- what's recorded and where is it recorded, I mean, on any deal?

A. Well, I think you have a deal jacket and you can see all the different forms that were included in that.

Q. Sir, this is called a recording and processing fee. I want to know, first of all, you're charging them -- apparently you're telling them you're charging them $225 to record something. What is recorded?

You're the person most knowledgeable about how that fee was designed. What's recorded and where?

A. Do you want me to generalize?

Q. I want you --

A. I mean, I can tell you some of the documents, but you've got the information.

Q. Documents that are recorded?

A. Yes.

Q. Where are they recorded?

A. Well, some are recorded with the bank, if

Page 77

there's financing. If there's not financing, they're -- with or without financing, the DMV, the Department of Motor Vehicles.

Certainly we have to keep, you know, items secure, and we have to have all the documents that are necessary for Fair Lending, all the Truth in Lending, all these different things we have to comply with. So we keep these documents. We have to keep them for, I believe, seven years.

And we have to keep them secure, so they are recorded. And then, you know, in the computer system, when you're doing a transaction, you have numerous documents just for the Department of Motor Vehicles.

Q. Well, we agree that when you take something to the Department of Motor Vehicles, they record it in a legal fashion, that is, they file it.

A. Sure.

Q. The other -- but other than that, the other documents are recorded in your office?

A. Well, the computer system, it's entered into the DCS system.

Q. What's the DCS system?

A. Dealer -- it's our Dealership Computer

Page 78

System, which there's basically two major companies that furnish it, and they're the ones that speak to the manufacturers, so we sort of have to deal with them. That's why it's so expensive.

But, you know, it's any -- so we can get a history on the car. If the person comes back in for service, we get a history of the car, and of course --

Q. Again, my question is: Other than the DMV, we're talking about recording by you in your system.

A. Well, recordkeeping, some of the recording, I guess, you know, for example, Car Fax or all of these other documents, we are by law supposed to, yes, record them and keep up with them and keep them in a secure place.

Q. So recording and keeping are the same thing to you?

A. Well, you have to do one before you do the other.

Q. Record? I mean, you say recording is --

A. I mean, is this not -- would you not consider this recording? This is one piece of paper, and there's numerous documents --

Q. Sir, what I think is -- and I'll ask the

Page 79

questions here, but what I think is irrelevant. I'm asking what you think.

A. I think that recording is obvious. The deal jacket's full of recording and documentation.

Q. Okay.

A. Things that require recording.

Q. And then there are things that require processing?

A. Certainly.

Q. You have to process -- record and process the title documentation to get them a title.

Other than going -- other than that document going outside the office -- and of course if there's a loan made, you record the lien. Do you record the lien?

A. Certainly.

Q. The rest of this recording and processing is internal. It's stuff that you do to keep records for your purposes in your computer?

A. Not necessarily in the computer. There's hard copies, as you've been furnished.

Q. Right, hard copies or in the computer, but they're recorded by you for you?

A. Well, they're provided for -- I mean, they're there. Just like your doctor records, yes,

Page 80

it's for you, but also it's so he can do a better job of taking care of you in the future.

It's documentation that we need and the customer would want us to keep and certainly keep secure.

Q. Does your doctor charge you a recording fee when you go in to see him?

A. Does your doctor --

Q. No, no, a specific line item recording and processing fee.

A. No, his is a prescription fee or any other call we make.

Q. Absolutely. Just like you can charge somebody a fee if you sell them -- you sell insurance sometimes, or warranties or other items, and those are legitimate charges, right?

A. If it's a legitimate, it's legitimate. You know, I mean, if there's --

Q. You had the analogy of your doctor, but this is a fee for recording and processing.

There's another -- there are fees on here for insurance. On this one it's not filled out. You could have charged for insurance, right?

A. Actually, we've never done that. And, frankly, I -- I mean, there is one insurance policy

Page 81

that is available that makes sense for some people, and that is that -- you know, I guess you call it insurance coverage in case your car depreciates faster, which we've seen a lot of lately with the economy.

Q. I guess what I'm saying is, the recording and processing fee, other than what you send to the DMV, do you register or record anything other than things at the DMV?

A. Well, yeah.

Q. What do you record or register other than the DMV? Where else do you register and record stuff?

A. Well, you know, first -- we're certainly recording receipts. You know, certainly if there's -- there's financing, you obviously have multiple pages in a financing contract.

Q. And where is that filed?

A. Well, a copy, I would imagine, would be in the deal jacket still, a copy would be with the customer, and a copy would be sent to the finance company, and they all have different requirements, but --

Q. And so what part of what you're charging for is that? Is that processed?

Page 82

A. Here we go again. I don't know what portion of that. I think I've made that clear.

Q. But you're charging for some portion of that?

A. I mean, I don't know what portion of the total fee that represents.

Q. But does it represent some part?

A. I'm sure.

Q. But you have no idea what part?

A. No.

Q. But it's some part?

A. Certainly. We mail paperwork. We process the license plates for the customers. We provide them to the --

Q. Now, you indicated that you had to enter this in or scan it in or whatever in a computer system. You had an acronym for it.

A. DCS.

Q. Yeah, what does that stand for?

A. Dealer Communications System. It's our -- it's a computer system that enables us to manage all aspects of the business and put things into accounting so that you can, you know, manage the business, keep up with it and have things documented, because of things like this, you know,

Page 83

just so that we can make sure --

Q. Well, give me some sense of what -- is it -- are these items scanned in or is there a program that you fill things in?

A. Right, there's a lot of key-punching that goes in initially.

Q. And what's key-punched in?

A. Well, anything that, you know, is unique to the customer, to the vehicle. Every vehicle's unique, so, you know, the VIN number and all the aspects to identify it.

If there's financing, you know, there's just almost endless things. Almost like legal documents. I guess they are legal documents.

Q. I mean, is there a -- it's called DVS?

A. DCS.

Q. And it has a series of screens that have to be filled in by somebody?

A. Right.

Q. Who does that?

A. Well, for, you know, like -- I think we discussed this earlier, it could be a lead salesperson, a sales guide that is working with a customer. If he's got the skills, it could be an office manager. It could be the centre manager.

Page 84

But basically that's -- in dealing with the retail customer, that's in dealing with that person.

Q. When they enter information on it, is this Retail Buyer's Agreement -- I mean, Retail Buyer's Order, is this a computer document?

A. Yes.

Q. So when he enters information on this, does it automatically go into that computer system?

A. Yes. No. Well, some things do, some cross over, some do not.

Q. And when he types a finance agreement -- I guess what I'm saying is this: Is this one of these -- and I think it is, because most systems are this way today. When you enter it once to generate a finance agreement or this buyer's order or some other document, it's captured in that system, pieces of it?

A. Pieces of it are. And each document, though, does require data being added --

Q. Right.

A. -- it seems to me.

Q. But nobody has to take the deal jacket and go and enter everything at one time. It's entered as the deal progresses?

A. My people would argue with that. They

Page 85

would say that this is quite a process and it takes a good while. But I would think, you know, that's -- what you're saying is somewhat true. Some of the items do cross over, certainly.

Q. And when you do this, you indicated the manufacturer requires you to use this system?

A. It's difficult -- let me put it this way: It's difficult to deal with an automobile franchise and not have one of these systems.

And it's difficult, if next to impossible, because, for example, if there's a change in the parts pricing -- I'm telling you things that aren't related to the question but I think helps you, hopefully. You can cut me off if it doesn't.

But if, for example, the pricing changed, we're getting parts from England, if you didn't have one of their systems, you would have to key-punch in thousands of parts. It's impossible, as you can imagine the time involved. So instead, they communicate with these people via an update.

And it just, you know -- and that's one of the reasons we pay so much money for one of the major vendors. There's only two that are major vendors.

Q. And you just -- is Land Rover the only car

Page 86

you sell, automobile?

A. Here, yes.

Q. And around the state you sell Jaguar too?

A. No.

Q. What else do you sell?

A. Land Rover, as far as the car dealerships we have. The motorcycle dealership, we went over the different brands.

Q. Right. I guess what I'm trying to say is that system you have, is that a Land Rover-created system?

A. No. Ours is ADP, and it's -- they customize it for the manufacturers, okay.

Q. So if you were a Buick dealership, you'd have a GM --

A. You may, or you could have ADP or you could have what was formerly called Reynolds and Reynolds, and I forgot the name.

Q. Reynolds and Reynolds is another --

A. That was the other big computer vendor that automobiles --

Q. And does it let -- I mean, can the folks in England look into your computer and see what your volume is and how much you're selling?

A. No. The -- no. And the U.S. importer

Page 87

gets financial statements from you. Now, they do keep up with, you know, new car purchases and even sometimes preowned certified, which is kind of the next tier of it.

Q. How do they keep up with it?

A. Primarily the financials. You have it broken out on the statement, as you see, the numbers. And as far as the other details, it's typically from the statement.

Q. But does the manufacturer or some representative, do they come by your dealership from time to time?

A. Periodically, yes.

Q. Do they have access to this computer system when they come by? Can they look in?

A. That would be unusual. They could if -- I mean, we have nothing to really --

Q. I guess what I'm saying is this: I'm not asking if they do, I'm asking can they?

A. Not without permission. You know, I mean, it's -- unless the employee just moved over and said here, you know.

But we're involving them in so many processes. You know, for example, a service customer that has a warranty issue or whatever, we

Page 88

may -- you know, we're generating paperwork or we're letting them look at these different items. So it's not transparent, but it's kind of a partnership.

Q. Now, when -- is this recording and processing fee, is that -- if somebody finances the car, are they financing that or do they have to pay that outside the finance?

A. Well, it depends on the -- I would imagine it depends on the finance company. I think most finance companies, they get a copy of the buyer's order. When we send in their contract, you know, it's disclosed where they can see what it's for.

But most of them are interested in the total cash or the total amount they have to pay for it, and that's what they're basing what they'll finance on. And of course when they approve it, they only approve, you know, certain criteria.

Q. Do you do any zero APR deals?

A. Very rarely, and that would be a manufacturer subsidized thing. And like any other manufacturer, if there was, obviously, a need in the model year or something like that, typically it's not zero percent.

Q. I see those advertised on TV.

Page 89

A. Yeah.
Q. How do they do that?
A. The manufacturer is paying the finance company and the finance company's cutting their rate, and that's a subsidized payment.
Q. And the finance company is aware that the manufacturer -- the manufacturer's paying the financing for a period of time?
A. Yeah. And that's why that's typically -- I told you, for example, we go with -- oftentimes with a captive finance company, and this would be true of most brands.
One of the reasons is the manufacturers work with -- they can't work with everybody the same way, so they will typically work with their captive or the one they're -- they do most business with.
And it may be, for example, that the buy rate, if you will, would be, let's say 5 percent, and the manufacturer decides to offer 3.99 or 2.9 or whatever. In that situation, you know that, you know, what's going on is basically somewhere between the manufacturer and the finance company. They're getting together and saying, okay, I'll cut my rate a little bit if you'll throw in something

Page 90

to help with the cost so the consumer gets this advertised rate or a better rate. So it --
Q. But the consumer pays a payment based on that better rate or, if there's zero APR, they pay principal and no interest in effect?
A. Yeah.
Q. But that's typically done with a captive, that is, an -- and a captive would be like GMAC?
A. That's right, for the GM dealers.
Q. Has nothing to do with this lawsuit, just curious.
A. Well, you're going to be our next dealer, see, so you're getting --
Q. Not based on what I see on the TV or read in the newspapers.
A. You don't want me to look in the phone book and tell you what I see, do you?
Q. Now, that title and license fee on there, that $25, is that something you keep or does that go to the --
A. No, that is a straight-across cost. That's a -- that is, in this case, I believe, a transfer fee, and those fees have changed in the last few years.
I believe that's still a transfer, and I

Page 91

believe a new title would be -- or a new plate would be -- the title and plate would be 39, I believe.
Q. And why is the recording and processing fee put right below that title and license? Who decided the placement?
A. Well, we tried to make it conspicuously, you know, visible. And if -- this is a copy, but typically if -- it seems like that's the logical place for it based on what the Department of Consumer Affairs instructed us. You know, they said basically, you know, disclose it, have it disclosed on the buyer's order, and --
Q. But why recording and processing fees? You don't think that --
A. Well, basically the upper numbers --
Q. Excuse me, one second.
A. I'm sorry.
Q. Does that give the inference to you that somehow it's tied to that title and license, that that's what you're paying to get recorded and processed?
A. That certainly was not our intent.
Q. Could you see where somebody might think that?

Page 92

A. Well, it's kind of below the line, if you will. Everything above is referring to the automobile. If you get extra options that are, you know -- we hang a brush bar on the front of this Land Rover, that would be part of the options.
And so it's covered up by the sticker here, but you know what I'm saying, it's related to the automobile as you go down to here.
And then you go to their automobile, if there's a trade, and then you show them the difference. You add sales tax, if there's a balance owed on the trade. It's a very logical progression.
If they told us to do it another way, we'd be happy to do it. It's just this seemed to be in our mind the right way to do it.
Q. But would you agree sales tax is something that doesn't go to you?
A. Yes. I mean, you're right.
Q. And the balance owed, what does that mean?
A. If the customer has a balance due on their -- on the vehicle they decided to trade, you know, if they owe BB&T 4,000, that has to be calculated in the total buyer's order.
Q. So the balance owed wouldn't be going to

Page 93

the dealership, wouldn't be going to you?
A. Oh, no. We have a payoff.
Q. Right.
So the sales tax is going to the tax department, the balance owed is going to some bank, the title and license fee is not going to you?
A. No.
Q. And then there's 225 that is going to you?
A. Right.
Q. So you've got four items in a row after cash difference. And three of them, if the customer looked at it, they would know was not going to you, and then the fourth one before you get to the total is going to you?
A. Well --
Q. Just is that correct?
A. It's going to us.
Q. Is that correct?
A. It's been disclosed over and over. It's going to hit them when they walk in the showroom. It's going to hit them on the buyer's order. It's explained verbally the way it is in our application. Our people tell them that it's, you know --
Q. I mean, in '06 they were doing that, there

Page 94

was a sign up?
A. Yes.
Q. And it was disclosed where in writing other than the sign?
A. The signs. And then, for example, you've heard them talking in the previous depositions about worksheets. This is typically the worksheet, and they would manually, you know, write up on it.
So basically it's disclosed during the discussions with the sales guide, and then it's disclosed when they are -- you know, before they sign anything.
And it's -- you know, it's authorized, but it's not required, and we all know that and there's no pretension. I mean, you can hardly avoid the disclosure at least in our showroom.
Q. How do you account for the money, that is, is it a separate accounting on your balance sheet?
A. Not totally. It goes into other income, is where it goes on the financial statement.
Q. So you don't track it separately?
A. I don't believe so. I believe other items can enter other income, not often, but --
Q. What are the other items that go into other income?

Page 95

A. Oh, there could be an incentive earned by, you know, who knows, by selling a certain number of vehicles or -- I'm just trying to think of different things.
It's where accounting people typically dump things that pop up on the positive side, which of course isn't often enough, but --
Q. Right.
Do you charge off any expenses against that line item in your accounting system?
A. You know, I don't believe we've gotten into that. You could certainly rationalize that. There's a lot of detail and a lot of work that we just haven't done.
Q. So the answer would be no?
A. No, I don't believe so.
(DEPO. EXH. 8, Document, Bates Number 9345, was marked for identification.)
(DEPO. EXH. 9, Document, Bates Numbers 9398 and 9396, was marked for identification.)
(DEPO. EXH. 8A, Retail Installment Contract, was marked for identification.)
(DEPO. EXH. 8B, Deal Jacket, was marked for identification.)

Page 96

BY MR. HARPOOTLIAN:
Q. Eight is, as I said, 9345, and then we've introduced 8A, which, because the eight we had did not have the second page in, and this is a blowup of eight plus the rest of eight, first page, and then of course the second page of eight would be behind that.
Did that make sense?
In other words, the -- if you look at eight, the front of eight, it's part of 8A, and then you go to the rest of eight to the second page, 9348, to get --
MR. HAMM: I think you've got it right, Dick.
BY MR. HARPOOTLIAN:
Q. So let's go to the big one, which would be 8A.
MR. HAMM: I've confirmed he has that in front of him.
BY MR. HARPOOTLIAN:
Q. And this has been produced by you as -- what is this document called, a Retail Installment Contract?
A. Yes.
Q. And this was produced by you as a sample

Page 97

of a retail sales contract in 2006. Okay.
And just let me cut to the chase here. You would agree that nowhere on this retail sales contract is disclosed the administrative closing processing fee that we've talked about before?
A. No, not on this contract.
Q. And then if you go to the second page of eight, that would be the small one, Bates stamp 9348.
MR. HAMM: Wait a minute, Dick. I want to make sure he has the right one.
BY MR. HARPOOTLIAN:
Q. Bates stamp 9348. Do you see at the bottom?
MR. HAMM: That's not what he has.
BY MR. HARPOOTLIAN:
Q. Second page of the little one.
A. Okay.
MR. HAMM: So for the record, it's the second page of Exhibit 8, and the Bates number on the bottom is the 9348. So we're looking at the same thing, Dick?
MR. HARPOOTLIAN: Right.
BY MR. HARPOOTLIAN:
Q. And what is this document?

Page 98

A. Pretty small writing, huh?
Q. That's the way you gave it to us.
A. Let's see. Okay. Land Rover Capital Group was the -- that's the brand at the time under Ford Credit, so it's the financing contract.
Q. And this is where the --
A. Pretty much the same as the big thing, isn't it?
Q. I mean, you gave us both of these, so I assume they're two different documents.
MR. HAMM: For the record, what we gave you was making sure that you had the complete one because you were missing the second part of that, Dick.
MR. HARPOOTLIAN: Is this just a small version of the big one?
MR. HAMM: Yes, but it includes all of the verbiage.
MR. HARPOOTLIAN: Okay. I see what you've done with 8A is you incorporated everything in both pages.
MR. HAMM: Yes.
BY MR. HARPOOTLIAN:
Q. Go back to the big one for a second. That's the easiest thing to do.

Page 99

If you look at 8A, this is the Retail Installment Contract, correct?
A. Correct.
Q. On either page, page 1 or page 2 of this document, is the administrative fee, closing fee, processing fee, disclosed?
A. No, not on this.
Q. Now, let me ask you to go to -- well, let me ask you about one other document, which is eight -- what is the we owe, what is that, B?
A. That's just, again, trying to --
Q. Wait a second. What is it? 8B as in boy. It's called a we owe. What's a we owe?
A. If there is anything that during the transaction we have agreed to do and they've agreed we need to do -- for example, in this case, this example, clean the leather seats. There may have been a scuff or a mark on the seat that in this case the person needed -- the car needed a detail. It had not been done yet, apparently.
Q. There's no price input on this. Is that -- there's no accounting for the --
A. You know, depending on what it is, there could be.
Q. Like what?

Page 100

A. You know, for example, we owe them a -- you mentioned a satellite radio, we owe them -- you know, in other words, we're delivering the car but fully understand that we are going to do these other things. They'd like to have the car this weekend, for example, but it's just so there's no misunderstanding.
Q. And on the we owe do you ever put -- I mean, is there cash or money you give them, a rebate? Is that shown on the we owe?
A. So far I don't believe we've had customer rebates. That could happen with some dealerships, but I don't think we've had that situation.
Q. Would that show on the we owe if you did that or would that be on the financing agreement or on the other document?
A. I would think it would be more of a financial thing addressed on it.
Q. And not on the we owe?
A. Right.
Q. Now, let's go to Number 9, please.
MR. HAMM: For the record, when you're referring to Exhibit 9, are we talking about a document where the first page is 9398, Dick?
MR. HARPOOTLIAN: Correct. And the second

Page 101

page is 9396?
MR. HAMM: Yes.
BY MR. HARPOOTLIAN:
Q. And actually I'm more interested in the second page than I am in the first because I want to compare apples and apples, if you will.
So if you go to the second page, that is a retail sales -- what did we call the one before, a retail -- a Vehicle Retail Installment Contract?
A. It appears to be, yeah.
Q. And this one, if you look down on the left-hand side near the bottom, it's says, Land Rove Doc 225. Do you see that?
A. Yes.
Q. Now, this one is in 2007, October 18th of '07. The other one was -- the one we saw before in Number 8A was executed in 10/24/06, according to the top of the second page of it. So in a year, we now see that doc fee appearing on the -- this document.
Why is that? Was this after you got sued?
A. What was the date of the previous one?
Q. '06.
A. And what was the date?
Q. If you look at the top of the second page,

Page 102

you'll see on 8A a -- the payments start 10/24/06. So this would have been in '06.
A. Certainly we will do things as advised to, you know, do a more clear job. We try and do things in a straightforward manner. So I'm speculating.
The other thing is, you know, I don't know the finance source. Some of the finance sources do not have a column like that and some do.
If we found a better way to do it, that's something that had to be done on the computer system. I'd like to think these things happen instantly, but that's a big deal with these systems, ADP and all that.
So I'm assuming that's a refinement on what we were able to show. But again, it doesn't -- we don't feel that's necessary simply because they are also getting the buyer's order. So they know what they're financing.
Q. I understand that, but we go back to 8A, there's certainly space on the front page of that to write in that doc fee where it says two blank, four blank, right?
A. Yeah.
Q. So you could have put it on this one in

Page 103

'06?
A. Well, I don't really understand -- if the customer -- this is just generated paperwork. If they're concerned with the interest rate, they've already agreed to the buyer's order with the clear disclosure.
So, you know, some of the finance companies really don't care. They're interested in total dollar amount.
Q. I understand that. And prior to this, do they sign a contract?
A. Oh, yeah. This only comes up when the deal is done, when the customer has committed and the arrangements for payment have been made.
Q. But if they don't sign this, there's no deal?
A. If they don't sign it, there will be no financing, so obviously, yeah.
Q. There's no deal.
So this is the last document they've got to execute before the deal's done?
A. I can't promise you, because there's several others. There's the we owe document. There's the federal document, you know.
Q. But --

Page 104

A. But, yeah, that's -- at that point, they're buying a car at that point.
Q. Is this the sales contract?
A. No.
Q. This is not the sales contract?
A. No. No, that's the finance installment contract.
Q. It says, you, the buyer, and cobuyer, if any, may buy the vehicle described below for cash or on credit. Cash price --
A. This is the buyer's order.
Q. What?
A. This is the buyer's order. That is the installment contract. That's the contract with the finance company that we're simply representing.
Q. But you agree that you weren't disclosing it in '06 and apparently you do disclose it?
A. Apparently.
Q. Why? Why the change?
A. I don't know. But --
Q. And you're the person most knowledgeable about that?
A. I'm the person most knowledgeable.
Q. And you don't know? There's nobody else --

Page 105

A. I don't see a -- I don't see any problem either way, because, again, they don't get to that point until everything has been clearly disclosed.
Q. Well, why put it down there? Why change?
A. I can't tell you that we've done it as a result of our attorney's advice, but it could be something like that. We're trying to comply with the law. We always have.
Q. Well, then, this would be -- the second one would be complying with the law and the first one wouldn't?
A. I'm simply telling you we're trying to always do that. And if you tell -- not you, but if the Department of Consumer Affairs tells us to do something a better way -- which they never have. They've never told us we're doing anything wrong. We're simply trying to do as good a job as we can based on the rules that govern us. And we're certainly open to changes, and I'll continue to be if we can make things even more clear.
Q. But would you agree in 8A and 9, as you look at these documents, the person sees how much they're going to have to pay for license, title, registration, how much for taxes, the amount financed, and where is, on this document, when

Page 106

they're -- where is that 225 folded in?
A. Well, I mean, in this example, I believe it's -- I mean, do we have the -- is this the same buyer's order? No.
Q. No, I don't have the buyer's order. So where's it folded in? If I'm looking at this, where would I --
A. In my estimation, it would be under the cash price, what they're paying.
Q. Okay. So the 225 has been folded into the cash price?
A. In full view of both the finance company and the customer. And our customers are pretty smart. They understand when you show them over and over.
Q. Now, when they went out to -- he's verified these Interrogatory Answers. Is that correct?
You, in your Interrogatory Answer -- I want to make sure I understand this. As to Interrogatory Number 9, you said, at the time of the Plaintiff's purchase in February of '06, Defendant Land Rover's general policy was to charge a closing fee, recording, processing fee on all motor vehicle transactions. However, each

Page 107

transaction generally involved negotiations between the dealership and consumer on the total amount paid for the vehicle.
Is that correct?
A. Right.
Q. I just want to make sure. It was charged on all vehicles?
A. Yes.
Obviously, you know, each deal stands on its own. And, you know, there are people today that, as you know, will come in and they're interested in a -- they want it simple, real simple. I want out-the-door price of such and such, and of course out-the-door also includes sales tax and other things, which obviously cost us money. So it's --
(DEPO. EXH. 10, Manufacturer Designed Ad, LR-39, 6/30/06, was marked for identification.)
(DEPO. EXH. 11, Manufacturer Designed Ad, was marked for identification.)
(DEPO. EXH. 12, Classified Ads, was marked for identification.)
BY MR. HARPOOTLIAN:
Q. Let me ask you some general questions about advertising for just a second. We heard the

Page 108

other day when I was here something about co-op advertising. I have not heard that term before. Tell me what that is.
A. Well, there are times when a franchise dealership -- where the manufacturer offers to share advertising expenses with you.
Q. For promotion or something?
A. Well, just -- you'll notice many of our ads are simply the generic ads that the manufacturers' agency has designed.
One of the reasons for that is it gives a consistent message, but the other reason is it becomes, if there's a program, co-op eligible. So, you know, it's one of those things.
They have strict guidelines and we cannot waiver from certain --
Q. So if I look at Exhibits 10 and 11 -- and I'll ask you about 12 in just a minute -- those are, what did you say, manufacturer designed or --
A. Right.
Q. Tell me what that means.
A. In other words, we didn't design this -- the basics of this ad. You know, you can move things around a little bit. But basically it's got to have the elements. It's got to be one of their

Page 109

produced ads in most cases, unless they individually approve it, and that varies from manufacturer to manufacturer.

But a co-op ad is simply an ad where the manufacturer -- and this is BMW and everybody -- it's where they step in and say, okay, we're going to give you, for example, 50 percent co-op if you advertise this month, this message or whatever.

Q. For instance, they do TV ads by co-op?

A. Yes.

Q. And they do print ads by co-op?

A. Right.

Q. Radio ads?

A. Yeah.

Q. Just about any kind of advertising?

A. Right.

Well, sometimes they can apply pressure one way or the other and say, no, we're not interested in radio, you know, for example.

Q. But where it is a co-op ad, especially print ads, they provide -- of course -- provide an ad which saves you the trouble of having to hire somebody to design an ad?

A. Right. If it doesn't fit the magazine or the paper's size, you may have to pay to have it

Page 110

resized, so to speak.

But in general, you don't have to worry about, if there's a program like co-op, that you mentioned, that it's eligible if you follow the guidelines.

And the guidelines are, you know, you cannot vary things. You know, price, for example, you have to list the MSRP. If we vary from that, then you run the risk of being rejected, so to speak, as far as the funding.

Q. Let's look at ten and maybe we can apply that concept to these ads, okay?

A. Okay.

Q. Ten, the first page, which is Bates stamped LR-39, says -- you look up at the top, it says, LR-3 ad for LRC Columbia metropolitan color, some measurements, 6/30/06.

Is that -- did that come from -- when you say --

MR. HAMM: You're referring to the left side of the paper?

MR. HARPOOTLIAN: Right.

BY MR. HARPOOTLIAN:

Q. So when you get -- who do you get this ad from that's predone? Is it mailed to you or

Page 111

e-mailed to you or how does that get to you?

A. Well, they have a web site that you can access for the base of it. And then we've had a couple of different agencies over the years that basically, if there's a need to reconfigure for the magazine size, they may have to customize it, but then it has to be, again, accepted as approved if it is something that is co-opable.

Q. But you could run this -- this is the way it came from BMW's web site?

A. Not BMW, Land Rover.

Q. I mean Land Rover.

A. I mean, I can't tell you for sure. This is the way they've been known to do it at times.

But the shape of this ad -- typically theirs would be a little wider. So my guess is to fit the magazine space and the advertising requirements, best case -- I mean, the best information I have would tell me that we had this customized by our advertising agency and they went back and made sure it was approvable.

Q. Approvable by?

A. Land Rover.

Q. And how do they go back and make sure it's approvable?

Page 112

A. In other words, they -- well, they just have to submit it. So time framewise that can be kind of a push.

Q. When you say approved, who do they submit it to? You don't send it to England. Who do you send it to?

A. Land Rover North America is in the U.S., and, you know, they represent Land Rover products.

Q. And where are they located?

A. Well, they were in California, but they are in New Jersey where Operations has been.

Q. And so this is faxed to them or e-mailed to them and they say yeah or nay?

A. Right. And sometimes it may even be the factory representative, that they can approve ads and that sort of thing. But in general, that's co-op.

Q. And how do you keep a record of whether they've approved it or disapproved it? I mean, are there ads they disapprove?

A. Yeah. You either change them or --

Q. Why would they disapprove it?

A. It can be very -- what we consider somewhat silly, but sometimes not: Where the logo sits, how your tag looks on the bottom with your

Page 113

localized name, you know, your local dealer name. It could be anything.

Q. Let me ask you this -- and I'm not an advertising executive by any means, but I'm looking at this ad on LR-39, and there's about three inches of white space between the top and the bottom. What's that for? Is that aesthetics?

A. Frankly, this was part of an ad campaign, actually seat belts. This was part of a campaign, I believe, where there was a -- this is going to be funny, y'all are going to enjoy it -- a local karateist, a well-known businessman that took karate or something. I'm thinking maybe they had him in here, because, thus, the seven black belts.

And apparently -- and I'm just speculating because I don't see it here, and, you know, you look at the next one --

Q. And there isn't that white space.

But these are -- and let's cut to the chase here. These are ads that you get from Land Rover, you adapt them if you want -- although on number three I see a big white space again going past that third page, something was in there?

A. No, that is a separate ad below.

Q. Oh, is it?

Page 114

A. Yeah, that's for the bike dealership.

Q. Is that you too?

A. Yeah, that's the motorcycle dealership.

Q. So just the top one was the --

A. The Land Rover.

Q. And that would be either not changed or it was changed and you'd send it to somebody at Land Rover North America to sign off and say yes?

A. Right.

Typically -- they'd typically only be changed over the last couple years. We've just -- it's expensive and time consuming. Typically it would only be changed to fit the size, but, you know, there are examples occasionally where they approve certain things. One thing they don't approve is any pricing variability.

Q. And in terms of these ads, every ad you run like this, whether it's co-opable or not, you send it to them just in case you may be able to co-op it later on?

A. I don't believe so. There's -- co-op is not a big, big thing with us. And in this market, you know, and we are -- being a niche player, so to speak, you're not really getting a great amount of money to, you know -- from the factory, so we use

Page 115

it up every year, you know.

Q. Do you run advertising without their -- I mean, do they have to --

A. They don't --

Q. Under your dealership agreement, do they have the right to sign off on all advertising?

A. No.

And most of our -- one of the reasons we don't have a lot of ads is our location is typically our best advertising, that and the referrals from customers and repeat business.

Q. And these were co-op ads, is what --

A. I can't tell you that for sure. I can say that certainly LR-58 is a co-opable ad. I think -- I think LR-47 is because that was a -- that was a campaign Land Rover did. You may remember it, let's take mine, and they were showing people just in the extreme circumstances.

Q. And you look at 11, Exhibit Number 11, these are, again, the same sort of thing?

A. Yeah, that's a factory ad.

Q. And the process with how you got these and what you did with them are the same?

A. Exactly.

Q. Now, let's look at Number 13 -- Number 12,

Page 116

I'm sorry. And if you look at these three here, occasionally we'll see Friday, November 3rd. You go to page 9198.

A. Okay.

Q. You see one there -- you see Land Rover.

A. Uh-huh.

MR. HAMM: Repeat that page, Dick.

MR. HARPOOTLIAN: 9198.

MR. HAMM: Thank you.

BY MR. HARPOOTLIAN:

Q. You see Land Rover? These are classified ads?

A. Yes.

Q. And this is an ad y'all would have placed?

A. Yes.

Q. And would you have paid for this or would the manufacturer have paid for this?

A. Well, there have been times I recollect where they -- since this is their layout, although there is a typo on this particular one you pointed out that I'm seeing right away, and --

Q. Which one? What's the typo?

A. The typo's up near the top. It says 140-point inspection. It's hard to read. Six-year 175,000-mile limited warranty.

Page 117

We all have problems with vendors changing things. And let me look back.

Q. 175,000-mile?

A. Yeah, it's not the case. It's 75,000.

If you look back to the first page you have, 91, 92, you'll see the way it was supposed to be and the way it was, and this --

Q. Well, is this something provided to you by Land Rover of North America?

A. Yeah, the layout, the format, the box, the template, and then we basically have substituted units in there.

But I'm looking back at the back. I think -- yeah, they corrected it at some point, so that may be one of those -- we do catch advertising people, I mean, just screwing up, type-setting wrong. Somebody thought that was a -- instead of a slash one and they made it 175.

Q. So in terms of advertising, what percentage of your advertising dollars are spent on newspapers, do you reckon?

A. I would say an average of -- it has been probably 30 percent, and I would say now, you know, that's a shrinking number.

Q. And can you correlate that to cars sold?

Page 118

Do you track -- try to figure out where people get their information?

A. I think that's why it's shrinking. We're finding people -- again, they see us or somebody sent them in or they're in for another vehicle.

Q. What about television? Do you do television advertising?

A. The manufacturer, you know, does more of that. We do very little. There were times that we had done a little bit of it, but we haven't done that in a good while.

Q. Now, when the manufacturer does it, do they do it on a national program or do they buy local?

A. Sometimes they're buying national cable, which will hit us locally. But more often they're doing national purchases in major markets, and we don't have major markets.

Q. They don't come down in Columbia and buy WIS.

A. That would be unusual. There have been rare instances, but typically that would be something that would be co-oped with us.

Q. What about radio?

A. No, very rare. I don't know of a single

Page 119

example where they've done national radio.

Q. What about on the internet?

A. Well, they have a web site, and they will post, you know, some prices, things like that sometimes.

Q. But you don't have a web site, they do?

A. Yeah, we have a web site too.

Q. But do you advertise on the web site?

A. Yeah.

Q. And do you have any idea what percentage of sales comes from your internet site?

A. I would think that's growing, but my guess would be, you know, 20, 30 percent at most. It's hard to measure because the exposure could be from Land Rover, it could be from ours.

Q. Right.

What about do you do direct mail?

A. Sometimes.

Q. And does that --

A. Typically -- typically, and not often, but typically, we would do that, and it would be more of a service informational thing.

Occasionally a party, you know, we do quarterly events for our customers, an event, you know, we'll send our customers, but not a lot of

Page 120

advertising.

Q. In these ads, like if we look at the newspaper classified ads, looking at Land Rover, if you look at the one on the front page, '06 Range Rover, silver parchment, 27K, VIN number --

MR. HAMM: Dick, you're talking about 9129?

MR. HARPOOTLIAN: Yeah.

BY MR. HARPOOTLIAN:

Q. 27K, I guess that means 27,000 miles.

Do you see it?

A. Right.

Q. You've got a VIN number, and -- why do you put the VIN number in there?

A. Well, again, just trying to stay within the law and not create confusion with anybody. That's a specific vehicle that -- and that's not consistent. I won't say that all the advertising shows a VIN number. But in this case, if somebody comes in, we know that's an advertised car, that's got a price there, and --

Q. That 55,993 is the sales price?

A. Right.

Q. Somebody walks in and says I want to pay the 55,993 for that car?

Page 121

A. Yes.
Q. Is the 225 added to that or is that included in that?
A. Well, it's an advertised car, that's included, and this is an ad.
Q. So that's the tax, tag, and title?
A. No. I gave you the example of some people insisting on that, and, you know, that could happen. I won't say it wouldn't. But as far as documentation fee, that's in the advertised price on a car that's advertised.
Q. Well, when is it not included in the advertised price?
A. Obviously people will look at a car and they may come in thinking that car, but they may look and end up buying another car.
If they were to select another car and look at it and they're in negotiation, they get the price. I can't -- I can't tell you that they couldn't find a car on the lot that the documentation fee would be included, but it would be disclosed by the time they're on the showroom and, you know, discussing the deal.
Q. If they negotiate below that -- and I assume that 55,993 number's negotiable?

Page 122

A. Everybody wants a deal. Each deal would have to be looked at, I would think, and certainly in many cases that's -- you know, people don't offer more. They offer less. So I would say that figure was --
Q. Have you ever had anybody offer more?
A. I'm waiting for that person.
Q. And how is that advertised price determined?
A. It's a market price. We think of it as a market price.
Q. But, I mean, is there a calculation done, a work sheet?
A. Typically, again, telling you a little bit about what I understand the business is and best practice is, there's a value for cars, and that's determined by what dealers are paying for the cars as far as a wholesale value.
Many of these vehicles, you know, there's auctions all over the country. We subscribe to that. We used to rely on, you know, the books.
Q. The Blue Book, right?
A. Well, no.
Q. Or whatever book it was.
A. But there's a number of books.

Page 123

But typically, because there is a two-week lag or whatever on them, we basically subscribe where we can go on and get the latest auction results, you know, up to the minute.
So again, when we put a cash value on a customer's trade, we try and, you know, basically figure what is -- what is the market value for us to buy the car at a wholesale price. And typically it's not going to vary a whole lot, because, you know, it's just -- it's so easy to document as a dealer what it is.
From a retail price, we look at a number of market factors. Obviously several months ago we were selling cars at terrific losses because of the way the market went.
Q. So if somebody comes in -- so if you go back to Exhibit Number 9 --
MR. HAMM: We don't have that in front of us just yet, Dick.
THE WITNESS: I may have buried it here. There it is.
BY MR. HARPOOTLIAN:
Q. And somebody walks in and wants to buy that Range Rover at 55,993, and they fill out this Retail Buyer's Order, it says price up at the top,

Page 124

55,993, right, where it says price, that first line?
A. Where did my ad go?
Q. Number 9.
A. Yes.
Q. And we're taking that ad -- that silver parchment.
A. Okay.
Q. So they put in that 55,993 up there at the top where it says price.
A. Uh-huh.
Q. And then total would be 55,993. That's after the additional options, because assume they don't get the additional options, right, and then there might be some trade-in allowance?
A. That's probably a very well-equipped loaded car where they wouldn't be getting any options.
Q. Okay. You got your sales tax, you got your title and license, and would that be blank there because you've already included that 225 in in the --
A. No, that would not be blank. It's preprinted on the form. So what they would do is if the person paid all of it, they would deduct

Page 125

that amount, back that out of the sales price.
Q. Up at the top?
A. Right.
Q. So it wouldn't sell for 55,993, they'd back out the 225 and cut it down to 55,7 something?
A. 768 would be the figure if they had an agreed-upon price on that car.
In other words, they agreed to the price that was advertised and they didn't negotiate anything less than that?
Q. Right.
A. Yes.
Q. Would that be shown on the buyer's order anywhere?
A. Yes, that would be shown -- in other words, the price up here on this example you've got would change and become -- my understanding would be -- it would be, like you said, 55,768.
Q. But, I mean, would it be shown -- would that minus 225 be shown somewhere?
A. Not the minus, no. It would basically drop the price if that -- again, if they're paying the full price, drop the price, and then add it back.
Q. But if they didn't pay the full price --

Page 126

A. If it would be less than that, the 225 would still appear and be added back to it. So let's say we sold the car for, you know, 54,750.
Q. Then the 225 would be added back in?
A. Right.
Q. Now, in this ad, these ads that we've shown, especially this -- let's talk about this ad we were just talking about.
MR. HAMM: Which page?
MR. HARPOOTLIAN: Page --
Exhibit Number 12, page 9129, the one we keep talking about which is the '06 Range Rover.
BY MR. HARPOOTLIAN:
Q. Tell me where in this advertising it tells these folks that there is a $225 processing, recording fee.
A. Well, I've not -- there's nowhere in this ad. I mean, I've not instructed my people to do that on an advertised vehicle if it's included in it. We haven't done that. They're going to get disclosure when they arrive, when they discuss the car, you know, in numerous places like we talked about.
Q. Well, you would concede with me that, in this print advertising, nowhere is it disclosed

Page 127

there's a $225 recording and processing fee?
A. No. This example you're showing me right now, it certainly isn't, so --
Q. Are there any print ads you've ever done that in?
A. There may have been a mention in some print ads that, you know, includes blah, blah, blah, or whatever, but as far as --
Q. We've asked --
A. As far as my understanding, if they come in, they say, this is the car I'm interested in, and you look, this is an advertised car, I mean, it's included in it and there's really no discussion. But they -- they see it. They know they're paying it.
Q. Let's limit it to advertising. We've asked you for samples of advertising where it was disclosed in Motions to Produce, and we've gotten none. Would you assume then there are none?
A. Probably not. I just -- to me you can say it's a charge or you can say it's included, and we've tried to advertise the car with a price.
And today more -- I mean, I don't know that -- with all the consumer protection stuff, we've tried to be straightforward and not run into

Page 128

obstacles, and we don't get the complaints, and, you know, the Department of Consumer Affairs has never called us and said we're doing anything wrong. So we're open to suggestions, of course.
Q. But you would concede that -- well, you've never done it on television advertising either.
You've never -- and these ads come from the manufacturer that you use without that disclosed?
A. Right.
Q. Not on the internet, don't disclose it in the internet ads?
A. I don't believe so.
Q. Newspaper ads we've talked about.
Radio, any radio you've ever disclosed it on?
A. I don't believe so.
Q. Now, and direct mailings?
A. Like I say, we haven't done a lot of that with anything on cars, but if we did, I don't believe so. Okay. I believe it would be included.
MR. HAMM: Dick, for the record, the question you've tendered was you've asked for all these ads that advertise the price of the vehicle.
MR. HARPOOTLIAN: Right.

Page 129

MR. HAMM: I'm just wanting to make sure.
MR. HARPOOTLIAN: Okay.
BY MR. HARPOOTLIAN:
Q. Well, let me make -- do you know of any advertising in which you disclosed it -- you're the person most knowledgeable about this fee. Do you have -- do you have any independent knowledge of any ad you've run, print, TV, radio, direct mail, internet, in which you disclosed that there was a $225 administrative fee or closing fee or processing recording fee?
A. I don't know of an ad.
(DEPO. EXH. 13, Discovery Responses, was marked for identification.)
BY MR. HARPOOTLIAN:
Q. How about go to -- if you go past the preliminary documentation, I can't see the -- oh, it's LR-429, the Land Rover Columbia, the one that looks like this.
A. Oh, okay. Yeah, I know what that is.
Q. Tell me what that is, that is LR-429.
A. Well, that's the -- that's a product -- a software that we purchased that we go in, you know, fill in the information so that -- I guess the best way to describe it is an informational sheet.

Page 130

Q. What happens with it after you fill it out and print it out?
A. Well, typically it's laid, I guess, in the dash of the car, and -- but it's certainly something we encourage people after hours, you know, our -- people come in after hours and like to shop, as you know, and it gives them some background on the car.
So in theory, we've gone through and answered, you know, does this one have the third row seats and so on and so forth. This one has the optional running board.
So it's a used car with the information that, you know, people like to gather, and it's looked on as a --
Q. And then you have dealer selling price down here?
A. Right.
Q. And you put a price on there?
A. Right.
Q. Do you, on this, disclose the $225 fee and --
A. I don't believe on our -- on these stickers.
Q. What is it called? Sticker?

Page 131

A. Sticker, you know. It's not used that way, but it's certainly a -- it could be used that way, you know.
Q. But, I mean, it's left in the car?
A. It's left for them to see in, along with, you know, you've got -- sometimes you've got -- well, you have the federal thing that's applied, but --
Q. What's that thing called, a Monroney?
A. This is really, if you have a used car, Monroney. If you had one --
Q. This would be it?
A. This would be closer, except the Monroney is a factory, federally-controlled installed thing that you can't -- again, it's on there.
Q. But is this stuck to the window or is it left on the dash?
A. In our case, it's not, but it could be. I mean, I'm not going to say that it couldn't be used that way.
Q. And it advertises what kind of vehicle it is, what it's got?
A. The mileage and the options and so on.
Now, the selling price, you know, here, I just don't -- you know, we've not instructed them

Page 132

to start disclosing on the information at the dealership because there's so much disclosure there. It's --
Q. Right. But this is when somebody comes by after hours, this is what they see?
A. Right. And this is not all the cars, but yes, this is --
Q. Right. The used cars?
A. Again, I'll say we don't always catch this, but this is something that's an information thing that we like to have for the customer on used cars.
Q. It's an advertisement of what the car is and how much it is?
A. Well, it's not an advertisement. It's basically in-house information much like, you know --
Q. Why is it not an advertisement?
A. Because we're not out advertising the car with it. If you come to my house, I mean, am I advertising? I think it's just an information -- we've never looked at it as advertising.
Q. Well, if you've got a for sale sign in front of your house, are you advertising your house for sale?

Page 133

A. We've never looked at that.
Q. Will you answer that for me.
If you have a for sale sign out in front of your house with a price on it, are you advertising your house for sale?
A. We're on our lot, our dealership, obviously everything's for sale. I don't consider what you're saying to be apples and apples.
Q. Well, let me ask --
A. I'm not going to answer the question. I can't --
Q. You need to answer the question.
A. I don't have an answer for that.
Q. So you don't know whether that's advertising or not?
A. I don't think it's comparable in any way.
Q. You don't think putting a for sale sign in front of your house with a price on it is advertising?
A. I'm not saying that. I just don't think that's a relevant question.
Q. Well, I'm sorry, you don't get to decide what's relevant.
A. Okay.
Q. Answer the question and we can move on.

Page 134

A. I think it would be an advertising form for a house, yes.
Q. When you put this inside your vehicle, after hours and people wander through the lot looking at it, it's not advertising?
A. I've never looked at it that way. It's not my understanding.
Q. Could it be? Would you accept my definition for it?
A. I understand where you're coming from.
Q. Would you accept my definition?
A. No.
Q. Now, the second document in here, LR-430, what is that?
A. This is something that I heard mentioned earlier, but this is something we don't often use. We will sometimes use this on a -- the best example I know is a cycled-out service loaner. We offer our customers alternate transportation when they're in for service. So it may be called a loaner car, a demo. But when there's significant savings on a -- typically a current model year car, we might sometimes use this tag.
Q. Where is it put?
A. Typically this is what I heard referred to as the hang tag.

Page 135

Q. And where is it put?
A. On the windshield, sun visor, or what do you call it?
Q. The rearview mirror?
A. Right.
Q. And it has prices on it?
A. If this was used, yes.
Q. And does it disclose the $225 fee?
A. No, again, not on our --
Q. Do you consider this advertising?
A. Well, if I had it parked out in front of the Capitol building, yes, but no, not --
Q. Not on your lot?
A. Not in our house, no.
Q. Not on your lot.
A. Right.
Q. It's not in your house.
A. Not on our property.
Q. Now, the next one, 431, is a buyer's guide. And what is this?
A. Well, that's a federally-mandated document. There's a back side on the next page. The customer has to look at this and sign off, typically.

Page 136

And basically it's a disclosure form. If there is a warranty or if there's not, you have to have this posted and have it checked. So it's a good document.
Q. Where is it posted?
A. In the car where it's visible to the customer from outside. It's another one of those items that helps them.
Q. We've talked about them and you know what a Monroney is.
A. Right.
Q. And that's applied by the manufacturer?
A. Right.
Q. And it has --
A. Could be their -- could be their port. It could be whatever, but we certainly aren't --
Q. You don't do it?
A. Right.
Q. It's that way when you get it?
A. That's right.
Q. And it's got the manufacturer's price on it?
A. That's right.
Q. And it's got all the equipment -- I mean, it details what you're paying for?

Page 137

A. Right, and -- other than if you added other accessories and stuff.
Q. Does it show sales tax on it?
A. No.
Q. Does it show the administrative fee?
A. No.
Q. Do you sometimes apply additional stickers to -- around the Monroney or on the car, on the window, on new cars?
A. Oftentimes we will apply a Land Rover-recommended added value sticker that shows things like additional benefits you get when you purchase a Land Rover.
It may consist of things like a full tank of gas, a loaner car when needed, you know, car washes when you're in for service, just that type of thing. And those are included at no charge.
Q. Do you ever put a sticker on indicating that there's a $225 administrative fee on the car?
A. No, I don't believe so.
Q. Do you have a sign in your establishment disclosing this fee?
A. Yes. In fact, in the interest of overdisclosure, when you walk in, we've had a sign since, you know, its inception. We've got it near

Page 138

the sales guides' desk in addition. It's there.
Q. I'm sorry?
A. I mean, it's fully disclosed. It would be difficult to -- in fact, we even -- on the advice of our -- I guess our -- from the beginning I believe we did this, so this might have been, if I remember correctly, a result of, you know, just good advice.
But we, certainly lately, have gone with larger disclosures with big writing, and in lieu of, we haven't used the -- as far as I recollect, we haven't used the registration certificate that we get back. We've basically put it in larger recommended writing so that it's not missed.
MR. HARPOOTLIAN: Let's mark this as Number 14.
(DEPO. EXH. 14, Copy of Sign, was marked for identification.)
BY MR. HARPOOTLIAN:
Q. This has been furnished to us by you as a copy of your sign. Do you recognize it?
A. Yes.
Q. It says in here: This dealership charges a 225 closing fee as a means of reimbursing it for certain overhead costs such as document retrieval

Page 139

and document preparation. And then it goes on to say that it is a charge permitted by law.
Now, this tells the consumer they're paying a $225 fee for reimbursement for certain overhead costs such as document retrieval and document preparation. Is that correct?
A. Yes.
Q. And you would concede that in your bookkeeping/accounting procedures, you don't reflect this 225 as reimbursement for anything, do you? You record it as profit.
A. We record it as other income, I believe.
Q. But you don't, on an accounting basis, record it as being reimbursed for anything. Isn't that correct?
A. You know, I don't know if she could go backwards and pull it out that way, but it's clearly put in that area.
Q. Of profit?
A. Other income.
See, profit is something that I wish we had more of. It's income, but, you know --
Q. There's no --
A. There's gross profit and there's expense, and it's -- you know, it's --

Page 140

Q. But there's no accounting setoff in your system which would show that you're reimbursing for something, in your accounting system?
A. I think the feeling was what I said earlier. There's so many different factors in it that it would be a lot of work and a lot of unnecessary work.
We're very comfortable that it partially -- it partially recoups our cost, but we're not concerned about overcharging. We wish we were getting fully reimbursed, but I don't believe we are.
Q. So that answer would be no? Do you remember the original question?
A. No, I don't. I was rolling along there.
Q. That's why I always ask you to answer yes or no and then you can explain.
A. Okay.
Q. Do you, in your accounting system, record this as a reimbursement for anything? The answer would be no?
A. No.
Q. There we go.
Now -- and you've already explained the rest.

Page 141

Now, do you register? Do you register with Consumer Affairs?

A. Yes.

Q. Do you do it for each dealership separately?

A. We have tried, and, you know, I don't know what the latest is on that. I think last year, for whatever reason, they sent one of the checks back and we followed up to make sure that there was no misunderstanding, but yes, we do them individually.

Q. In 2006, as we saw earlier, or 2005, you registered on, and I believe in December, to charge the 350 -- I mean, it says 350. Was this supposed to be filed by July 1 of '05 to charge for the '05-'06 fiscal year or do you know?

A. I don't think so, but I don't know. I know that we've -- you know, our people have made us, you know, very sure that we did that in time, and we didn't -- as you know with some of the correspondence, we didn't do anything regarding the fee until we were completely compliant.

(DEPO. EXH. 15, Article 2, Marquis Trip Values Advertising Promotional Trademarks, LR-168, was marked for identification.)

MR. HAMM: On the record, I think I have

Page 142

an obligation to share it with Counsel, but Counsel have an obligation, and you have someone present with you, Mr. Studemeyer, and your -- the individual present with you is not Counsel, and you have an obligation to protect the confidentiality of this document.

MR. STUDEMEYER: Correct.

MR. HAMM: You agree?

MR. STUDEMEYER: Yes.

BY MR. HARPOOTLIAN:

Q. Let me ask you to look at this document, page 2.

MR. HAMM: This is Exhibit Number 15, Dick?

MR. HARPOOTLIAN: Right, 15, LR-168. Page 9329 on the bottom.

MR. HAMM: I got it. Okay.

BY MR. HARPOOTLIAN:

Q. This is called Article 2, Marquis Trip Values Advertising Promotional Trademarks.

What's a marquis value?

A. Mark, marquis, I mean, you know, it's basically brand value.

Q. Brand value, okay.

It says, Advertising 2.2: Advertising

Page 143

done consistently and regularly in compliance with company guidelines.

Are there guidelines issued by the company, written guidelines?

A. Yeah, I would think so. But basically what I shared with you earlier about any advertising not being damaging to the brand is what they're concerned with, and that's why they insist on the price being the MSRP.

Q. But are there written guidelines?

A. There may be. It's been so long since I've, you know, reviewed their guidelines, because we're always on the -- typically using their ads and so on, but I'm sure there are.

Q. Where would those be? Where would you find those?

A. I mean, right here would be the place I'd think they'd address it most, just simply by their expectation.

Q. There's not some document or workbook or handbook?

A. I don't know. I need to -- I mean, the brand has -- we changed owners not too long ago and then we changed owners back in 2000. You mentioned BMW, we used to be part of the BMW group. So I

Page 144

can't really tell you for sure.

Q. But if I asked for it, you'd look for it?

A. I'd look for it.

Q. Signs, it says: Dealer will provide company with sufficient information concerning local laws and ordinances to allow for proper design and placement of signs.

Have you ever submitted to Land Rover the statute or made them aware of the requirements about disclosure of this closing fee?

A. I don't believe so. They may have a copy of our buyer's order, you know, if there was a customer complaint that we contacted them on or the customer contacted them on on a new car, you know, one of those rare instances.

It could be we furnished them, you know, documentation that would include that disclosure on a buyer's order or something. But as far as discussing that with them, no, I don't think so.

Q. But they got copies of -- on a fairly regular basis of these buyer's orders. I mean, they'd see them from time to time?

A. Yeah.

Q. And it's -- on those buyer's orders, you see the 225, right?

A. Certainly.
Q. And have you had anybody from the corporate entity, the manufacturer, ask you what that 225 is for?
A. I don't recall that. I certainly haven't.
Q. And would they -- who would they talk to other than you if they had asked?
A. Well, I mean, they may talk to a manager of a dealership. But typically the factory type discussions of significance they'd talk to me only.
Q. On page LR-172, it says, System, 6.12, it says: Dealer will purchase and maintain an upgraded required data processing system together with related software and telecommunications as specified for Company by use exclusively with Land Rover products.
Is this the system you were talking about before?
A. Yeah.
Q. What was that called, C --
A. DCS.
Q. DCS. Dealer Communications System.
MR. HARPOOTLIAN: Okay. That's it.
(The deposition concluded at 1:23 p.m.)

SIGNATURE OF DEPONENT

I, the undersigned, JACK LESTER FRASHER, JR., do hereby certify that I have read the foregoing deposition and find it to be a true and accurate transcription of my testimony, with the following corrections, if any:

PAGE	LINE	CHANGE	REASON

JACK LESTER FRASHER, JR., Date

CERTIFICATE OF REPORTER

I, Gina M. Smith, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify:
That the foregoing deposition was taken before me on the date and at the time and location stated on page 1 of this transcript; that the deponent was duly sworn to testify to the truth, the whole truth and nothing but the truth; that the testimony of the deponent and all objections made at the time of the examination were recorded stenographically by me and were thereafter transcribed; that the foregoing deposition as typed is a true, accurate and complete record of the testimony of the deponent and of all objections made at the time of the examination to the best of my ability.
I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.
Witness my hand, I have hereunto affixed my official seal this 10th day of March, 2009, at Columbia, Richland County, South Carolina.

Gina M. Smith
RPR, CSR, Notary Public,
State of South Carolina
at Large.
My Commission expires
July 23, 2013.

I N D E X

	Page
Stipulation	4
EXAMINATION BY MR. HARPOOTLIAN	5
Certificate of Reporter	147

E X H I B I T S

Plaintiff's		
1	30(b)(6) Deposition Notice	13
2	South Caroling Department of Consumer Affairs Motor Vehicle Dealer Closing Fees Form, LR-01	20
3	Response to Interrogatory Number 11	25
4	E-Mail from Gary Palmer	53
5	E-Mail from Gary Palmer to Chuck	63
6	Document Titled Doc Fee	67
7	Retail Buyer's Order	75
8	Document, Bates Number 9345	95
9	Document, Bates Number 9398 and 9396	95
8A	Retail Installment Contract	95
8B	Deal Jacket	95
10	Manufacturer Designed Ad, LR-39, 6/30/06	107
11	Manufacturer Designed Add	107

(EXHIBITS CONTINUED.)

		Page
12	Classified Ads	107
13	Discovery Responses	129
14	Copy of Sign	138
15	Article 2, Marquis Trip Values Advertising Promotional Trademarks, LR-168	141

EXHIBIT 9

State of South Carolina
In the Court Of Common Pleas
County of Aiken

Heather Herron, Natalie Armstrong, Michael Ritz, Julie Freeman, Christine Watts, Alison Dannert, Michael Blease, Michael Watts, Individually and for the Benefit of All Car Buyers whom paid "Administrative Fees" as Described Below to Defendants,
Plaintiffs,
vs.
Century BMW a/k/a Sonic Automotive; Dick Dyer & Associates, Inc.; Galeana Chrysler Plymouth, Inc. a/k/a Galeana Chrysler Jeep, Inc.; J.L.H. Investments, LP a/k/a Hendrick Honda; Overland, Inc. d/b/a Land Rover of Columbia; Taylor Toyota a/k/a Taylor Investments; and Toyota of Greenville, Inc., et al.,
Defendants.

NO. 06-CP-02-1230

DEPOSITION

COPY

WITNESS: Richard Taylor
DATE: February 13, 2009
TIME: 10:00 a.m. - 11:40 a.m.
LOCATION: Richardson, Plowden & Robinson
Columbia, South Carolina

TAKEN BY: Attorney for the Plaintiffs

REPORTED BY: KATHRYN J. LINDLER

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INDEX OF WITNESSES

	PAGE
RICHARD TAYLOR	
EXAMINATION BY MR. LEWIS	6
SIGNATURE OF DEPONENT	61
CERTIFICATE OF REPORTER	62

EXHIBITS

PLAINTIFF's

1	Amended Notice 30(b)(6) Deposition of Taylor Toyota	10
2	Vehicle Worksheet Purchase Agreement	35
3	Vehicle Worksheet Purchase Agreement	37
4	Defendant Taylor Toyota Supplemental Answers to Plaintiff's Interrogatories	41

STIPULATIONS

It is stipulated by and between counsel that this deposition is being taken in accordance with the South Carolina Rules of Civil Procedure, and that the deponent does not waive the right to read and sign the deposition transcript.

Thereupon,

RICHARD TAYLOR,

being first duly sworn to tell the truth, the whole truth and nothing but the truth, as hereinafter certified, testified as follows:

EXAMINATION

BY MR. LEWIS:

Q. Good morning.

A. Good morning.

Q. What is your name?

A. Richard A. Taylor.

Q. Richard A. Taylor.

A. For Allen, yes, sir.

Q. Mr. Taylor, have you had your deposition taken before?

A. No, sir.

Q. Have you been at the depositions here during this week?

A. No, sir.

Q. A deposition is I ask questions and lucky for me you don't get to ask questions. You get to answer them.

A. Yes, sir.

Q. If you answer them, it's assumed that you understood the question. If you don't understand the question, you just ask me and I'll try to be clearer or try to rephrase it so that you do understand it.

A. Certainly.

Q. Also sometimes if I cut you off and you just say I didn't finish, I'll be quiet and let you finish.

A. Okay.

Q. I will ask yes and no questions and I would like you to answer them yes and no and then give any explanation you want to give.

A. Okay.

Q. I also may sometimes act like you don't want me to at which time you tell me that I'm acting some way that you don't like and I will try to change, okay?

A. Yes, sir.

Q. You're here on a case involving administrative fees. Do you know what administrative fees are?

A. Yes, sir.

Q. Do you know what this case is about?

A. Administrative fees.

Q. Do you know any more than that? Do you know what they say is wrong or anything? What is it that this case says causes the customer to get damaged or not to have to pay the fee?

MR. WALKER: I object to the form. It's compounded. You asked two questions.

Q. What is it that you understand why you're asked to give the fees back?

A. I don't know.

Q. You don't know?

A. No, sir.

Q. No one has ever told you?

A. No, sir.

Q. Have you ever read the complaint?

A. Not completely, no, sir.

Q. What is your job?

A. General manager of the Toyota -- I was the general manager of the Toyota store.

Q. You're not any more?

A. No, sir.

Q. What happened?

A. I now am overseeing the three stores that we currently own.

Q. You own three stores?

A. Yes, sir.

Q. And they're all different dealerships?
A. Yes, sir.
Q. What are their names?
A. Taylor Hyundai.
Q. Where is it?
A. Augusta, Georgia. Taylor Infiniti.
Q. Where is it?
A. Augusta, Georgia.
Q. Hyundai, Infiniti and what else?
A. Taylor BMW, Augusta, Georgia also, or Evans, Georgia.
Q. Those are the three?
A. Yes, sir.
MR. WALKER: When you say you all own, who are you referring to?
MR. LEWIS: I'll get to that.
Q. Is there a Taylor Toyota?
A. Not any longer, sir.
Q. Where is it?
A. It was sold in, I believe September 30 or October 1. I don't remember the date that we actually closed.
Q. Who bought it?
A. Bob Richards.
Q. Where is it located?

A. In North Augusta, South Carolina.
Q. These Hyundai, Infinity and BMW, who owns them?
A. Ann Taylor.
Q. How is she related to you?
A. She's my mother.
Q. She used to be the owner of Taylor Toyota too?
A. Yes, sir.
Q. Will you mark this as an exhibit please.

(WHEREUPON, Plaintiff's Exhibit No. 1 was marked for identification only.)

Q. Looking at Exhibit Number 1, this is the suit against dealers including Taylor Toyota or Taylor Investments?
A. Yes, sir.
Q. What is Taylor Investments?
A. Taylor Investments is actually the company that -- it's Taylor Investments DBA Taylor Toyota.
Q. Now it's no longer DBA Taylor Toyota?
A. Correct.
Q. You're here to speak on behalf of Taylor Toyota?
A. Yes, sir.
Q. Why?
A. Because I was the general manager of the store for a period I guess between '02 when I guess the beginning

of the suit here through I believe May of '04 and then again from August of '05 until February of '06 and I have been directly involved in the store even though I was not acting as the general manager during those other two time periods.

Q. When was it sold?

A. September 30/October 1 of '08.

Q. Have they changed how they do business since then or do you have any idea?

A. I don't know.

Q. I'm confused. You're here on behalf of a company that you don't know how they're operating now?

A. The company Taylor Investments, Taylor Toyota, no longer exists. The assets of the dealership were sold September 30/October 1 of '08.

Q. So it was an assets sale?

A. Yes, sir.

Q. Then the company Taylor Investments, it still owns Hyundai, Infiniti and BMW?

A. No, sir.

Q. It's a different named company?

A. Yes, sir.

Q. What does Taylor Investments own?

A. At the current time it owns a body shop in North Augusta.

Q. How much money does it have?

A. I couldn't tell you right now. As far as the body shop or Taylor Investments?

Q. No, Taylor Investments. Does it have any money?

A. I'm certain it does in the bank account, but I don't check that regularly.

Q. Give me an idea of what your best guess is. Does it got enough money? I mean is it a hundred thousand? A couple million? How much does it have?

A. It's over a million.

Q. When it sold the assets, did it make any money on the sale?

A. Yes, sir.

Q. How much did it make?

A. I'll give you -- I don't know exactly. Approximately --

Q. I understand. It's not a memory test, but just give me your best estimate. I understand.

A. After everything, approximately 9 million.

Q. What happened to the 8 million that went from 9 million they got after and now it's down to 1 million? What happened to the 8 million?

A. You asked me how much Taylor Investments had in the bank account.

Q. I'm sorry.

A. The owner of Taylor Investments, Ann Taylor, used that money to pay off some of the properties that she owned.

Q. Let me make sure I understand. Taylor Investments then have some properties?

A. No, sir. The properties are owned in a different company.

Q. She used Taylor Investments money to pay off properties owned by different companies?

A. By Taylor Family Limited Partnership.

Q. She took that money and paid off properties that were owned by Taylor Family Partnership?

A. Technically, yes, sir.

Q. She did that in '08?

A. At the time of closing, yes, sir. The money was actually disbursed to the lien holders of those properties from the closing statement.

Q. The money, let me make sure I understand. The 9 million, just whatever, went to Taylor Investments?

A. Yes, sir.

Q. Because that was the same as Taylor Toyota also known as Taylor Investments?

A. Yes, sir.

Q. Taylor Investments took the money and paid off loans for the Taylor Family Partnership?

A. The money was actually disbursed at closing. In other words, the sum amount of the money that was paid by Bob Richards at closing was disbursed by the attorneys at the closing to pay off loans on four properties.

Q. Let me make sure we understand. They used Taylor Investment money to pay off loans on properties that was not owned by Taylor Investments?

A. I'm not sure I understand. Rephrase it for me.

Q. I'm trying to make it clear.

A. May I ask a question?

Q. Let me just make it clear. Nine million dollars came to Taylor Investments no matter how you look at it.

A. Okay.

Q. That 9 million, parts of it were sent out to pay loans or mortgages on properties?

A. Yes, sir.

Q. And those properties were not owned by Taylor Investments?

A. Yes, sir.

Q. Do you have anything to do with these other dealerships?

A. Yes, sir. I oversee Taylor Hyundai, Taylor Infiniti and Taylor BMW.

Q. Are the way they handle administrative fees any different than the way Taylor Toyota handled them?

A. In what way?

Q. In any way?

A. No, sir.

Q. All four of them do them the same way except Taylor Toyota is no longer here, but when they were in business they all four did it the same way?

A. Yes, sir.

Q. Looking at Exhibit Number 1, would you turn to the last page. Have you seen that before?

A. Yes, sir.

Q. Those are the subject matters that you have been designated to talk about on behalf of Toyota Taylor?

A. Yes, sir.

Q. Administrative fees, you mentioned it started in '02 or something like that. How did it start?

MR. WALKER: Object to the form.

Q. How did it start? You can answer. I don't know what's the matter with that unless it's a signal.

A. No, the administrative fee did not start in '02. I'm saying the suit regarding the administrative fees goes back to '02 I believe.

Q. When did it start?

A. I have recollection of Taylor Toyota charging fees in the, I'm going to say the mid to late '80s.

Q. So they've been charging a fee since the '80s?

A. Yes, sir.
Q. An administrative fee?
A. Yes, sir.
Q. Have they been charging it the same way?
A. The same way, yes, sir. The same amount, no, sir.
Q. There was a statute passed about administrative fees, do you remember that statute?
A. I'm familiar with the statute, yes, sir.
Q. Do you remember about when it was passed?
A. No, sir.
Q. Did it change the way you were doing business when they passed that statute?
A. No, sir.
Q. When this lawsuit was filed, did you change anything?
A. No, sir.
Q. You charge this fee as a separate line item for each sale, don't you?
A. Yes, sir.
Q. Do you keep books on this separate line item?
A. The administrative fee is put on the other income line on our financial statement.
Q. On your what?
A. On the financial statement.

Q. You take all the administrative fees and you add them up and that is called other income?

A. That goes into the other income account, yes, sir.

Q. Is that what it is other income?

A. It goes on the line that's called other income.

Q. Is it other income?

A. Certainly, yes, sir.

Q. It's no different than the income you get from selling parts?

A. Correct.

Q. Or selling cars?

A. Correct.

Q. I would say then that the amount of it is not tied to any particular cost?

A. I don't understand exactly what you're asking there. I can tell you that the amount that we charge, we would look at the financial statements, look at the cost of doing business and adjust our fees from looking at the financial statement itself seeing where the dealership was from an expense standpoint or a profitability standpoint.

Q. Then you try to get more profit by getting a higher administrative fee?

A. Sometimes we were just trying to cover the cost, the expenses, the operating or the overhead expenses of the

dealership or operating expenses.

Q. Let's talk about this. If you did it that way, you look at the expenses, and they came to $10 and you look at the other income and it came to $9. So you would be losing a dollar, right, if you had income 9 and expenses 10?

A. In your example certainly I'd be losing a dollar.

Q. What you're telling me you'd make the admin fee big enough to make up that difference?

A. No, sir.

Q. Then how did you determine it?

A. We would take the financial statement, look at the bottom line. If we're losing money, we would look at several different areas including administrative fees.

Q. You would try to make up the loss of monies by the administrative fee and other items?

A. Yes, sir.

Q. Did you not try to make a profit?

A. That's what we were trying to do in business, yes, sir. Certainly.

Q. You would even use administrative fees to try to make a profit?

A. Yes, sir.

Q. You do that by looking at the overall financial statement of the company?

A. Yes, sir.

Q. You couldn't tell me that this administrative fee was tied to any particular expense item?

A. No one particular expense item.

Q. Or any group of them except all of them?

A. Correct.

Q. Your fee would go up each year or each several years, it continued to incline?

A. Yes, sir.

Q. That would be done by the same method, you would just sit down, look at it and come up with a fee?

A. We would take a lot of things into consideration. I mean the cost of doing business, the regulatory items that we were most recently had to increase expense for such as the OFAC, checking to see make sure that our buyer was not on the terrorist list, things like that. We would have an increase in the cost of doing business and sometimes adjust our fee accordingly, yes.

Q. You made a million dollars one year off administrative fees?

A. I don't think we made a million dollars.

Q. That's how much you collected?

A. Collected, yes, sir.

Q. How many secretaries or record checkers or administrative people do you think you might be able to

hire for a million dollars?

A. A lot.

Q. I agree. The South Carolina Automobile Dealer Association, did you have any dealings with them on the admin fee?

A. No, sir.

Q. Never talked to them?

A. No, sir.

Q. How did you all come up with the idea?

A. I don't know.

MR. WALKER: Object to the form. Which idea?

Q. The idea to charge an administrative fee. He understood.

A. I don't know.

Q. It just was there?

A. I was not in the general manager capacity in the late '80s when I recollect that there was an administrative fee.

Q. When you came on board to be general manager, there was an administrative fee being charged and you just carried forward with it and upped it according to what we've just talked about?

A. Yes, sir.

Q. You don't remember any bulletins from the South Carolina Automobile Dealers Association about the

administrative fee?

A. Not specifically, no, sir.

Q. The bulletins that they sent had no effect on how you charged the fee?

A. No, sir.

Q. They did or they didn't?

A. They did not.

Q. Are you a member?

A. Yes, sir, SCADA.

Q. I think you already told me when the law was passed that didn't change the way you did it either?

A. When the statute was passed, we certainly made our filings with the Department of Consumer Affairs from that point forward.

Q. You mean you paid $10 or whatever it was $25?

A. And filled out the proper paperwork and posted --

Q. But that's all --

MR. WALKER: Please let him finish.

Q. I'm sorry.

A. And posted the announcement or the notice that they required or they asked us to post.

Q. Did you do anything else?

A. I don't believe so.

Q. Do you know what the law says you must do to charge a closing fee?

A. Yes, sir, I think so.

Q. What does it say you must do besides put it up or disclose it in a conspicuous location and pay a $10 fee? Do you have to disclose the fee?

A. Yes, you have to disclose the fee on the purchase order or buyer's order.

Q. Buyer's order?

A. Hm-hmm.

Q. It says on the sales contract?

A. Sales contract, buyer's contract.

Q. What is the sales contract?

A. We call it a buyer's order.

Q. Is it the installment contract when they finance it?

A. No, sir.

Q. Could they buy the car if they didn't have an installment contract?

A. Absolutely.

Q. How?

A. Pay cash.

Q. What if they can't? If he fills out this -- what did you call it? An invoice?

A. Buyer's order. Sales contract is fine.

Q. Sales contract.

A. I understand where you're at now.

Q. Sales contract?
A. Yes, sir.
Q. He doesn't have cash?
A. Right.
Q. That contract doesn't mean a thing?
A. It states what he's agreed to purchase the vehicle for and then that amount goes onto the installment contract.
Q. That's the contract that buys the car, isn't it?
A. It's the contract that pays us for the car.
Q. So it pays for the car?
A. Yes, sir.
Q. But the other contract which does not pay for the car is the sales contract?
A. It's the sales contract, correct.
Q. Have you ever talked to any other dealers about the administrative fees?
A. No, sir.
Q. Ever talked to anybody at the Automobile Dealers Association?
A. No, sir.
Q. Have you ever talked to anybody about the administrative fees?
A. Yes, sir.
Q. Who?

A. Owner, Ann Taylor.

Q. Anybody else?

A. The general manager that came in after me, Louie Herron.

Q. Where is he?

A. He's in Augusta, Georgia.

Q. What company is he with?

A. He's not with anyone right now.

Q. What is his name?

A. Louie Herron.

Q. Why isn't he with anybody? He doesn't have a job?

A. He was the general manager for Taylor Toyota when Mr. Richards bought the assets. They agreed to three months employment. So at the end of the year, the end of December or I guess it was 10 days into January they decided to part company.

Q. They decided to part company. So he's out looking for a job?

A. Yes, sir.

Q. Have you ever talked to anybody about this lawsuit?

A. Yes, sir.

Q. Who?

A. Jess Black.

Q. Who is he?

A. He's with the other three dealerships. He helped me gather information.

Q. Who is he?

A. He's, he doesn't have an official title. He assists in running all three stores with me.

Q. What did he do? What did you ask him and what did you all talk about?

A. He helped gather some information that was requested for this suit.

Q. We requested like, do you know what tags are that hang on the rear view mirror?

A. Yes, sir.

Q. Do you all use those?

A. We did --

MR. WALKER: Object. All being Taylor Toyota.

A. We did from time to time.

Q. What would they be? Look like a hanging tag with a price on them?

A. Sometimes.

Q. When they had a price on them, did they ever mention the administrative fee?

A. No, sir.

Q. So they would hang off of the rear view mirror?

A. For the most part. Sometimes on the dash.

Q. They would be in your lot?

A. On the lot, yes, sir.

Q. They were there for people who would walk by to look at to see how much it would cost?

A. Yes, sir.

Q. Those numbers were not -- was that what they paid for the car or was that the starting price for negotiations?

A. We would've loved for it to have been what they paid for the car, but it was usually the starting price that the customer negotiated downward from there.

Q. It was also a price that enticed the customer to start a negotiation, wouldn't it?

A. It's a price tag, yes.

Q. To entice them to start negotiations? If you put a million dollars on a car, they wouldn't negotiate. They'd walk right by that one.

A. You'd be surprised. Some people would. They would negotiate. They don't negotiate if you put -- it doesn't matter what you put on there.

Q. It doesn't matter?

A. They will negotiate, yes.

Q. I know they will negotiate, but isn't the price on there to try to get them interested in the car? Isn't that the purpose of the little price tag?

A. Of the price tag on the lot.

Q. Yes, to get them interested in the car?

A. It's to let them know what the car would cost them if they bought it today.

Q. To get them interested in the car, that's what it's for, isn't it?

A. Yes, if it's discounted off of the MSRP certainly.

Q. Do you have used cars?

A. Yes, sir.

Q. Do they have tags on them?

A. No, sir.

Q. You never hang a tag on used cars?

A. From time to time, but we don't put prices on the stickers of the used car.

Q. Doesn't it have a little tag that that says this car is $6,000 or something?

A. Not generally.

Q. Do you do that sometimes?

A. Sometimes, yes, sir.

Q. You do that to get them interested in the car?

A. Yes, sir.

MR. WALKER: Please let him finish.

A. During a sales event or something of that nature, yes, we would put special prices on the used cars so that

the customer could come. Sometimes we would advertise the customer could come, look while we're not there and the price is clearly marked on every car.

Q. And those prices did not say anything about administrative fees?

A. No, sir, they included them.

Q. Huh?

A. They included the administrative fee.

Q. Does it say that on the advertisement?

A. No, sir.

Q. Let me take you through a sale. You say it included the administrative fee. Say a car cost $10,000 and the administrative fee is $200.

A. Okay.

Q. You say the 10,000 included the administrative fee. The guy sits down to bargain. He just bargains off the 10,000, doesn't he?

A. Yes, sir.

Q. Let's suppose he decides $8,000 is going to be a sale, everybody says, great, there's a sale. When you fill out your paperwork, do you show any administrative fee?

MR. WALKER: Object to the form.

Q. Or do you just say sales price $8,000 and there's no administrative fee?

MR. WALKER: Object to the form. Go ahead and

answer.

A. There is an administrative fee on every deal.

Q. You would add the administrative fee to the $8,000?

MR. WALKER: Object to the form.

A. No, sir. We would use a worksheet during negotiations. $8,000, $200, if you're a South Carolina customer $300 sales tax, are you transferring the tag or you're trading a vehicle, here's the new vehicle or if you're not, here's the new tag fee, equals exact amount of dollars. The customer either agrees to that or continues negotiating.

Q. He negotiates off the 10, down to the 8 and then you add those other things in and that's the price?

MR. WALKER: Object to the form.

A. Depends on how the customer negotiates.

Q. I'm sorry, what do you mean?

A. When we write the customer's offer, it comes to a bottom line. The customer then either negotiates from the bottom line or they'll abandon bottom -- negotiating anything on the buyer's order and just go strictly to a payment.

Q. Go to a what?

A. They'll start negotiating a payment.

Q. Let's go for that $10,000 again. I come in and

the $10,000 is on the car. I want to talk about that car.

A. Okay.

Q. And what does your salesman say? It's $10,000?

A. Hm-hmm.

Q. I say well I won't pay you 10, I'll pay you 8. There was 10 on the windshield, I'll pay you 8. The salesman says okay. How much am I going to owe in cash if I give it to you?

A. The negotiation is done on a worksheet. The price on the tag of the vehicle, if we sold you the car for what was on the tag, it included the administrative fee. If you negotiated a price of $8,000, it was written on a worksheet, there's no agreement at this point, the sales person hasn't agreed to anything. He's taking your offer of $8,000 plus an administrative fee.

Q. That's what I wanted to know. When you figured out this amount, was there anybody besides you that determined the amount of the administrative fee?

A. I would talk to Ann Taylor.

Q. I think you said that. Anybody else?

A. Louie Herron when he was the general manager.

Q. That's that guy that's looking for a job now?

A. Yes, sir. May have consulted or talked to Larry Clark who was our controller during part of this time period.

Q. Anybody else? That's all you can think of?

A. In information gathering, we would talk to sales people.

Q. I'm not asking about information. I want to know who you talked to about the amount of the fee.

A. Then you got it there.

Q. I noticed that you've changed the name of it from procurement delivery fee to administrative service fee and you call it vehicle purchase agreement administrative service fee. You call them different names. Who named them?

A. That would be either, that would probably be Ann Taylor and myself.

Q. Why did you change the names of them?

A. I don't know. I don't recall.

Q. Anybody tell you to change the names of them?

A. No, sir.

Q. You just did it?

A. (Shakes head yes.)

Q. You don't know why?

A. We're trying to do it in a way that explains it to a customer.

Q. Each time you changed it was it a way to be more clear to the customer? That's what you were trying to do?

A. What we felt like would be more clear, yes, sir.

May I grab a water?

Q. Sure.

(Off the record.)

Q. Let's talk about new cars for a minute. It has a sticker on them. You all have a name for it.

A. Monroni.

Q. That is the what?

A. That's the manufacturer's sticker.

Q. Does that include an administrative fee?

A. As a line item on the sticker?

Q. Yes. No. Does it include it? When someone comes in and you have that on there, is the administrative fee included in the Monroni price?

A. No, sir.

Q. We've heard about supplemental stickers. Do you know what they are?

A. Yes, sir.

Q. Do you have supplemental stickers?

A. We do.

Q. Supplemental stickers are put on the car where the Monroni sticker is to add on supplemental items, is that correct?

A. Yes, sir, or remove supplemental items.

Q. Is the administrative fee put on that?

A. No, sir.

Q. If I have a vehicle with a Monroni sticker of $30,000 and I have add-ons because I put fancy hub caps on there of a thousand dollars, the supplemental sticker would say fancy hub caps a thousand dollars and then it will be $31,000 for the price of the car?

A. Yes, sir.

Q. And then you negotiate off the $31,000 and you come to a price and then the administrative fee is added to that?

A. During the negotiation anything that you offer is written down as is the administrative fee.

Q. What?

A. The administrative fee is on our worksheets when we're working with a customer negotiating a price.

Q. It's on there as a line item?

A. Yes, sir.

Q. It's printed on there?

A. No, sir, it's handwritten and fully disclosed.

Q. It's handwritten?

A. Yes, sir.

Q. But there's a little space that says administrative fee?

A. Yes, sir.

Q. Does it have on that little space where it says on the worksheet administrative fee, does it have the

amount how much it is?

A. Yes, sir.

Q. Is there ever any time that a salesman ever fills out any different amount than what's told on that worksheet?

A. I don't understand your question.

Q. Administrative fee is $200. It's on the worksheet. It says administrative fee $200. There's a place over here in the column that you're going to add up, there's a little blank spot where you say he writes it in.

A. Right.

Q. Do they ever write in less than the $200?

A. No, sir.

Q. Do they ever not write in the $200?

A. No, sir. We had a time period of about approximately a year and a half where I did not charge employees the administrative fee.

Q. On their worksheet that would just be a blank?

A. It would be blank, yes, sir.

Q. But everybody else's it would have whatever the line says the administrative fee was?

A. Everybody else, yes, sir.

Q. Do you have copies of those worksheets?

A. Yes, sir.

Q. For every deal?

A. I can't say every deal, but, yeah. It's supposed to be in the deal jacket, yes, sir.

Q. There is a deal jacket?

A. Hm-hmm.

Q. Mark this please.

(WHEREUPON, Plaintiff's Exhibit No. 2 was marked for identification only.)

Q. You got Exhibit 2 there?

A. Yes, sir.

Q. This looks like a, what do you call it, jacket?

A. Yes. This would be -- this looks like a copy of what was in our deal jacket.

Q. On the front says Vehicle Worksheet Purchase Agreement?

A. Yes, sir.

Q. I thought it would be a worksheet where the negotiated price would be shown and it isn't shown. It just shows one price?

A. Right.

Q. Prior to 22,818.33 there must been negotiations to get down to 22,818.33?

A. I would assume, yes.

Q. Then they got to the 22,818.33, he writes it down and then he says administrative service fee and he adds

them up and just like you say, they come down to the cost of the vehicle and including everything would be 24,750, isn't that right?

MR. WALKER: Object to the form of the question.

Q. Isn't that right?

A. The math works, yes, sir.

Q. Is what I say not right?

MR. WALKER: Object to the form.

A. I wasn't there during this deal, but from my experience, the customer agreed to a bottom line price of $24,000. It's very odd that a bottom line price would come out to an even number like that. So sometime during the negotiation this customer, in my opinion during that negotiation would have said 24,000, that's it. So then we backed the numbers up from there to arrive at 23,095.33 total selling price.

Q. You think you back into the selling price on this, is that what you said?

A. On this deal, yes, sir. We backed into $23,095.33 total selling price.

Q. If you backed into it, why would you have a $750 Toyota rebate? That seems to me that was a rebate that was given at the end of negotiations rather than one that was backed into. That doesn't make a bit of sense.

MR. WALKER: Object to the form of the question.

A. We knew there was a Toyota rebate when we negotiated the deal with the customer. So when the customer agrees to a $24,000 bottom line.

Q. So you just went and backed into it?

A. We went backwards, yeah.

Q. Let me make sure I understand. If this customer did not have to pay the $277 administrative fee, he would've got the price for less than -- price of 24,000 minus 277, isn't that true?

A. If the customer did not have to pay it, correct.

Q. Mark this.

(WHEREUPON, Plaintiff's Exhibit No. 3 was marked for identification only.)

Q. Look at Exhibit Number 2. Look back at 2. If you turn over, there's a typewritten document and it looks like it's different. What is that document?

MR. WALKER: Talking about page 2, Cam?

MR. LEWIS: Yes.

A. That's done in the business office or the F and I office.

Q. What do you call that document? Is that the sales contract?

A. Yes, this is the sales contract.

Q. This is the sales contract. You use the

worksheet and the sales contract, is that right?

A. Yes, sir.

Q. And then you add into it the financing, is that right? How it's going to be financed?

A. No, we don't add in.

Q. It says here cash on delivery 3750, balance financed 20,985. It looks like to me that's what it does.

A. Right.

Q. Then there is another vehicle worksheet agreement that says void. That was just one they didn't like?

A. Evidently, yes, sir.

Q. On that one it doesn't look like they backed into that one, does it?

A. No, sir.

Q. On that one, they bargain down to a price of 24,780, isn't that right?

A. It looks like they bargain down to a price or a different figure of 23,057.

Q. So that one --

MR. HAMM: Would you identify what page you are on.

MR. LEWIS: 04641.

Q. That one he didn't back into that one you say. You looked at it and it doesn't look like it, does it?

A. It doesn't appear so, no, sir.

Q. Now look at Exhibit 3. I don't understand that one. Look at Exhibit 3 please. Do you see that?

A. Yes, sir.

Q. I don't understand. I got a retail installment contract and it has all the numbers on it, but my worksheet doesn't have any numbers on it.

A. Yes, sir.

Q. Why is that?

A. I don't -- I wasn't there again. I can tell you in certain instances a customer wants to buy a particular vehicle and because of either credit, most of the time credit, they want to know if they can get down -- number one if you can get them approved and then the bank kind of dictates the bottom line that can be financed for that particular customer depending on their credit. Then you again back into the numbers after the bank tells you what they can do for this particular customer on this particular car.

Q. You have on the financing agreement it says Taylor Toyota, Inc. 277.

MR. WALKER: What page are you referring to, Cam?

MR. LEWIS: 8530.

Q. Do you see that?

A. Yes, sir.

Q. It doesn't say anything about administrative fee.

A. Right.

Q. Now you call it Taylor Toyota, Incorporated?

A. Right.

Q. Why do you do that? Why don't you put administrative fee? Closing fee? Why don't you tell them what it is?

A. It's clear it's coming to us. It's not an administrative fee that this particular bank, I don't know whose contract, it looks like Wells Fargo is who it was assigned to, it's not an administrative fee for Wells Fargo. It's coming to Taylor Toyota that $277.

Q. You want to make sure you get $277?

A. No, sir, I want to make sure the customer knows that we are getting that $277.

Q. If he didn't have to pay that, he would get the car for $277 less?

A. Yes, sir. If he didn't have to pay that.

Q. This administrative fee, we know what we're talking about when we use administrative fee, is for both new and used cars, right?

A. Yes, sir.

Q. You had an interrogatory answer saying how much you made each year. They're not verified. Do you know what I mean by they're not under oath?

A. Right.

Q. Do you say they're under oath now?

A. May I see the document?

Q. Would you mark that.

(WHEREUPON, Plaintiff's Exhibit No. 4 was marked for identification only.)

Q. That's a document that has questions and answers. I want to know if --

A. On the back page?

Q. All of them. This should've had an oath to it under the rules that these answers are given under oath as being correct to the best of your knowledge. Is that true?

A. That is true at the time. I would like to add to I guess Interrogatory Number 8 the name Ann Taylor. She did act as the general manager during the time frame here as well as a gentleman by the name of Brad Simpson.

Q. Where is Mr. Simpson?

A. He acted as a sales manager and I don't, at this time I don't know his whereabouts. I can get a last known, but.

Q. Anything other than that so you can swear to Exhibit Number 4 as being under oath?

A. What word did you use on the amounts here? You say non-verified or non-certified? What did you say.

Q. I said these answers are not under oath. Under

the rules it says that they are to be answered under oath that they're true to the best of your knowledge.

A. Yes, they are true to the best of my knowledge.

Q. That's all I'm asking you. Because it's not on here, I want you to do it now.

A. Yes, to the best of my knowledge this is exactly correct.

Q. Did you all advertise on television?

A. Yes, sir.

Q. Do you advertise the price of a vehicle on television?

A. Yes, sir.

Q. Do you put on there that it includes the administrative fee or do you even mention the administrative fee?

A. We do not mention the administrative fee.

Q. Do you ever advertise on the radio?

A. Yes, sir.

Q. Do you advertise the price of vehicles on the radio?

A. Yes, sir.

Q. Do you put in the advertisement on the radio the administrative fee?

A. No, sir.

Q. Does the advertisement on the television, is it

your contention -- what is your contention about the administrative fee?

A. Our dealership's policy was anything that we advertise on television or any price that we advertise on television, radio, newspaper includes the administrative fee.

Q. Do you go the same way, they come in and if you advertise it for $10,000, that was to entice them to come in to look and talk about that car?

A. Yes, sir.

Q. And then you bargain the price down to 8,000 on your worksheet and then you'd add in that administrative fee and taxes and tags just like you said before?

MR. WALKER: Object to the form.

A. We try to be customer friendly. We negotiate any which way the customer wants to negotiate.

Q. You want to be customer friendly?

A. Yes, sir.

Q. I'm sure. All car dealers want to be customer friendly. I appreciate that.

A. You sound sarcastic. You sound a little sarcastic there. What was the question again.

Q. You got radio, television, print advertisement, the internet, anything. You put on there $10,000 and that's put on there to get the customer interested in the

car?

A. Right. You come in and you pay $10,00 for that car, it includes the administrative fee.

Q. How much would you show as the administrative fee on their sales contract?

A. Whatever our administrative fee was at that time.

Q. You would say it was included in there, but when you wrote it down on the sheet, you'd subtract from the $10,000 the administrative fee and show the sales price as that amount and then the administrative fee?

A. To come to a total of whatever we're advertising.

Q. But if it's not -- if they bargain off the advertised price, then you do it the other way. You come to a number and then you add in your administrative fee?

MR. WALKER: Object to the form.

A. We show our worksheet. We negotiate off a worksheet that always has the administrative fee on there, yes, sir. If you walked into the dealership and offered me $8,000 for the vehicle that I advertised for 10, we would write it up as 8,000 plus, plus the fee, plus the tags, plus the tag comes to this.

Q. The fee being the administrative fee?

A. Yes, sir.

Q. Is the $10,000 that you advertised a car on television, would that be an advertisement?

A. Yes, sir.

Q. Would it be an advertisement on the radio?

A. Yes, sir.

Q. Would it be an advertisement if you put it in the newspaper?

A. Yes, sir.

Q. Would it be an advertisement if you put it on the internet?

A. Certainly.

Q. Would it be an advertisement if it was a window sticker?

A. No, sir, it would be a price tag.

Q. A price tag?

A. Yes, sir.

Q. What's the difference of showing a car on television with the number $10,000 on it and a car in your lot with $10,000 on it? Why is one advertisement and the other one is not?

A. Because my idea of advertising is something to get you to come in and look for that vehicle or come in to my lot. When you get to my lot, I have price tags sometimes on vehicles during sales events.

Q. I'm just trying to figure this out.

A. I'm saying I don't, I don't, I don't see a price tag as an advertisement. When I go to Lowe's and they got

a lawn mower out front with a price tag on it, I don't view that as an ad.

Q. What do you view that as?

A. It's a price tag.

Q. Is it not to let you know what the price is for the purposes of you being interested in it and buying it?

A. Yes.

Q. Why isn't that advertisement?

A. Because there is a difference in price tags and advertisement to me.

Q. What is the difference?

A. I think, I just think that advertising is -- would be defined as something to get you to come in and shop at our store.

Q. Nothing on Lowe's premises, nothing on Wal-mart's premises and nothing on your premises is an advertisement, because you're already there?

MR. WALKER: Object to the form.

A. Advertisement?

Q. It's not an advertisement.

A. I say it's a price tag. That's just my way of looking at it.

Q. I want to know. Can you have advertisements on your premise?

A. Yes. We posted newspaper advertisements that we

ran in the Augusta Chronicle, we would post those in the dealership.

Q. Those are advertisements in your dealership?

A. Yes, sir.

Q. When they would have a picture of a Toyota car for $10,000, that's an advertisement?

A. Yes, sir.

Q. But if it had the same car sitting right beside that ad on the wall with $10,000 posted on its windshield, that's not an advertisement?

A. If --

Q. Is it or not? I just want to know.

A. No. The Monroni label that the manufacturer puts on the vehicle has a price on it, that's not an advertisement.

Q. I don't ask you about Monroni. Let's suppose you put in this ad and you have it on the wall for this car for $10,000, you said that's an ad?

A. Hm-hmm.

Q. An advertisement, isn't it?

A. Yes, sir.

Q. Now you come over and here's the car right there and it has a little, what do you call it, hang tag in there for $10,000, is that an advertisement? Which one is the one that's an advertisement?

A. I think it's a price tag. That's just my...
Q. What is the difference between the two of them?
A. I don't know.
Q. You don't know?
A. No.
Q. One is an advertisement and one is not?
A. Advertisement is designed to get you onto my lot.
Q. Let's start over. That sign or that daily chronicle or whatever that you say is up on the wall is an advertisement?
A. Yes, sir. It's a copy of our advertisement.
Q. It's a copy of your advertisement?
A. Yes, sir.
Q. But you could not have an advertisement on your wall, on your cars, on your premises that isn't something that was done off premise?
A. I don't understand.
Q. Let's suppose you have a car for $10,000.
A. Okay.
Q. You have a big sign up on top of the car $10,000, is that an advertisement?
A. In my view, it's a price tag.
Q. If I take a picture of that car with the big sign up on it $10,000 and I take a little poster and I walk down the street and I pin it on a wall, is that an

advertisement?

A. Yes, sir.

Q. So the difference is one's on the premise and one's off premise?

A. Yes, sir.

Q. Do you have co-op advertising?

A. With Toyota, yes, sir.

Q. Did all your advertisements in the paper, newspaper, printer or anything, were they all designed by Toyota?

A. No, sir.

Q. Did you have an agency?

A. Yes, sir.

Q. Who was your agency?

A. Mass Media Marketing and they are in Augusta, Georgia.

Q. Did Mass Media Marketing then deal with Toyota to say that the advertising was okay with Toyota?

A. May I explain Toyota's co-op?

Q. Sure.

A. Toyota would give the dealers $100 a car for co-op advertising. They had advertising covenants that we had to follow in order to receive that $100 per vehicle. Toyota hired an outside agency or outside company to monitor our advertising. We did not have to submit any of

our advertising to Toyota in order to receive the co-op. They had an outside company that was responsible for monitoring all the dealers' advertising to make sure they were adhering to Toyota's covenants. However, our policy was our agency would submit our ads to Toyota for approval, not Toyota, excuse me, to the monitoring company that would say meets covenant.

Q. Who is the monitoring company?

A. I'd have to go back and look. I think it's a company, I think it's ABC, but I don't -- I couldn't tell you what ABC stands for right now off the top of my head.

Q. These covenants, who has the covenants? Do you have copies of them?

A. I don't have them, no. Yes, I had them and my agency had them.

Q. Your agency, this Mass Media has them?

A. Yes, and we kept copies on premise too of the ad covenants.

Q. Did you furnish those to us?

A. The ad covenants, no, sir.

Q. Why not?

A. Didn't know -- I wasn't asked for them, I don't believe.

Q. None of the ads on television, radio, print advertising, internet or -- did you do direct mailings?

A. From time to time.

Q. None of those mention the administrative fee?

A. No, sir.

Q. We've already said that the window stickers or the tags or the soap you write the price on, none of those mention it?

A. No, sir.

Q. You sent us two DVDs of a closing. What are those?

A. DVDs of a closing?

Q. I don't know. DVD look like of people signing documents, doing stuff, what is it?

A. It's a recording of what took place in the business office, or F and I office.

Q. Of a particular closing?

A. No, sir.

Q. Is it staged?

A. No, sir.

Q. What is it?

A. It's a recording of what actually took place in the business office.

Q. Is it a sale of a car?

A. Yes, or the transaction in the F and I office.

Q. Transaction. Is there a customer in there?

A. Yes, sir.

Q. Do you film all your customers' transactions in the F and I office?

A. Yes, sir. That's the policy, yes, sir. It's our dealership's policy.

Q. Do you have a film of Mike Ritz, the one that is the plaintiff here?

A. I don't believe so. Or you would have it. I don't recall when we -- I don't recall exactly the date when we began taping or disking, recording, the transactions. I don't remember what date it was.

Q. Do you get the customer's permission?

A. Yes.

Q. How do you get their permission?

A. We post signs in the business office that lets them know that the transaction is going to be recorded.

Q. Do they sign any disclaimer?

A. No, sir.

Q. It's just a sign?

A. It's a sign and our business manager tells them.

Q. Why don't you get them to sign something? Who does this? Is this a common practice that some poor guy sitting in there is getting filmed buying a car?

A. Yes, sir, it's a common practice.

Q. How do you know it's a common practice?

A. I know that other dealerships do it.

Q. Who do you know does it?

A. I can't give you any specific names, but in the business, in the trade magazines, it's addressed. In other words, some dealerships do, some dealerships don't, the advantages to recording and the disadvantages to recording.

Q. Do you have a sign that says it's going to be recorded?

A. Yes, sir.

Q. Do you have a sign that says it's going to be recorded and you can refuse?

A. No, sir. It just says that the transaction is going to be recorded.

Q. Does it say they can refuse it any where?

A. It doesn't, no, sir.

Q. Does anybody ever refuse it?

A. No, sir.

Q. Did you have a policy when your manager said to them hey we're going to film you buying this car, but you can refuse it or do you never say refuse it?

A. No, sir, we don't.

Q. Do you know if Mr. Ritz' car was advertised?

A. I do not know, sir.

Q. Let's take a break and see where I am.

(Break.)

Q. You mentioned the covenants, advertising

covenants. Do you remember anything about them, what they are?

A. I do remember some things. Toyota, certain ways you can use their Toyota emblem. Can't use certain words in your advertising.

Q. What kind of words?

A. I'd have to look at the covenants to be, to get specific, but, for example, they didn't want the ad to appear to be distressed such as when you're doing a sale, a clearance sale, you couldn't say wholesale to the public, which you can't anyway.

Q. Liquidation sale, you can't say that?

A. Yeah. A lot of their covenants are the same as you'll see from the Department of Consumer Affairs in the various states. And again there are some guidelines they give you on using their brand, the Toyota emblem. And again some verbiage that you are not allowed to use in your advertisement, things like that.

Q. Does it say you have to comply with laws?

A. Yes, sir. Our dealer agreement says that.

Q. Your dealer agreement. If you don't comply with the laws, then they can jerk your dealership?

A. Yes, sir.

Q. You have to comply with the truth in advertising?

A. Yes, sir.

Q. If you don't, that would be another reason you might lose your franchise?

A. I don't know specifically, but I would imagine so.

Q. Do you know any legislative efforts to change the closing fee statute?

A. In South Carolina?

Q. Yes.

A. No, sir.

Q. You know it in other places?

A. I've read in the trade magazines where some of the other states have dictated a set dollar amount for closing fees I believe. I couldn't tell you the particulars.

Q. You've brought up trade journals several times. Are there some names of ones that are most --

A. Automotive News is the one that I read most regularly and that's not very, but it's the one that I...

Q. Are there any other ones that come to mind?

A. I think one of them is called Dealer Business, but Automotive News is the one that I refer to the most.

Q. I'm interested in the film. Why do you film people? What's the reason for that?

A. It's twofold. It offers us protection.

Q. Protection from what?

A. From a customer accusing us of or the business manager, the F and I manager, of saying something that he didn't say or saying that he gave us $5,000 down. Various, various -- it protects us and it also protects the customer himself. There have been several instances where a customer would come in and say or complain about maybe, I can give you one particular instance. We were missing money on the deal when the deal got to the accounting office. The customer says no I paid that. Where did you pay it. I paid it in the F and I office. I had the money in my back pocket, it was in a Sun Trust envelope. It was cash money. I took it out and gave it to your F and I manager, your manager. Went back and reviewed the film, never gave it to anybody. It was just a mistake on our part for not collecting it, but the customer said that they paid it, they told us the envelope exactly what it was in, who they gave it to, brought the customer in, showed them the tape and they said lo and behold, you know what, let me go home and see if I left that in my pocket. So it does offer us some protection, but it offers them protection too.

Q. You don't take pictures of the papers? The film doesn't show the papers?

A. No.

Q. I couldn't look at the film and see what the

paper says?

A. No, sir.

Q. All it is is the people in the room and generally you can hear what they say?

A. Yes, sir.

Q. Has anybody ever refused to be filmed?

A. Not to my knowledge.

Q. If they refuse to be filmed, would you refuse to close?

A. You know, I don't know.

Q. What is your policy?

A. I haven't had that to come up.

Q. Is there a policy on it?

A. No, sir.

Q. Let's right here, it just came up, what would be your recommendation to your sales manager or whatever?

A. Well, I guess I'd ask why the customer did not want to be filmed.

Q. He says I just don't want to.

A. I'd ask my sales manager did you get positive identification. Have you looked at his identification thoroughly. Is there anything odd about it. To me if a customer would refuse to have the transaction filmed, then they may not be up to all legitimate -- there's something probably not legitimate in the deal or something. I don't

know. I can't imagine why somebody would refuse.

Q. You can't?

A. I can't, no.

Q. What would you do if they did refuse? You can't tell me?

A. I don't know.

Q. You keep talking about the advertised price. How many people in your time pay the advertised price?

A. Not very many.

Q. Would you say none or every great once in a million?

A. Would you like a percentage? Just a guess?

Q. Yeah, I would like you to tell me out of --

A. I'm thinking one out of a hundred.

Q. Do you keep records of who paid an advertised price since that's pretty unusual?

A. No, sir. We keep records of how many people came on the lot during the course of a certain advertisement, but we don't keep a record of who purchased a vehicle for an advertised price.

Q. When they come on a lot, that's when they walk along and look at all the cars and see how much they are?

A. I would say that's when they come up and walk on the lot and look at the cars, yes, sir.

Q. Don't all the cars have a price on them?

A. All the new cars have a Monroni label.
Q. How about the used cars, do they have a price?
A. No, sir.
Q. They have to ask?
A. Yes, sir.
Q. When they ask for a price of a used car, is that a predetermined price for that used car?
A. Sometimes we code the sticker on the actual used car vehicle with just a price, that's the starting price.
Q. So it's code only --
A. The sales person knows the code so they don't have to run back and forth and the customer at least has an idea this is a $15,000 car, this is an $18,000, this is a $10,000 car.
Q. So what he does is he asks the salesman and the salesman will give him a price by looking at the coded price on there and then he will give him an offer?
A. Then they go inside, yes, sir.
Q. Then they go inside?
A. Yeah. If the customer wants to make an offer, yes, sir.
Q. They don't make it out there looking at the car?
A. From time to time the customer will throw a number out there.
Q. The guy will say no let's go inside or something?

A. Yeah, let's walk in, let's go ahead and put it on paper.

Q. That tag that's on the used car is coded?

A. The stock tag, yeah.

Q. It's coded with a price?

A. Yes. During certain time periods. During other time periods it wasn't coded at all. You had to go inside and get the price from the manager.

Q. Let's just talk about when it's coded with a price.

A. Okay.

Q. That was a price tag that was not intended for the public to see?

A. Yes.

Q. The advertised price that you put in these advertisements that you say, how do you come up with that price?

A. You try to make the price enticing enough so that if the customer is shopping a like make or model that they would come to your store, but you try to make it also high enough that you're not giving away every bit of profit that you got in a deal, but there's no scientific method for it.

Q. That's what you do? That's the basis of it what you just said?

A. Sure.

Q. Thank you.

MR. WALKER: No questions.

FURTHER THE DEPONENT SAYETH NOT.

SIGNATURE OF DEPONENT

I, the undersigned, RICHARD TAYLOR, do hereby certify that I have read the foregoing deposition and find it to be a true and accurate transcription of my testimony, with the following corrections, if any:

PAGE	LINE	CHANGE	REASON

RICHARD TAYLOR DATE

CERTIFICATE OF REPORTER

I, Kathryn J. Lindler, Court Reporter and Notary Public for the State of South Carolina at Large, do hereby certify:

That the foregoing deposition was taken before me on the date and at the time and location stated on Page 1 of this transcript; that the deponent was duly sworn to testify to the truth, the whole truth and nothing but the truth; that the testimony of the deponent and all objections made at the time of the examination were recorded stenographically by me and were thereafter transcribed; that the foregoing deposition as typed is a true, accurate and complete record of the testimony of the deponent and of all objections made at the time of the examination to the best of my ability.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 17th day of February, 2009, at Columbia, Richland County, South Carolina.



Kathryn J. Lindler

EXHIBIT 10

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN)

Heather Herron, et al,)
)
Plaintiffs,)
)
-vs-) C.A. No. 2006-CP-02-1230
)
Dick Dyer & Associates,)
Inc., et al,)
)
Defendants.)

DEPOSITION OF CHARLES RICHARD TURK

PURSUANT to Notice and/or agreement between the parties, the 30(b)(6) deposition of TOYOTA OF GREENVILLE [CHARLES RICHARD TURK] was taken at the law offices of Haynsworth Sinkler Boyd, P.A., Two Liberty Square, 11th Floor, 75 Beattie Place, Greenville, South Carolina, on Wednesday, February 25, 2009, commencing at the hour of approximately 11:31 a.m.

JANE S. WEHUNT, REPORTER

INDEX

	Page
Appearances and Notations	4
Examination by Mr. Lewis	6
Plaintiff's Exhibit No. 1, Definitions and Topics for 30(b)(6) Deposition of Toyota of Greenville	10
Plaintiff's Exhibit No. 2, September 16, 2008 Defendant Toyota of Greenville, Inc. d/b/a Toyota of Greenville's Answers to Interrogatories From Plaintiffs and January 16, 2009 Toyota of Greenville's Second Revised Answers to Plaintiffs Revised First Set Of Interrogatories	20
Plaintiff's Exhibit No. 3, September 6, 2007 SCADA Bulletin Entitled "Reminder: Closing Fee Registrations Are Past Due"	40
Plaintiff's Exhibit No. 4, June 21, 2001 SCADA Bulletin Entitled "'Closing Fee' Regulation Issued by Dept. Of Consumer Affairs"	43
Plaintiff's Exhibit No. 5, April 2008 Incentives Internet Ad	46

INDEX CONTINUED

	Page
Plaintiff's Exhibit No. 6, May 2006 Incentives Internet Ad	50
Plaintiff's Exhibit No. 7, Retail Installment Sale Contract	59
Plaintiff's Exhibit No. 8, Buyer's Order	61
Plaintiff's Exhibit No. 9, Memorandum to All Sales Managers Regarding Procurement Fees	69
Plaintiff's Exhibit No. 10, Employee Procurement Fee Disclosure	70
Plaintiff's Exhibit No. 11, Window Stickers	72
Plaintiff's Exhibit No. 12, Hang Tags	78
Plaintiff's Exhibit No. 13, Newspaper Ad	81
Examination by Mr. Martin	90
Certificate of Notary Public	92
Errata Page	93

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STIPULATIONS:

1. The deposition is taken pursuant to the South Carolina Circuit Court Rules of Civil Procedure.

2. The reading and signing of the deposition transcript by the deponent are expressly reserved.

EXHIBITS:

See Index, page 2.

CHARLES RICHARD TURK,
being first duly sworn was examined and testified as follows:

EXAMINATION BY MR. LEWIS:

Q. Mr. Turk, let me first apologize that we had you sit here for this amount of time, and also hope that your wife is doing better. If you need anything, to leave or do anything, just let me know. Now, I'm supposed to tell you a few things and I will. First of all, have you had your deposition taken before?

A. Yes, sir.

Q. So you understand that I ask questions and you don't get to ask questions.

A. I do.

Q. And that if you answer the question, it's assumed that you understood the question.

MR. MARTIN:
Excuse me. I would respectfully object, and I'm sorry to interrupt. But my understanding of the ruling is that if the witness has a question, he can ask it to you is my understanding. But if he has a question about what you're asking, he can direct his question to you.

MR. LEWIS:
Yeah, he can ask a question about the question, but he doesn't get to quiz me.

MR. MARTIN:
True.

MR. LEWIS:
I was going to get to that, but Mr. Martin always wants to get in the middle of everything.

EXAMINATION CONTINUES BY MR. LEWIS:

Q. So I forgot where I was. So I was saying --

MR. MARTIN:
I resemble that remark.

MR. LEWIS:
I know.

EXAMINATION CONTINUES BY MR. LEWIS:

Q. I remember. So if you answer the question, it's assumed that you understood the question.

A. Okay.

Q. Now if I ask you a question and you answer and I interrupt you, you just say, 'I am not finished,' and I'll apologize and let you finish.

A. Okay.

Q. Now if you don't understand my question and you want to clarify it, ask me and I'll try to clarify it. That's one of the things you do so that you are answering the question you think you are answering. And, finally, if I'm doing something you don't like,

I will try to stop. Sometimes I can and sometimes I can't, but if you ask, I'll try. Is that all okay?

A. Yes, sir.

Q. Now what is your job?

A. I'm general manager.

Q. Of what?

A. Of Toyota and Lexus and Scion of Greenville.

Q. Who owns that?

A. Terry Wall.

Q. Does Terry Wall own any other dealerships?

A. He does.

Q. What other dealerships?

A. The Toyota, Lexus and Scion of Greenville are in one corporation, but he does own another dealership in another corporation.

Q. What is that dealership?

MR. MARTIN:
And I would object to the question on the grounds that it's not within the scope of the 30(b)(6) Notice. You can answer what you know and, therefore, not binding on the corporation.

EXAMINATION CONTINUES BY MR. LEWIS:

Q. What's the name of the other --

A. Greenville Automotive.

Q. And what do they sell?

A. Volvos, Jaguars and Porsches.
Q. And to the best of your knowledge, that's another --
A. It is another corporation, yes, sir.
Q. And so you're the -- what is it you call yourself? The general --
A. A general manager.
Q. You're the general manager of the Toyota Store?
A. Yes, sir.
Q. Now how long have you been general manager?
A. I've been employed there since 1976. I've been general manager since approximately 1985.
Q. Do you know what an administrative fee is when I say administrative fee?
A. Yes, sir.
Q. Do you all call it an administrative fee?
A. No, sir.
Q. What do you call it?
A. We call it procurement fee.
Q. Procurement fee. So I'll call it a procurement fee. Is that okay?
A. Either one.
Q. Either one, okay. So if I slip up and say procurement fee versus some other kind of fee, you'll understand that we're all taking about the same fee?
A. Yes, sir.

Q. Administrative fee versus procurement, okay. Now when you were there in 1976, did they charge an administrative or procurement fee?
MR. MARTIN:
Object, again, respectfully, because it's outside the scope of the 30(b)(6), but if he has knowledge, he may answer, and it's not binding on the corporation.
WITNESS CONTINUES:
A. Repeat the question, please.
Q. Now were you told you were going to be a 30(b)(6) designee?
A. Yes, sir.
Q. Were you given the subject matters of that?
A. Yes, sir.
MR. LEWIS:
Mark this as Exhibit No. 1. It's the last page which has the topics and the note.
(Plaintiff's Exhibit No. 1 marked for identification.)
EXAMINATION CONTINUES BY MR. LEWIS:
Q. Do you know these topics?
A. Yes, sir, I do.
Q. Huh?
A. Yes, sir.
Q. The first topic on there is, "The time line and history for your charging administrative fees." Do you see that?
A. Yes, sir.
Q. And so what I'm asking you is, in 1976, were you charging administrative fees?
MR. MARTIN:
Objection, respectfully, again, to the form of the question, because under the "Definitions," it says, "The term 'relevant time period' refers to any and all times between August 29, 2002 and November 30, 2008." And that's what --
MR. LEWIS:
Well, it doesn't say on Topic A during the "relevant time period." So that's -- [to the witness] go ahead and answer it. I'll let your -- [To Mr. Martin] Just say you object on the relevant time, because you want this thing to last forever.
EXAMINATION CONTINUES BY MR. LEWIS:
Q. Go ahead.
A. I was actually service manager then, and I honestly don't know.
Q. How about, when do you first remember the administrative fee?
A. When I became general manager, it was there.
Q. And that would be in 1985?
A. Yes, sir.

Q. And that fee at that time, you don't know how it was calculated or how it was came up with?
A. No, sir.
Q. Do you remember how much it was?
A. No, sir, I don't.
Q. Now do you know what this suit is about?
A. Yes, sir.
Q. What's it about?
A. It's about whether we handled administrative fees properly in our advertising.
Q. How do you handle administrative fees properly?
A. We include the administrative fee in all of our advertised prices and all our advertising.
Q. So to make sure I understand, if you advertise a car for $10,000 and I come in and buy it for $10,000, will my invoice show an administrative fee?
A. Your buyer's order will show the administrative fee allocated, but the administrative fee will not be charged on top of the $10,000.
Q. So what you do is, you put down what the cost of the car will be, $10,000, minus the administrative fee?
A. That's, basically, correct, yes, sir.
Q. Now if I don't buy it for $10,000 and I buy it for $9000, do you charge an administrative fee on top of the 9000?

A. Yes, sir.
Q. So if your administrative fee was $100 and you advertised it for 10,000 and you worked a bargain for him to sell it for 9000, he'd pay 9100?
A. That's correct.
Q. By the same token, if you bargained to sell it for $9,950, he'd pay $10,050?
MR. MARTIN:
Objection to the form of the question.
EXAMINATION CONTINUES BY MR. LEWIS:
Q. Under your reasoning, that's true, isn't it? You'd charge him -- he didn't pay the advertised price, so he gets the $100 administrative fee, and that would push him above the advertising price?
MR. MARTIN:
Same objection.
EXAMINATION CONTINUES BY MR. LEWIS:
Q. Is that what you'd do?
A. No, sir.
Q. You'd just charge him the 10,000?
A. That negotiation would never happen.
Q. Oh, I see. So because it would never happen, you don't have to worry about it?
A. No one ever asks for $50 off is what I mean.
Q. What's your administrative fee now?

A. It's 289.
Q. Let's assume it's $300. And let's assume it's the $10,000 again, and you bargain down to sell it for $9800, $200 off. Now what would you do with your administrative fee? Would you add it to it and make it higher than the 10?
A. No, sir.
Q. Would you add any administrative fee to the $9,800?
A. No, sir.
Q. You wouldn't add any administrative fee?
A. No, sir.
Q. So how low would you go before you would add the administrative fee if you had advertised the car for $10,000?
A. 9,700.
Q. So if he bargained down to 9,700, he'd pay 10,000?
A. That is correct.
Q. But if he bargained down to 9800, he'd only pay 9800?
MR. MARTIN:
Objection to the form of the question.
MR. LEWIS:
You don't have to answer.
EXAMINATION CONTINUES BY MR. LEWIS:
Q. Now we were talking about, you remembered it was there when you got there in '85. Do you remember what it

was in '85?
A. (Indicates negative response).
Q. Do you remember any time when you raised it?
A. Yes, sir.
Q. When?
A. I believe we provided you with a time line for that with amounts -- with some dates and the amounts raised.
Q. Do you remember when you raised it, how you determined how much it would be?
A. Yes, sir, our overhead expenses.
Q. Your overhead expenses?
A. Uh-huh (affirmative).
Q. Just all your overhead expenses?
A. The ones related to the new and used car departments.
Q. The overhead related to the new and used car departments combined?
A. Yes, sir.
Q. Now that overhead is -- when you sell a car, you make a profit, don't you?
MR. MARTIN:
Objection to the form of the question.
EXAMINATION CONTINUES BY MR. LEWIS:
Q. You try to, don't you?
MR. MARTIN:

Same objection.
WITNESS CONTINUES:
A. That is, of course, the idea is to make a profit.
Q. Well, you sell a car for more than you paid for it, don't you?
MR. MARTIN:
Objection to the form of the question. You may answer.
WITNESS CONTINUES:
A. Not all the time.
Q. Well, you try to, don't you?
A. Yes, sir.
Q. And that money above what you pay for it, what do you call that?
A. That would be the gross profit.
Q. And gross profit, you take all your overhead out. That's right, isn't it? Gross profit has got to cover your overhead, doesn't it?
A. The gross profit has to offset the overhead to make net profit.
Q. Now this administrative fee, how did you determine how much of the gross profit you would need to come from the administrative fee?
A. We don't actually look at it that way.
Q. I know you don't, and I'm sure of that. Then how much

of the overhead did you think should come from the administrative fee?

A. We did not see any way to charge the amount that would be necessary really to offset any of those expenses or those expenses. We took a look at it, and we looked at what our competitions' ads were, what the marketplace we thought would bear, and we came up with the fee.

Q. And then do you account for them as a separate line item and add them up at the end of the year?

A. No, sir.

Q. What do you do? Account for them as a separate line item in your journal?

A. No, sir.

Q. Can I go in and see how much money you got in administrative fees?

A. No, sir.

Q. You've given us that, but you can't tell me how you got it?

A. That's -- that's the amount that was actually allocated on the buyer's order based on how many cars we sold.

Q. I've got to make sure I understand. That was the amount the administrative fee would be if I took all the buyer's orders and added them up?

MR. MARTIN:

Objection to the form of the question.

WITNESS CONTINUES:

A. Could you rephrase that?

Q. You've told me on the buyer's order there will be an administrative fee shown, whether it was included in the advertising price and you'll back it out or if it was under the advertised price it's added onto it, one of those two ways. But in all instances, there is an administrative fee on the buyer's order, correct?

A. There is one allocated on the buyer's order.

Q. And so when you allocate it, that allocation, you add up all the allocated administrative fees and you'll find out what it is your records show were administrative fees; isn't that true?

A. But not collected.

Q. Not collected?

A. Yes, sir.

Q. The reason it wasn't collected, you say, because some of them are allocated?

A. They were all allocated to additions to income, but we don't always collect the fees.

Q. When don't you collect them?

A. Customers negotiate it out.

Q. They negotiate it out?

A. Uh-huh (affirmative).

Q. And when they negotiate it out and you come to a price, then you allocate it back out?

MR. MARTIN:

Objection to the form of the question.

WITNESS CONTINUES:

A. Rephrase that for me.

Q. Every buyer's order you told me had a administrative fee on it?

A. It does.

Q. And you're telling me that sometimes you don't collect it?

A. That's correct.

Q. What you're saying is, sometimes you don't collect it because it's shown on the -- but when do they negotiate it out? When does the buyer say I'm not going to pay that fee?

A. When we sit down with the customer and a customer settles on a car, and we lay out all of the expenses, the fees -- not expenses. I'll correct that -- all of the fees, the taxes, the tag, the administrative fee, and we show the customer what the car is going to cost them. And at that point, there's most often more negotiation.

Q. And you say sometimes somebody will refuse to pay the

administrative fee?

A. Oh, frequently.

Q. Frequently?

A. Uh-huh (affirmative).

Q. But at the time that Mr. Watts bought his car on January 3, 2005, it was your "Policy to charge a procurement fee on all retail motor vehicle sales"; is that true?

A. To allocate.

Q. No, it says, "to charge" --

A. Right.

Q. -- isn't that true? Is that not true or true?

A. With the customer, it depends on whether you consider charge -- whether the customer actually paid it or not. It's allocated on the buyer's order, but the customer, in Mr. Watt's case, specifically, did not pay it.

MR. LEWIS:

Mark this.

(Plaintiff's Exhibit No. 2 marked for identification.)

MR. MARTIN:

What exhibit is that?

EXAMINATION CONTINUES BY MR. LEWIS:

Q. Look at Exhibit No. 2, page 5. Have you seen these before?

A. Yes, sir.
Q. Did you verify them as being under oath?
A. Yes, sir, I did.
Q. Huh?
A. Yes, sir, I did.
Q. And do you know what I'm going to ask you?
MR. MARTIN:
Objection to the form of the question.
EXAMINATION CONTINUES BY MR. LEWIS:
Q. Would you look at No. 10?
A. Yes, sir.
Q. You've seen that before?
A. I have.
Q. And you looked at it recently?
A. I have.
Q. Huh?
A. Have I looked at it recently?
Q. Uh-huh (affirmative).
A. Yes, sir.
Q. And why did you look at it recently?
A. To sign this form.
Q. So that was the last time you looked at it is when you signed it?
A. The last time?
Q. Uh-huh (affirmative).

A. Yes, sir.
Q. And that was when you signed it on the 16th day of September, 2008.
A. Well, I need to retract that then. I thought I was looking at something else. I thought I was looking at the Affidavit that I signed and stated I had reviewed.
MR. MARTIN:
Objection to the question.
EXAMINATION CONTINUES BY MR. LEWIS:
Q. Look at the document, what you signed here. Do you see that --
A. Oh, I see it.
Q. -- "Personally appeared before me" --
A. Correct.
Q. -- "... who states that [you're] familiar with the facts and matters alleged ... and the same are true [and] based upon his knowledge"? Do you see that?
A. Yes, sir. That is correct.
Q. When was the last time you looked at the document, Exhibit No. 1 -- excuse me -- I mean, Exhibit No. 2?
A. (Reviews document). I don't see where I signed -- okay.
Q. Please read what you said you did. You read them and you saw them?
A. Yes, sir. I actually read this, again, yesterday.

Q. Yesterday?
A. Yes, sir.
Q. Why did you read it yesterday?
A. Just to refresh my memory.
Q. When you refreshed your memory, you see what No. 10 says?
A. (Reviews document).
Q. You see 10-a?
A. Yes, sir. I'm reading that now.
Q. It says that, "State your policy as to whether you charge an administrative fee on car purchases. Include in the description the following: Whether all purchasers pay the administrative fee, and if not, why not?" Do you see that?
A. Yes, sir.
Q. And you answer under oath, "At the time of Plaintiff Michael Watts' purchase on January 3, 2005, Defendant Toyota of Greenville's policy was to charge a Procurement Fee on all retail motor vehicle sales." Do you see that?
A. Yes, sir.
Q. Is that true?
A. The policy was to allocate the fee. The policy was to allocate the fee and to collect the fee if it was not included in the advertised price. However, in the

negotiation process, we absorbed the fee on Mr. Watts' deal, specifically. And the fee appears on his buyer's order, but he really didn't pay it.
Q. He didn't pay it?
A. No, sir.
Q. Well, it appears as a "Fee Collected."
A. It is a fee allocated.
Q. Allocated. Does it say "allocated" on his buyer's order?
MR. MARTIN:
Objection to the form of the question, and I would like to point out for the record that these Answers to Interrogatories were amended on January 16th --
MR. LEWIS:
On January 16th. Okay, they were amended. They were not sworn to.
EXAMINATION CONTINUES BY MR. LEWIS:
Q. Do you know about why they were amended, Mr. Turk?
MR. MARTIN:
And I would also object, they were sworn to, and the verification was sent to you before this deposition.
EXAMINATION CONTINUES BY MR. LEWIS:
Q. Mr. Turk?
A. Yes, sir.
Q. Did you amend these Answers?

A. Yes, sir.
Q. Did you amend them at your lawyer's request?
MR. MARTIN:
Objection to the question of any conversations between the lawyer and attorney [sic] during the process of litigation.
EXAMINATION CONTINUES BY MR. LEWIS:
Q. When you look --
MR. MARTIN:
Excuse me. Let me just get my objection on the record, Cam. My objection is that any questions dealing with advice between an attorney and client during the pending case is inappropriate to be asked and ask that the privilege be invoked in that he not answer any questions about what his lawyer told him to do or not do.
EXAMINATION CONTINUES BY MR. LEWIS:
Q. Let me ask you something. This Exhibit No. 2, you verified that as being true, right?
A. No, sir. It's actually -- was actually a poor choice of words.
Q. Well, you verified it as being true, didn't you?
A. Yes, sir, I did.
Q. And who was your lawyer at the time?
A. At the time that this action was filed against us --

Q. At the time you answered Exhibit No. 2, who was your lawyer?
A. -- it was Harvey Sanders.
Q. Then after Exhibit No. 2, sometime after it, you have amended and changed your answer?
A. Yes, sir.
Q. And who was your lawyer when you changed your answer?
A. I'm not sure if Mr. Sanders corrected that or not.
Q. Well, who was the lawyer when you sent your answers in? Who signed the new answers?
MR. MARTIN:
Could you give the witness a copy of them?
MR. LEWIS:
Sure.
EXAMINATION CONTINUES BY MR. LEWIS:
Q. You want to see them? Look at that and see if it refreshes your recollection.
A. (Reviews document).
Q. It's on page 8.
A. My copy doesn't say -- June 12th?
Q. Huh?
A. What is the date? Is that 16th of --
Q. Sixteenth of January.
A. Sixteenth of January.
Q. Who's your lawyer? Who does it say your lawyer is

then?
A. That was Mr. Martin.
Q. So we got one set of answers when Mr. Sanders was your lawyer and a new set of answers when Mr. Martin is your lawyer, right? Isn't that right?
A. That is correct, but I need to explain something.
Q. Explain all you want to.
A. Okay. Mr. Sanders was aware that this was, basically, misstated, because these fees are not always collected.
Q. And he was aware of that?
A. He was.
Q. And were you aware of it?
A. Prior to changing the --
Q. Were you aware of it?
A. Was I aware? Yes, sir.
Q. And did you sign Exhibit No. 2 when you were aware of this?
A. Exhibit No. 2? No, sir.
Q. You didn't sign it?
A. I did sign it.
Q. And you were aware of the fact that you had allocated fees when you signed them?
A. Yes, sir. I did not make the distinction between the allocation and the charge.

Q. You didn't?
A. No, sir.
Q. Now with these fees, whether they're allocated or charged, they're separately accounted for, aren't they?
A. No, sir.
Q. When you take your buyer's order and it has the administrative fee on it, is every buyer's order entered into your accounting books?
A. Yes, sir.
Q. And in your accounting books, is there a line item for administrative fees?
A. No, sir.
Q. So when you put in what a person pays for a car into your accounting records, am I to understand that you take the amount that's on the buyer's order that they say they paid for the car and you add to it the procurement fee, and that's the amount that you put in your bookkeeping as what a car costs or what they paid for the car?
A. Repeat that question, again.
Q. Okay. Somewhere in your accounting records you put in how much each car was sold for?
A. Correct.
Q. So let's suppose it's Car No. 10, and it was sold for

$10,000, and it showed a $300 procurement fee or administrative fee. In your records, you would enter that in as that you got $10,300 for that car?

A. No, sir. We'd have the tax and the tag and title as well.

Q. That would be entered in just as a lump sum?

A. As a separate line item.

Q. We're talking about on the line item without -- not taxes, not tags, but what they paid for the car. If you paid 10,000 -- he said he paid 10,000 on the buyer's order, and there's a $300 administrative fee shown on there, what will it show in your records that he paid for the car, not tags and not taxes?

A. Well, if that's a negotiated price of $10,300, then that $300 would not be -- if you take the $10,300, the $300 is going to be allocated off the buyer's order to Additions to Income every time, but it is not collected from the customer.

Q. I didn't ask you that. I want to know in your records -- I don't care how it got there. Every buyer's order has an amount that he paid for the car and a administrative fee shown. Okay?

A. Right.

Q. Now what I want to know is, when you take and put it in your accounting, do you add those two together, or

do you put them in separately?

A. They go in separately.

Q. And under what heading is administrative fee put in?

A. Additions to Income.

Q. Additions to Income?

A. Yes, sir.

Q. And are there any other items put into Additions to Income other than administrative fee?

A. Yes, sir.

Q. What?

A. Interest earned on the company checking account.

Q. Interest earned. Anything else?

A. Interest earned on any CDs, bad debt recoveries, rental car income.

Q. Anything else?

A. Factory money for contests.

Q. Anything else?

A. Factory money for the finance and insurance objectives.

Q. Anything else?

A. Used car write-downs -- used car write-downs from prior years would go there as well, write-down recovery.

Q. Anything else?

MR. MARTIN:

While we're stopped, I'd just like to make a general objection that this question, these series of questions, are, again, outside the scope and that he's not prepared as the corporate representative to answer it, but what he knows, he's certainly capable as his own personal knowledge.

MR. LEWIS:

Make sure you understand, because I don't say anything does not mean I agree with one thing you say. Is that fair?

MR. MARTIN:

I would assume that you'd agree with everything I say, Cam.

EXAMINATION CONTINUES BY MR. LEWIS:

Q. Anything else?

A. Some warranty receivables recovery would go there, too.

Q. Let me ask you. If we go get in your computer the Additional -- what was it? -- Additions to Income, then are each one of the Additions to Income coded as to what they are so you could say I want to see all the bad debt recoveries, I want to see all the interest earned on the CDs, the interest earned on the checking account? Are they coded so we could get all that information?

A. It all actually goes to that one line.

Q. And so you'd have to go look through the whole printout and just pull them out one by one?

A. Yeah. You know, I think it's all lumped sum there together, so it would be -- to reconstruct it would be --

Q. Well, if it were every --

MR. MARTIN:

Please wait.

MR. LEWIS:

I'm sorry.

WITNESS CONTINUES:

A. To reconstruct it, I don't know.

Q. Every sum has a bunch of individuals.

A. Sure.

Q. So somewhere there's a bunch of little numbers that add up to the big number.

A. Certainly.

Q. So if I look in those little numbers, it'll tell what they are, doesn't it?

A. Well, you'd have to -- you would have to pull all the documents that went to Additions to Income to track it by.

Q. You would. There's not a printout somewhere that just prints out all of them as to that?

A. No, sir.
Q. But we do know that every buyer's order shows an administrative fee?
A. There's one allocated --
Q. You say it shows it?
A. -- on every buyer's order.
Q. Well, I'm using the word "show" to try to be nice to you.
A. Well, I appreciate that.
Q. So all I want to know is, if I look on every buyer's order, there's a little line that says, "Administrative Fee," and there'll be a number right beside it?
A. I agree with that.
Q. Now this Additions to Income then in your accounting would be then added to the other income you get. What is the income in addition to? It says, "Additions to Income." What's income?
MR. MARTIN:
Objection, again, to the question on the grounds that it's not subject to the limitations of the 30(b)(6) Notice, and, therefore, not binding on the corporation, but the witness may answer if he knows.
WITNESS CONTINUES:
A. The Operating Profit appears above Additions to

Income.
Q. Operating Profit.
A. Right.
Q. What is Operating Profit?
MR. MARTIN:
Same objection.
WITNESS CONTINUES:
A. The Operating Profit is the gross profit less all of your expenses, selling expense, operating expense and overhead expense. And that gets you to that number.
Q. And the overhead expense that you just talked about would include the overhead for new and the overhead for new [sic] operations, wouldn't it?
A. I'm sorry?
MR. MARTIN:
Objection to the form of the question.
EXAMINATION CONTINUES BY MR. LEWIS:
Q. Excuse me?
A. Yes, sir. Could you repeat that?
Q. This overhead expense that you just mentioned, that overhead expense would include the overhead for the new car operation and the used car operation and the service operation and the parts operation, all of them, wouldn't it?
MR. MARTIN:

Objection to the form of the question.
WITNESS CONTINUES:
A. Would you repeat that?
Q. You said that the operating profit was after you got the gross profit and you subtracted expenses and overhead and so forth?
A. Yes, sir.
Q. Now the overhead that you're talking about would be the overhead for what?
MR. MARTIN:
Objection about the scope, again.
WITNESS CONTINUES:
A. The financial statement has columns. It has a New Car Department column and a Used Car Department column and a Parts Department column and a Service Department column.
Q. I understand. I just --
A. And a Body Shop Department.
Q. All I'm asking about is that overhead --
MR. MARTIN:
Again, I'd like the witness to finish his answer, please.
MR. LEWIS:
He did. That's all the departments.
MR. MARTIN:

Are you finished with your answer?
WITNESS:
No, I really wasn't.
EXAMINATION CONTINUES BY MR. LEWIS:
Q. What's the next one? Are there any other departments?
A. All of those columns are there, and all of the expenses for each department are separately allocated and divided to those departments, and it appears that way on the statement.
Q. So when you say overhead, it would include the overhead for each of those departments?
MR. MARTIN:
Objection to the form of the question.
WITNESS CONTINUES:
A. It is broken out for each department based on that department's expenses, departmental expenses.
Q. That's right. And when you subtract it from the gross profit, you lump it altogether, and then you subtract it, and then you add in the -- that would be called the operating profit, wouldn't it?
MR. MARTIN:
Same objection about the scope.
EXAMINATION CONTINUES BY MR. LEWIS:
Q. Wouldn't it?
A. Yes, sir.

Q. And then you add to the operating profit the additional income?
MR. MARTIN:
Same objection.
EXAMINATION CONTINUES BY MR. LEWIS:
Q. Is that right?
A. Yes, sir. That is correct.
Q. And then after you add it to the additional income there, what do you call that number?
A. That would be the net profit before taxes.
Q. Net profit before taxes.
MR. MARTIN:
Same objection to all these lines of questions.
EXAMINATION CONTINUES BY MR. LEWIS:
Q. Thank you. Now you said that when you determined to get the amount of the administrative fee that you looked at other dealers. Did you talk to other dealers?
A. No, sir.
Q. Did you e-mail other dealers?
A. No, sir.
Q. Did you get any information from other dealers?
A. No, sir.
Q. How did you know what they were charging?
A. The newspaper ads.

Q. You just looked at their newspaper ads, okay. And that was your sole source of what other people were charging?
A. Yes, sir.
Q. And when did you start looking at newspaper ads?
A. I look at newspaper ads daily.
Q. Do you remember when they started appearing in newspaper ads, the administrative fees?
A. Yes, I know when we put it in.
Q. When was that?
A. We put the administrative fees in the ad -- I can't really say the exact date that -- they were in the ad prior to the August 2002 dates of this litigation.
Q. So they were put in before the litigation?
A. Yes, sir.
Q. Why did you decide to put them in?
A. As an effort to properly disclose.
Q. So without having them in there, then they were not properly disclosed?
A. Not necessarily.
Q. Well, if you put them in there in an effort to properly disclose, you didn't have them in prior to whenever you decided to put them in, did you?
A. I honestly --
MR. MARTIN:

Objection to the form of the question.
WITNESS CONTINUES:
A. I honestly don't remember. I really don't.
Q. Well, you said there was a time you decided to put them in the ads.
A. Uh-huh (affirmative).
Q. That's the administrative fee; is that right?
MR. MARTIN:
Same objection about the scope.
EXAMINATION CONTINUES BY MR. LEWIS:
Q. Is that right?
A. I guess that's more of an assumption.
Q. On whose part?
A. On my part to say that.
Q. So you don't know --
A. I don't know when -- they've been there as long as I can remember.
Q. They've been in the ads as long as you can remember?
A. They have.
MR. MARTIN:
Same objection.
EXAMINATION CONTINUES BY MR. LEWIS:
Q. Now the South Carolina Automobile Dealers Association, did you talk to them about the fees?
A. No, sir.

Q. Did you get bulletins from them?
A. Yes, sir.
Q. Did you read them?
A. Yes, sir.
Q. Did you do anything based upon those bulletins?
A. I recall seeking legal counsel at the advice of one of those bulletins.
Q. The what?
A. We sought out an attorney at the advice, I believe, of one of those bulletins.
Q. Who was your attorney you talked to?
A. I don't remember who it was.
Q. Do you remember the date?
A. I do not.
Q. Is there a way for you to find the date?
A. By looking at the SCADA bulletins, I might could determine an approximate date.
(Plaintiff's Exhibit No. 3 marked for identification.)
EXAMINATION CONTINUES BY MR. LEWIS:
Q. Here's one. This was on September 6, 2007.
MR. MARTIN:
What exhibit number?
COURT REPORTER:
Three.
EXAMINATION CONTINUES BY MR. LEWIS:

Q. Do you remember that one?
A. Yes, sir, I do.
Q. Would that have been when you went to get some legal advice?
A. No, sir. It was prior to that.
Q. Prior to this. So it would be some other bulletin?
A. Yes. Uh-huh (affirmative). Do you have one there from 2002, 2001?
Q. That's when you think it was, somewhere around there?
A. Uh-huh (affirmative).
Q. That's okay. Do the best you can. Did you have any meetings with anybody at the South Carolina Automobile Dealers Association?
A. I have attended two meetings in my 33 years.
Q. Were any of them where they discussed the administrative fee?
A. Only the one after the litigation was filed.
Q. And when was that?
A. Well, August -- it was August or September. I guess the meeting must have been October of that same year, maybe November.
Q. And who was there?
A. The head of SCADA, Pat Watson.
Q. Pat Watson?
A. Yeah.

Q. Were there any lawyers there?
A. Yes, sir.
Q. Who?
A. I don't know. I know that Harvey Sanders, who represented us at that time, was there. He went down. Mr. Hamm was there. There were other attorneys there, but I don't know who they were. I believe Mr. Becker may have been there, but I'm not certain about that.
Q. Did they have a general discussion?
A. They did, yes, sir.
Q. Have you ever signed anything called a Joint Defense Agreement?
A. Yes, sir.
Q. When did you sign that?
A. I honestly don't remember that. It was not at the meeting.
Q. Was it before or after?
A. I honestly don't remember that. I don't remember the sequence.
Q. Was Mr. Sanders your attorney, or was Mr. Martin your attorney?
A. Mr. Sanders.
Q. What did Mr. Watson say at that time?
A. Well, he went over the -- what the Department of Consumer Affairs had previously stated, the items that

needed to be done in order to charge a dealer fee.
MR. MARTIN:
Would you mind if I took a break since we're stopped looking for a document?
(BRIEF RECESS)
(Plaintiff's Exhibit No. 4 marked for identification.)
EXAMINATION CONTINUES BY MR. LEWIS:
Q. Look at Exhibit No. 4. You mentioned that you wanted to look at an earlier -- there would have been an earlier bulletin than Exhibit No. 3, and I did find an earlier one. Is that the one you're talking about after which you went and got legal counsel?
A. (Reviews document). It may have been. The time frame is certainly --
Q. Yes, sir, that seemed to be right in --
A. -- about right.
Q. Now what I want you to look at in Exhibit No. 4, are you telling me prior to Exhibit No. 4 that you included the fee in the advertised price?
A. Yes, sir.
Q. Why did you do that?
A. We disclosed the fee for a number of years. We always enclosed -- included the dealer fee plus the tax, tag and title in the disclaimer in all our ads.
Q. Oh, you didn't put down how much it was; you just said

there would be a dealer fee?
MR. MARTIN:
Objection to the form of the question.
WITNESS CONTINUES:
A. I cannot remember when we didn't show the amount. I really can't. I can't remember when we didn't show the amount that we were charging for the fee. I'm just saying we never disclosed the dollar amount on the tax and tag, but we did on the fee.
Q. Now let's suppose you had a $10,000 car, and you had a disclaimer at the bottom. Would that be a disclaimer that included the administrative fee or it didn't include the administrative fee?
MR. MARTIN:
Objection to the form of the question.
WITNESS CONTINUES:
A. Could you rephrase that?
Q. You said you had a disclaimer. If the car was $10,000, Buy this car for $10,000 --
A. Uh-huh (affirmative).
Q. -- what did the disclaimer say?
A. It may have said plus those items, plus the fee, but the fee, the amount of the fee, would have been there.
Q. So plus those?
A. Yes, sir.

Q. So to get the advertised price including the fee, you would have to have added the fee to the $10,000?
A. The tax --
MR. MARTIN:
Object to the form of the question. You may answer.
WITNESS CONTINUES:
A. The tax and the title and the fee would all have to be added to the price of the car.
Q. To get the advertised price of the car not including tax and tags and title --
A. You're speaking of the time period prior to this notice; is that right?
Q. That's right. Being Exhibit No. 4. To get the price, you'd have to add the administrative fee to the price that was in the ad when you looked at the disclaimer?
MR. MARTIN:
Objection to the form of the question.
EXAMINATION CONTINUES BY MR. LEWIS:
Q. Is that right?
A. Yes, sir.
Q. Now did that change, or is that still the way it works?
A. All of our advertising prices -- all of our prices now say, "Price includes 289 procurement fee."
Q. Is that the same for the internet fee, the internet

advertising?
A. The internet advertising, it says, "Price includes -- all pricing on this site includes 289" or something to that effect.
MR. LEWIS:
Mark that Exhibit No. 5.
(Plaintiff's Exhibit No. 5 marked for identification.)
EXAMINATION CONTINUES BY MR. LEWIS:
Q. There's an internet ad. Do you see that, Exhibit 5?
A. Uh-huh (affirmative).
Q. I don't see where it says included. I see where it says excludes.
A. What was this date? Was this April of '08? (Reviews document).
MR. MARTIN:
Just for the record, could you please identify what Exhibit 5 is, Cam? Where does it come from? Is it like one screen of what's on the internet?
MR. LEWIS:
I don't know. Ask him.
EXAMINATION CONTINUES BY MR. LEWIS:
Q. Isn't this an internet ad?
A. It is. It's an ad to lease. It has lease payments. It doesn't have an advertised price.
Q. So you're saying when you have a lease car you don't

have to say what the administrative fee is?
A. I'm not aware of any statute that says you do.
Q. So on all these cars you add an administrative fee?
MR. MARTIN:
Objection to the form of the question.
WITNESS CONTINUES:
A. Repeat the question.
Q. I go out and I go to lease a car from you. And we know what the lease payment is and there's always a down payment, isn't there?
A. Yes, sir.
Q. And there's a down payment plus an administrative fee on all these cars, isn't there?
MR. MARTIN:
Objection to the form of the question.
WITNESS CONTINUES:
A. Not always.
Q. Well, if I go get a lease -- what do you call them? A lease form?
A. Did you come and do what now?
Q. I'm going to lease a car.
A. Okay.
Q. There's some kind of document that sets forth the down payment and the lease payment?
A. The disclosure, yes, sir.

Q. What is it called? What's that form?
A. Lease disclosure.
Q. That disclosure will have on it a procurement fee and a number on every lease car, won't it?
A. No, sir.
Q. It doesn't have a administrative fee?
A. It does not. If the customer says -- we will absorb the fee if necessary and just go ahead with the ad price of the car.
Q. Excuse me. But on your documentation, don't you -- what do you call it? -- you back it out and you put it there? It's shown, isn't it?
A. There is a --
MR. MARTIN:
Objection to the form of the question.
WITNESS CONTINUES:
A. Once again, there is a line item on the buyer's order that has the fee listed, but the cap costs and all are reduced by the amount of that fee.
Q. But if I pick up the buyer's order, and I'm some new guy and I look, I will see where it says that an administrative fee was charged, won't it?
MR. MARTIN:
Objection to the form of the question.
EXAMINATION CONTINUES BY MR. LEWIS:

Q. Isn't that true?
A. Repeat that question, again.
Q. When I pick up the buyer's order on a lease car and I look at it, I look at all the charges, there will be -- it will say that I was charged an administrative fee. I don't know whether it was a setoff or whatever. If I just looked at the paper, itself, it will say charged administrative fee?
MR. MARTIN:
Objection to the form of the question.
EXAMINATION CONTINUES BY MR. LEWIS:
Q. Isn't that true?
A. The fee will be shown there. However, when the customer comes in and says they are interested in leasing this car, our salesman is going to sit down with them and go over these numbers. At that point, these things are often negotiated lower than what the advertised price is.
Q. I understand.
A. And they're often -- the fee is negotiated out.
Q. But all I'm asking you -- I don't care whatever you say the negotiations are -- when I write the buyer's order, I write in an administrative fee or it's either printed where it says, "Administrative fee" on the buyer's order; isn't that true?

A. It's allocated on every buyer's order.
MR. LEWIS:
Mark this one, please.
(Plaintiff's Exhibit No. 6 marked for identification.)
EXAMINATION CONTINUES BY MR. LEWIS:
Q. This is Exhibit No. 6 and, I think, it includes Exhibit No. 5, but the front page is an internet ad for a car. And where does it say anything about administrative fee?
A. (Reviews document). Without being on the website, it's impossible for me to really tell.
Q. Well, let's look at the "Starting at 12,215." Okay? Does that include an administrative fee or exclude an administrative fee?
A. You're referring to the disclaimer on 7412?
Q. No. I just want you to tell me. Just looking at Exhibit 6, the first page, it says, "Starting at 12,215." Does that 12,215 include an administrative fee or exclude an administrative fee?
MR. MARTIN:
Objection to the form of the question.
WITNESS CONTINUES:
A. I don't know without seeing all of the paid printouts on the website, because this -- because this disclaimer we see here (indicating) comes from the

website providers, not just Toyota, and it is used in every state. So when they put that in there, that terminology can't always be changed. That has changed, because the distributor over the years has given us a lot more capability to be more flexible with our website. But whenever we advertised a price starting at 12,215, that included the fee. We never -- we've never added the fee to an advertised price.
Q. Where does it say in this advertisement that it includes the fee?
A. It doesn't in what we're looking at here. I don't know if it may if at some point --
Q. Well, you said --
MR. MARTIN:
Excuse me. Please let him answer your question.
MR. LEWIS:
Fine. I thought he was finished.
EXAMINATION CONTINUES BY MR. LEWIS:
Q. Go ahead. What do you want to say?
A. There were some times with Toyota and Lexus where we could go somewhere else and qualify that, but I can't tell you if that was the case here or not based on what I'm looking at here.
Q. What do you mean, "qualify"?
A. It may say it somewhere in the ad in the areas that we

had ability to modify.
Q. Well, let me ask you this. So are you telling me -- what did you say this was from? Southern Toyota?
A. The --
MR. MARTIN:
Objection to the form of the question.
WITNESS CONTINUES:
A. The template, to the best of my knowledge, is a Southeast Toyota template.
Q. Southeast Toyota?
A. Yes.
Q. And did Southeast Toyota advertise for you?
A. Southeast Toyota was the provider -- or they still are the provider, let me rephrase that, of our internet solution.
Q. And are you telling me that Southeast Toyota did or did not put on something about the administrative fee in their internet ads?
A. This particular ad --
Q. I'm just asking you in general.
MR. MARTIN:
Excuse me. Please let him finish.
WITNESS CONTINUES:
A. I'd like to just qualify something here. This particular ad is not from our specific dealership

website. I don't believe that it is. It's got "Toyota Connections" on there, so this must have come from a link.

Q. Well, let me ask you about your advertising with South -- what's their name? Southeastern --

A. It's right here on 7412 at the top. If you go to page 7412, you'll see it at the top, Southeast Toyota Distributors.

Q. Southeast Toyota Distributors. What is that?

A. It's the distributorship where we receive our cars from, where we actually purchase our cars from.

Q. And then do they send out advertisements?

A. They from time to time will do new model introductions, but they don't generally do pricing.

Q. Well, what about this Exhibit 6? What is it? Where did it come from?

A. It came from Southeast Toyota would be my opinion.

Q. And it has pricing on it?

A. I don't see anything on here from Toyota of Greenville.

Q. Well, if it's on the internet, would this be applicable to your dealership?

A. I believe I saw something over here that said that it was -- added a disclaimer about Florida, Georgia, North Carolina and South Carolina lease offers. And

that's the area that they distribute cars to. So this came -- I don't know where this came from, but it's not something that we --

Q. Would you honor it? Is this something you'd honor?

MR. MARTIN:

Excuse me, Cam. Would you please let him finish, and then ask your next question?

MR. LEWIS:

He did finish. He said it wasn't his.

MR. MARTIN:

Were you finished, Mr. Turk? Just as a matter of gentlemancy, I would ask that you let him finish his answer.

MR. LEWIS:

No such word.

MR. MARTIN:

Sorry?

WITNESS CONTINUES:

A. When it shows Yaris starting at 12,215, it doesn't show MSRP there, so I don't know. I don't know what that number represents.

Q. Well, when they ad this business on the internet, is this something that you honor or don't honor?

A. When they generally do pricing like that --

Q. I only asked you if you honor it or don't honor it.

MR. MARTIN:

Please let him finish.

MR. LEWIS:

That was a yes or no.

MR. MARTIN:

No, it's not.

MR. LEWIS:

He can explain it all he wants.

EXAMINATION CONTINUES BY MR. LEWIS:

Q. Do you honor it or not?

A. I can only say that I'm certain they would not have put this price in there if it was not an MSRP. I don't believe that they would have, because they don't set our pricing. But they didn't say MSRP in this ad, and we did not prepare this ad. So if a customer came in with this 12,215, that's what they would pay, and that would include the procurement fee.

Q. It would?

A. But we're not going to look at that customer and tell them that we're not honoring that.

Q. I agree with you. Now if he looks at this ad, he wouldn't know it, whether it included a procurement fee or not, would he?

A. When he came in --

Q. When he looked at this --

MR. MARTIN:

Please, Mr. --

MR. LEWIS:

Let me ask him.

MR. MARTIN:

Mr. Lewis -- Mr. Lewis --

MR. LEWIS:

No. He's going to answer my question.

MR. MARTIN:

-- one second, one second. Let's -- let's -- let me have the floor. I'm going to object --

MR. LEWIS:

It takes you too long.

MR. MARTIN:

-- on the grounds that the witness is not being allowed to finish his answers, and I would request, respectfully, that when you ask a question, Mr. Lewis, you give Mr. Turk an opportunity to completely answer your question before you jump to the next one.

MR. LEWIS:

Would you ask him to please answer yes or no and give any explanation he wants? These are yes and no questions.

MR. MARTIN:

I will ask him to answer the questions to the best of

his ability, but I would ask you, Mr. Lewis, to allow him to finish his answers before you go to the next question.

MR. LEWIS:

All right.

MR. MARTIN:

Thank you very much.

EXAMINATION CONTINUES BY MR. LEWIS:

Q. How would anybody know -- excuse me. Let me start over. Looking at Exhibit 6, you wouldn't know whether the 12,215 included an administrative fee or didn't include an administrative fee, would you?

MR. MARTIN:

Objection to the form of the question.

WITNESS CONTINUES:

A. In looking at the document you have before me, I would not know.

Q. Thank you.

A. But I'd like to -- I'd like to add something to that if I may.

Q. Add anything you want. If you'll answer them like that, you can speak for a day.

A. I don't want to speak for a day, believe me. The customer -- I know this is repeating myself. But the customer that comes in on this ad, if this is, indeed,

an MSRP, which I am doing something you shouldn't do in assuming it is, that customer is not likely to buy that car at that price anyway. But if they did, we would not charge an administrative fee on top of it. And in the negotiation process, when we're talking with the customer, we go over all the fees and document everything to the customer at that time.

Q. Anything else you want to say?

A. No, sir. That's quite enough.

Q. We have documents that show you had a procure fee of $69, and then it went and we have one in 1/22/03 where it went to 129, and they're preprinted. Do you know what I mean by that?

A. Yes, sir, I do.

Q. That means that they're on the buyer's form. There's a number that's already there and it's printed there, and it's called a procure fee?

A. Yes, sir.

Q. And then in 2/05, it went to 189 preprinted --

A. May I have a copy of that?

Q. I'm just saying, if you want to look at them all and take that time, I'm going to -- you can assume it or if you want to verify it, you can do whatever you want. I'm not really interested. The numbers are the numbers.

A. Okay.

Q. And then in September of '06, we show 289 preprinted. Now all those numbers were, as far as you know, were -- or they came from the process that you earlier told me?

MR. MARTIN:

Objection to the form of the question.

WITNESS CONTINUES:

A. The process --

Q. Where you said --

A. -- analyzing --

Q. -- the overhead.

A. -- the overhead? Yes, sir.

Q. And there isn't any difference how any of them were -- the amount was obtained except through the process you said? There's no one -- they were all done the same way; they just came up with a different answer as time went on?

A. That's a fair statement, yes, sir.

MR. LEWIS:

Mark this.

(Plaintiff's Exhibit No. 7 marked for identification.)

EXAMINATION CONTINUES BY MR. LEWIS:

Q. Look at Exhibit No. 7.

A. Yes, sir.

Q. I'd just like to know. This is a Installment Sales Contract?

A. Yes, sir.

Q. I don't see anywhere on there that you put the procurement fee or the administrative fee on such documents.

MR. MARTIN:

Objection to the form of the question.

WITNESS CONTINUES:

A. (Reviews document). This is a contract that is prepared and supplied to us by World Omni Financial Corporation.

Q. Yes, sir.

A. Our buyer's order, which is our contract with the customer, has the fee disclosed.

Q. So where in this contract -- is the fee included in the 22,211?

A. Yes, sir.

Q. Huh?

A. The fee is allocated in that amount.

Q. And somewhere in there there's that fee?

A. Yes, sir.

Q. And we're looking at Exhibit No. 7. I don't know that. I'd have to go back to the buyer's order?

A. The buyer's order -- actually, the buyer's order and

any worksheet where we work numbers -- we start with the worksheet. They all would reflect the fee, and it would have been explained to the customer prior to getting to the finance contract. This is the finance contract. It's not the contract between us and the customer.

Q. Now this buyer's order --

MR. LEWIS:

Let's make it Exhibit No. 8.

(Plaintiff's Exhibit No. 8 marked for identification.)

EXAMINATION CONTINUES BY MR. LEWIS:

Q. That's a buyer's order, isn't it?

A. Yes, sir, it is.

MR. MARTIN:

One second, one second.

EXAMINATION CONTINUES BY MR. LEWIS:

Q. Right?

A. Yes, sir.

Q. And we see that procurement fee down there as 289 printed in, don't we?

A. Yes, sir, we do.

Q. Huh?

A. We do.

Q. And this buyer's order is the last document that is given to the purchaser throughout negotiations. This

is the end of negotiations?

MR. MARTIN:

Objection to the form of the question.

WITNESS CONTINUES:

A. It could be.

Q. Well, do you ever negotiate after that?

A. Often there's more than one buyer's order has happened.

Q. Oh, so someone reneges?

A. They change their mind about the car.

Q. So then there'll be another buyer's order?

A. That's correct.

Q. But this Exhibit No. 8 is supposed to be the last document unless someone changes their mind?

MR. MARTIN:

Objection to the form of the question.

WITNESS CONTINUES:

A. No, sir. There are a lot of documents that are signed in a deal as I'm sure you have seen.

Q. Yeah.

A. So there are a lot of documents in there. This is not the last document.

Q. I'm sorry. This would be the last pricing document. This is the end of the pricing negotiations, and this is what is the last document?

A. Once again, not all the time.

Q. Well, even if there's two of them, the last document, the last pricing document will be a buyer's order?

A. The last pricing document, yes, sir. I will agree with that.

Q. And every buyer's order has a procurement fee of 289 printed there?

MR. MARTIN:

Objection to the form of the question.

WITNESS CONTINUES:

A. It would depend on when the car was purchased, of course, based on the fee at that time.

Q. It would have a procurement fee, but it will be printed there just like we went through them, 69 all the way up to 289 depending on the date?

A. That is correct. It would be allocated on every buyer's order.

Q. I didn't ask you that. All I asked you, it would be printed on there just like it is on Exhibit No. 8?

A. Yes, sir.

Q. And why don't you put it on the installment contracts?

A. You will find it on some and then some you may not. Different lenders have different policies about that. What happens -- like this particular one (indicating) is a retail installment contract instead of a lease,

and I'm looking at this to see -- because these forms change all the time. This is an '02 form. It's not one, of course, that's being used today. What happens, the number off the bottom of the buyer's order is normally the number they want to see and a cash price. Now that's not true of every lender. Every lender has their own forms, has their own policies. And we've got 20-some odd lenders we're using, and some of them will allow us to itemize on there, but there was a time when nobody did. All they wanted on there was items that the customer purchased in the finance department --

Q. Let me ask you this.

A. -- and they would send the contract back to us and not pay us.

Q. Let me ask you this. Who precluded you -- what lenders precluded you from showing the administrative fee on the installment contract? Did anybody preclude you from doing that?

A. Yes.

Q. Who?

A. I cannot honestly say. I can't. What happened, I recall getting contracts back in the mail and having to have a customer come in for my F & I managers and get them to re-sign the contract because we itemized

something that they didn't want to see on there. They don't want that in there. They only wanted -- it used to always be that way. Like I say, it has evolved to where now -- now I do not know of anybody that we are doing business with that won't let us put it on there. I think that's an accurate statement.

Q. Do you now put --

A. It's not the case.

Q. Do you now put it on there?

A. Yes, sir.

Q. But prior to your putting it on there, some people precluded you from putting this administrative fee?

A. Yes, sir.

Q. And you can't tell me who they were?

A. No, sir, I can't.

Q. Do you know what your net profit before taxes is?

MR. MARTIN:

Objection to the form of the question on the grounds it's outside the scope of the Notice. If the witness knows, he may answer.

WITNESS CONTINUES:

A. Yes, sir, I know what it is.

Q. Do you remember what it was last year?

MR. MARTIN:

Same objection.

WITNESS CONTINUES:

A. No, sir. It's confidential information.

Q. You know, that's fine and dandy, but you're here and I'm asking you. You're not going to tell me?

MR. MARTIN:

And I would object to the question, also, on the grounds that we have a confidentiality order.

MR. LEWIS:

I understand that.

MR. MARTIN:

And we are invoking that this is only for noncompetitors to not know.

MR. LEWIS:

Fine. They all agree with that. Everybody signed it.

EXAMINATION CONTINUES BY MR. LEWIS:

Q. Tell me what your profit before taxes are.

A. I don't recall.

Q. You don't recall now after telling me you do remember?

A. Oh, no. Did I say I remembered the net profit?

Q. Yeah.

A. I don't remember.

Q. Do you have an estimate?

A. You asked me if we had a net profit, didn't you?

Q. Excuse me. Let me ask you. Do you have any idea what your net profit before taxes are?

A. I have an idea.

Q. Well, give me your idea.

MR. MARTIN:

Same objection.

WITNESS CONTINUES:

A. The net profit is for all departments.

Q. I understand.

A. I don't have any idea what the net profit is for the new and used car departments.

Q. I understand that. I just want the net profit for all departments before taxes. What's that number?

MR. MARTIN:

For what year?

EXAMINATION CONTINUES BY MR. LEWIS:

Q. For whatever years you remember. What years do you remember? Do you remember 2008?

A. Without having the financial statement in front of me, I couldn't tell you.

Q. Now you don't even have an idea anymore? Your idea went away?

A. There are a lot of factors that go into that.

Q. Well, I want to know what you remember your amount of money is for -- let's just take 2007. What was your net profit before taxes? Do you have any idea?

A. No, sir, I don't.

Q. Well, thinking along, do you have an idea what your net profit before taxes is at all? Do you have a number?

A. It varies a great deal from year to year.

Q. What does it vary? What's a high and what's a low?

MR. MARTIN:

Objection to all of these questions.

MR. LEWIS:

I understand.

MR. MARTIN:

Would that be all right?

MR. LEWIS:

Yeah.

MR. MARTIN:

Can we have a continuing objection?

MR. LEWIS:

Yeah.

MR. MARTIN:

Okay, thank you.

EXAMINATION CONTINUES BY MR. LEWIS:

Q. Give me a range.

A. I would -- for what years? Give me that, again.

Repeat the question.

Q. What was your net profit before taxes, a range, over the last five years?

A. For the entire facility?
Q. Uh-huh (affirmative).
A. Toyota, Lexus, Scion, parts, service, sales?
Q. Uh-huh (affirmative).
A. About $5 million.
Q. That's an average or you came up with one number?
A. That's an average.
Q. And what would be the low and the high?
A. Probably four to six, right in there.
Q. That's fine. Thank you.
(Plaintiff's Exhibit No. 9 marked for identification.)
EXAMINATION CONTINUES BY MR. LEWIS:
Q. Do you see Exhibit 9?
A. Yes, sir, I do.
Q. Is that one of your documents?
A. It is.
Q. And let's see what it says. "The Procurement Fee is charged on every buyers order and is added to the negotiated price unless the customer is purchasing an advertised vehicle at the advertised price as all advertised vehicles have the Procurement fee included in the advertised price." Is that what it says?
A. That's what it says.
Q. And this is what you sent out to all your managers?
A. Yes, sir.

Q. And this is your policy?
A. Correct.
Q. Thank you.
(Plaintiff's Exhibit No. 10 marked for identification.)
EXAMINATION CONTINUES BY MR. LEWIS:
Q. Do you see that document, Exhibit No. 10? Is that one of your documents?
A. Yes, sir, it is.
Q. And who signs that?
A. Our salesman.
Q. Is this something that they sign now, today?
A. Yes, sir.
Q. And it's a form that you require?
A. A form that we require the salesman to sign?
Q. Uh-huh (affirmative).
A. Yes, sir. Uh-huh (affirmative).
Q. And it's your policy?
A. It is. However, let me qualify that if I may. We have the salesman sign this because we do not want the salesman absorbing procurement fees. We want the manager to be the one that absorbs it unless it's advertised, and then that's fine. But if it's -- we don't want the salesman making a decision to waive the procurement fee for the customer. We still attempt to collect that fee because it's a legitimate fee.

Q. It says here, "I understand that each and every customer who purchases a vehicle from our company must pay a procurement fee ..."
A. Yes, sir. And once again, that is to keep the salesman from marking that off of a buyer's order or offering or altering a buyer's order to take it off.
Q. I see. So the only time, according to you, that anybody takes it off is in the -- what do you call that office? The finance office?
A. No, sir.
MR. MARTIN:
Objection to the form of the question.
EXAMINATION CONTINUES BY MR. LEWIS:
Q. When they sit with the paperwork, that's the only time it comes off?
MR. MARTIN:
Same objection.
WITNESS CONTINUES:
A. No, sir.
Q. Well, who fills out the buyer's order?
A. The buyer's order is completed by the salesman.
Q. So the salesman completes the buyer's order. He cannot take off the procurement fee or the administrative fee. He has to leave it there?
A. No, sir. The sales manager goes in during the

negotiation process prior to the buyer's order.
Q. I see. And so the sales manager, he can go in and he can override Exhibit No. 10?
A. That is correct.
Q. And do you have any documents that say that or policies that say that or writings that say that?
A. Everybody there knows it. All the salesmen know it.
Q. I know you say that. This is something you make them sign, but do you have any documents that say the sales manager can come in and override Exhibit No. 10?
A. No, sir.
MR. LEWIS:
Did you say you verified all your Answers?
MR. MARTIN:
Yes, sir.
MR. LEWIS:
So I don't have to go through that; you verified them all?
MR. MARTIN:
Yes, sir. Well, he did. My client did.
MR. LEWIS:
Mark this.
(Plaintiff's Exhibit No. 11 marked for identification.)
EXAMINATION CONTINUES BY MR. LEWIS:
Q. Is No. 11 a window sticker?

A. A Monroney label, yes, sir.
Q. Excuse me?
A. A Monroney label, yes, sir.
Q. And it has on there a supplemental sticker, doesn't it?
A. No supplemental sticker from the dealership.
Q. Does the dealership put on supplemental stickers?
A. Not as a matter of practice. It does happen on rare occasions.
Q. But you can do that?
A. We can add a sticker, yes, sir.
Q. Huh?
A. We can. We can add an addendum sticker.
Q. Have you ever added an addendum sticker to show the procurement fee?
A. I'll answer the question, we have not. And I would like to further state that the only thing that goes on the addendum sticker are additional accessories that we may have transferred off of another car.
Q. But you could put on here "administrative fee." You could put that on your sticker if you wanted to, couldn't you?
A. It's just a -- it's just a price tag.
Q. Well, I'm asking you. Couldn't you put "administrative fee" on a supplemental sticker?

There's nothing precluding you from doing that, is there?
A. There's nothing that says that we have to do it, though.
Q. Didn't ask you that. I just asked you, you could do it if you wanted to, couldn't you?
A. Yeah.
Q. Thank you. Now this Exhibit No. 11 is an advertisement, isn't it?
MR. MARTIN:
Objection to the form of the question.
WITNESS CONTINUES:
A. No, sir. It's not an advertisement.
Q. If I went out and put on the internet this very information in Exhibit No. 11, the exact same thing, would it be an advertisement?
A. No, sir.
Q. Why?
A. This is just for comparison. It's mandated by the Federal government.
Q. I didn't ask you that?
A. It's just a comparison so that a shopper can compare vehicles, but it's not an advertisement.
Q. Why wouldn't it be an advertisement if I put it on the internet and say, 'Toyota' -- what kind of car is

this? -- 'Sequoia SR5' and have that on the internet? Why isn't that an advertisement?
A. It's not an advertised price.
Q. Why isn't it an advertised price of $39,805.90?
A. Because that's the manufacturer suggested retail price plus the distributor adds.
Q. And that's not an advertised price?
A. No, sir. That's the starting point of negotiations.
Q. So the starting point of negotiations is not an advertised price. Is that your testimony?
A. No, sir. That is actually what the manufacturer suggest we retail the car for. They don't tell us what to sell the cars for.
Q. I just asked you, is that an advertised price or not?
A. No.
Q. What is it?
A. That's the manufacturer suggested retail price.
Q. So the manufacturer suggested retail price put on a form like this where it tells you you've got 14 city miles per gallon, highway 18, listing all of the things that are on the car, and all the different items it says about the car, that's not an advertisement?
A. No, sir. I don't think -- I don't think of it as an advertisement.

Q. If I change this number and put it on the internet and I put $30,805.90, and I put this on the internet, would that be an advertisement?
A. Repeat the question, again.
Q. If I took this very document, Exhibit 11, put it on the internet and I put down here, instead of 39,000, I put down here we'll sell it for $30,805.90. I strike that out and put 30,805.90.
A. Is this just a hypothetical?
Q. Yeah. I just want to know, would that be an advertisement?
MR. MARTIN:
On the internet.
WITNESS CONTINUES:
A. If we were to run an ad like that. I'm not aware that we ever did.
Q. I didn't ask that. Just whether it would be.
A. I would say it's an advertised price if it included the procurement fee in the 30,000 and you marked it down to that. I guess it would be an advertised price.
Q. Now if I put that same document and I put 30,805.90, I take it off the internet and I put it on the car, is that an advertisement?
A. No, sir.

Q. Why?
A. An advertisement is to draw people into the dealership to do business. The pricing on the vehicles are just price tags.
Q. Just price tags?
A. Uh-huh (affirmative).
Q. So price tags are not there to entice people to buy that car?
MR. MARTIN:
Objection to the form of the question.
EXAMINATION CONTINUES BY MR. LEWIS:
Q. Is that right?
MR. MARTIN:
Same objection.
WITNESS CONTINUES:
A. It's, basically, just a price tag with a -- it's just a price tag, and it's a starting point to negotiate a purchase.
Q. Is it a number to try to entice people to start negotiations?
MR. MARTIN:
Same objection.
WITNESS CONTINUES:
A. I wouldn't look at it just that way, but I still look at it as just a price tag.

Q. I'm just asking you. Isn't it a price tag? Isn't it a number to try to get people to start negotiations on that particular car?
MR. MARTIN:
Objection to the form of the question.
WITNESS CONTINUES:
A. It's, basically -- no, it's not.
Q. It isn't?
A. It isn't. The hang -- the price tags that are on the cars are there so people that are on our lot that are already there shopping can look at different cars and see what kind of price range they're likely to be -- what price range they're priced in.
MR. LEWIS:
Mark this.
(Plaintiff's Exhibit No. 12 marked for identification.)
EXAMINATION CONTINUES BY MR. LEWIS:
Q. Look at Exhibit No. 12.
A. Yes, sir.
Q. These are what would be on cars on your lot, right?
MR. MARTIN:
Can you repeat that question? I'm sorry. I missed it.
MR. LEWIS:
These would be the tags that would be on cars --

MR. MARTIN:
The tags.
MR. LEWIS:
-- on their lot.
MR. MARTIN:
Okay.
WITNESS CONTINUES:
A. Yes, sir. These are tags that we have used on occasion on different promotions.
Q. Look at the one that's on page 7308 of Exhibit No. 12. Do you see that?
A. (No response).
Q. Do you see that?
A. 7308, yes, sir.
Q. It says, "Spring Sales Event, Sign & Drive!"
A. Uh-huh (affirmative).
Q. And is that not an advertisement?
A. No, sir.
Q. Now if I put this same document in the paper, in the newspaper, would it be an advertisement?
A. If it was in the newspaper, obviously for the person to -- obviously for the purpose to lead someone to come to our dealership to shop, then that would be an advertisement, and it would have the procurement fee included.

Q. So this very same, exact tag, 7308, if it was in the newspaper, it would be an advertisement, but on your lot it is not an advertisement? I just want to make sure.
A. The --
MR. MARTIN:
Objection -- excuse me. I'm sorry. Objection to the form of the question. You may answer.
EXAMINATION CONTINUES BY MR. LEWIS:
Q. Go ahead.
A. The -- repeat the question, again, for me.
Q. Let's look at another one. We'll just look at any of them. Let's look at the, let's say, the first page.
A. Okay.
Q. Is that an advertisement?
A. No, sir, not if it's hanging on the car on the lot.
Q. If I put it in the newspaper, is it an advertisement?
A. No, sir.
Q. Why?
A. Because we would have the disclaimer in there, price includes. We wouldn't run it like this.
Q. Let's suppose you run it like that without the disclaimer. Just like it is, would it be an advertisement?
MR. MARTIN:

Objection to the form of the question. You may answer.
WITNESS CONTINUES:
A. Based upon the fact that an advertisement is to attract people to come to our facility and do business, then that would be an advertisement.
Q. So I got you now. I've got it. So whatever you do on your property, your lots, whatever you put on the cars or what you say about the cars, those are not advertisements?
A. No, sir.
Q. But as soon as you go off your lot, you say, and do the same thing, those are advertisements?
A. We don't do the same thing.
Q. Yes, sir.
(Plaintiff's Exhibit No. 13 marked for identification.)
EXAMINATION CONTINUES BY MR. LEWIS:
Q. Look at Exhibit No. 13. Here's a newspaper ad. Now if this was on your lot, it wouldn't be an ad, would it? If it was on a little bulletin board on your lot, it wouldn't be an advertisement, would it?
A. No, sir.
Q. But now it's in the newspaper, it's an advertisement, right?
A. Yes, sir.

Q. Now I don't see where it says that these include the doc. -- I mean, the procurement fees?
A. Actually, under "Chance," it says, "All prices" --
Q. Plus.
A. -- "plus ..."
Q. It doesn't say, "include."
MR. MARTIN:
Excuse me. Let him finish, please. What does it say?
WITNESS CONTINUES:
A. It says -- it's kind of hard to read. I think that that is -- it's saying that it --
Q. Well, I can read it for you. "All prices plus" --
A. "All prices plus" -- I can see it now. "Plus," yeah. That's what I thought it said, but I couldn't make it out. Yes.
Q. -- "tax, tag and doc. fee."
A. Correct.
Q. So it doesn't include them?
A. Yes, sir.
Q. It doesn't --
A. That's included in the ad.
MR. MARTIN:
Objection to the form of the question.
EXAMINATION CONTINUES BY MR. LEWIS:
Q. Oh, it's included in the ad. The price doesn't

include the procurement fee, does it?
MR. MARTIN:
Objection to the form of the question.
WITNESS CONTINUES:
A. Yes, sir. The 22,277 does not include the procurement fee, but the procurement fee is included in the ad.
Q. I see. How much is the procurement fee?
A. The customer, when they come into the dealership, we'll go over these prices with them. And if they should buy this vehicle at the advertised price, then we're not going to charge them a procurement fee.
Q. That's not what your ad says, is it?
A. But we're not going to charge them a procurement fee.
Q. I know, but your ad doesn't say that, does it?
MR. MARTIN:
Objection to the form of the question.
EXAMINATION CONTINUES BY MR. LEWIS:
Q. If you don't want to answer it, don't answer it. It just says -- it says, "All prices plus ..."
A. Yes. I need to correct that.
Q. Oh, you do, okay?
A. Yes, sir, I do.
WITNESS:
Do you want to take a break?
MR. LEWIS:

Yeah, if you want to.
(BRIEF RECESS)
EXAMINATION CONTINUES BY MR. LEWIS:
Q. Did you sell Mr. Watts his car?
MR. MARTIN:
Objection to the form of the question.
WITNESS CONTINUES:
A. Would you rephrase that for me?
Q. Mr. Mike Watts, did you know he bought a car?
A. Yes, sir.
Q. Did you sell him the car?
A. Are you talking about me, personally?
Q. Yeah.
A. No, sir.
Q. Did you talk to him?
A. No, sir.
Q. So anything you know about that sale would be from his sales jacket?
A. Yes, sir.
Q. Huh?
A. Yes, sir.
Q. And that's what you've done; you've looked at his sales jacket to come here today?
A. Yes, sir.
Q. And that's the sales jacket you all already furnished

us?
A. That's correct.
Q. How do you come up with the -- look at Exhibit No. -- the stickers. What do they call them? That exhibit (indicating). What is that exhibit?
A. This right here (indicating)?
Q. Yeah.
MR. MARTIN:
You're talking about the hang tags?
MR. LEWIS:
Yeah, the hang tags. That's what they're called?
MR. MARTIN:
What exhibit is that?
WITNESS:
Twelve.
EXAMINATION CONTINUES BY MR. LEWIS:
Q. The hang tag. How do y'all come up with the price to put on those hang tags?
A. The sales manager will make that determination.
Q. Well, how does he do it? You were a sales manager one time, weren't you?
A. No, sir.
Q. Well, do you know how they do it?
A. Yeah.
Q. How do they do it?

MR. MARTIN:
Objection, again, outside the scope, but you may answer as to your knowledge, but not as corporate rep.
WITNESS CONTINUES:
A. As far as how they calculate it, it would depend upon the car that they were hanging the tag on, if it was a vehicle that had been here for a long period of time that needed to be moved for whatever reason, color or whatever.
Q. So been there a long period of time, he'd put a price on that, right?
A. Uh-huh (affirmative).
Q. To make it more attractive to a buyer?
MR. MARTIN:
Objection to the form of the question.
EXAMINATION CONTINUES BY MR. LEWIS:
Q. Isn't that true?
A. That is correct.
Q. Does Toyota pay for some of your advertising?
A. Toyota pays us $150 a car at this time.
Q. Before that, did they look at your advertising? Do they control advertising at all?
A. They have a ad covenant.
Q. What's an ad covenant?
A. It's a book that sort of outlines the things that they

don't want to see you do in an ad.
Q. Do you have the ad covenant?
A. Yes, sir, I do.
Q. And do you have an ad agency?
A. Yes, sir, I do.
Q. And does the ad agency have the ad covenant?
A. They do.
Q. And who is your agency?
A. It's Communicating Results.
Q. And where are they located?
A. In Greenville.
Q. Now that's a Communicated Results.
A. Communicating.
Q. Do they have and have you sat down with them and told them about the statute?
A. Oh, yes, sir.
Q. And who has told them what they should do to comply with the statute?
A. The ad covenant does not address the statute at all. It's Toyota National.
Q. I understand. I want to know who told your agency, your ad agency, how to comply with the statute that's in question here.
A. I believe that we actually gave him the Department of Consumer Affairs directive is what I believe happened.

Q. And so you gave him the directive and left it up to him to do it the way he was supposed to?
A. To be sure that we complied.
Q. Now would that ad that you want to get changed, would that be an ad -- and that's exhibit what?
A. Oh, no, sir. You misinterpreted me. I didn't say I wanted to change the ad.
Q. You said you were going to correct it.
A. I know. I meant I needed to correct my misstatement.
Q. I understand that.
A. Because my misstatement was that we would have included that in that price. We did not. In this ad, we added it, which is rare. We don't -- we don't -- that doesn't tend to happen.
Q. So there's an advertised price without the administrative fee? I'm asking you, is that --
MR. MARTIN:
Objection to the form.
EXAMINATION CONTINUES BY MR. LEWIS:
Q. -- who did that?
MR. MARTIN:
Objection to the form of the question.
WITNESS CONTINUES:
A. This ad was placed by Communicating Results, our agency.

Q. And let me ask you the same simple question. That ad has advertised price that does not include the administrative fee. Is that violative of the directives and the statute?
A. No, sir.
Q. Why?
A. Because the statute says that we must include the administrative fee in the advertised price. And we have included it. I mean, I'm sorry. We have not included it in the advertised price here. We have included the statement that it's going to be added to it along with the taxes and tag.
Q. And so you think that's okay, you can say that, and that meets the statute. Is that what your opinion is?
A. If it's in the ad, if it's part of the ad that says it's an addition.
Q. An addition, okay. And how much is it?
A. Well, that would be discovered when we sat down with the customer.
Q. So if I'm looking at that ad, I don't know how much that car costs, do I?
A. No, sir.
MR. LEWIS:
That's all I have. Thank you.
MR. MARTIN:

I just have a few questions.
EXAMINATION BY MR. MARTIN:
Q. Mr. Turk, there was a question that Mr. Lewis asked you about what you knew about the Michael Watts' deal, and he said something like, is all that you know is what you learned in the sales jacket? My question to you is, do you know anything more about the Michael Watts' deal other than just looking at the sales jacket?
MR. LEWIS:
Object to the form. It is suggesting an answer to his own client after he's answered, and it's totally improper.
MR. MARTIN:
I object to the comments. You certainly have the right to object to the form, but not comment.
EXAMINATION CONTINUES BY MR. MARTIN:
Q. So the question is, did you review anything else with respect to being prepared to answer about the deal with Michael Watts other than the sales jacket?
MR. LEWIS:
I object the same way before, as I did before.
WITNESS CONTINUES:
A. Yes, sir, I did.
Q. Tell me what you did.

A. I met with the sales manager on the deal, Richard Propes. I met with the second sales manager on the deal, Chris Benach. The customer actually returned three days later, so we had two sales managers involved with this customer. I spoke with the finance manager that handled the deal, Chad Blakemore. And none of the employees remembered Mr. Watts, specifically. A lot of customers in between, of course.
Q. Thank you, sir. Now could you turn to Exhibit No. 5, please.
A. (Complies). I've got it now.
Q. You were asked questions about this, but I'm not sure whose advertisement this is. Is this something that Toyota of Greenville did, itself?
A. No, sir.
Q. Who actually did this ad?
A. This is -- I don't know where this came from. It's obviously a Southeast Toyota ad.
MR. MARTIN:
That's all I have. Thank you very much.
MR. LEWIS:
I've got nothing.
DEPOSITION CONCLUDED AT APPROXIMATELY 1:43 P.M.

STATE OF SOUTH CAROLINA)
) C E R T I F I C A T E
COUNTY OF GREENVILLE)

I, Jane S. Wehunt, notary public in and for the State of South Carolina, acting as court reporter, do hereby certify that, pursuant to agreement and/or notice in the foregoing cause, the deposition of Charles Richard Turk was taken by me at Greenville, South Carolina, on Wednesday, February 25, 2009.

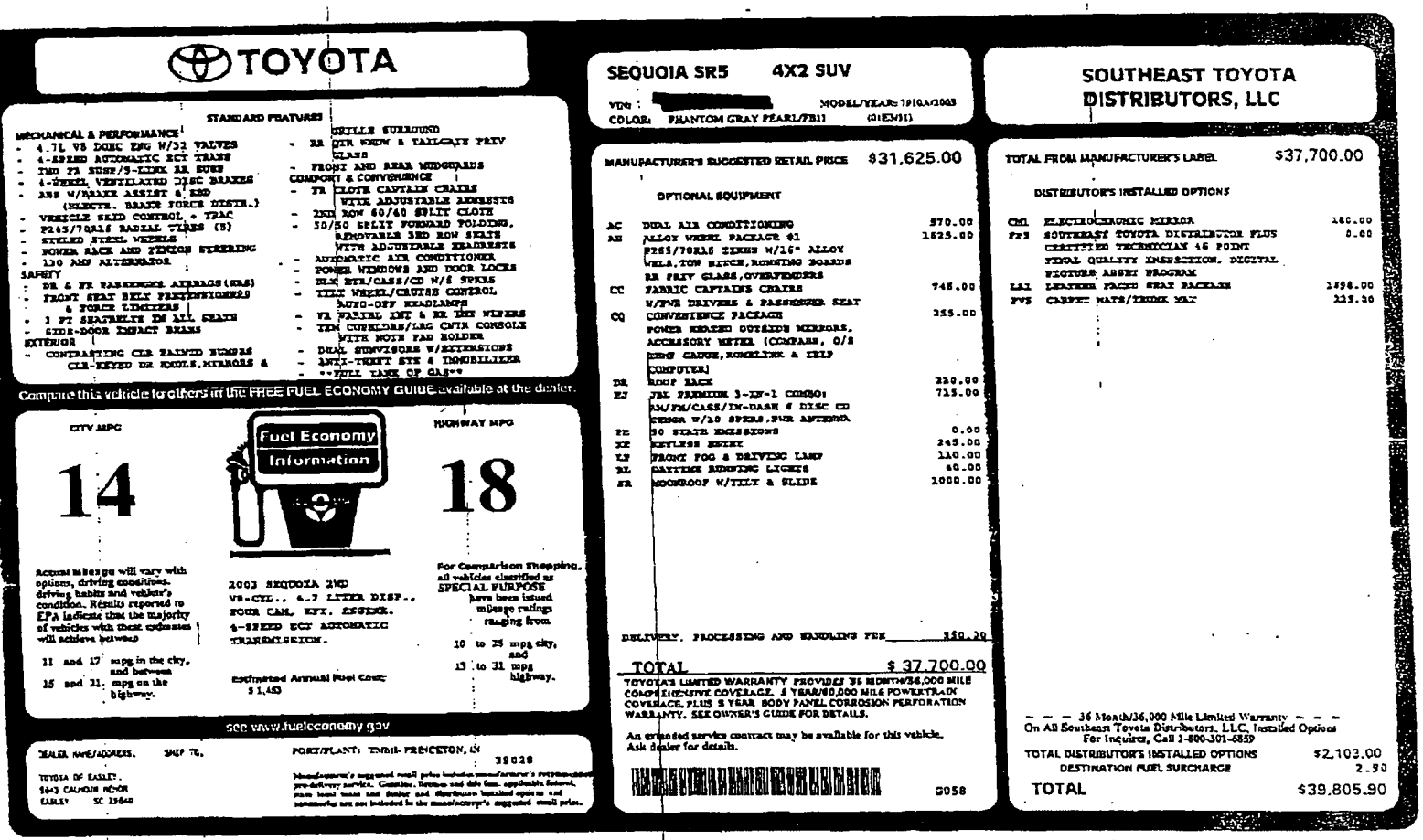
I further certify that the said Charles Richard Turk was first duly sworn to testify as hereinabove shown and the testimony of said deponent was reduced to writing.

I further certify that I am neither counsel nor attorney to either of the parties in said litigation nor interested in the event of the cause.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 20th day of March, 2009.

Jane S. Wehunt
Notary Public for South Carolina
My Commission Expires 6/15/2016

EXHIBIT 11



TOYOTA

STANDARD FEATURES

MECHANICAL & PERFORMANCE
- 4.7L V8 DOHC EFI W/32 VALVES
- 4-SPEED AUTOMATIC ECT TRANS
- TWD FR SUSP/5-LINK RR SUSP
- 4-WHEEL VENTILATED DISC BRAKES
- ABS W/BRAKE ASSIST & EBD (ELECTR. BRAKE FORCE DISTR.)
- VEHICLE SKID CONTROL + TRAC
- P265/70R16 RADIAL TIRES (S)
- STEELED STEEL WHEELS
- POWER RACK AND PINION STEERING
- 130 AMP ALTERNATOR

SAFETY
- DR & FR PASSENGER AIRBAGS (SRS)
- FRONT SEAT BELT PRETENSIONERS & TORCH LIMITERS
- 3 PT SEATBELTS IN ALL SEATS
- SIDE-DOOR IMPACT BEAMS

EXTERIOR
- CONTRASTING CLR PAINTED BUMPER CLR-KEYED DR HNDLS,MIRRORS &
- GRILLE SURROUND
- RR QTR WNDW & TAILGATE PRIV GLASS
- FRONT AND REAR MUDGUARDS

COMFORT & CONVENIENCE
- FR CLOTH CAPTAIN CHAIRS WITH ADJUSTABLE HEADRESTS
- 2ND ROW 60/40 SPLIT CLOTH
- 50/50 SPLIT FORWARD FOLDING, REMOVABLE 3RD ROW SEATS WITH ADJUSTABLE HEADRESTS
- AUTOMATIC AIR CONDITIONER
- POWER WINDOWS AND DOOR LOCKS
- TILT STR/CASS/CD W/6 SPKRS
- TILT WHEEL/CRUISE CONTROL
- AUTO-OFF HEADLAMPS
- FR PARKNG INT & RR INT WIPERS
- TEMP CONSOLES/LRG CMTR CONSOLE WITH NOTE PAD HOLDER
- DUAL SUNVISORS W/EXTENSIONS
- ANTI-THEFT SYS & IMMOBILIZER
- **FULL TANK OF GAS**

Compare this vehicle to others in the FREE FUEL ECONOMY GUIDE available at the dealer.

CITY MPG

14

Fuel Economy Information

HIGHWAY MPG

18

Actual mileage will vary with options, driving conditions, driving habits and vehicle's condition. Results reported to EPA indicate that the majority of vehicles with these options will achieve between

11 and 17 mpg in the city, and between

15 and 21 mpg on the highway.

2003 SEQUOIA 2WD
V8-CYL., 4.7 LITER DISP., FOUR CAM, EFI, ENGINE.
4-SPEED ECT AUTOMATIC TRANSMISSION.

Estimated Annual Fuel Cost: $1,453

For Comparison Shopping, all vehicles classified as SPECIAL PURPOSE have been issued mileage ratings ranging from

10 to 25 mpg city, and

13 to 31 mpg highway.

See www.fueleconomy.gov

DEALER NAME/ADDRESS, SHIP TO,

TOYOTA OF EARLY,
1843 CALHOUN HIGH
EARLY SC 29640

PORT/PLANT: TMMI- PRINCETON, IN 39028

Manufacturer's suggested retail price includes manufacturer's recommended pre-delivery service. Gasoline, license and title fees, applicable federal, state local taxes and freight and distribution included options and accessories are not included in the manufacturer's suggested retail price.

SEQUOIA SR5 4X2 SUV

VIN: [redacted] MODEL/YEAR: 3910A/2003
COLOR: PHANTOM GRAY PEARL/FB11 (01EM31)

MANUFACTURER'S SUGGESTED RETAIL PRICE $31,625.00

OPTIONAL EQUIPMENT

AC	DUAL AIR CONDITIONING	570.00
AN	ALLOY WHEEL PACKAGE #1 P265/70R16 TIRES W/16" ALLOY WHLS,TOW HITCH,RUNNING BOARDS	1625.00
CC	FABRIC CAPTAINS CHAIRS W/PWR DRIVERS & PASSENGER SEAT	745.00
CQ	CONVENIENCE PACKAGE POWER HEATED OUTSIDE MIRRORS, ACCESSORY METER (COMPASS, O/S TEMP GAUGE,HOMELINK & TRIP COMPUTER)	255.00
DR	ROOF RACK	330.00
EJ	JBL PREMIUM 3-IN-1 COMBO: AM/FM/CASS/IN-DASH 6 DISC CD CHNGR W/10 SPKRS,PWR ANTENNA	715.00
FE	50 STATE EMISSIONS	0.00
KK	KEYLESS ENTRY	245.00
LF	FRONT FOG & DRIVING LAMP	110.00
RL	DAYTIME RUNNING LIGHTS	60.00
SR	MOONROOF W/TILT & SLIDE	1000.00

DELIVERY, PROCESSING AND HANDLING FEE $ 550.00

TOTAL $ 37,700.00

TOYOTA'S LIMITED WARRANTY PROVIDES 36 MONTH/36,000 MILE COMPREHENSIVE COVERAGE, 5 YEAR/60,000 MILE POWERTRAIN COVERAGE, PLUS 5 YEAR BODY PANEL CORROSION PERFORATION WARRANTY. SEE OWNER'S GUIDE FOR DETAILS.

An extended service contract may be available for this vehicle. Ask dealer for details.

[redacted] 0058

SOUTHEAST TOYOTA DISTRIBUTORS, LLC

TOTAL FROM MANUFACTURER'S LABEL $37,700.00

DISTRIBUTOR'S INSTALLED OPTIONS

CM1	ELECTROCHROMIC MIRROR	180.00
FP3	SOUTHEAST TOYOTA DISTRIBUTOR PLUS CERTIFIED TECHNICIAN 46 POINT FINAL QUALITY INSPECTION, DIGITAL PICTURE ASSET PROGRAM	0.00
LA1	LEATHER FACED SEAT PACKAGE	1498.00
PV5	CARPET MATS/TRUNK MAT	125.90

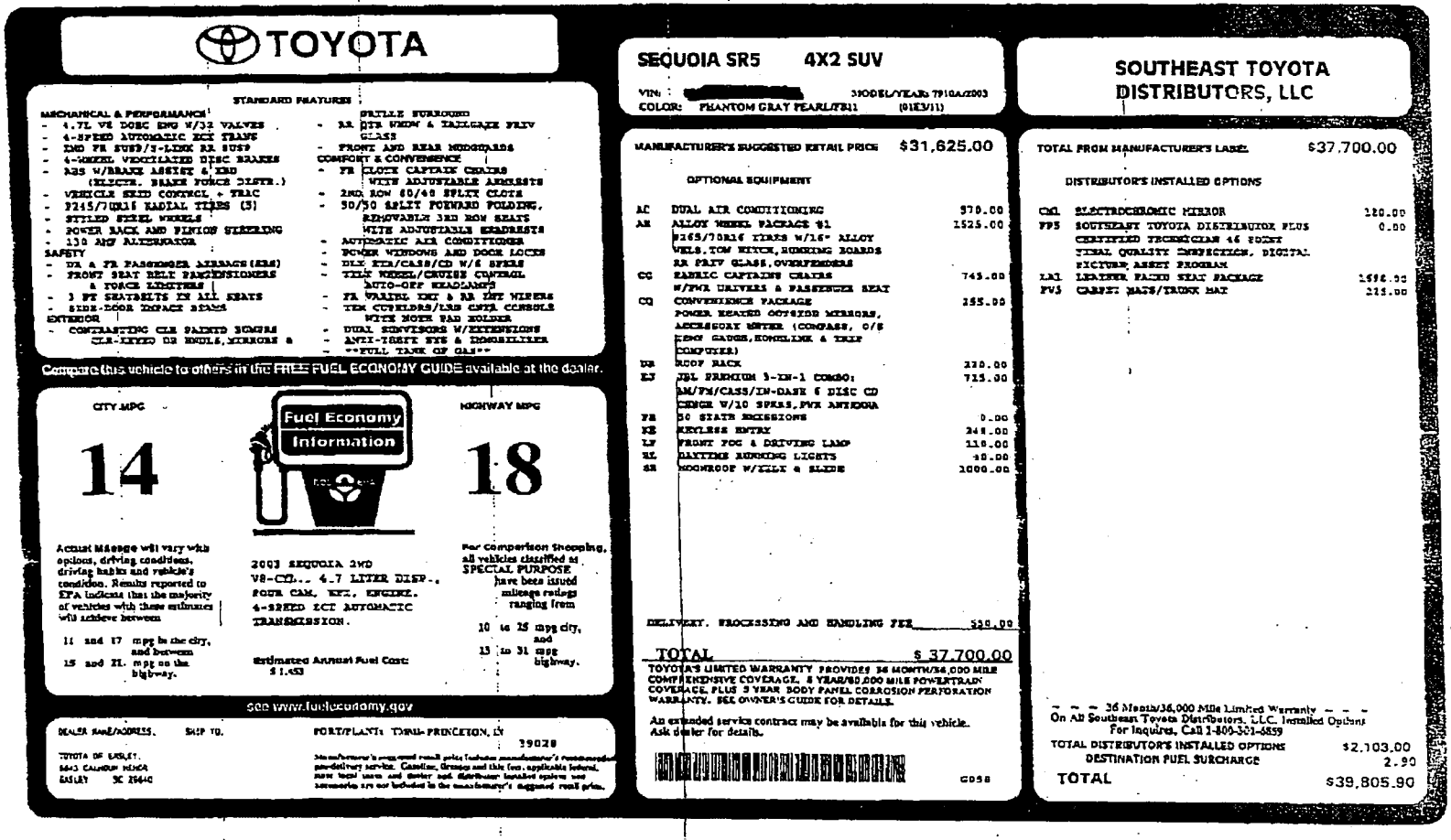
- - - 36 Month/36,000 Mile Limited Warranty - - -
On All Southeast Toyota Distributors, LLC, Installed Options
For Inquiry, Call 1-800-301-6859

TOTAL DISTRIBUTOR'S INSTALLED OPTIONS $2,103.00
DESTINATION FUEL SURCHARGE 2.90
TOTAL $39,805.90

6964

R.000616

TOG 200



TOYOTA

STANDARD FEATURES

MECHANICAL & PERFORMANCE
- 4.7L V8 DOHC ENG W/32 VALVES
- 4-SPEED AUTOMATIC ECT TRANS
- IRS FR SUSP/5-LINK RR SUSP
- 4-WHEEL VENTILATED DISC BRAKES
- ABS W/BRAKE ASSIST & EBD (ELECTR. BRAKE FORCE DISTR.)
- VEHICLE SKID CONTROL + TRAC
- P245/70R16 RADIAL TIRES (S)
- STYLED STEEL WHEELS
- POWER RACK AND PINION STEERING
- 130 AMP ALTERNATOR

SAFETY
- DR & FR PASSENGER AIRBAGS (SRS)
- FRONT SEAT BELT PRETENSIONERS & FORCE LIMITERS
- 3 PT SEATBELTS IN ALL SEATS
- SIDE-DOOR IMPACT BEAMS

EXTERIOR
- CONTRASTING CLR PAINTED BUMPER CLR-KEYED DR HNDLE, MIRRORS &
- BODY SIDE MOLDING
- RR STR WNDW & TAILGATE FLIP GLASS
- FRONT AND REAR MUDGUARDS

COMFORT & CONVENIENCE
- FR CLOTH CAPTAIN CHAIRS WITH ADJUSTABLE ARMRESTS
- 2ND ROW 60/40 SPLIT CLOTH
- 50/50 SPLIT FORWARD FOLDING, REMOVABLE 3RD ROW SEATS WITH ADJUSTABLE HEADRESTS
- AUTOMATIC AIR CONDITIONER
- POWER WINDOWS AND DOOR LOCKS
- DLX RTH/CASS/CD W/6 SPKRS
- TILT WHEEL/CRUISE CONTROL, AUTO-OFF HEADLAMPS
- FR VARIBL INT & RR INT WIPERS
- TRN CUPHLDRS/2ND CNTR CONSOLE WITH NOTE PAD HOLDER
- DUAL SUNVISORS W/EXTENSIONS
- ANTI-THEFT SYS & IMMOBILIZER
- **FULL TANK OF GAS**

Compare this vehicle to others in the FREE FUEL ECONOMY GUIDE available at the dealer.

CITY MPG

14

Fuel Economy Information

HIGHWAY MPG

18

Actual Mileage will vary with options, driving conditions, driving habits and vehicle's condition. Results reported to EPA indicate that the majority of vehicles with these estimates will achieve between

11 and 17 mpg in the city, and between 15 and 21 mpg on the highway.

2003 SEQUOIA 2WD V8-CYL., 4.7 LITER DISP., FOUR CAM, REF, ENGINE, 4-SPEED ECT AUTOMATIC TRANSMISSION.

Estimated Annual Fuel Cost: $1,453

For comparison shopping, all vehicles classified as SPECIAL PURPOSE have been issued mileage ratings ranging from

10 to 15 mpg city, and 13 to 21 mpg highway.

See www.fueleconomy.gov

DEALER NAME/ADDRESS: TOYOTA OF EASLEY, 6643 CALHOUN MEMO, EASLEY SC 29640

SHIP TO:

PORT/PLANT: TMMI- PRINCETON, IN 39028

The manufacturer's suggested retail price includes manufacturer's recommended pre-delivery service. Gasoline, dealer and title fees, applicable federal, state local taxes and dealer and distributor installed options are necessary are not included in the manufacturer's suggested retail price.

SEQUOIA SR5 4X2 SUV

VIN: [redacted] MODEL/YEAR: 7910A/2003

COLOR: PHANTOM GRAY PEARL/TR11 (01E3/11)

MANUFACTURER'S SUGGESTED RETAIL PRICE $31,625.00

OPTIONAL EQUIPMENT

AC	DUAL AIR CONDITIONING	$70.00
AR	ALLOY WHEEL PACKAGE #1 P265/70R16 TIRES W/16" ALLOY WHLS,TOW HITCH,RUNNING BOARDS RR PRTY GLASS,OVERFENDERS	1525.00
CG	EASELIC CAPTAINS CHAIRS W/PWR DRIVERS & PASSENGER SEAT	745.00
CQ	CONVENIENCE PACKAGE POWER HEATED OUTSIDE MIRRORS, ACCESSORY METER (COMPASS, O/S TEMP GAUGE,HOMELINK & TRIP COMPUTER)	255.00
DR	ROOF RACK	220.00
EJ	JBL PREMIUM 3-IN-1 COMBO; AM/FM/CASS/IN-DASH 6 DISC CD CHNGR W/10 SPKRS,PWR ANTENNA	725.00
FE	50 STATE EMISSIONS	0.00
KE	KEYLESS ENTRY	245.00
LF	FRONT FOG & DRIVING LAMP	110.00
NL	DAYTIME RUNNING LIGHTS	40.00
SR	MOONROOF W/TILT & SLIDE	1000.00

DELIVERY, PROCESSING AND HANDLING FEE $520.00

TOTAL $ 37,700.00

TOYOTA'S LIMITED WARRANTY PROVIDES 36 MONTH/36,000 MILE COMPREHENSIVE COVERAGE, 6 YEAR/60,000 MILE POWERTRAIN COVERAGE, PLUS 3 YEAR BODY PANEL CORROSION PERFORATION WARRANTY. SEE OWNER'S GUIDE FOR DETAILS.

An extended service contract may be available for this vehicle. Ask dealer for details.

[redacted] G058

SOUTHEAST TOYOTA DISTRIBUTORS, LLC

TOTAL FROM MANUFACTURER'S LABEL $37,700.00

DISTRIBUTOR'S INSTALLED OPTIONS

CKL	ELECTROCHROMIC MIRROR	120.00
FPS	SOUTHEAST TOYOTA DISTRIBUTOR PLUS CERTIFIED TECHNICIAN 46 POINT FINAL QUALITY INSPECTION, DIGITAL PICTURE ASSET PROGRAM	0.00
LXL	LEATHER FACED SEAT PACKAGE	1698.00
PVJ	CARPET MATS/TRUNK MAT	215.00

~ ~ ~ 36 Month/36,000 Mile Limited Warranty ~ ~ ~
On All Southeast Toyota Distributors, L.L.C. Installed Options
For Inquires, Call 1-800-321-6859

TOTAL DISTRIBUTOR'S INSTALLED OPTIONS $2,103.00

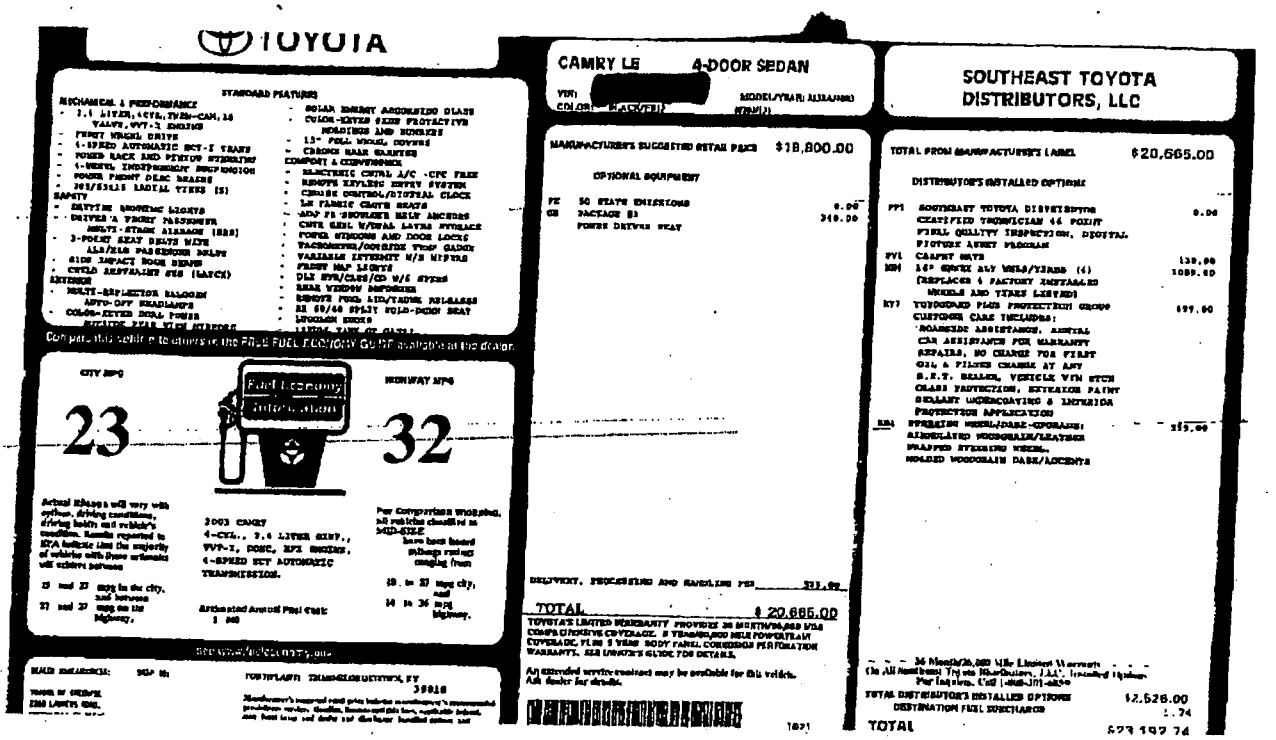
DESTINATION FUEL SURCHARGE 2.90

TOTAL $39,805.90

9676

R.000617

TOG 212



TOYOTA

STANDARD FEATURES

MECHANICAL & PERFORMANCE
- 2.4 LITER, 4CYL, TWIN-CAM, 16 VALVE, VVT-I ENGINE
- FRONT WHEEL DRIVE
- 4-SPEED AUTOMATIC ECT-I TRANS
- POWER RACK AND PINION STEERING
- 4-WHEEL INDEPENDENT SUSPENSION
- POWER FRONT DISC BRAKES
- 205/65R15 RADIAL TIRES (S)

SAFETY
- DAYTIME RUNNING LIGHTS
- DRIVER & FRONT PASSENGER MULTI-STAGE AIRBAGS (SRS)
- 3-POINT SEAT BELTS WITH ALR/ELR PASSENGER BELTS
- SIDE IMPACT DOOR BEAMS
- CHILD RESTRAINT SYS (LATCH)

EXTERIOR
- MULTI-REFLECTOR HALOGEN AUTO-OFF HEADLAMPS
- COLOR-KEYED DUAL POWER

- SOLAR ENERGY ABSORBING GLASS
- COLOR-KEYED SIDE PROTECTIVE MOLDINGS AND BUMPERS
- 15" FULL WHEEL COVERS
- CHROME BASE GRILLETES

COMFORT & CONVENIENCE
- ELECTRONIC CNTRL A/C -CFC FREE
- REMOTE KEYLESS ENTRY SYSTEM
- CRUISE CONTROL/DIGITAL CLOCK
- LR FABRIC CNTR SEATS
- ADJ FR SHOULDR BELT ANCHORS
- CNTR CONS W/REAR LAYER STORAGE
- POWER MIRRORS AND DOOR LOCKS
- TACHometer/OUTSIDE TEMP GAUGE
- VARIABLE INTERMIT W/S WIPERS
- FRONT MAP LIGHTS
- DLX SYN/CLOTH/CD W/S SYSTEM
- REAR WINDOW DEFOGGER
- REMOTE FUEL DOOR/TRUNK RELEASES
- 60/40 SPLIT FOLD-DOWN REAR SEAT
- LUGGAGE HOOKS
- LEATHER WRAP ON SHIFT KNOB

Compare this vehicle to others on the FREE FUEL ECONOMY GUIDE available at this dealer.

CITY MPG **23**

HIGHWAY MPG **32**

Actual mileage will vary with options, driving conditions, driving habits and vehicle's condition. Results reported to EPA indicate that the majority of vehicles with these automatic will achieve between

23 and 27 mpg in the city, and between 27 and 32 mpg on the highway.

2003 CAMRY
4-CYL., 2.4 LITER SFI., VVT-I, DOHC, EFI ENGINE, 4-SPEED ECT AUTOMATIC TRANSMISSION.

Estimated Annual Fuel Cost: $ 940

For Comparison Shopping, all vehicles classified as MID-SIZE have been issued mileage ratings ranging from

19 to 23 mpg city, and 26 to 36 mpg highway.

SEE MONROney LABEL FOR TRANSMISSION DESIGNATION, EPA 39918

Manufacturer's suggested retail price includes manufacturer's recommended preparation service. Dealer's financial cost may be less. Applicable federal, state, local taxes and dealer set charges, installed options and

CAMRY LE 4-DOOR SEDAN

VIN: [redacted] MODEL/YEAR: ALLEGANCE

COLOR: BLACK(218) STOCK(2)

MANUFACTURER'S SUGGESTED RETAIL PRICE $18,800.00

OPTIONAL EQUIPMENT

PZ	50 STATE EMISSIONS	0.00
GB	PACKAGE B3	340.00
	POWER DRIVER SEAT	

DELIVERY, PROCESSING AND HANDLING FEE 331.00

TOTAL $ 20,665.00

TOYOTA'S LIMITED WARRANTY PROVIDES 36 MONTH/36,000 MILE COMPREHENSIVE COVERAGE, 5 YEAR/60,000 MILE POWERTRAIN COVERAGE, PLUS 5 YEAR BODY PANEL CORROSION PERFORATION WARRANTY. SEE OWNER'S GUIDE FOR DETAILS.

An extended service contract may be available for this vehicle. Ask dealer for details.

1021

SOUTHEAST TOYOTA DISTRIBUTORS, LLC

TOTAL FROM MANUFACTURER'S LABEL $20,665.00

DISTRIBUTOR'S INSTALLED OPTIONS

PP1	SOUTHEAST TOYOTA DISTRIBUTOR CERTIFIED TECHNICIAN 46 POINT FINAL QUALITY INSPECTION, DIGITAL PICTURE ASSET PROGRAM	0.00
PV1	CARPET MATS	139.00
MW	18" CHROME ALY WHLS/TIRES (4) (REPLACES 4 FACTORY INSTALLED WHEELS AND TIRES LISTED)	1089.00
KY7	TOYOGUARD PLUS PROTECTION GROUP CUSTOMER CARE INCLUDES: ROADSIDE ASSISTANCE, RENTAL CAR ASSISTANCE FOR WARRANTY REPAIRS, NO CHARGE FOR FIRST OIL & FILTER CHANGE AT ANY S.E.T. DEALER, VEHICLE VIN ETCH GLASS PROTECTION, EXTERIOR PAINT SEALANT UNDERCOATING & INTERIOR PROTECTION APPLICATION	699.00
KA1	SPECIAL MARKETING PROGRAM: ALUMINUM WOODGRAIN/LEATHER WRAPPED STEERING WHEEL, MOLDED WOODGRAIN DASH/ACCENTS	199.00

36 Month/36,000 Mile Limited Warranty On All Southeast Toyota Distributors, LLC, Installed Options. Per Engineer, Call 1-800-331-4331

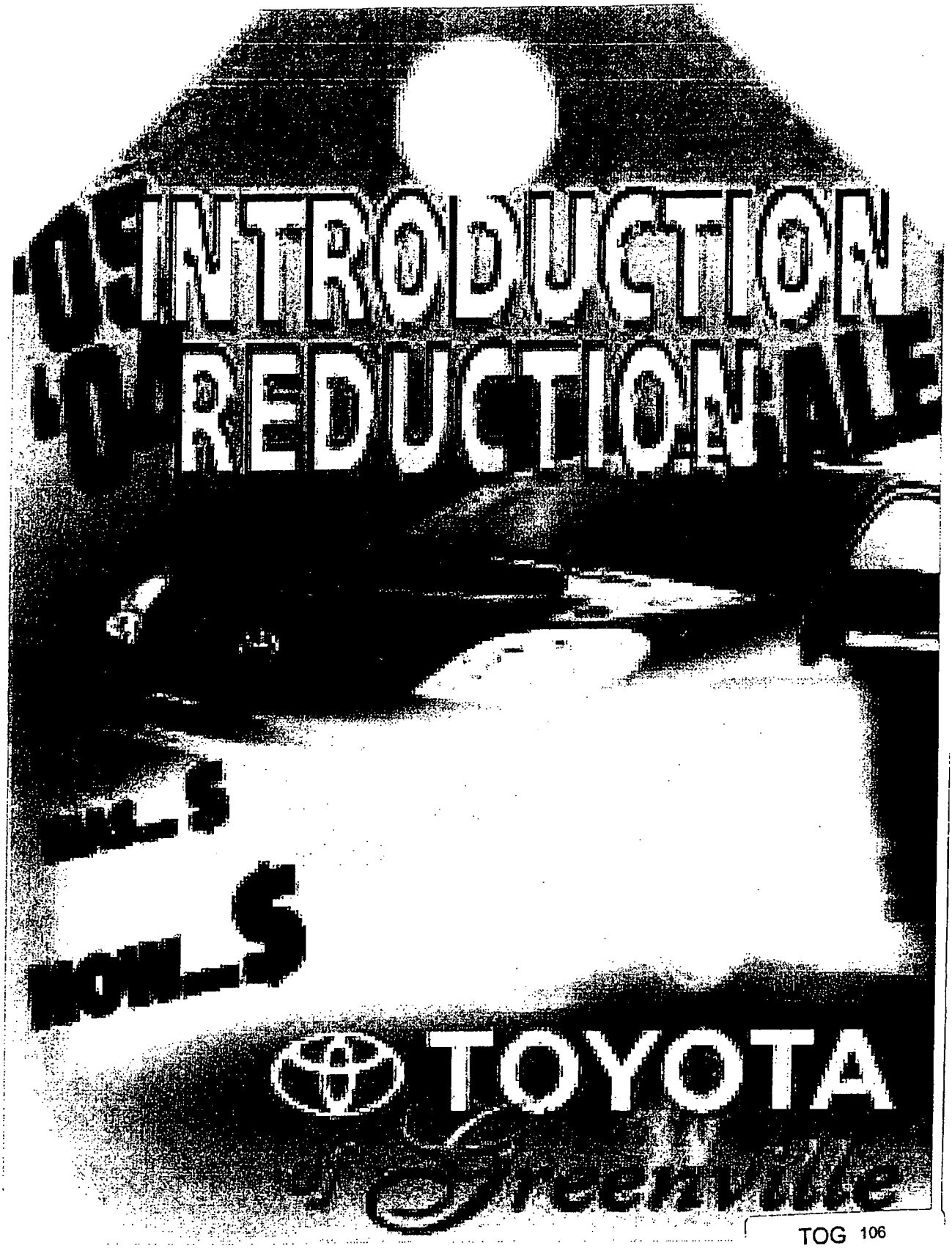
TOTAL DISTRIBUTOR'S INSTALLED OPTIONS $2,526.00

DESTINATION FREIGHT CHARGES 1.74

TOTAL $23,192.74

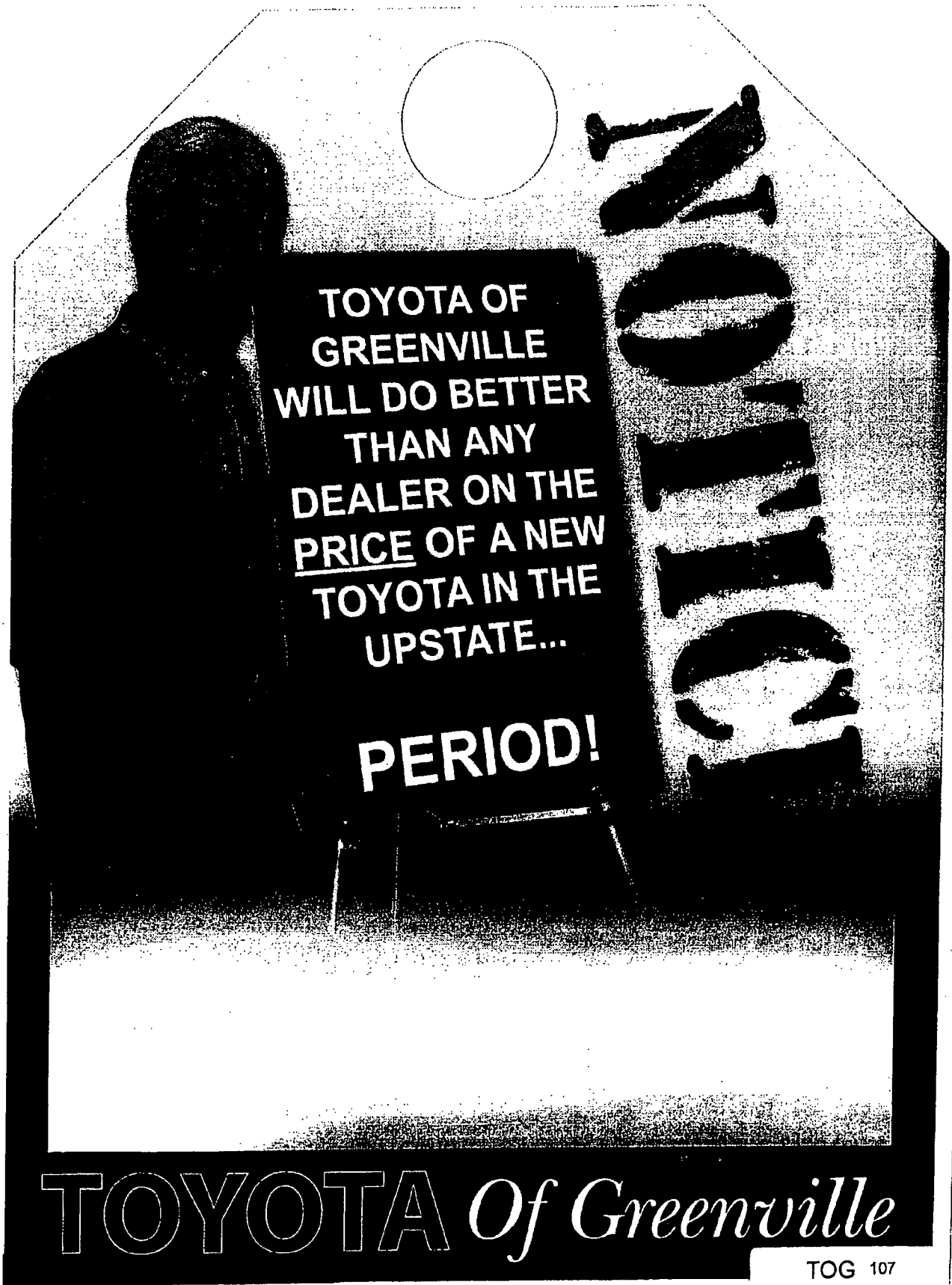
TOG 156

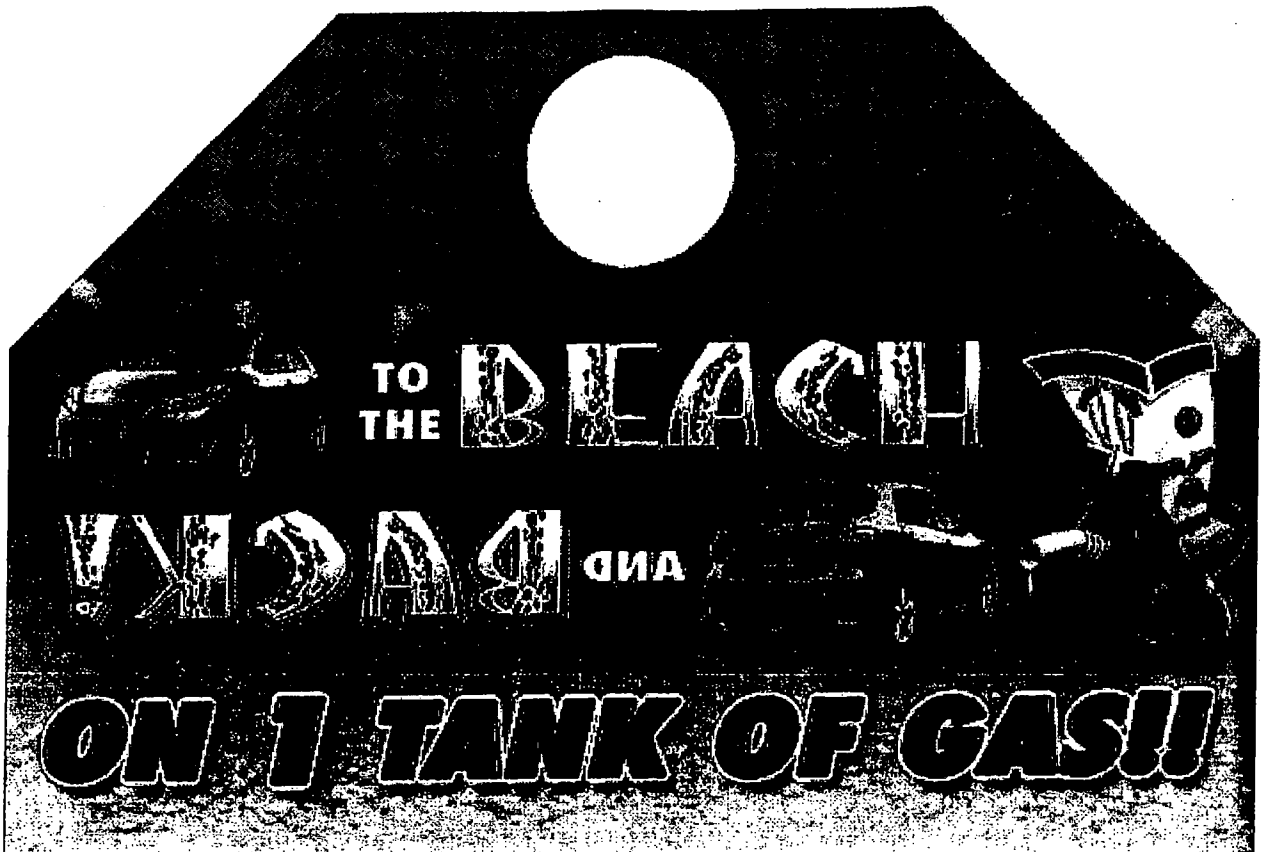
EXHIBIT 12



TOG 106

R.000620


TOYOTA OF GREENVILLE WILL DO BETTER THAN ANY DEALER ON THE PRICE OF A NEW TOYOTA IN THE UPSTATE...
PERIOD!
TOYOTA Of Greenville
TOG 107

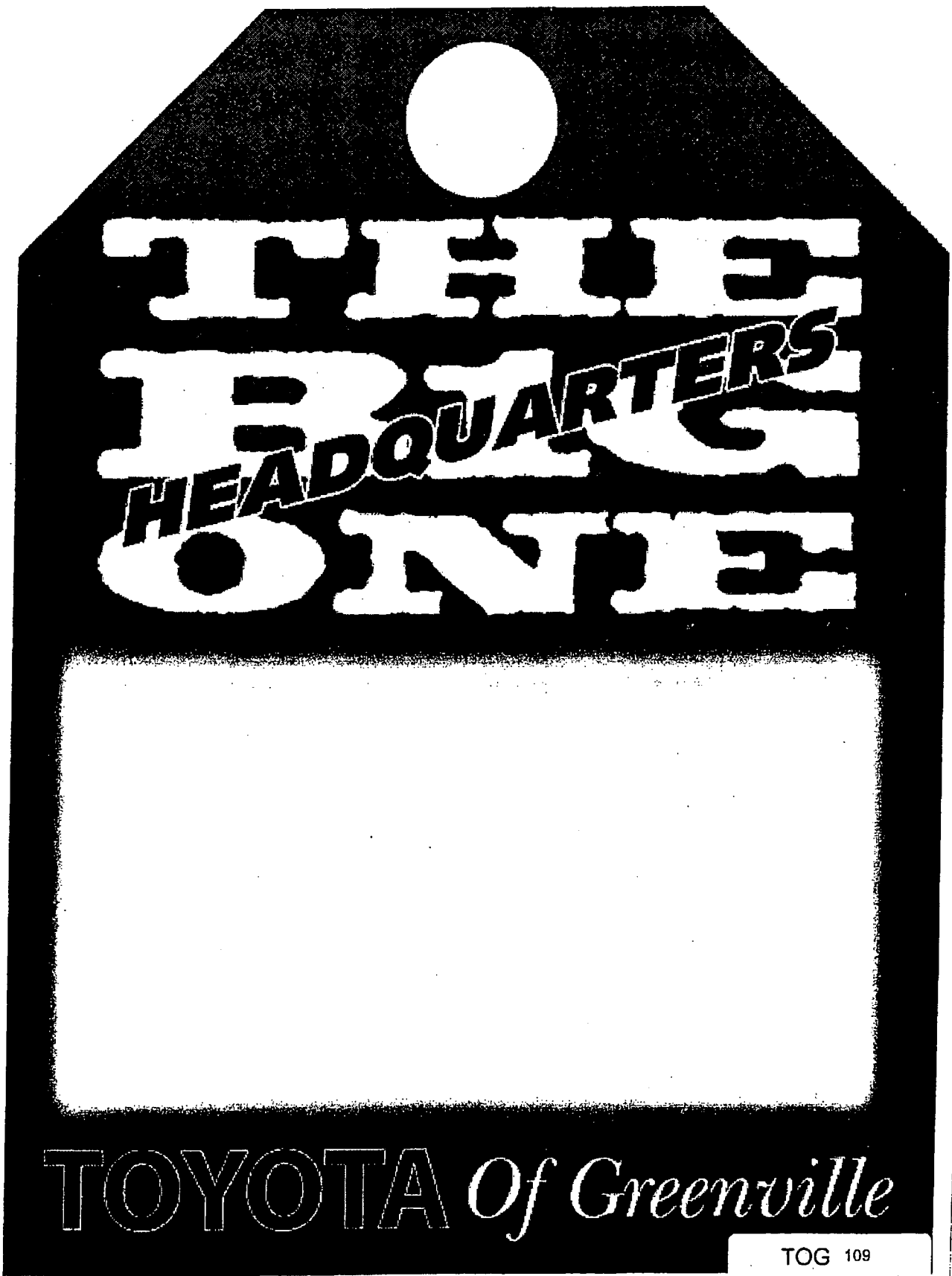


TOYOTA *Of Greenville*

TOG 108

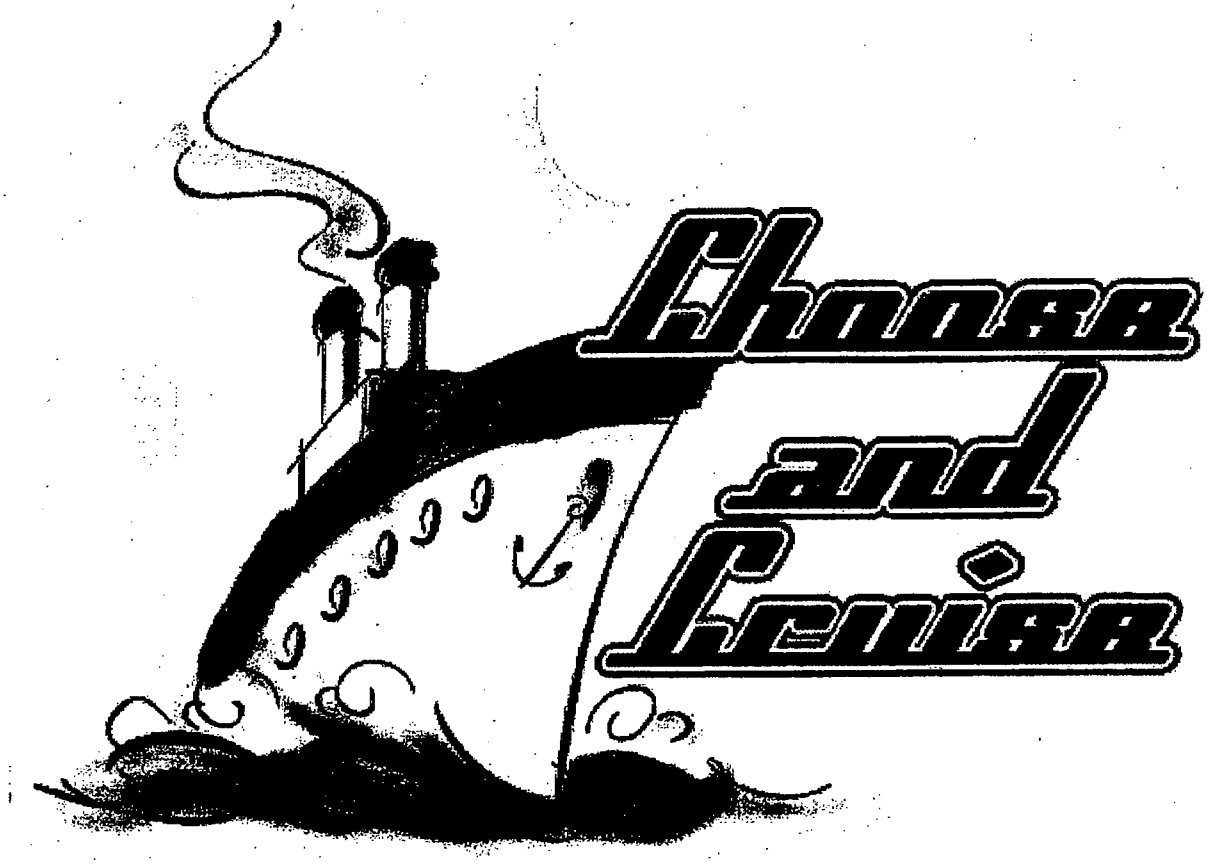
7298

R.000622



7299

R.000623

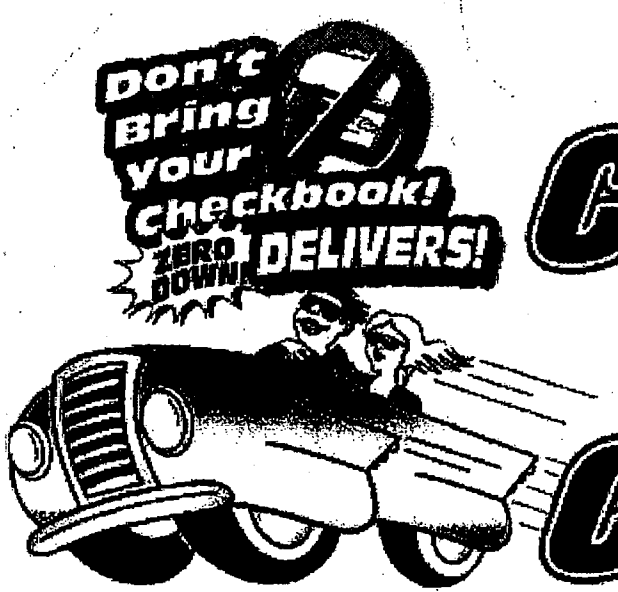


TOYOTA *Of Greenville*

TOG 110

7300

R.000624



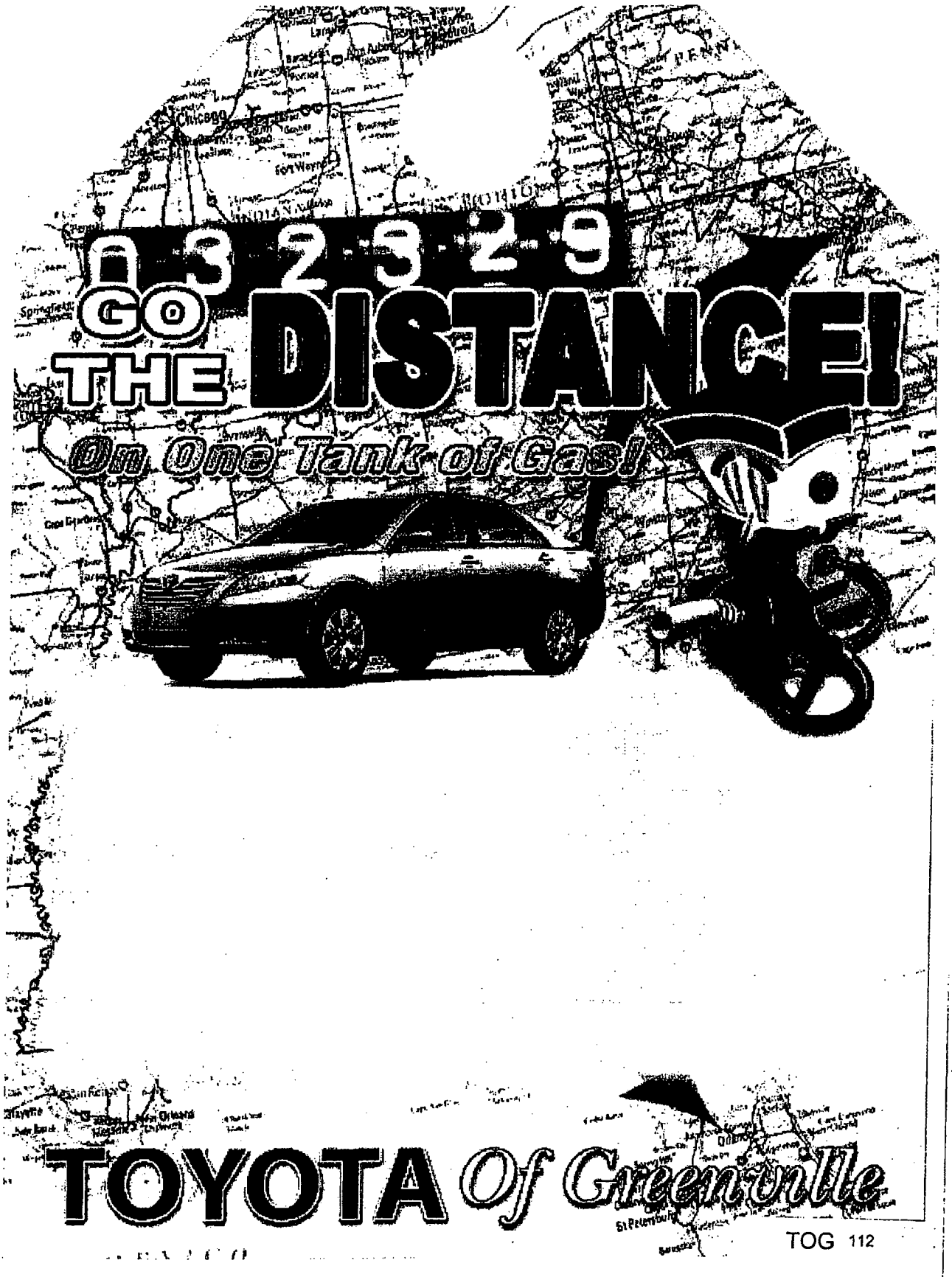
Choose and Cruise!

TOYOTA *Of Greenville*

TOG 111

7301

R.000625


323-9
GO
THE DISTANCE!
On One Tank of Gas!
TOYOTA Of Greenville
TOG 112



7303



TOYOTA *Of Greenville*

TOG 114

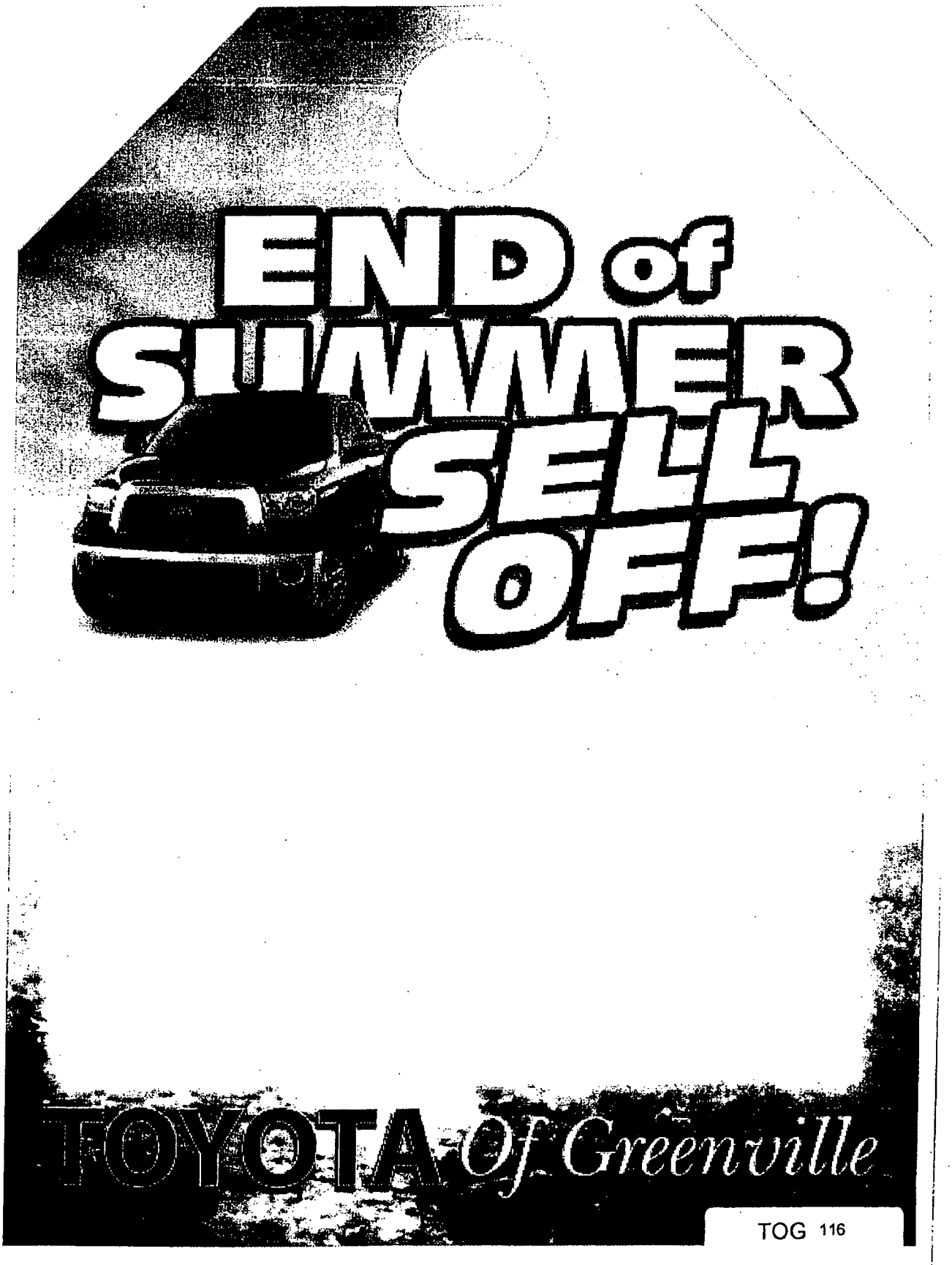
7304

R.000628



7305

R.000629

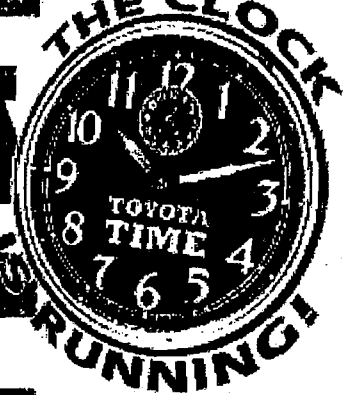


7306

R.000630

IT'S

TOYOTA TIME



NOW IS THE TIME TO BUY!

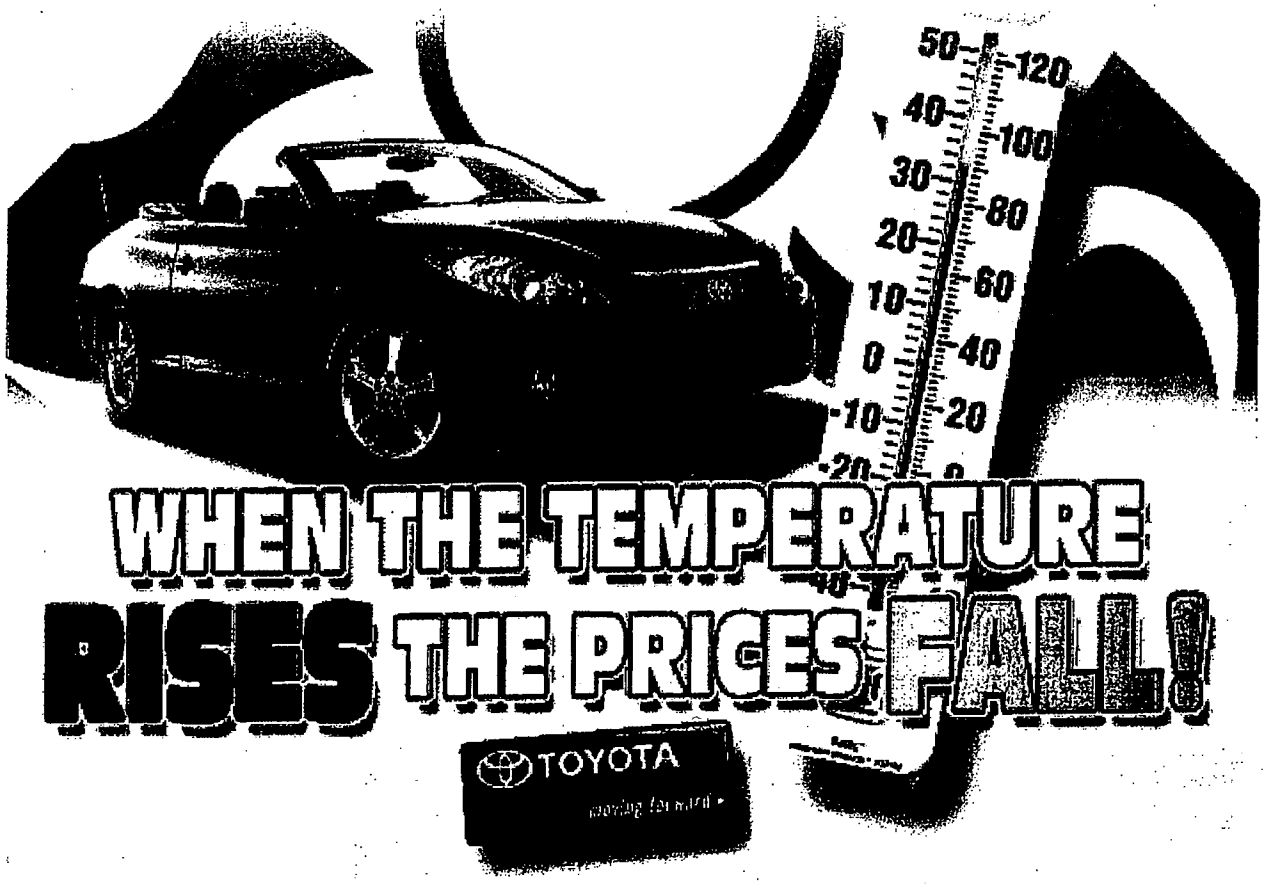
TOYOTA *Of Greenville*

TOG 117

7307


SPRING
SALES EVENT
Start
& Drive!
TOYOTA Of Greenville
TOG 118

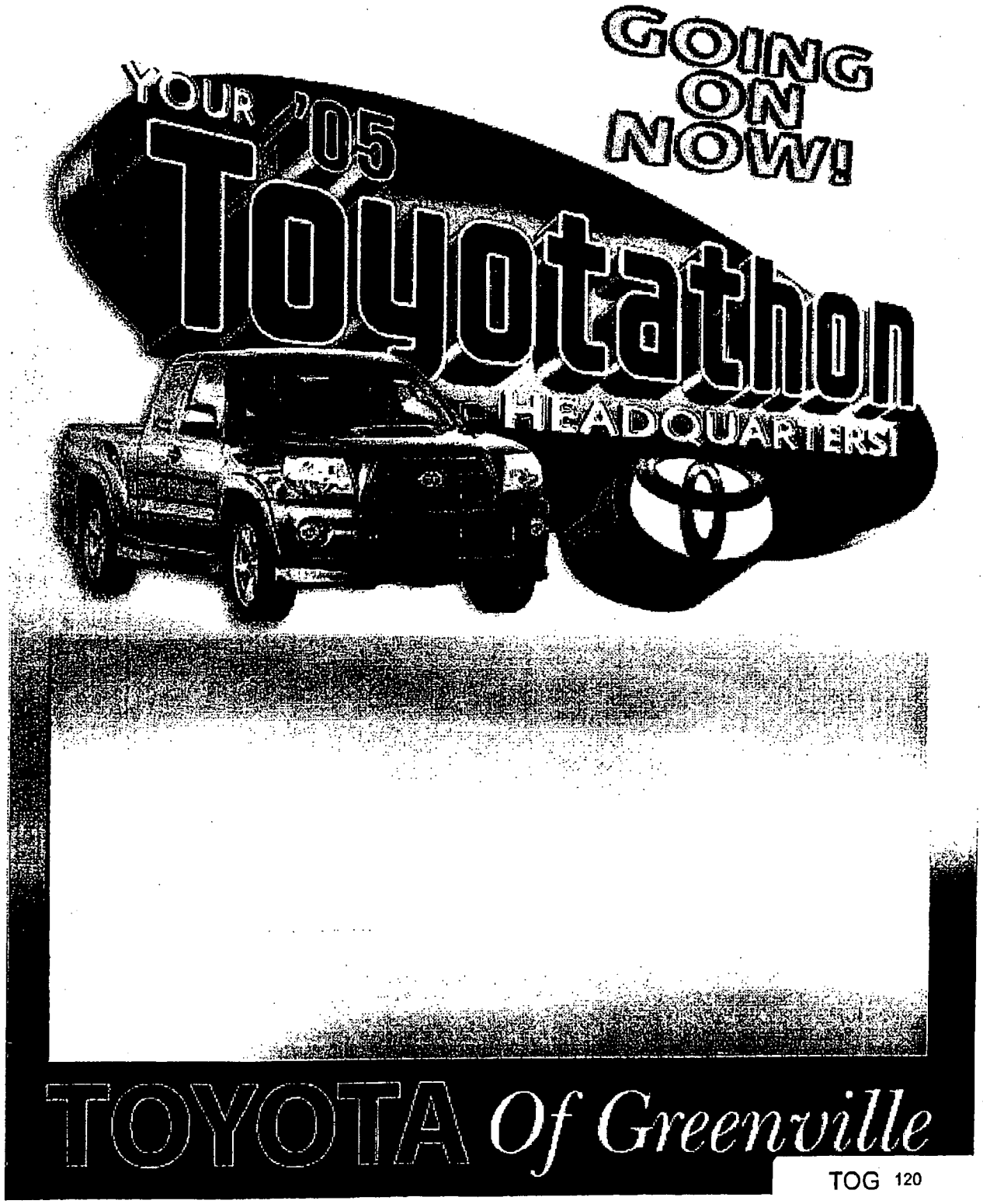
R.000632



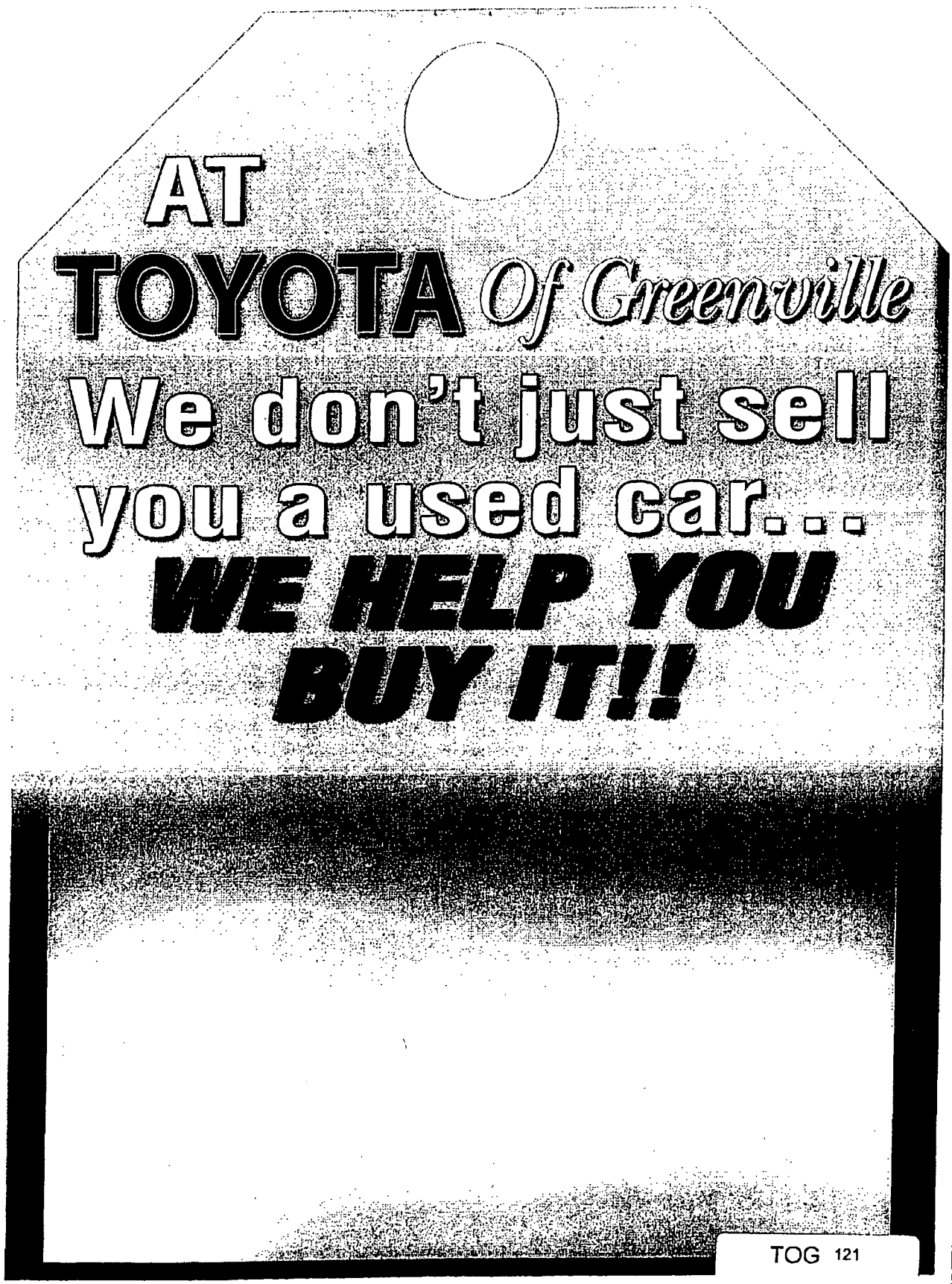
WHEN THE TEMPERATURE RISES THE PRICES FALL!

TOYOTA Of Greenville

TOG 119


GOING ON NOW!
YOUR '05
Toyotathon
HEADQUARTERS!
TOYOTA Of Greenville
TOG 120

R.000634



7311

R.000635

EXHIBIT 13

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS
FLOSSIE MAE FANNING AND NATHANIEL FANNING, SR., Individually and as Representatives of All Persons Similarly Situated, Collectively Designated as JOHN DOE and JANE DOE, Plaintiffs, vs. FRITZ'S PONTIAC-CADILLAC-BUICK, INC.; VOYAGER LIFE INSURANCE COMPANY; WESTERN SURETY COMPANY and CITIZENS & SOUTHERN NATIONAL BANK; Defendants.	)	AFFIDAVIT OF STEVEN W. HAMM

PERSONALLY appeared before me Steven W. Hamm, who being duly sworn, deposes and says that:

1. I am the Administrator of the South Carolina Department of Consumer Affairs, having been duly appointed pursuant to Section 37-6-506 of the Code of Laws of South Carolina.

2. I also hold the position of Consumer Advocate for the State of South Carolina pursuant to Section 37-6-602 of the Code of Laws of South Carolina.

3. As Administrator of the Department of Consumer Affairs my duties and responsibilities include administering and enforcing the South Carolina Consumer Protection Code (S.C. Code Ann. §§37-1-101 et seq.), including credit related advertising.

4. I have reviewed the records of the South Carolina Department of Consumer Affairs kept as a part of its official responsibilities, together with those kept in the ordinary course of its business, and I base my testimony of the information contained in these records, as well information within my personal knowledge.

5. Section 37-2-202 of the Code of Laws of South Carolina sets forth permissible additional charges which may be charged in addition to finance charges on consumer credit sales within South Carolina, including additional permissible charges that may be adopted by rule of the Administrator of the Department of Consumer Affairs.

6. In 1987, the Department began to take a more active role in obtaining compliance with the advertising laws under the Truth in Lending Act and the Unfair Trade Practices Act, pursuant to its authority in §§37-2-301 and 37-2-304 of the Code of Laws of South Carolina.

7. In September, 1987, the Department sent to all members of the South Carolina Automobile and Truck Dealers Association a letter outlining several advertising practices that the Department believed violated the law. (A copy of the letter is attached hereto as Exhibit A). Item number 1 of that letter specifically addresses additional closing fees, variously called documentary fees, procurement fees, administrative fees, closing costs, as well as other names, and indicates that attempts to treat such fees as an additional cost to the advertised price would be considered as a violation of the law.

8. On July 25, 1988, the Department held a public meeting concerning automobile advertising. At this meeting certain materials were handed out to those attending. Item number 4 of the first page of these hand-out materials specifically addresses additional closing fees and states that advertising such costs as an additional charge to the advertised price would violate the law.

9. In November, 1988, the Department mailed to all members of the South Carolina Automobile and Truck Drivers Association a copy of the South Carolina Department of Consumer Affairs Advertising Guidelines & Standards. (A copy of the Advertising Guidelines & Standards is attached hereto as Exhibit B). The Guidelines & Standards were developed as a result of the 1987 letter and the public meeting in July, 1988, and they were derived primarily from standards prepared by the Association. Item number 6 of the 1988 Guidelines & Standards also specifically addresses additional closing fees and states that advertising such costs as an additional charge to the advertised price would violate the law.

10. In October, 1988, the Department sent a letter to an attorney in Charleston concerning the legality of additional closing fees. (A copy of this letter is attached hereto as Exhibit C). This letter was one of the Department's first attempts to address the fees within themselves, unconnected with advertising. This letter questioned the legality of such fees because they were not specifically permitted under §37-2-202 of the Code of Laws of South Carolina.

11. In January, 1989, the Department entered into an Assurance of Discontinuance, pursuant to §37-6-109 of the Code of Laws of South Carolina, with one South Carolina automobile dealer, whereby the dealer agreed to forego the use of add-on fees to sales contracts other than for options and protection packages. (A copy of this Assurance is attached hereto as Exhibit D).

12. Between October, 1988 and July, 1989, the Department began discussing additional closing fees and determined, during June, 1989 or early July, 1989, that such fees within themselves were a violation of the law.

13. On July 12, 1989, the Department sent a letter to a different automobile dealer in South Carolina responding to his question concerning the legality of additional closing fees. (A copy of this letter is attached hereto as Exhibit E). The letter sets forth the Department's position that such fees are a violation of the law.

14. On July 15, 1989, the Department filed suit against the same automobile dealer who had signed the Assurance of Discontinuance for violations of the S.C. Consumer Protection Code, including charging additional closing fees in violation of the Assurance of Discontinuance. This action was ended by settlement between the parties.

15. Consistently, since July, 1989, the Department has taken the position that additional closing fees are a violation of the law.

16. I have reviewed the bill of sale and work sheet in the subject action regarding a consumer credit sale by defendant Fritz's Pontiac-Cadillac-Buick, Inc., to the named plaintiffs of an automobile whereby a charge listed as a "procurement, delivery, filing fee" is set forth in the amount of $87.00.

17. This charge is the same type of additional closing fee that is mentioned above, and it is not one of the specifically permitted additional charges set forth in §37-2-202 of the Code of Laws of South Carolina. Further, this charge has never been approved by me, as Administrator of the Department of Consumer Affairs, pursuant to §37-2-202(e).

18. On June 5, 1989, the Department mailed to the Defendant Fritz's Pontiac-Cadillac-Buick, Inc., a notice that the use of add-ons, such as documentary, administrative or closing fees, was a violation of the law and that further violations would be treated as intentional violations. (A copy of this letter is attached hereto as Exhibit F).

19. On June 27, 1989, several employees of the Department met with this defendant's owner, Fritz Waidner, at his request to discuss advertising and other matters. (A copy of his letter requesting the meeting is attached hereto as Exhibit G). At this meeting the Department advised Mr. Waidner that any type of closing costs were illegal excess charges unless the charges were specifically permitted by §37-2-202. (A copy of a memorandum of this meeting is attached hereto as Exhibit H).

20. On July 26, 1990, the Department again mailed to this defendant a notice that use of add-on charges was a violation of the law. (A copy of this letter is attached hereto as Exhibit I).

Steven W. Hamm, Administrator
South Carolina Department of
Consumer Affairs

SWORN to before me this
12th day of March, 1992

Danny R. Collins (L.S.)
Notary Public for South Carolina

My Commission Expires: 8/11/92

0068

01996

R.000642

STEVEN W. HAMM
ADMINISTRATOR
AND
CONSUMER ADVOCATE

The State of South Carolina

Department of Consumer Affairs

2801 DEVINE STREET
P. O. BOX 5757
COLUMBIA, S.C. 29250-5757

September 9, 1987

COMMISSIONERS
EMIL W. WALD
CHAIRMAN
ROCK HILL
LEHMAN A. MOSELEY, JR.
VICE CHAIRMAN
GREENVILLE
NELL W. STEWART
GREENVILLE
LONNIE RANDOLPH, JR.
COLUMBIA
JOHN T. CAMPBELL
COLUMBIA
BOBBY T. JONES
CAMDEN
THOMAS L. MOORE
CLEARWATER
W. LEWIS BURKE
COLUMBIA
RICHARD C. MOORE
GREENVILLE
TIMOTHY F. ROGERS
COLUMBIA

Dear South Carolina Automobile Dealer:

The Department of Consumer Affairs and the South Carolina Automobile and Truck Dealer's Association have worked together for sometime to obtain voluntary compliance with reasonable and lawful standards in automobile advertising. I would like to express my appreciation for the cooperation and assistance that my office has received from dealers all across South Carolina. However, problems still exist that cannot be ignored.

In order to maintain an open line of communication, I am providing you with a list of advertising and dealer practices that exist in South Carolina that constitute violations of state and federal law. Those practices include, but are not limited to the following:

(1) Advertisement of prices which are below the price at which the automobile can actually be purchased. (Use of add-ons such as freight, protection packages, documentary fees, factory and dealer installed options in addition to the advertised price);

(2) Advertisement of automobiles not actually available on the dealer's lot;

(3) Use of asterisks in a manner that make advertisements unclear or ambiguous so as to mislead the consumer;

(4) Failure to comply with Truth-in-Lending disclosures;

(5) Advertisements that appear to state that automobiles can be purchased for one-half of sticker price;

(6) Continued use of the term "free" when a purchase is required to obtain the "free" item;

(7) Statements by sales people to customers that dealers are <u>required</u> by manufacturers to charge for additional dealer preparation charges;

(8) Claims that automobiles are being sold at "factory invoice" when they are actually sold at full M.S.R.P;

(9) Advertisements that fail to clearly identify lease and sale programs and prices.

Further advertising problems brought to the attention of the Department of Consumer Affairs will not be treated as mere oversights, but as intentional violations. In addition, we will begin a regular program of identifying dealerships to the public that continue to ignore the guidelines adopted by your association. Any dealers who have questions about the legality of certain types of advertising are welcome to call the Department for clarification.

Sincerely,

Steven W. Hamm
Administrator

bp

cc: Mr. Patrick L. Watson
Executive Vice President
S. C. Automobile Dealer's Association
1517 Laurel Street
Columbia, South Carolina 29201

0070

01998

R.000644

EXHIBIT B

REV. 11/28/88

SOUTH CAROLINA DEPARTMENT OF CONSUMER AFFAIRS
ADVERTISING GUIDELINES & STANDARDS

Below is a list of advertising and dealer practices that constitute violations of state and federal law. These practices include, but are not limited to the following:

(1) Discounts, Savings - Any discounts or savings indicated in an advertisement must be those that are deducted from the MSRP. Any discounts, incentives, or savings by the manufacturer that are indicated on the Monroney sticker and used to compute the MSRP may not be claimed by the dealer in their advertisements as savings or discounts from the dealer.

(2) Rebates - If a rebate is indicated as being part of an advertised price, the amount of the rebate must be shown in the main body of the advertisement (close to the advertised price).

(3) A dealer may not advertise in any manner that is false, deceptive, or misleading or that misrepresents any vehicle offered for sale.

(4) Advertisements for the sale of new and used vehicles shall clearly and conspicuously identify the dealership by the same trade name as shown on the application for dealer's license, provided that the title or designation is not misleading. A trade or corporate name that falsely states or implies that the dealer has a special relationship or connection with a manufacturer that other dealers do not have is misleading.

(5) When the price of a vehicle is quoted, the advertisement shall clearly identify the vehicle as to make, year, model, special equipment, etc. All terms or claims, including statements about trade-in allowance, shall be factual and presented clearly and conspicuously.

(6) The advertised price shall be the full delivered cash price which the customer shall pay, except for taxes and tag fees. Dealer shall not advertise prices which are below the price at which the automobile can actually be purchased (use of add-ons such as freight, protection packages, documentary fees, administration fees, closing fees, factory and dealer installed options in addition to the advertised price). The amount of the factory rebate, if any, must be indicated in the advertisement.

(7) The term "wholesale" may not be used in retail advertising. The term "factory sale" or "liquidation

sale" may not be used in retail advertising if they imply that the dealer is selling vehicles in a manner other than through normal retail channels.

(8) The use of layout, headlines, illustrations, style, sound, length of time, lighting, color, or type size of an advertisement, or all of the above, may not obscure or make misleading any material fact in any advertisement or sales presentation.

(9) All advertising shall comply with Regulation Z and Regulation M of the Federal Truth in Lending Act.

(10) Advertisements which offer special annual percentage rate financing shall disclose any special conditions, terms, or selling prices which shall be met before the annual percentage rate applies.

(11) Unsupported selling claims or other statements, not in the public interest, may not be used. This includes statements such as: "We guarantee to sell for less"; "Highest trade-in allowance"; "Make your own deal"; "Name your own price"; and "Guaranteed minimum trade-in allowance.

(12) An advertisement for a motor vehicle lease should not be presented in a manner that a reasonable person would interpret as being an advertisement for the sale of a motor vehicle. Likewise, an advertisement for the sale of a motor vehicle should not be presented in a manner that a reasonable person would interpret as being an advertisement for a motor vehicle lease. Advertisements must clearly identify lease and sale programs and prices.

(13) Dealers shall not advertise automobiles that are not actually available on the dealer's lot.

(14) Dealers shall not use asterisks in a manner that make advertisements unclear or ambiguous so as to mislead the consumer. Graduated payment schedules must be presented in a clear and conspicuous manner so as not to mislead the consumer.

(15) Dealers shall not use the term "free" when a purchase or other consideration is required to obtain the "free" item.

(16) Sales people shall not make statements to customers that dealers are required by manufacturers to charge for additional preparation charges. Likewise, sales people should not represent to customers that any charges are required by State or Federal governments.

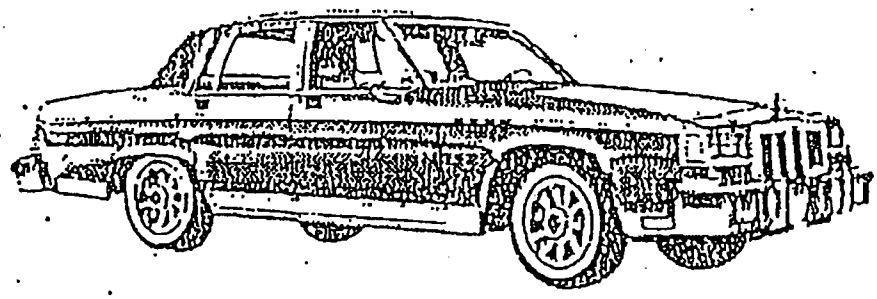
(17) Dealers shall not make claims that automobiles are being sold at "factory invoice" or "dealer invoice" when they are actually sold at full M.S.R.P. "Dealer invoice" and "factory invoice" are the manufacturer's initial invoice amount to the dealer. They are higher than the dealer's final cost because dealers often receive rebates, allowances, discounts, and holdbacks. The "dealer invoice" and "factory invoice" price include freight (destination and delivery charge) and national advertising. "Factory invoice" and "dealer invoice" mean the invoice amount at the bottom of the invoice. "Dealer cost" is the actual vehicle cost. This amount excludes the addition of holdback, freight, and national advertising.

REBATES
EXAMPLE: Wrong Way to Advertise

THIS WEEK ONLY

$9999.00

(includes rebate)



1989 Oldsmobile
Stk. #1989

ABC MOTORS, INC.
Columbia, SC
0074

02002

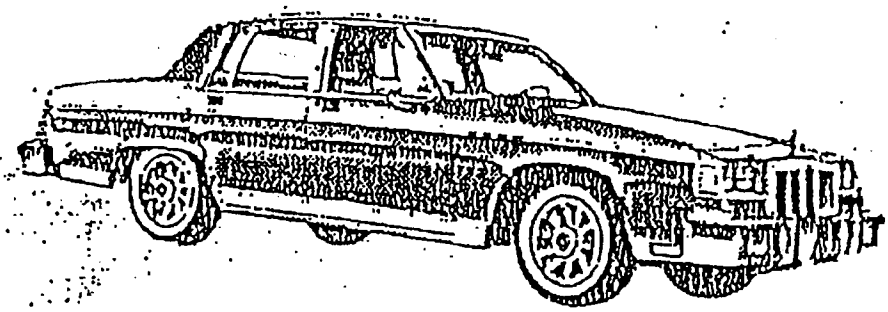
REBATES

EXAMPLE: Right Way to Advertise

THIS WEEK ONLY

$9999.00

(includes $500.00 rebate)



1989 Oldsmobile
Stk. #1989

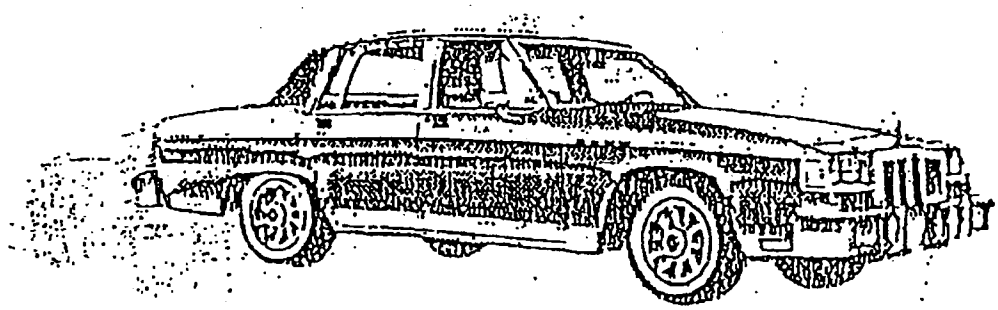
0075

ABC MOTORS, INC. 02003

EXAMPLE: Factory Savings/Discount
Wrong Way to Advertise

THIS WEEK ONLY

Options Package Savings	$ 500.00
Factory Rebate	$ 500.00
Dealer Discount	$ 500.00
TOTAL [redacted] Savings	$1500.00



1989 Oldsmobile
Stk. #1989

ABC MOTORS, INC.
Columbia, SC

02004

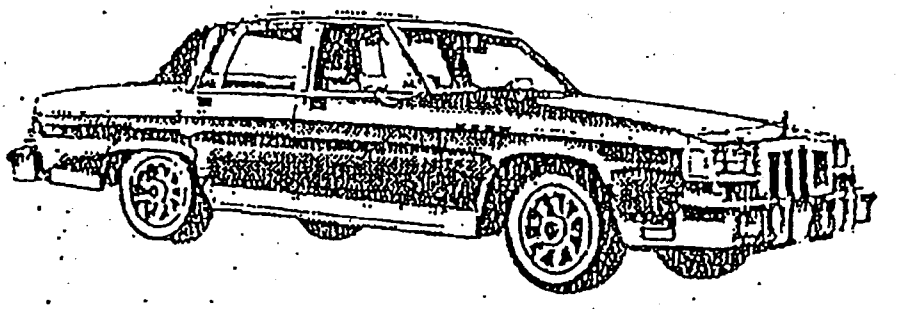
0076

EXAMPLE: Factory Savings/Discount
Right Way to Advertise

THIS WEEK ONLY

Factory Rebate	$ 500.00
Dealer Discount	$ 500.00
TOTAL [redacted] Savings	$1000.00

Window sticker reflects a FACTORY OPTIONS SAVINGS of $500.00.



1989 Oldsmobile
Stk. #1989

ABC MOTORS, INC.
Columbia, SC

0077

02005

R.000651

Closed-End Credit Disclosures

Triggering Terms

If an advertisement promoting "closed-end credit" (defined on page 4 of this manual) contains any of the following triggering terms, three specific disclosures must also be included in the advertisement. The *triggering* terms are:

1. *the amount of the downpayment* (expressed either as a percentage or as a dollar amount).
   Examples: "10% down"
   "$25 down"
   "90% financing"
2. *the amount of any payment* (expressed either as a percentage or as a dollar amount).
   Examples: "Monthly payments less than $67"
   "Pay 5% each month"
   "$9 per month"
3. *the number of payments.*
   Examples: "36 small payments are all you make"
   "48 monthly payments and you're all paid up"
4. *the period of repayment* (the total time required to repay).
   Examples: "Five years to pay"
   "36 months to pay"
   "4 year loans available"
5. *the amount of any finance charge.*
   Examples: "Financing costs less than $100"
   "Less than $100 interest"
   "$100 financing"

The following are examples of terms which do *not* trigger the required disclosures:

"No downpayment"
"18% Annual Percentage Rate loans available here"
"Easy monthly payments"
"Loans available at 5% below our standard annual percentage rate"
"Low downpayment accepted"
"Pay weekly"
"Terms to fit your budget"
"Financing available"

Required Disclosures

If any triggering term is used in a closed-end credit advertisement, then the following three *disclosures* must also be included in that advertisement:

(1) the amount or percentage of the downpayment;
(2) the terms of repayment; and
(3) the "annual percentage rate," using that term spelled out in full. If the annual percentage rate may be increased after consummation of the credit transaction, that fact must be disclosed.

Sample Disclosures (General)

The following example, which promotes the credit sale of a $1,000 car, illustrates the required disclosures for a closed-end consumer credit advertisement which would comply with the Truth in Lending Act *if printed clearly and conspicuously:*

R.000652

"No downpayment. 12 monthly payments of $100 each; annual percentage rate: 35%."

In displaying the downpayment, the word "downpayment" need not be used. For example, "10% cash required from buyer" or "credit terms require minimum $100 trade-in" would suffice.

Repayment terms may be expressed in a variety of ways in addition to the exact repayment schedule. For example, a creditor who offers loans might use unit cost to disclose repayment terms: "48 monthly payments of $25 per $1,000 borrowed."

Rate Disclosures

If the finance charge in a closed-end credit advertisement is expressed as a rate, it must be stated as an "annual percentage rate," using that term. If the annual percentage rate may increase after consummation of the credit transaction, that fact must be stated. If a component of that finance charge is interest computed at a simple annual rate, that rate *may* also be included. However, it must not be displayed more conspicuously than the annual percentage rate. For example, an advertisement for mortgage credit may include the contract rate of interest[5] together with the annual percentage rate.

If the finance charge is computed by applying a periodic rate to the unpaid balance, the periodic rate may also be stated along with the annual percentage rate. As with the simple annual rate, the periodic rate may not be stated more conspicuously than the annual percentage rate.

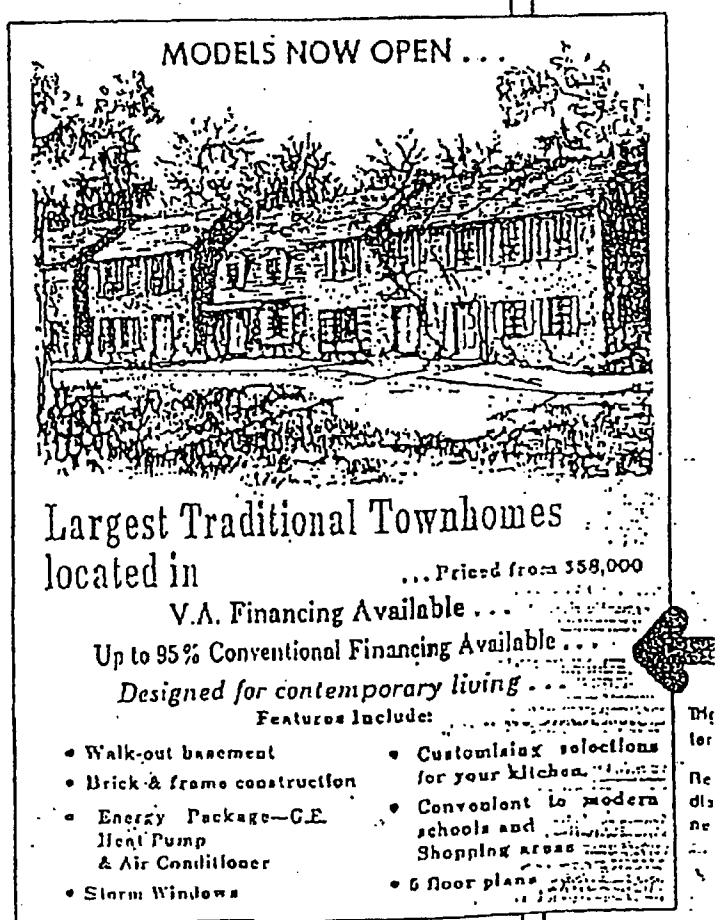
Except as noted above, no closed-end consumer credit advertisement may include any rate of finance charge other than the "annual percentage rate." An advertiser may *never* include an "add-on" rate (for example, "$6 per $100 per year") or a discount rate in an advertisement. These rates are misleading since they are significantly lower than the corresponding annual percentage rate, and their use violates the Truth in Lending Act.

Real Estate Advertisements

Real estate advertisements which also promote consumer credit must comply with the advertising provisions of the Truth in Lending Act.

1. Rate Disclosure Examples

As with other advertisements of closed-end consumer credit, if only the annual percentage rate is disclosed, additional disclosures are not required. An advertisement may simply state, "Assume 12% annual percentage rate mortgage" or "14% annual percentage rate mortgages available."



[5] The annual percentage rate may include insurance, discounts, and points which may not be included in the contract rate. For further information on the finance charge and annual percentage rate, see

Consumer Lease Disclosures

Consumer Leases In General

The Truth in Lending Act regulates consumer leases because they represent an alternative to buying on credit. Also, unless certain information is provided, a consumer might easily confuse leasing with purchasing on credit.

Triggering Terms

If an advertisement promoting a "consumer lease" (defined on page 4 of this manual) contains any of the following triggering terms, then five specific disclosures must also be included in the advertisement. The *triggering* terms are:

1. *the amount of any payment.*
   Example: "Pay a mere $128 per month"
2. *the number of required payments.*
   Examples: "$133 per month...36 month lease"
   "Low monthly payments on our four-year auto leases"
3. *a statement that any or no down-payment, or other payment, is required at the beginning of the lease.*
   Examples: "Lease now and make no payments for three months"
   "Only a small down-payment"
   "Leave your pocketbook behind and return home in your leased '63 Chevy"

The following are examples of terms which do *not* trigger the required disclosures:

"Low Monthly Payments"
"Lease for Less than It Costs to Buy"
"We Lease to Anyone"

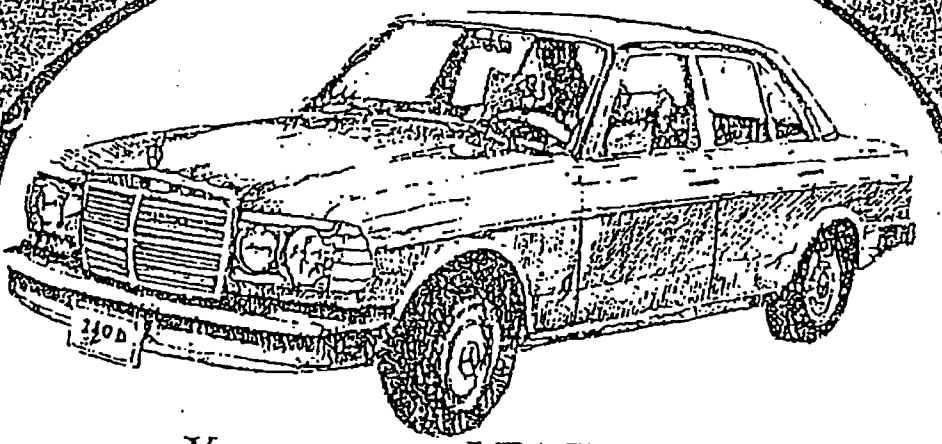
Required Disclosures

If any triggering term is used in a consumer lease advertisement, then the following five *disclosures* must also be included in that advertisement:

(1) a statement that the transaction advertised is a lease;
(2) the total amount of any payment (such as security deposit or capitalized cost reduction) required at the beginning of the lease, or a statement that no such payment is required;
(3) the number, amounts, due dates, or periods of scheduled payments, and the total of such payments under the lease;
(4) a statement of whether the customer has the option to purchase the leased property and at what time and price (the method of determining the price may be substituted for disclosure of the price); and
(5) a statement of the amount (or method of determining the amount) of any liabilities the lease imposes upon the customer at the

WRONG

LEASE



You can now LEASE a Luxurious Mercedes-Benz 240 Diesel for Less . . .

only . . . **$283.18** per month

WITH AIR CONDITIONING, AM/FM RADIO, CENTER ARM REST, 4 SPEED TRANSMISSION

SALES TAX & TAGS NOT INCLUDED

36 PAYMENTS AT $283 PER MO.

Oldsmobile • Datsun • Mercedes-Benz

Triggeri terms

Require disclost needed

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end of the term; and, if the customer has such liability, a statement that the customer shall be liable for any difference between the estimated value of the leased property and its realized value at the end of the lease term.

Sample Disclosures

The following is an example of the required disclosures for a consumer lease advertisement which would comply with the Truth in Lending Act *if printed clearly and conspicuously:*

"36 month lease. No payments at the beginning of the lease, 36 monthly payments of $128 totaling $4,608. Customer has no option to purchase at the end of the lease. Customer will have no further liability unless auto has depreciated to less than 40% of its new car price. If so, customer is liable for that additional depreciation."

Catalog and Multi-Page Advertisements

Consumer lease advertisements which appear in catalogs or other multi-page advertisements are subject to the special provisions described on page 16 of this manual.

Merchandise Tags and Multiple Item Leases

If a merchandise tag for an item normally included in a multiple item lease contains any triggering term, it must either (a) include all required disclosures or (b) *clearly and conspicuously* refer to a sign or display prominently posted in the lessor's showroom which includes all required disclosures.

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R.000656

EXHIBIT C

The State of South Carolina
Department of Consumer Affairs

2801 DEVINE STREET
P. O. BOX 5757
COLUMBIA, S.C. 29250-5757

STEVEN W. HAMM
ADMINISTRATOR
AND
CONSUMER ADVOCATE

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CAMDEN
THOMAS L. MOORE
CLEARWATER
W. LEWIS BURKE
COLUMBIA
RICHARD C. MOORE
GREENVILLE
TIMOTHY F. ROGERS
COLUMBIA

October 20, 1988

fax 934-9365

Daniel F. Norfleet, Esquire
Waldman & Associates
Remount Square
1861 Remount Road, Suite 204
PO Box 90466
North Charleston, SC 29410-1466

RE: Closing Fees

Dear Mr. Norfleet:

Administrator Steven W. Hamm has referred your letter of August 11, 1988 to me for reply. Please excuse this tardy response.

This Department has consistently taken the position both with regard to consumer credit sales and consumer loans, that if the additional charge provisions of S.C. Code Ann. §§37-2-202 and 37-3-202 (1976 as amended) do not allow for a fee or charge to be assessed as a permissible additional charge, that fee or charge must be considered part of the finance charge (or credit service charge) unless it is specifically prohibited.

While I cannot comment on nor identify any dealership presently under investigation, I can comment in general terms. We have received some information that such fees are being charged ostensibly as additional charges for the service of document preparation, notary fees, "follow-up" calls and the like.

There are two problems with the charging of such fees in connection with consumer credit sales of automobiles. First, there is no provision for them in §37-2-202. We are not certain whether they are charged on cash and credit contracts alike. Even so, certain "closing costs" fees are specifically allowed by §37-2-202 (1)(d) for real estate secured transactions. By negative implication, they are not allowed for non-real estate secured transactions. In addition, I am aware of no provision for such fees as part of the amount financed under the federal Truth in Lending Act [15 U.S.C. §1601 et seq.].

Furthermore, it would appear that certain dealerships are advertising cash prices of automobiles in full page advertisements without including the so called closing fee in the cash price. Because the fee is an easily ascertainable element of the overall

price of the vehicle, it should be included in the cash price the same as elements such as "destination charges." A copy of Mr. Hamm's advertising guidelines are included for your information. So is a copy of the recent opinion of the Maryland Attorney General's office based on substantially the same grounds.

I hope this is sufficiently responsive to your inquiry.

Sincerely,

Philip S. Porter
Counsel to Administrator

PSP:dfneb

Steve Hamm

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R.000658

EXHIBIT D

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	SOUTH CAROLINA DEPARTMENT OF CONSUMER AFFAIRS
S.C. DEPARTMENT OF CONSUMER AFFAIRS, Petitioner, vs. ACTION CHEVROLET, INC. Respondent.	ASSURANCE OF DISCONTINUANCE

In accordance with provisions of the South Carolina Consumer Protection Code § 37-1-101 et seq., S.C. Code Ann. § 37-1-101 et seq. (amended 1976), Petitioner and Respondent hereby agree to the provisions of this Assurance of Discontinuance as set forth below. In entering this Assurance, Respondent makes no admission of unlawful or wrongful conduct. Respondent recognizes and understands, however, that any violation of the provisions herein shall constitute a prima facie violation of the South Carolina Consumer Protection Code and shall subject Respondent to the penalties as set forth therein.

In order to resolve this matter Respondent consents to this Assurance.

WHEREFORE, the Respondent does freely, voluntarily and knowingly give and assure the S.C. Department of Consumer Affairs, that

1. Respondent will not engage in any activity, conduct or practice designed to mislead or deceive the public as to the price, quality or guarantee applicable to any product for sale by

Respondent.

2. Respondent will not advertise, print, display, publish, distribute, broadcast, or cause to be advertised, printed, displayed, published, distributed, or broadcast in any manner any statement of representation that is false, misleading, or deceptive to the consumer.

3. All advertisements by Respondent will accurately reflect the manner in which the product is sold.

4. The advertised price in an advertisement for a vehicle shall be the delivered cash price which the customer shall pay, except for taxes and tag fees. The Respondent will not use add-ons in the advertisement such as freight, protection packages, documentary fees, or dealer options in addition to the advertised price. However, the actual sales transaction may include add-ons such as protection package and options, in addition to the advertised price if the consumer requests them. The Respondent will not add "fees" to the buyer's contract.

5. The Respondent will not use asterisks in a manner that make advertisements unclear or ambiguous so as to mislead the consumer.

6. All advertising shall comply with Regulation Z of the Federal Truth in Lending Act and Federal Trade Commission Act.

7. Factory rebates on cars purchased from Respondent must be accounted for and disclosed in the buyer's contract. The buyer's contract must be a true and clear accounting of the sales transaction between the Respondent and the consumer.

8. The Respondent may not use advertising that implies

the Respondent is selling vehicles in a manner other than through normal retail channels.

9. Any automobile the Respondent advertises for sale at dealer invoice must be sold at dealer invoice. The dealer invoice price includes freight and national advertising. Dealer invoice is the manufacturer's initial invoice amount to the dealer. It is indicated as the invoice amount at the bottom of the invoice. No other charges may be added to this price except taxes and tags.

10. The Respondent agrees to pay the sum of ten thousand dollars ($10,000) to the Department as a complete settlement of the matters contained in this Assurance of Discontinuance.

11. The Respondent and the Department agree that this Assurance is an Assurance of Discontinuance made pursuant to S.C. Code Ann. §37-6-109 (1976 as amended).

In consideration of the foregoing, the Petitioner agrees to forego further proceedings in this matter. However, it is specifically understood that the Administrator, Steven W. Hamm may reopen this matter if Action Chevrolet should engage in any of the conduct noted in this Assurance.

ACTION CHEVROLET, INC.

By: _____

Date: 1/4/89

S.C. DEPARTMENT OF CONSUMER AFFAIRS

By: _____
Steven W. Hamm, Administrator

Date: 1-11-89

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STEVEN W. HAMM
ADMINISTRATOR
AND
CONSUMER ADVOCATE

The State of South Carolina

Department of Consumer Affairs

2801 DEVINE STREET
P. O. BOX 5757
COLUMBIA, S.C. 29250-5757

July 12, 1989

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TIMOTHY F. ROGERS
COLUMBIA
HARRY WALKER
COLUMBIA
A. CLARK JENKINS
JOHNS ISLAND
GENE McCASKILL
CAMDEN

Robert F. Williams
3136 North Pleasantburg Dr.
Greenville, SC 29609

RE: Additional Costs or Fees in Auto Sales

Dear Mr. Williams:

Recently you have asked how to treat a fee that you call a procurement fee. As I understand it this fee is to cover the costs of closing the sale, doing the paperwork, and transporting or sending the documents to the Highway Department. If this fee serves a different purpose, please let me know because it may change what I say.

The Department's position is that such charges may not be charged or advertised. They may not be put on the buyer's order, the retail sales contract, or the window sticker. The Department feels strongly enough about this position that we have filed a lawsuit against one dealer, and this type of charge is the basis for one of the causes of action. This does not mean that you cannot take your expenses into consideration when pricing an auto or negotiating a sale. These expenses are part of the expense associated with the operation of an auto dealership and are to be treated the same as any other type of overhead expense. That is, you must determine how low you can go when you are negotiating the price and still make a profit. If you want to recoup an additional $89.00, then you should not reduce the price as much during negotiations.

For at least two years, this Department has been informing dealers of the problem with using such a fee in connection with the advertising of the purchase price of an auto. The problem, as it relates to advertising, arises when an auto is advertised at a cash price and then when the deal has been reached this additional charge is added to the price. The amount of this charge is predetermined or can be determined easily. It appears that the only purpose for not including the fee in the advertised price is to make the consumer think he is getting a better deal than he actually is getting. Therefore, if an auto is advertised for a cash price and the fee is added later, the price advertisement is deceptive and misleading.

Not only is the fee not permitted in advertisements, but also the fee is improper in any financed consumer transaction, unless the charge is specifically permitted by the South Carolina Consumer

Protection Code. The legal basis for this position can be seen by evaluating those provisions of the Code that set forth the permissible charges on a financed transaction. These provisions are found in Part 2 of Chapter 2 of the Code (§§37-2-201 through 210) in the case of credit sales, and in Part 2 of Chapter 3 (§§37-3-200 through 210) in the case of consumer loans. Since the present context is auto sales, I will confine my evaluation to credit sales.

Very briefly, Part 2 of Chapter 2 provides for various types of additional charges. The type of charges that are authorized are as follows:

§37-2-201 -- finance charges
§37-2-202 -- permissible additional charges
§37-2-203 -- delinquency charges
§37-2-204 -- deferral charges
§37-2-205 -- service charge on refinancing
§37-2-206 -- service charge on consolidation
§37-2-207 -- service charge for revolving charge accounts
§37-2-208 -- advances to perform covenants of the buyer

The only other sections of Part 2 do not permit any type of charges. In fact, the remaining sections give certain rights to the buyers.

§37-2-209 -- gives the buyer the right to prepay the debt
§37-2-210 -- provides for the rebate due to the buyer upon prepayment

Of these possible charges it would seem that only two may apply. Those two are §§37-2-201 and 37-2-202. Section 37-2-201 provides that a seller making a consumer credit sale may properly contract for and receive a finance charge as permitted in the provisions of §37-2-201. As I understand it, you do not want this fee to be considered a finance charge. If my understanding is incorrect, please let me know.

Section 37-2-202 provides for certain additional charges that may properly be made. I am attaching a copy of this code section for your convenience. This section is divided into three parts. The first part, §37-2-202(1), provides for five specified types of charges. The second part, §37-2-202(2), provides for the permissible insurance charges. The third part, §37-2-202(3), provides for permissible additional charges when the buyer assumes an existing obligation. Neither the second nor the third part of this code section apply to the procurement fee. Therefore, unless one of the specified additional charges in the first part authorizes the procurement fee it is not permitted. These permissible charges are:

(a) Official fees and taxes;
(b) Charges for insurance as described in subsection (2);
(c) Annual charges for the privilege of using a credit card, when the card and the charges meet the conditions set forth;

(d) Closing costs when the debt is to be secured by an interest in land if the costs are bona fide and paid to third parties;
(e) Charges for other benefits conferred on the buyer if these charges meet the criteria set forth in this subsection.

The first three types of charges do not apply to the procurement fee. Official fees and taxes are charges made by and paid to the government. There is no question that the procurement fee is not a government fee. Therefore, this part does not make the fee permissible. Also, there is no question that the procurement fee is not for insurance, so the insurance provision does not authorize the procurement fee. Finally, there is no question that the fee does not relate to a charge for the privilege of using a credit card, and, as a result, that this part does not authorize the fee. Therefore, only the fourth or fifth parts of the subsection could possible authorize the fee.

Part four is for closing costs. Many of the dealers that want to charge what you call a procurement fee call the fee a closing fee. Part four does not authorize such a fee in the sale of an automobile because the fee is permitted only when the debt is secured by an interest in land. This paragraph, §37-2-202(1)(d), lists five types of closing costs that may be made when the debt is secured by an interest in land. The first of these charges is for title examinations and title insurance. Due to the nature of establishing title to real estate, a title examination is essential. The second type of closing cost that is permitted is a fee for the preparation of the deed and other documents. This fee is permissible only if the fee is paid to a third party who is not related to the creditor. The third type of closing cost is escrows for future payment of taxes, insurance and such like. The fourth type of closing cost is fees for notarizing deeds and other documents. This type of fee is permitted only if the fee is paid to a third party who is not related to the creditor. The fifth type of closing cost is fees for real estate appraisals when the real estate is the property that is the subject of the sale. This type of cost is permitted only if the fee is paid to a third party who is not related to the creditor. While some of these type costs may appear to be similar to the purpose of your procurement fee, they are quite different in some cases, and they are not permitted if paid to the creditor in the cases that would be similar. Since the procurement fee is paid directly to the dealer, these closing costs would not authorize the fee as a permissible closing cost even when their use is for purposes similar to the purpose of the procurement fee.

The only remaining possibility is the fifth specified permissible additional charge. This charge is for other benefits conferred on the buyer. To be permissible the charge and the benefits must meet several requirements. I do not believe the fee meets the requirements, but I will identify each of them a give a brief discussion of the reasons why I do not believe the fee is authorized under this part of the Code section.

The first of these requirements is that there must be a benefit conferred on the buyer. It is very doubtful that a procurement fee

confers any benefit on the buyer. In fact, it would seem that the real benefit of the fee is conferred upon the seller. The second requirement is that the benefit must be of value to the buyer. It is even more doubtful that the procurement fee is of any value to the buyer. The third requirement is that the charge must bear a reasonable relation to the benefit to the buyer. I do not believe that a charge of $89.00, much less one of $199.00 as some dealers charge, has any reasonable relation to the benefit that a buyer may receive. The fourth requirement is that such a charge must not be of a type that is for credit. If the charge is of a type that is for credit, then the charge is a finance charge and must be treated as one. The fifth requirement is that the charge must be authorized as permissible by a rule adopted by the Administrator. As of now there are no rules authorizing any additional charges as permissible.

The only permissible charges are those set forth in the Consumer Protection Code, and the procurement fee, regardless of the name actually given to the fee, is not authorized by the Code. Therefore, the fee is an illegal excess charge and cannot be charged.

I have tried to state our position and the basis for it as clearly as I can. If you have questions or want to discuss this matter further, please let us know. We would be happy to try to arrange a meeting with you, the Dealers' Association, and your attorneys if you desire.

With best regards, I am

Sincerely,

s/

Danny R. Collins
Staff Counsel

cc: Patrick E. Watson,
Executive Vice-President of
the South Carolina Automobile
and Truck Dealers' Association

STEVEN W. HAMM
ADMINISTRATOR
AND
CONSUMER ADVOCATE

The State of South Carolina

Department of Consumer Affairs

2801 DEVINE STREET
P. O. BOX 5757
COLUMBIA, S.C. 29250-5757

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JOHNS ISLAND
GENE McCASKILL
CAMDEN

June 5, 1989

Fritz Waidner
Fritz Pontiac-Cadillac-Buick, Inc.
P. O. Box 878
Newberry, SC 29108

RE: Auto Advertising Standards and Guidelines

Dear Mr. Waidner:

As you are aware the S.C. Department of Consumer Affairs has worked with South Carolina auto dealers to obtain voluntary compliance with reasonable and lawful standards in automobile advertising. We have endeavored to maintain an open line of communication in order to be available to assist dealers who may have questions about the legality of certain types of advertising. We appreciate the cooperation and assistance that our Department has received from dealers all across South Carolina.

Enclosed is a copy of the S.C. Department of Consumer Affairs auto advertising standards and guidelines.

In your recent television advertisement, the use of fees in addition to the advertised price is a violation of state and federal law.

A dealer may not use add-ons such as documentary fees, administration fees, closing fees, or any fees in addition to the advertised price.

Your cooperation and assistance in voluntary compliance with lawful advertising standards is appreciated. Further advertising problems brought to the attention of the Department of Consumer Affairs will not be treated as oversights, but as intentional violations.

I would appreciate your written acknowledgement within ten (10) days of the date of this letter indicating your understanding of

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and voluntary compliance with the law as set forth in this letter. If you have any questions about this letter, please feel free to call the Department at (803) 734-9460.

Sincerely,

Steven W. Hamm
Administrator

SWH/cam

enclosures

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R.000667

PONTIAC
Cadillac
BUICK

FRITZ'S
Pontiac-Cadillac-Buick
"WE'RE HERE TO SERVE YOU"
4010 College Street Exin.
Newberry, South Carolina 29108
(803) 276-8970 (Newberry)
(803) 254-5131 (Columbia)
1-800-426-7433

RECEIVED
JUN 20 1989
DEPARTMENT OF
CONSUMER AFFAIRS

June 17, 1989

Dear Steve,

Thank you for your letter of June 5th. This area of advertising, guidelines, etc. is somewhat unclear to us and I would like to meet with you at your office when its convenient to you to discuss the situation.

Thanks,
Fritz Dasher

P.S.
Home # 345-2777
Business # 254-5131
1-276-8970

We got a meeting with Danny Collins June 27th so you don't have to reply to this letter.

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R.000668

M E M O R A N D U M

TO: File

FROM: Danny Collins

RE: Meeting with Fritz Waidner

DATE: June 28, 1989

On June 27, 1989, several members of the Staff met with Fritz Waidner to discuss various matters. Those attending were Danny Collins, Helen Fennell, Annette Murphy and Karen Yongue, as well as Fritz Waidner. Three primary issues were discussed at the meeting: closing costs (documentary fees, procurement fees or administrative fees), secondary financing and an active complaint filed against the dealership.

Closing Costs

After some discussion, I think Mr. Waidner understood our position on closing costs as an excess, unpermitted additional charge. We gave him a copy of §37-2-202, and explained that if a charge was not specifically permitted by that section, it would be considered an excess charge. Mr. Waidner wanted to know why the bank could make him a loan and add different types of charges. We explained that certain additional charges are specifically permitted in loans secured by real property. Mr. Waidner countered that the loan was not secured by realty but by equipment. We explained that that was a commercial transaction (business to business) and was not governed by the Consumer Protection Code. Mr. Waidner once again countered that he was personally liable on the loan. We explained that the purpose of the loan was still a business purpose and was not governed by the Code.

Secondary Financing

After our discussion of the method of secondary financing used by Mr. Waidner, it appears that he has no hidden finance problems. We asked Mr. Waidner to describe the operation of the high-risk financing he uses. He told us that when a person was turned down by the primary source of financing, then the credit application would be given to another company. The negotiated terms would remain the same, except for the changes made necessary by a higher finance charge. The higher finance charge is disclosed and there is no extra fee that is charged to accept the high risk customer. We explained to Mr. Waidner that if that is how they operated, then there was probably no problem with respect to additional charges or hidden finance charges.

Hunter Complaint

After discussing the first two matters, we briefly discussed the complaint filed by Dennis and Charlotte Hunter. Mr. Waidner confirmed that he was aware of the problem, and he added that this particular matter was one that he felt strongly enough about to hold his ground, even when it meant that he would be kicked out of Autocap. We informed Mr. Waidner that we felt this complaint had to be resolved. This is one of the few times where a dealer, instead of the consumer, would be bound by a contract he wanted to break, and our position was the same as it would be if the consumer wanted out of the contract -- i.e. the contract is binding and must be performed. Mr. Waidner relies on a clause in the agreement that attempts to make the contract binding only if the financing is approved. The contract form provides a signature line immediately below this condition precedent, but the consumer never signed the line. After some discussion, Mr. Waidner agreed that he would try to resolve this complaint. If he is unable to reach a resolution, we agreed to offer a proposal that may help resolve the matter.

STEVEN W. HAMM
ADMINISTRATOR
AND
CONSUMER ADVOCATE

The State of South Carolina

Department of Consumer Affairs

2801 DEVINE STREET
P. O. BOX 5757
COLUMBIA, S.C. 29250-5757

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COLUMBIA
HARRY WALKER
COLUMBIA
A. CLARK JENKINS
JOHNS ISLAND
GENE McCASKILL
CAMDEN

July 26, 1990

Fritz Waidner
Fritz Pontiac-Cadillac-Buick, Inc.
P. O. Box 878
Newberry, SC 29108

RE: Auto Advertising Standards and Guidelines

Dear Mr. Waidner:

As you are aware, the S.C. Department of Consumer Affairs has worked with South Carolina auto dealers to obtain voluntary compliance with reasonable and lawful standards in automobile advertising.

If a rebate is indicated as being part of an advertised price, the amount of the rebate must be shown in the main body of the advertisement (close to the advertised price). Enclosed is a copy of one of your ads not in compliance with this rebate advertising guideline.

Please note a dealer may not use add-ons such as documentary fees, administration fees, closing fees, or any fees in addition to the purchase price. Enclosed is a copy of the S.C. Department of Consumer Affairs Automobile Advertising Guidelines and Standards. Your cooperation and assistance in voluntary compliance with lawful advertising standards is appreciated. I would appreciate your written acknowledgement within ten (10) days of the date of this letter indicating your understanding of and voluntary compliance with the law as set forth in this letter. If you have any questions about this letter, please feel free to call the Department at (803)734-9460.

Sincerely,

Danny R. Collins

Danny R. Collins
Counsel/Enforcement Unit

DRC/cam

enclosures

0097

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE
COUNTY OF AIKEN	)	SECOND JUDICIAL CIRCUIT
	)	
HEATHER HERRON, ET AL.,	)	CIVIL ACTION NO.: 06-CP-02-1230
Plaintiffs,	)	
	)	**REPLY TO DEFENDANTS' MEMORANDA IN OPPOSITION TO PLAINTIFFS' MOTION ASKING THE COURT ISSUE A DECLARATORY JUDGMENT INTERPRETING THE STATUTES GOVERNING THIS CASE UNDER RULE 57, SCRCP**
vs.	)	
	)	
DICK DYER, INC., ET AL.,	)	
Defendants.	)	
	)	
	)	
	)	

Plaintiffs submit this Reply to Defendants' Memoranda in Opposition to Plaintiffs' Motions asking the Court to issue a Declaratory Judgment interpreting the statutes governing this case under Rule 57, SCRCP. Specifically, Plaintiffs request that the Court declare the following:

1. It is a violation of S.C. Code Ann. §37-2-307 if a dealer charges closing fees that are not for reimbursement of certain overhead costs;

2. It is a violation of S.C. Code Ann. §37-2-307[1] if a dealer fails to include the charging of closing fees in the advertised price of motor vehicles.[2]

    a. It is a violation of S.C. Code Ann. §37-2-307 for a dealer to charge closing fees as an add-on to the advertised price of a motor vehicle;

    b. A price on a window sticker is the advertised price of a motor vehicle for purposes of S.C. Code Ann. §37-2-307;

[1]S.C. Code Ann. §37-2-307 provides: "Every motor vehicle dealer charging closing fees on a motor vehicle sales contract shall pay a one-time registration fee of ten dollars during each state fiscal year to the Department of Consumer Affairs. The closing fee must be included in the advertised price of the motor vehicle, disclosed on the sales contract, and displayed in a conspicuous location in the motor vehicle dealership."

[2]Specifically, is the closing fee included in the asking price and does it thereafter remain in the price throughout negotiations such that it cannot be an add-on to the negotiated selling price?

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11:24 Am
AIKEN COUNTY
CLERK OF COURT

c. A price on a hang tag is the advertised price of a motor vehicle for purposes of S.C. Code Ann. §37-2-307;

d. The first price given to you verbally by a salesman is the advertised price of a motor vehicle for purposes of S.C. Code Ann. §37-2-307;

e. A price in the newspaper is the advertised price of a motor vehicle for purposes of S.C. Code Ann. §37-2-307;

f. A price on the internet is the advertised price of a motor vehicle for purposes of S.C. Code Ann. §37-2-307;

g. A price on television is the advertised price of a motor vehicle for purposes of S.C. Code Ann. §37-2-307;

3. Unless S.C. Code Ann. §37-2-307 is followed, closing fees are illegal; and

4. The charging of illegal closing fees is an unfair act in violation of the Dealers Act, S.C. Code Ann. §56-15-30(a).[3]

I. BACKGROUND

This case arises from the Defendant Car Dealers charging of illegal "closing fees." Closing fees are sometimes referred to by a variety of names. In this case, Defendant Galeana charged Plaintiff Natalie Armstrong a $199.00 closing fee called an "ADMIN FEE."[4] Defendant Dick Dyer charged Plaintiff Michael Blease a $199.00 "PROCESSING FEE."[5] Defendant Hendrick Honda charged Julie Freeman a $299.00 "Procurement Fee."[6] Defendant Landrover

[3] S.C. Code Ann. §56-15-30(a) provides: "(a) Unfair methods of competition and unfair or deceptive acts or practices as defined in § 56-15-40 are hereby declared to be unlawful."

[4] See Exhibit A, Invoices.

[5] Id.

[6] Id.

charged Plaintiff Heather Herron a $225.00 "Recording & Processing Fees."[7] And Defendant Taylor Toyota[8] charged Plaintiff Michael Ritz a $277.00 closing fee called a "PROCUREMENT/ DELIVERY FEE."[9]

Courts in other states have found that the charging of closing fees is an unfair trade practice. *See E.g.* Motzer Dodge Jeep Eagle, Inc. v. Ohio Atty. Gen., 642 N.E.2d 20, 25 (Ohio App. 12 Dist.,1994)(Motor vehicle dealership committed unfair or deceptive act in violation of Consumer Sales Practices Act by charging handling and delivery fee which was preprinted in price section of retail buyer order form.). As one commentator noted, car dealers charge closing fees because "[t]hese fees aren't usually questioned so the dealership looks at that as free money." Munroe, Brian, *Car Buying Revealed, How to Buy a Car and Not Get Taken for a Ride*, Morgan James, 2008.[10]

In late 1980's, the then Consumer Advocate Steve Hamm found the charging of closing fees in South Carolina to be illegal. Mr. Hamm in an affidavit stated:

> 12. Between October, 1988 and July, 1989, the Department began discussing additional closing fees and determined, during June, 1989 or early July, 1989, that **such fees within themselves were a violation of the law.**
>
> 15. Consistently, since July, 1989, **the Department has taken the position that additional closing fees are a violation of the law.**[11]

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[7] Id.

[8] Defendant Taylor Toyota is an Aiken County dealership and venue is without dispute proper in Aiken County as to this Defendant.

[9] Id.

[10] Every transaction of each dealer includes a closing fee that would reduce the price of motor vehicles if not charged. See Exhibit B, Rule 30(b)(6) Deposition of Taylor Toyota, p. 36, ll. 6-10 ("Q: Let me make sure I understand. If this customer did not have to pay the $277 administrative fee, he would've go the price for less than—price of 24,000 minus 277, isn't that true? A: If the customer did not have to pay it, correct.").

[11] Exhibit C, Affidavit of Steven Hamm.

(Emphasis added). An exhibit to the Affidavit explains the rationale:

> The problem, as it relates to advertising, arises when an auto is advertised at a cash price and then when the deal has been reached this additional charge is added to the price. The amount of this charge is predetermined or can be determined easily. It appears that **the only purpose for not including the fee in the advertised price is to make the customer think he is getting a better deal than he actually is getting**.[12]

(Emphasis added).

In 1992, the South Carolina Automobile Dealers Association ("SCADA"), a group in which all of the Defendants in this case are members, discussed attempting to make closing fees legal. Minutes from a January 28, 1992 meeting provide in part: "Claude Burns requested that the Association do something to allow for Documentary Fees to be charged in South Carolina."[13]

In 1996, the South Carolina Supreme Court in Fanning v. Fritz Pontiac-Cadillac Buick issued an opinion suggesting that charging closing fees was an unfair trade practice. 322 S.C. 399, n. 8, 472 S.E.2d 242, n. 8 (1996) ("[W]e do not imply that inclusion of such [c]losing fees may not be attacked on other grounds, such as claims for fraud, misrepresentation or unfair trade practices."). The Fanning Court, however, held that closing fees were not prohibited by the former version of the Consumer Protection Code, the narrow issue before the Court.

Car dealers were divided on how to respond to the Fanning decision. One dealer sent a letter to SCADA's president urging legislative action to legalize closing fees. This letter provided in part:

> I have personally reviewed a copy of the Fritz's case. Although the South Carolina Supreme Court agreed that charging doc. fees was not a violation of the Consumer Protection Code, the Supreme Court also included a footnote stating:

[12] Exhibit C, Affidavit of Steve Hamm, Exhibit E.

[13] Exhibit D, January 28, 1992 SCADA minutes.

> By our holding we do not imply that inclusion of such fees may not be attacked on other grounds, such as claims for fraud, misrepresentation or unfair trade practices. The Fannings have done so here and their claims remain pending in circuit court. We express no opinion as to the merit of those claims.
>
> ...I view the Fritz's case as a warning shot. **The Supreme Court has been kind of enough to paint a target for trial lawyers** who may be interested in class action litigation. **Anyone, who reads and understands footnote 8 might just ring the bell next time around**.[14]

SCADA decided against legislative action. A February 1999 SCADA bulletin provides in part:

> **Any legislative activity in this area could very well result in unneeded attention by the legislature of the fee**, which could in turn lead to unneeded regulation of the fee or could very well result in legislative action to prohibit the fee. Either of these actions would be very detrimental to our Dealer Body.[15]

As shown by the above quote, SCADA did not want "unneeded attention" on closing fees because they were afraid that if the legislature knew what they were doing the legislature might "prohibit the fee."[16] This is especially true in light of the $300 sales tax limitation.[17] This is an admission that SCADA (which includes the Defendants in this case) believed that the charging of closing fees was unfair to consumers and unknown to the majority of the legislature.

In 2001, on the last day of the legislative session and without the issue going to any subcommittee, full committee, conference committee,[18] SCADA "worked out" a proviso[19] that

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[14] Exhibit E, March 8, 1999 Dick Smith Automotive Group Letter (emphasis added).

[15] Exhibit F, February 1999 SCADA Bulletin.

[16] Id.

[17] Id.

[18] Exhibit G, Rule 30(b)(6) of SCADA, p. 267, ll. 1-18. By presenting the closing fee legislation as budget proviso on the last day of session, SCADA was able to satisfy one of its goals of not creating "unneeded attention" on closing fees.

[19] Exhibit H, June 26, 2000 SCADA Bulletin.

was tacked on to the budget bill and approved by acclamation on the floor of the Senate, without any debate, which legalized closing fees, albeit with strict disclosure requirements. The statute passed, S.C. Code Ann. §37-2-307 provides:

> Every motor vehicle dealer charging closing fees on a motor vehicle sales contract shall pay a one-time registration fee of ten dollars during each state fiscal year to the Department of Consumer Affairs. The closing fee must be included in the advertised price of the motor vehicle, disclosed on the sales contract, and displayed in a conspicuous location in the motor vehicle dealership.

The enactment of a statute legalizing closing fees definitively shows that charging closing fees in absence of meeting the statute's requirements is illegal.[20] Otherwise, the statute is meaningless.

II. AMOUNT OF CLOSING FEE[21]

The first requirement at issue in these motions is that Defendants can only charge closing fees that are for reimbursement of certain overhead costs. This requirement arises from the plain language in S.C. Code Ann. §37-2-307 which authorizes the charging of "closing fees." S.C. Code Ann. §37-2-307 provides:

> Every motor vehicle dealer charging **closing fees** on a motor vehicle sales contract shall pay a one-time registration fee of ten dollars during each state fiscal year to the Department of Consumer Affairs. The closing fee must be included in the advertised price of the motor vehicle, disclosed on the sales contract, and displayed in a conspicuous location in the motor vehicle dealership.

(emphasis added). The use of the term "closing fees" necessarily involves the reimbursement of the certain costs that are associated with an automobile closing such as document retrieval and document preparation. Nothing in the statute authorizes a dealer to charge hidden profit fees.

The fact that §37-2-307 allows closing fees for reimbursement of certain closing costs was confirmed by the Department of Consumer Affairs. In 2001, the Department of Consumer

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[20] This addresses Dick Dyer argument IV.

[21] This section addresses Galeana arguments 8, 9; Dick Dyer argument III; Hendrick Honda arguments 8, 9; Taylor Toyota argument IV, B.

Affairs, which is charged with implementing and interpreting the Consumer Protection Code (including §37-2-307), issued an interpretation which limits the charging of closing fees to only a "**means of reimbursing [the dealer] for certain overhead costs such as document retrieval and document preparation.**"[22] This interpretation and rule by the Department of Consumer Affairs regarding S.C. Code Ann. §37-2-307 is "valid for the enforcement of the law. . . ." *See* Heyward v. South Carolina Tax Comm'n, 240 S.C. 347, 126 S.E.2d 15, 19-20 (1962)("[T]he legislature. . .in enacting a lawsuit. . .may authorize an administrative agency or board to 'fill up the details' by prescribing rules and regulations for the complete operation of the law within its expressed general purpose."). The Department of Consumer Affairs has "filled up the details" and clarified that S.C. Code Ann. §37-2-307 only allows closing fees to be charged as a means of reimbursement for "certain overhead costs." The Department of Consumer Affairs' interpretation is consistent with the plain language of §37-2-307 which allows the charging of "closing fees"- i.e. fees associated with automobile closings "such as document retrieval and document preparation."[23]

Defendants argue that "Nothing in the statute limits closing fees to cost or prohibits a profit." Dick Dyer Memorandum, p. 5. Defendants' argument that closing fees can be charged for profit is contrary to the plain language of S.C. Code Ann. §37-2-307 which provides:

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[22] Exhibit I, June 7, 2001 Administrative Interpretation 2.307-0101. This language was included in the official interpretation and as a suggested disclosure sign that complies with S.C. Code Ann. §37-2-307's requirement that the charging of closing fees be "displayed in a conspicuous location in the motor vehicle dealership."

[23]The Department of Consumer Affairs does not approve the amount that dealers register to charge as closing fees. This is because the Department cannot look at dealers' records and works through a complaint process not a monitoring process. See Exhibit J, Danny Collins Depo., p. 162, ll. 11-7 and 163, ll. 19-23. This footnote addresses Dick Dyer argument V; Landrover argument II.

> Every motor vehicle dealer charging **closing fees** on a motor vehicle sales contract shall pay a one-time registration fee of ten dollars during each state fiscal year to the Department of Consumer Affairs. The closing fee must be included in the advertised price of the motor vehicle, disclosed on the sales contract, and displayed in a conspicuous location in the motor vehicle dealership.

Use of the term "closing fees" necessarily involves the reimbursement of the costs that are associated with documenting an automobile closing. Nothing in the statute authorizes a dealer to charge hidden profit fees.

Defendants recognized this limitation in §37-2-307 and posted signs in their dealership admitting that closing fees are only for reimbursement of certain overhead costs.[24] The following chart shows the Defendants own interpretation of §37-2-307 as reflected in their signs.

Galeana Sign	"Galeana Chrysler Jeep Kia charges a $199 closing fee **as a means of reimbursing the costs of document retrieval and document preparation**."
Dick Dyer Sign	"THIS DEALERSHIP CHARGES A $199 CLOSING FEE **AS A MEANS OF REIMBURSING IT FOR CERTAIN OVERHEAD COSTS** SUCH AS DOCUMENT RETRIEVAL AND DOCUMENT PREPARATION."
Hendrick Honda Sign	"THIS DEALERSHIP CHARGES A **$299** CLOSING FEE **AS MEANS OF REIMBURSING IT FOR CERTAIN OVERHEAD COSTS** SUCH AS DOCUMENT RETRIEVAL AND DOCUMENT PREPARATION."
Toyota of Greenville	"THIS DEALERSHIP CHARGES A $289.00 CLOSING FEE **AS A MEANS OF REIMBURSING IT FOR CERTAIN OVERHEAD COSTS** SUCH AS DOCUMENT RETRIEVAL AND DOCUMENT PREPARATION."
Taylor Toyota	"THIS DEALERSHIP CHARGES A $499.00 CLOSING FEE AS **A MEANS OF REIMBURSING IT FOR CERTAIN OVERHEAD COSTS** SUCH AS DOCUMENT RETRIEVAL AND DOCUMENT PREPARATION"
Landrover	"THIS DEALERSHIP CHARGES A $225.00 CLOSING FEE **AS A MEANS OF REIMBURSING IT FOR CERTAIN OVERHEAD COSTS** SUCH AS DOCUMENT RETRIEVAL AND DOCUMENT PREPARATION"

Defendants signs are admissions that the Defendants have always known that §37-2-307 only

[24] Exhibit K, Defendants' Signs.

permits closing fees for purposes of reimbursing the certain overhead costs related to automobile closings and have, through mandatorily required signage, affirmatively made that representation to their customers.

Moreover, Defendants are all members of SCADA which has repeatedly instructed its members to only charge closing fees for the reimbursement of actual costs.

> Q: From 1978 to this minute right now, is it still SCADA's position—
> ...
> --that this fee, must be reasonable and for a service actually performed?
> A: Yes.[25]
>
> Q: Okay. Why would you advise your dealers to make certain that the fee is reasonable for the service provided?
> A: Because that's what the Department of Consumer Affairs had said to do.[26]

SCADA is correct closing fees can only be charged as a means of reimbursing dealers for certain over head costs. Defendants are all members of SCADA and this is an admission as to their own interpretation of S.C. Code Ann. §37-2-307.

Additionally, Defendant Landrover in its deposition admitted that §37-2-307 did not authorize dealers to charge closing fees for profit:

> Q: You agree that you can't charge more—
> A: I agree.
> Q: —than what you're reimbursed for? You can't make a profit on it, can you?
> A: Right, that's our understanding.[27]

Landrover is also correct. S.C. Code Ann. §37-2-307 allows closing fees for reimbursement of certain overhead costs. The statute does not authorize hidden profit fees.

Notably, Defendants only raised this argument after discovery exposed that Defendants

[25] Exhibit G, Rule 30(b)(6) Deposition of SCADA, p. 140, ll. 1-7.

[26] Exhibit G, Rule 30(b)(6) Deposition of SCADA, p. 170, ll. 21-25.

[27] Exhibit L, Landrover 30(b)(6) Deposition, p. 48, ll. 3-8.

do not charge a closing fee for reimbursement of any "certain overhead costs," nor did they even attempt to determine what incurred costs they were charging to the consumer through the addition of a closing fee. The following chart shows these responses.

Dick Dyer	Defendant Dick Dyer, through a Rule 30(b)(6) deposition, deposed that it had no study or calculation of what the closing fee covers. Dick Dyer Deposition, p. 13, ll. 1-3. Dick Dyer also admitted that the general manager who came up with the fee did not know specifically what overhead costs were covered by the fee. Dick Dyer, p. 15, l. 16 - p. 16, l. 9.
Landrover	Defendant Land Rover stated that it simply "guessed at" determining what amount to charge its customers and also admitted that it had no study or analysis to determine what amount to charge as a closing fee. Landrover, p. 17, ll. 7-25 (no study or analysis to determine what the dollar amount was); p. 30, ll. 6-9 (no document exists reflecting the costs of each item); and p. 42, ll. 13-15 ("Q: Did you guess at it? . . .What did you do? A: I think we guessed at it.").
Taylor Toyota	Defendant Taylor Toyota admitted in its Rule 30(b)(6) deposition that it did not charge closing fees for reimbursement of any certain costs but instead charges the closing fee for a profit. Taylor Toyota, p. 17, l. 11 - p. 18, l. 6. Additionally, the Taylor Toyota designee deposed that the fee was not tied to any particular or group costs of costs. Id.
Hendrick Honda	Hendricks Honda's representative also admitted its closing fee did not cover any particular overhead or other costs. Hendrick Honda Depo., p. 224, ll. 16-19; p. 241, ll. 3-11; and p. 261, ll. 3-11.
Toyota of Greenville	Toyota of Greenville's representative deposed that they did not look at overhead to determine closing fees but instead looked at the competition and tried to determine what the market would be. Toyota of Greenville depo., 10, p. 16, l. 25 - p. 17, l. 8.

Additionally, discovery showed that Defendants can make millions of dollars charging these fees. For example, in 2006 Taylor Toyota collected $1,210,876 in closing fees. Using the $1,201,876, Taylor Toyota could have hired 40 full time secretaries at $30,000.00 a year to do nothing but process paperwork related to the automobile closings. Certainly, the $1.2 million exceeds the costs arising from automobile closings.

Defendants Galeana and Hendrick Honda also argue that "after the fact" (and after their 30(b)(6) depositions) dealer employees went back and analyzed the monies received from

closing fees and that their best "estimate" is that the fees are less than their overhead costs.[28] This post hac analysis is not admissible. Neither Defendant has identified any expert witness to testify as to these speculative estimated opinions. Nor has either Defendant produced the calculations or supporting data in discovery. Regardless, the "after the fact" calculations are contrary to these Defendants' signs and do not defeat the fact that both Defendants (Galeana and Hendrick) admit that the closing fees they charge are not limited to reimbursement of the costs.[29] More importantly, the statute requires the fees be for actual reimbursement of certain overhead costs. Defendants cannot satisfy this requirement by doing an after-the-fact analysis.

Defendants also argue that in 2008 the Department of Consumer Affairs changed the language in the recommended closing fee notice sign and therefore the changed Department's interpretation. The 2008 sign reads: "The dealership charges closing fees on a motor vehicle sales contract."[30] The language as included in the 2001 Department of Consumer Affairs official interpretation provides: "The dealership charges closing fees as a means of reimbursing it for certain overhead costs such as document retrieval and document preparation." Defendants' arguments relying on the 2008 sign should be rejected because the Departments' interpretation has not changed.

The changes at issue were made without authority by a lower level Department of Consumer Affairs employee at Steve Hamm's recent request.[31] The employee Herbert Walker

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[28] Galeana Memorandum, p. 32 and Hendrick Honda Memorandum, p. 30.

[29] See Exhibit M, Affidavit of Scott Rhodes (without exhibits), para. 7 ("Galeana charges closing fees **primarily** as a means of reimbursing the costs....")(emphasis added); and Affidavit of Don Pendleton (without exhibits), para 8 (identical paragraph).

[30] Exhibit N, Revised Sign. (Collins Deposition Ex. 7).

[31] Exhibit J, Deposition of Danny Collins, p. 228, l. 4 to p. 233, l. 16.

formerly worked for Steve Hamm.[32] Significantly, Mr. Hamm first attempted to have Brandolyn Pinkston, the Head Administrator for the Department of Consumer Affairs, and Danny Collins, Esq., the Deputy for Regulatory Enforcement change the sign.

> Q: Could you tell us what Mr. Hamm's request was. What was the meeting about? What went on? What was said?
>
> A: I can only give you the substance of it now because its been about two years ago and I just don't remember the details. But it had to do with—he mentioned there was a lawsuit, that it involved the dealer closing fee. He also mentioned the interpretation in saying that that form was not mandatory and that it was not—they use a different form. He proposed some language to us to change our form.
> ....And at some point in time, we told him we were not planning to change our language.[33]

As shown above, Mr. Hamm's request was turned down. After the request was turned down, Mr. Walker changed the sign without the approval of Brandolyn Pinkston the Head Administrator for the Department of Consumer Affairs, Danny Collins, Esq., the Deputy for Regulatory Enforcement, or the commission for the Department of Consumer Affairs.[34] When the form was changed it was accompanied by a letter by Mr. Walker which states: "The language used on the form was suggested to be changed by the industry."[35] Mr. Walker is not an attorney and not authorized to issue official interpretations.[36]

Significantly, the 2001 interpretation, which includes the closing fee sign stating that the fees are for reimbursement of "certain overhead costs," has not been changed. In fact, Mr.

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[32] Exhibit O, Deposition of Herbert Walker, p. 31, ll. 3-19.

[33] Exhibit J, Danny Collins Deposition, p. 229, ll. 7 to 25.

[34] Exhibit J, Danny Collins Deposition, p. 230, l. 2 to p. 233, l. 16.

[35] Exhibit P, May 13, 2009 Letter from Herbert Walker.

[36] Exhibit J, Danny Collins Deposition, p. 233, ll. 12-17.

Hamm's activities show that the Defendants realize that the official interpretation poses a severe problem for the dealers. Otherwise, Mr. Hamm would not go to such quiet lengths to try to get the Department of Consumer Affairs to change its interpretation; and, after failing in that attempt, getting a lower level employee to change the closing fee sign without the permission of any of his superiors, and in direct conflict with their written denial of Mr. Hamm's request.

Defendants interpretation that S.C. Code Ann. §37-2-307 allows hidden profit fees should be rejected. The statute should be interpreted in accord with Defendants' signs, the plain language of the statute, and the Department of Consumer Affairs interpretation. S.C. Code Ann. §37-2-307 authorizes the charging of "closing fees" which are for the reimbursement of certain overhead costs arising from automobile closings such as document retrieval and document preparation. The statute does not authorize the charging of hidden profit fees or fees that are attempted to be justified after the fact.

III. ADVERTISED PRICE[37]

The second requirement at issue is that the closing fee must be included in the advertised price of the motor vehicle. S.C. Code Ann. §37-2-307 provides:

> Every motor vehicle dealer charging closing fees on a motor vehicle sales contract shall pay a one-time registration fee of ten dollars during each state fiscal year to the Department of Consumer Affairs. **The closing fee must be included in the advertised price of the motor vehicle**, disclosed on the sales contract, and displayed in a conspicuous location in the motor vehicle dealership.

(Emphasis added).

In 2001, the Department of Consumer Affairs, in an official interpretation of §37-2-307, stated that this requirement is designed to avoid unfair surprise by having a closing fee added-on. The 2001 interpretation provides in part:

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[37] This section addresses Galeana arguments 4, 7; Dick Dyer, arguments II; Hendrick Honda arguments 4, 7; Landrover argument III; Taylor Toyota argument III.

> If the closing fee is charge, and the vehicle is advertised, the closing fee must be included in the advertised price **so that consumers cannot be unfairly surprised by having the closing fee added on** after the acceptance of an advertisement's terms.[38]

The Department of Consumer Affairs regularly sends out advertising warning letters that get sent to all car dealers in the state, restating this interpretation. One such letter provides in part:

> **The advertised price shall be the delivered price that the consumer will have to pay, except for taxes, title and tags, as required by the Government.** The enclosed ads by your dealership, which appeared in The AutoMart Magazine on September 12- September 19, 2008, on pages A16, A17 and A18, discloses in the fine print, "Prices Plus TTL and $299 Dealer Closing Fee". **Add-ons (Closing Fees)** of this nature **must be included in the cash price.**
>
> The purchase price of a vehicle enables the consumer to know how much money it will cost to purchase the vehicle. **Using add-ons such as fee disguises the actual coast [sic], making the advertised price misleading.**[39]

Danny Collins, Esq., the Department of Consumer Affairs deputy for regulatory enforcement, explained in his deposition that the closing fee must be included in the advertised price because it's a charge the dealer knows in advance:

> A: The closing fee must be included in the advertised price of the motor vehicle.
> Q: And what does that mean?
> A: When they advertise a price—and its easier to see in the newspaper because you've got that, you can take it with you, you can look at over and over. But A lot of times they'll have a price—and if they want to leave out, they can leave out taxes, tags, and title because the Government imposes those charges. But **if it is a type of charge that the dealer knows in advance, it needs to be included in the advertised sale price**....[40]

This requirement is designed to prevent a surprise add-on at the end.

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[38] Id.

[39] Exhibit Q, Example Department of Consumer Affairs Advertising Warning Letter (Big O Dodge).

[40] Exhibit J, Danny Collins Deposition, p. 15, ll. 7-20.

Q: The purpose of putting in the language included in the advertised price of the vehicle is to prevent a surprise add-on at the end, isn't it?

...

A: That is what the advertising letters will say and that is what the administrative interpretation says.[41]

Plaintiff Julie Freeman's transaction illustrates the harm sought to be avoided by requiring that "[t]he closing fee must be included in the advertised price of the motor vehicle." At the time of her purchase, June 2006, Ms. Freeman was a twenty three year old second grade teacher.[42] Ms. Freeman was looking to purchase her first car.[43]

On June 11, 2006, after Ms. Freeman arrived at Defendant Hendrick Honda's dealership, she approached a Honda with a price on a window sticker.[44] The advertised price on the window sticker was for $18,995.[45] Ms. Freeman then test drove the car, went back into the dealership, and negotiated a price in her targeted monthly payment range.[46] These negotiations are shown on a worksheet maintained by Hendrick Honda which lists: the advertised price for the car $18,995, then shows a crossed out $18,295, and finally a circled "SELLING PRICE" of $17,975.[47] Right next to the circled $17,975, the worksheet states "7/11/06 Good for 2 weeks."

The next day, July 12, 2006, Ms. Freeman returned to the dealership. At that time, Ms.

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[41] Exhibit J, Danny Collins Deposition, p. 196, ll. 1-8.

[42] Exhibit R, Julie Freeman Deposition, p. 7, ll. 24-25; p. 10, l. 13 to p. 11, l. 5.

[43] Exhibit R, Julie Freeman Deposition, p. 17, ll. 2-7

[44] Exhibit R, Julie Freeman Deposition, p. 33, l. 14 to p. 34, l. 1 and p. 34, l. 17 to p. 35, l. 7. Defendant Hendrick Honda in their memorandum insinuates that Ms. Freeman's window sticker did not include a price. Defendant Hendrick Honda, however, has failed to produce any witness to contest Ms. Freeman's recollection of the window sticker.

[45] Exhibit R, Julie Freeman Deposition, p. 35, ll. 14-24.

[46] Exhibit R, Julie Freeman Deposition, p. 39, ll. 5-9.

[47] Exhibit S, Hendrick Honda Worksheet, Freeman Deposition Exhibit 14 and p. 3 of Exhibit 4.

Freeman "already had this price that he had told me the day before."[48] Ms. Freeman then signed the paperwork completing the purchase. Significantly, Ms. Freeman's invoice provides:

CASH PRICE OF VEHICLE & ACCESSORIES	$ 17975.00
TRADE-IN ALLOWANCE	$ 900.00
DIFFERENCE	$ 17075.00
PROCUREMENT FEE	$ 299 00
STATE TAXES	$ 300.00
LICENSE, LICENSE TRANSFER, TITLE, REGISTRATION FEE	$ 39.00
TOTAL PRICE OF UNIT	$ 17713.00
LIEN PAYOFF OWED CUSTOMER GUARANTEES	$ 377.57
DOWN PAYMENT	$ N/A
BALANCE	$ 18090.57

As shown above, Hendrick Honda took the agreed to "SELLING PRICE" from the day before, $17,975, and then added a $299.00 administrative fee, which was pre-printed on the invoice next to state taxes and title/ registration fees. Ms. Freeman does not remember any discussions about the $299.00 administrative fee.[49]

Mr. Collins, the Consumer Affairs deputy for regulatory enforcement, addressed this issue in his deposition:

> Q: Okay. If you're sitting there in the little cubicle across from whoever is doing the selling, whether it's the salesman or the manager or whatever, and **y'all struck a bargain on the price of the car, and let's say that's $15,000, okay**.
> **And the man across the desk with you in his cubical puts that big long form, the buyer's order**, in his printer and it comes out and he attaches a whole bunch of other documents to it, an agreement to arbitrate and this and all that other stuff, and than passes you the buyer's order and you look down there **at the bottom and it's $15,000 that you agreed on, plus taxes of $300, plus tags, and then it has a closing cost on it** and that's the first you ever knew about it.

[48] Exhibit R, Julie Freeman Deposition, p. 63, ll. 2-11.

[49] Exhibit R, Julie Freeman Deposition, p. 72, ll. 4-10.

....

A: **They should have let the person know before that.**[50]

As Mr. Collins deposed, if the dealer is going to add-on a closing fee at the end of the purchase, the Dealer needs to "let the person know before that."

In sum, Hendrick Honda allowed Ms. Freeman to negotiate $1,000.00 off the advertised price of the car (advertised price $18,995 and promised "SELLING PRICE" $17,975) and then when the paperwork was presented Hendrick Honda added on a $299.00 administrative fee. The $299.00 administrative fee was the "type of charge that dealer knows in advance" and therefore was required to be "included in the advertised sales price." Obviously, the fee was not included in the advertised price because the invoice shows the fee being added-on after the negotiated "SELLING PRICE."

If S.C. Code Ann. §37-2-307 had been followed, the advertised price of Plaintiff Freeman's car would have included the $299.00 closing fee and the closing fee would not be a later add on. In other words, if the closing fee were included in the advertised price of the car the initial negotiating point between the consumer and the dealer would have included the $299.00. §37-2-307 was designed to prevent this late add-on.

In order to comply with the statute, the initial advertised price of a vehicle must include the closing fee. Car dealers violate §37-2-307 if they add the closing fee to the advertised price for the car. One way to avoid a violation is to disclose all components of the price (the price of the car and the closing fee) in the advertisement. The dealer can also avoid a violation by not adding the closing fee onto the price at the end.

Some Defendants[51] argue that the Court should adopt the following interpretation of S.C.

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[50] Exhibit J, Danny Collins Deposition, p. 220, ll. 6-22.

Code Ann. §37-2-30:

> **Galeana Memoranda**
> Galeana understands the Closing Fee Statute to require that if and when a particular vehicle is sold exactly as advertised and at the price advertised, the closing fee is properly charged as long as the final sales price does not exceed the advertised price.[52]
>
> **Hendrick Honda Memoranda**
> Hendrick Honda of Easley understands the Closing Fee Statute to require that if and when a particular vehicle is sold exactly as advertised and at the price advertised, the closing fee is properly charged as long as the final sales price does not exceed the advertised price.[53]
>
> **Taylor Toyota Memorandum**
> Moreover, there is a distinction between an advertised price and a negotiated price....Whether a closing fee is added to the negotiated price was immaterial, as the Closing Fee Statute does not govern prices other than the "advertised price."[54]

For the reasons set forth below, the above interpretations should be rejected.

The following example illustrates Defendants' position. Plaintiff Natalie Armstrong purchased a car that was advertised for $11,995. This price appeared in a State newspaper advertisement[55] and on a hang tag on the rearview mirror.[56] Plaintiff Armstrong's pay $11,995 for the vehicle and that Defendant Galeana added a closing fee to this price.[57]

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[51] Defendants Dick Dyer and Landrover, in their memoranda, never offer an explanation as to the meaning of §37-2-30's requirement that the closing fee must be included in the advertised price of the motor vehicle. Apparently, these Defendants concede that Plaintiffs' interpretation is correct.

[52] Defendant Galeana's Memorandum at p. 5.

[53] Defendant Hendrick Honda's Memorandum, at p. 5.

[54] Defendant Taylor Toyota Memorandum at pp. 12-13.

[55] Exhibit T, State Newspaper Advertisement.

[56] Exhibit U, Deposition of Natalie Armstrong, p. 54, ll. 14-23.

[57] Exhibit A, Natalie Armstrong Invoice.

Defendants argue that §37-2-307 does not apply to Plaintiff Armstrong's transaction because Defendant Galeana allegedly negotiated with Plaintiff's father and agreed "to clean the battery, replace the front windshield, and provide a new tire cover as additional terms of the deal." See Galeana Memorandum at p. 9. Defendants argue that because these "additional terms of the deal" were added that Plaintiff did not purchase the car "exactly as advertised and at the price advertised" and therefore §37-2-307 does not apply.

Defendants' interpretation of §37-2-307 leads to an absurd result and therefore should be avoided. *See* New York Times Co. v. Spartanburg County School Dist. No. 7, 374 S.C. 307, 312, 649 S.E.2d 28, 30 (S.C.,2007)("We will reject a statutory interpretation that leads to a result so plainly absurd that it could not have been intended by the legislature or would defeat the plain legislative intention."). Under Defendants' interpretation, if Armstrong accepts the $11,995 without any further negotiation then the statute applies and Galeana cannot add-on the closing fee.[58] Defendants further argue that once Plaintiff Armstrong negotiated any item §37-2-307 no longer applied and it was then permissible to add the closing fee at the end. The result suggested by the Defendants is absurd. There is no reason that the Plaintiff Armstrong should lose the protection of the statute simply because her father allegedly negotiated to receive a tire cover. The statutes' protection should apply in all cases.

Defendants' theory is contrary to the plain language of S.C. Code Ann. §37-2-307 which provides:

> Every motor vehicle dealer charging closing fees on a motor vehicle sales contract shall pay a one-time registration fee of ten dollars during each state fiscal year to the Department of Consumer Affairs. **The closing fee must be included in the advertised price of the motor vehicle**, disclosed on the sales contract, and

[58] Defendants concede that all invoices will show a closing fee being added to the price of the car. Defendants, however, contend that the invoices are manipulated so that the closing fee is backed out of the price of the car and then added back on the invoice.

displayed in a conspicuous location in the motor vehicle dealership.

Nothing in the statute says that the closing fee must be included in the advertised price "only when a customer does not negotiate" (a situation that almost never occurs and an interpretation that would render the statute meaningless). Instead, the statute states that: "The closing fee must be included in the advertised price of the motor vehicle." There is no exception in the statute that says it does not apply if a customer negotiates. If the legislature wanted to include this exception it would have done so.

Furthermore, the proffered interpretation only protects the car dealers and would render §37-2-307 close to meaningless because according to Defendants only "extremely rare"[59] customers pay the asking price for a vehicle. Hinton v. South Carolina Dept. of Probation, Parole and Pardon Services, 357 S.C. 327, 342, 592 S.E.2d 335, 343 (S.C.App.,2004) ("we should seek a construction that gives effect to every word of a statute rather than adopting an interpretation that renders a portion meaningless."). Defendant Galeana provided an affidavit from one of its salesmen that provides: "It would be extremely rare for a buyer to come to Galeana and simply offer to pay the asking price for a vehicle."[60] Similarly, Taylor Toyota concedes: "virtually all customers negotiate the price of the vehicle to a price below that posted on a window sticker or printed advertisement."[61] The Defendants proposed interpretation is incredibly narrow and is contrary to the liberal construction to be used in interpreting the consumer protection code. See Davis v. NationsCredit Financial Services Corp., 326 S.C. 83, 86, 484 S.E.2d 471, 472 (S.C.,1997)("[T]he South Carolina Consumer Protection Code, declares

[59] Exhibit V, Affidavit of Jarrah Jordan (without exhibits), paragraph 26.

[60] Exhibit V, Affidavit of Jarrah Jordan (without exhibits), paragraph 26.

[61] Taylor Toyota Memorandum, p. 12.

that it shall be liberally construed and applied to promote its underlying purposes and policies. S.C. Code Ann. § 37-1-102(1) (1989). One of the primary purposes of the Consumer Protection Code is to 'protect consumer buyers.'"). Respectfully, the Court should find that the statute's requirement that the closing fee shall be included in the advertised price applies to every purchase not just those "extremely rare" purchases without negotiation.

Additionally, Defendants' proffered narrow interpretation effectively guts the statute because it would not avoid unfair surprise to consumers except in "extremely rare" transactions. This unfair surprise is cited as the reason for the statute by the Department of Consumer Affairs. The Department of Consumer Affairs 2001 interpretation provides in part:

> If the closing fee is charge, and the vehicle is advertised, the closing fee must be included in the advertised price **so that consumers cannot be unfairly surprised by having the closing fee added on** after the acceptance of an advertisement's terms.[62]

Similarly, Danny Collins, Esq., the Department of Consumer Affairs Deputy for Regulatory Enforcement, deposed:

> Q: The purpose of putting in the language included in the advertised price of the vehicle is to prevent a surprise add-on at the end, isn't it?
>
> ...
>
> A: That is what the advertising letters will say and that is what the administrative interpretation says.[63]

Defendants proffered narrow interpretation of §37-2-307 should be rejected because it allows closing fees to be charged as surprise add-ons in all but "extremely rare" transactions. The starting price for negotiations has to include the closing fee otherwise the statute has no real meaning.

Defendants also attempt to excuse their failing to include closing fees in the advertised

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[62] Id.

[63] Exhibit J, Danny Collins Deposition, p. 196, ll. 1-8.

price by trying to limit the definition of the term advertise. Defendants argue that window stickers, hang tags, and oral statements of price do not constitute the advertised price of a motor vehicle. This argument should be rejected because it is contrary to the plain meaning of the term "advertise."

This Court should adopt Black's Law Dictionary 6th Ed. Definition of the term "advertise" which is as follows:

> To advise, announce, appraise, command, give notice of, inform, make known, publish. To call a matter to the public attention by any means whatsoever. **Any oral, written, or graphic statement made by the seller in any manner in connection with the solicitation of business and includes** without limitation because of enumeration, **statements and representations** made in a newspaper or other publication or on radio or television or contained in any notice, handbill, sign, catalog, or letter, or printed on or **contained in any tag or label attached to or accompanying any merchandise**.

Black's Law Dictionary 6th Ed (emphasis added). Black's Law Dictionary's plain meaning definition of the word "advertise" has been accepted by many courts. *See* Dorr v. Wyoming Bd. of Certified Public Accountants, 21 P.3d 735, 743 (Wyo. 2001); *see also* Smith v. Baldwin, 611 S.W.2d 611, 614-15 (Tex.1980); First State Bank v. Keilman, 851 S.W.2d 914, 922 (Tex.App.-Austin, 1993); and General Case. Co. of Illinois v. Four Seasons Greetings, 2002 WL 31939106, 2 (Minn.Dist.Ct). This Court should follow other courts and adopt this definition.

Danny Collins, Esq. the Department of Consumer Affairs Deputy for Regulatory Enforcement when shown the above Black's Law Dictionary definition in his deposition agreed with the definition of advertise with the exception of the terms "advise," "command," and "appraise" which he "would want to know more on how they're using them."[64] As pointed out by Defendant Landrover in its memorandum, Mr. Collins's interpretation as the Deputy for Regulatory Enforcement for the Department of Consumer Affairs should be given deference.

[64] Exhibit J, Danny Collins Deposition, p. 225, l. 18 to p. 227, l. 15.

See Landrover Memorandum, pp. 10-14 citing Lexington Law Firm v. South Carolina Department of Consumer Affairs, 382 S.C. 580, 677 S.E.2d 591 (2009). Respectfully, this Court should also adopt this plain meaning definition.

Defendants make several arguments that are contrary to the definition of the term advertise. Defendants argue that window stickers and hang tags do not contain the advertised price of cars. Window stickers and hang tags are "tag[s] or label[s] attached to or accompanying merchandise" and are "statement[s] made by the seller . . . in connection with the solicitation of business." Black's Law Dictionary 6th Ed.[65] Accordingly, window stickers and hang-tags advertisements consistent with the Black's Law Dictionary definition. Common sense dictates that a price on a window sticker or hang tag is the advertised price of the car.

Similarly, Defendants make several arguments about a Monroney window sticker that should be rejected. A Monroney window sticker is a window sticker that includes the manufacturer's suggested retail price. *See* 11 U.S.C. §1232. By definition, the manufacturer's suggested retail price does not include the dealer's closing fee. As conceded by several Defendants, if a dealer adds anything to a car "that must disclose the additions on a supplemental

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[65] The fact that window sticker and hang tags are advertising is confirmed by Defendant Galeana's Advertising Compliance Plan which provides in part:

> "Lot Pricing
> 1. **All windshield paint, Hanging Tags, Car Toppers, or other lot price displays will have the CLOSING FEE discloser.**
> 2. Vehicle add-a-tag will have the closing fee $199 price added and will be the highest price charged for a new vehicle – unless the customer adds additional dealer installed options."

Galeana's Advertising Compliance plan is relevant to show Defendants interpretation of the term"advertised price" under S.C. Code Ann. §37-2-307. *See* Ryan v. The Port of New York Authority, 281 A.2d 539 (N.J. 1971)(holding that while a subsequent event is not admissible to prove negligence or culpable conduct in connection with an event such evidence is admissible to show the defendant's interpretation of a guideline).

sticker." *See* Galeana Memo, p. 26 and Hendrick Honda Memo, p. 25. An example of a Monroney window sticker and dealer added supplemental sticker is attached as Exhibit W.

Defendants first argue that under Plaintiffs' interpretation of S.C. Code Ann. §37-2-307 "a closing fee could never be charged on new cars because dealers are not allowed to remove or alter Monroney labels" and "[i]f the Legislature had intended to forbid closing fees on new cars, it would [sic] stated as much in the Closing Fee Statute." This argument misstates Plaintiffs' position. Plaintiffs do not contend closing fees can never be charged on new cars. If a dealer wishes to charge a closing fee on a new car, the dealer must add a supplemental sticker stating that a closing fee is being added—just like any other additional item above the Monroney advertised price.

Defendants also argue that "because the Monroney sticker is not a statement by Galeana or any other dealer, but rather by the manufacturer, that it should not be considered an advertisement." *Citing* Valencia v. Crabtree Imps, Inc., 2004 Conn. Super Lexis 385, 5-6 (Conn. Super Ct. Fes. 24, 2004). This argument misses the point. S.C. Code Ann. §37-2-307 provides:

> Every motor vehicle dealer charging closing fees on a motor vehicle sales contract shall pay a one-time registration fee of ten dollars during each state fiscal year to the Department of Consumer Affairs. **The closing fee must be included in the advertised price of the motor vehicle**, disclosed on the sales contract, and displayed in a conspicuous location in the motor vehicle dealership.[66]

(Emphasis added). This statute applies to the advertised price of vehicles regardless of whether the manufacturer advertises the price or the dealer advertises the price. The statute protects the public because it ensures that dealers cannot add-on closing fees in addition to the advertised price of the motor vehicles. With reference a Monroney sticker, a new car dealer may charge a closing fee as long as the closing fee is disclosed like any other additional item on a

[66] S.C. Code Ann. §37-2-307.

supplemental window sticker.

At least one other state has looked at this issue and determined that Monroney stickers and window stickers are advertisements that must include closing fees. An October 2007 report by the Florida Senate provides:

> ***Advertisements and Pre-Delivery Service Fees***
> Section 501.976(16), F.S., requires all vehicle advertisements to include "all fees or charges that the customer must pay..." excluding state and local taxes, tags, registration fees, and title fees. However, "advertisement" is not statutorily defined.
>
> **Industry representatives understand this term to include the price presented in media advertisements, prices "painted" on vehicle windshields, or the "totaled" or "bottom line" price on the Monroney and dealer stickers**. While not specifically identified, the fee must be included in the price advertised.
> . . .
>
> In 1988, Florida's Attorney General (AG) issued an opinion directly addressing this issue, which may support this interpretation. This opinion analyzed portions of Rule 2-19.005, F.A.C., the predecessor to s. 501.076, F.S.
> . . .
>
> The AG concluded any fee or charge imposed by the dealer for handling paperwork, regardless of the name given the fee by the dealer, must be included in the advertised price – and **the advertised price includes "any form of posted price on a motor vehicle, when done in a manner to sell or induce the customer to enter into an obligation relating to the vehicle**."[67]

The Court should also adopt the same definition of advertised price understood by industry representatives in Florida and the adopted by the Florida attorney general. This definition serves the purpose of the statute by protecting consumers from the unfair surprise resulting from having a closing fee added on at the end. *See* Exhibit J, Danny Collins Deposition, p. 196, ll. 1-8.

Similarly, Defendants argue that first oral statement of the asking price given to a customer by a sales person is not the advertised price. Oral statements of the asking price by car

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[67]Exhibit X, "Examining Automobile Dealers' Documentation Fees." *The Florida Senate October 2007.*

dealers to prospective purchasers fall squarely within the Black's Law Dictionary definition of "advertise" because they are an "oral...statement made by the seller...in connection with the solicitation of business." Additionally, other Courts have found that the term "advertised" includes oral statements. *See* Ford Dealers Association v. Department of Motor Vehicles, 32 Cal.3d 347 (CA 1982) *adopting definition and quoting* Feather River Trailer Sales, Inc. v. Sillas, 96 Cal.App.3d 234 (Ca.App. 1979) provides:

> The term 'advertised' as it is used in the Vehicle Code sections before us, is nowhere specifically defined in that code. Historically, however, **the terms advertising and 'advertisement' have been held to be broad enough to include oral representations made on a one-on-one basis**...We hold, therefore, that the trial court erred in concluding the one-on-one discussions between plaintiffs and the [customers] could not come within the statutory meaning of the term 'advertising.'"

(Emphasis added). Oral statements made by dealers stating the asking price of a motor vehicle are no different than a vendor at a baseball game advertising by yelling "ice cold beer $2!" or "peanuts $1!" Accordingly, this Court should find that the term "advertised price" in S.C. Code Ann. §37-2-307 includes the first asking price given to you verbally by a salesman.

Moreover, there is no reason to distinguish between a price printed in the newspaper, an oral statement of the asking price, or a window sticker. All of the statements are meant to entice the consumer to purchase the car. As such, Defendants arguments that the named Plaintiffs do not have standing to prosecute the case on behalf of all purchasers who were paid a closing fee that was not included in the advertised price should be rejected. Regardless of the form of the advertisement, Defendants violation was uniform. Defendants failed to include the closing fee in the advertised price of its vehicles and instead charged closing fees as add-ons.[68] Defendants

[68] Furthermore, as discussed in Section II, all group members were uniformly charged a closing fee that was not for reimbursement of certain overhead costs. As such, the named Plaintiffs have standing to prosecute the case for everyone who paid Defendants the illegal fees.

attempt to distinguish between the different forms of advertising should be rejected.

Defendants argue they are never required to disclose closing fees in the advertised price. S.C. Code Ann. 37-2-307 provides:

> Every motor vehicle dealer charging closing fees on a motor vehicle sales contract shall pay a one-time registration fee of ten dollars during each state fiscal year to the Department of Consumer Affairs. **The closing fee must be included in the advertised price of the motor vehicle**, disclosed on the sales contract, and displayed in a conspicuous location in the motor vehicle dealership.

(Emphasis added). S.C. Code Ann. §37-2-307 does not require a dealer to "disclose" the fee in every advertised price. What is required is that the advertised price must include the closing fee and that Defendants cannot advertise one price for a car and then add the closing fee at the end. Under §37-2-307, a car dealer cannot add a fee at the end of the transaction. The disclosure and inclusion at the beginning prevents any unfair surprise to the consumer by having the closing fee added on at the end.

IV. OTHER DISCUSSIONS

There are several motions requesting a declaratory judgment interpreting §37-2-307. This section addresses all other arguments raised by Defendants in opposition to the motions.

A. DEFENDANTS ARGUE THAT S.C. CODE ANN. §37-2-307 SHOULD BE CONSTRUED AGAINST CONSUMERS[69]

Defendants argue, citing Davis v. Nationscredit Financial Services, 326 S.C. 83, 484 S.E.2d 471 (1997), that §37-2-307 should be construed against consumers. The Davis Court applied the following exception to the general rule that the Consumer Protection Code, including

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[69]This section addresses Galeana argument 7(d); Hendrick Honda argument 7(d); argument on pp.3-4 of Dick Dyer's Memo; and Taylor Toyota argument IV.

37-2-307, will be construed liberally to protect consumers[70]:

> In order to avoid such misuse of the Truth in Lending Act, this court will strongly construe its provisions against borrowers who were not misled by a lender's disclosure but merely seek a penalty for finding **a technical problem** with the loan form which **could not have conceivably influenced his choice** of credit.

326 S.C. at 87, 484 S.E.2d at 473. As noted by the underlined portion of the above quote, the Court will only construe a provision against consumers if there is only a "technical problem" that could not "conceivably influence" the consumer's choice.

In this case, there is no technical problem. Defendants have unfairly added closing fees in addition to the advertised price of its vehicles. Additionally, the final price of a car that a customer agrees on can "conceivably" be influenced by a dealer charging an add-on closing at the end. As one commentator noted, car dealers charge closing fees because "[t]hese fees aren't usually questioned so the dealership looks at that as free money." Munroe, Brian, *Car Buying Revealed, How to Buy a Car and Not Get Taken for a Ride*, Morgan James, 2008. Furthermore, as stated in an exhibit to Steve Hamm's affidavit: "the only purpose for not including the fee in the advertised price is to make the customer think he is getting a better deal then he actually is getting."[71] The following rhetorical question answers this inquiry: if the defendants did not think they could make more money from the sale of a car by this practice, then why do the defendants add closing fees at the end of the transaction?

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[70] "[T]he South Carolina Consumer Protection Code, declares that it shall be liberally construed and applied to promote its underlying purposes and policies. S.C.Code Ann. § 37-1-102(1) (1989). One of the primary purposes of the Consumer Protection Code is to 'protect consumer buyers.'" Davis v. NationsCredit Financial Services Corp., 326 S.C. 83, 86, 484 S.E.2d 471, 472 (S.C.,1997).

[71] Exhibit C, Steve Hamm Affidavit, Exhibit E.

B. DEFENDANTS ARGUE THAT EVEN IF THEY CHARGED AN ILLEGAL FEE (IN VIOLATIONOF THE CONSUMER PROTECTION CODE) THAT THE CHARGING OF AN ILLEGAL FEE DOES NOT VIOLATE THE DEALERS ACT[72]

The Motor Vehicle Dealers Act, S.C. Code Ann. §56-15-30(a) provides: "(a) Unfair methods of competition and unfair or deceptive acts or practices as defined in § 56-15-40 are hereby declared to be unlawful." Plaintiffs ask the Court to find that a closing fee charged in violation of S.C. Code Ann. § 37-2-307 is an unfair act.[73] The term "unfair" is not defined in the Dealers Act. However, the term has been defined in cases interpreting the similar Unfair Trade Practices Act as including an act which is "offensive to public policy." *See* Adams v. G.J. Creel and Sons, Inc., 320 S.C. 274, 465 S.E.2d 84 (1995). Charging closing fees in violation of S.C. Code Ann. §37-2-307 fits this definition and is therefore an unfair act. This finding is consistent with the Supreme Court's suggestion in Fanning that the charging of closing fees prior to the protections afforded in §37-2-307 was an unfair trade practice. *See* Fanning v. Fritz Pontiac-Cadillac Buick 322 S.C. 399, n. 8, 472 S.E.2d 242, n. 8 (1996). Accordingly, Plaintiffs request that the Court find that a closing fee charged in violation of §37-2-307 violates public policy and is therefore an unfair act in violation of the Dealers Act.

Defendants argue that the Court should apply 15 U.S.C. § 45(n) of the Federal Trade Commission Act to this case. This statute provides in part:

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[72] This Section addresses Galeana arguments 10, 11, 12, 13, and 14; Hendrick Honda arguments 10, 11, 12, 13, and 14; Landrover arguments III and IV, Taylor Toyota argument VI, VII.

[73] Charging illegal closing fees also violates the Dealers Act because the practice is unreasonable and arbitrary. S.C. Code Ann. § 56-15-40(a) lists as a violation of the Dealers Act "any action which is arbitrary, in bad faith, or unconscionable." "Arbitrary conduct includes acts which are unreasonable..." Taylor v. Nix, 307 S.C. 551, 555, 416 S.E.2d 619, 621 (S.C.,1992). These questions are not before the Court at this time.

> (n) Standard of proof; public policy consideration
>
> The Commission shall have no authority under this section or 57a of this title to declare unlawful an act or practice on the grounds that such act or practice is unfair unless the act or practices causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition.

Defendants cite §56-15-30(b) of the Dealers Act as the basis for this argument. § 56-15-30(b) provides:

> In construing paragraph (a) the courts may be guided by the definitions in the Federal Trade Commission Act (15 U.S.C. 45).

15 U.S.C. § 45(n) should not be applied to this case because it is not a definition. The Federal Trade Commission Act's definitions are listed in 15 U.S.C. §44 entitled "Definitions" and in 15 U.S.C. §55 entitled "Additional Definitions." 15 U.S.C. § 45(n) simply deals with the "Standard of proof; public policy consideration" to be applied by the Federal Trade Commission.

Regardless, even if 15 U.S.C. § 45(n) was a definition, which it is not, this section does not prevent a finding that charging illegal closing fees is an unfair act. Defendants contend that because they disclose the closing fee on the invoice that the closing fee may be reasonably avoided by consumers. This argument should be rejected. In this case, the harm complained of is the Dealers charging closing fees for profit and as add-ons in addition to the advertised price of a car. Consumers cannot reasonably avoid a Dealer charging closing fees for profit because the consumer does not have access to the dealers books and records and is thus not in a position to know whether they are paying the fee for profit or reimbursement. Similarly, paying the fee is not reasonably avoidable as evidenced by Plaintiff Armstrong's and Plaintiff Herron's transactions. Ms. Armstrong asked about the fee and was told: "Everybody has to pay it and its

standard practice."[74] Similarly, Ms. Herron asked about the fee was told that the closing fee "has to be charged."[75]

Defendants also argue that because §37-2-307 is in the Consumer Protection Code that §37-5-202 is the exclusive remedy available to consumers. This argument also fails. §37-5-202 does not provide an exclusive remedy for violations of the act. This exact argument was addressed and rejected by the South Carolina Supreme Court in Tilley v. Pacesetter Corp, 333 S.C. 33, 40-41, 508 S.E.2d 16, 19-20 (1998)("Pacesetter contends that, in providing a specific remedy in 37-5-202 for violations of section 37-2-413, the legislature intended 5-202 as the exclusive remedy. We disagree. Had the Legislature so intended, it could have specifically provided that 37-5-202 was the exclusive remedy. Accord Hanier v. v. American Medical International, 328 S.C. 128, 492 S.E.2d 103(1997)(if legislature had intended certain result in a statute, it would have said so)."). This Court should follow the Supreme Court in Tilley and find that 37-5-202 does not provide an exclusive remedy for violations of the Consumer Protection Code.

Similarly, Defendants arguments that they are immune from liability because they committed a bona fide error fail. Defendants cite §37-5-202(7) which provides:

> A creditor may not be held liable in an action brought under this section for a violation of this title if the creditor shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid the error.

Plaintiffs have not brought a claim under § 37-5-202 and therefore this defense is inapplicable.

Defendants also argue that §37-6-104(4) shields them from any liability because they argue their actions are in compliance with the Department of Consumer Affairs 2001

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[74] Exhibit U, Deposition of Natalie Armstrong, p. 88, ll. 11-25.

[75] Exhibit Y, Deposition of Heather Herron, p. 90, ll. 2-13.

interpretation. §37-6-104(4) provides:

> Except for refund of an excess charge no liability is imposed under this title for an act done or omitted in conformity with a rule of the Administrator notwithstanding that after the act or omission this rule may be amended or repealed or be determined by judicial or other authority to be invalid for any reason.

This statute provides no protection for Defendants. As discussed above, Defendants actions are not in conformity with the 2001 Consumer Affairs interpretation. The 2001 interpretation does not authorize dealers to charge closing fees for profit. Instead, the 2001 interpretation provides that fees should be charged for reimbursement of "certain overhead costs." Additionally, the 2001 interpretation does not adopt Defendants' position that the requirement that the closing fee "must be included in the advertised price of the motor vehicle" only applies if the customer does not negotiate. Accordingly, §37-6-104(4) does not apply to Defendants' actions.

Defendant Taylor Toyota's argument that it is not a Motor Vehicle Dealer as referenced in §37-2-307 and Title 56 of the S.C. Code should also be rejected. Defendant Taylor Toyota has already admitted this point in its Answer. Paragraph 392 of Plaintiffs' Amended Complaint Provides: "Defendants are motor vehicle dealers subject to Title 56 of the S.C. Code." Paragraph 19 of Taylor Toyota's Answer provides "To the extent that the allegations in ¶392 refer to Defendant, Defendant admits these allegations." Moreover, Taylors assertion that §37-2-307 does not apply to cars that will be registered out of State is unfounded. Nothing in §37-2-307 limits the statute to only applying to cars registered in South Carolina. Furthermore, this narrow construction is contrary to the liberal construction intended to be given to the Consumer Protection Code. *See* Davis v. NationsCredit Financial Services Corp., 326 S.C. 83, 86, 484 S.E.2d 471, 472 (S.C.,1997)("[T]he South Carolina Consumer Protection Code, declares that it shall be liberally construed and applied to promote its underlying purposes and policies. S.C.

Code Ann. § 37-1-102(1) (1989). One of the primary purposes of the Consumer Protection Code is to 'protect consumer buyers.'").

C. DEFENDANTS ARGUE THAT THIS COURT CANNOT ISSUE A DECLARATORY JUDGMENT AT THIS TIME[76]

Defendants argue that the motions before this Court are for summary judgment. This argument is defeated by a simple review of Plaintiffs' motions. Plaintiffs have not asked for summary judgment. Plaintiffs instead have asked for a declaratory judgment interpreting S.C. Code Ann. §37-2-307 and the Dealers Act, §56-15-30(a). While the Court's interpretations of the statutes may be useful on a motion for summary judgment, that is not the request before the Court. Plaintiffs are not asking that the Court make findings as to liability or damages. Plaintiffs simply seek an interpretation of the statutes concerning closing fees.

An interpretation of the statutes is appropriate under the Declaratory Judgment Act. S.C. Code Ann. §15-53-30 provides:

> Any person...whose, rights, status, or other legal relations are affected by a statute, ...may have determined any question of construction or validity arising under the ...statute... and obtain a declaration of rights, status, or other legal relations thereunder.

This statute is "to be liberally construed and administered." S.C. Code Ann. §15-13-130. A declaratory judgment is proper even when the ruling "would not terminate the uncertainty or controversy giving rise to the proceeding." *See* Silverman v. Campbell, 486 S.E.2d 1, 2 (S.C. 1997)("Here, while the ruling does not terminate the entire controversy, it does remove uncertainty and the case presents a justiciable controversy. There is no abuse of discretion here."). Similarly, declaratory judgments are proper prior to determining claims for damages and when there is "at least the ripening seeds of a controversy." Auto-Owners Ins. Co. v.

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[76] This Section addresses Galeana arguments 1, 2, 3, 5, and 6; Hendrick Honda arguments 1, 2, 3, 5 and 6; Dick Dyer Supplemental Memorandum arguments on pp. 5-8; Landrover argument on p. 3, and arguments I and V; and Taylor Toyota arguments I, II, IV, VIB,

Rhodes, 385 S.C. 83, 94-95, 682 S.E.2d 857, 863 - 864 (S.C.App.,2009) (approved "DJ action during the pendency of the underlying action for damages.").

In this case, Plaintiffs seek a declaration interpreting S.C. Code Ann. §37-2-307 and the Dealers Act because Plaintiffs legal relations with Defendants are affected by these statutes. A ruling at this time will promote judicial economy and efficiency because it will inform all parties of what facts need to be shown in order to prevail at trial or on summary judgment in this matter. Such a ruling will focus the presentation of evidence and arguments to the Court saving the Court's and the parties' time and resources. A ruling at this time is also in conformity with Rule 1, SCRCP (the Rules of Civil Procedure "shall be construed to secure the just, speedy, and inexpensive determination of every action.").

Additionally, the Defendants are wrong in arguing that the requested declaratory relief violates the Court's Order Establishing Complex Case Designation for Pretrial Purposes Only. This Order authorizes the Court to hear "all pre-trial motions and other matters pertaining to this case." The rulings sought by Plaintiffs are pre-trial rulings interpreting S.C. Code Ann. §37-2-307 and the Dealers Act. Accordingly, the Court is authorized to make these rulings under the plain language of the Complex Case Order.

Defendants' arguments that a declaratory judgment cannot be obtained by motion are also non-availing. Plaintiffs properly pled a cause of action seeking a declaratory judgment in the Amended Complaint. The motions at issue are simply the written applications to the Court asking for a hearing on the declaratory judgment cause of action which seeks an interpretation of statutes. See Rule 7, SCRCP ("An application to the court for an order shall be by motion....").

Similarly, Defendants arguments as to venue also fail. Defendants cite Royster Co. v. Eastern Distrib. Inc., 301 S.C. 18, 20, 389 S.E.2d 863 (1990) for the proposition that summary

judgment motions should be heard in the appropriate county of venue. This argument fails for two reasons. First, as discussed above, Plaintiffs have not moved for summary judgment. Therefore, the Royster case is not applicable. Second, venue is proper in Aiken County because Defendant Taylor Toyota is an Aiken County dealer. *See* Ellis by Ellis v. Oliver, 307 S.C. 365, 367, 415 S.E.2d 400, 401 (S.C.,1992)(" Under the applicable venue statute, venue is proper where the defendant resides. § 15-7-30 (1977). If, however, there is more than one defendant, the action may be tried in any county where one or more defendants reside."). In any event, the Court can go forward with the motion as to Taylor Toyota.

Defendants' arguments as to right to a jury trial miss the point. Plaintiffs seek an interpretation of the statutes at issue and are not asking for the Court to make factual findings or to apply the law to facts. The questions before the Court are questions of law and no right to a jury trial attaches. *See* Stewart v. Richland Memorial Hosp., 350 S.C. 589, 593, 567 S.E.2d 510, 512 (S.C.App.,2002)("Because the pleadings place the case squarely within the statutory language, the standard of care was properly a question of law for the judge rather than a question of fact for the jury. 'The issue of interpretation of the statute is a question of law for the court.'")(internal citations omitted).

Defendants' arguments as to the adequacy of the group representatives are not before the Court. The only questions before the Court concern the statutory interpretation of S.C. Code Ann. §37-2-307 and the Dealers Act. This Court has previously found that Plaintiffs do not have to plead and prove the elements of Rule 23, SCRCP. To the extent Defendants wish to challenge any individual's adequacy to represent the group, Defendants are free to file a motion doing so. At this time, Defendant have filed no such motion.

Similarly, Defendants make other arguments that involve the application of the law to

facts. These arguments include: Defendants Galeana's and Hendrick Honda's arguments concerning implied waiver/equitable estoppel,[77] Taylor Toyota's arguments that Plaintiff Ritz suffered no damages[78] and Taylor Toyota's arguments as to the size of the group represented by Plaintiff Ritz.[79] The motions at issue do not involve the application of the law to the facts. Instead, Plaintiffs seek a declaration of what the law is. Defendants' questions may later be raised on summary judgment or at trial when the parties seek an application of the law to the facts.

V. CONCLUSION

Plaintiffs request that the Court declare the following:

---

[77] Defendants cannot meet the elements of the waiver or equitable estoppel defense. Defendants cannot achieve a positive gain by asserting equitable estoppel. *See* Ott v. Ott, 188 S.E.2d 789, 792 (S.C. 1936)("The final element of equitable estoppels is that the person claiming it must have been misled into such action that he will suffer injury if the estoppels is not declared....It was never intended *to work a positive gain to a party*."). The waiver defense fails because Defendants cannot show that any purchaser paid the closing fee knowing that the fee was illegally charged. *See* Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 344, 415 S.E.2d 384, 387-388 (1992)("A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Generally, the party claiming waiver must show that the party against whom waiver is asserted possessed, at the time, actual or constructive knowledge of his rights or of all the material facts upon which they depended."). Furthermore, the defenses do not apply because they would render S.C. Code Ann. §37-2-307's requirements meaningless.

[78]Taylor Toyota argues that Plaintiff Ritz suffered no damages because he cannot prove "reasonable reliance." Contrary to Taylor Toyota's arguments "reasonable reliance" is not an element of any of Plaintiff's causes of action. Plaintiff Ritz suffered damages because he paid an illegal fee in violation of S.C. Code Ann. §37-2-307.

[79] Taylor Toyota argues that cash sale and dead customers cannot be represented in this suit. These arguments go to the size of the group and are not before this Court at this time. However, these arguments should be rejected because nothing in S.C. Code Ann. §37-2-307 limits the applicability of this statute to only financed transactions. Instead the statute applies to "[e]very motor vehicle dealer charging closing fees on a motor vehicle sales contract." As Dick Dyer admitted in its Memorandum, "Closing fees have absolutely nothing to do with consumer credit." Dyer Memo, p. 4. Furthermore, this statute expresses the public policy of this State and the failure to comply with this statute's requirements renders the charging of any closing fees to customers an unfair practice in violation of the Dealers Act. *See* Fanning v. Fritz Pontiac-Cadillac Buick, 322 S.C. 399, n. 8, 472 S.E.2d 242, n. 8 (1996) (suggesting charging closing fees prior to S.C. Code Ann. §37-2-307 was an unfair trade practice).

1. It is a violation of S.C. Code Ann. §37-2-307 if a dealer charges closing fees that are not for reimbursement of certain overhead costs;

2. It is a violation of S.C. Code Ann. §37-2-307 if a dealer fails to include the charging of closing fees in the advertised price of motor vehicles.[80]

    a. It is a violation of S.C. Code Ann. §37-2-307 for a dealer to charge closing fees as an add-on to the advertised price of a motor vehicle;

    b. A price on a window sticker is the advertised price of a motor vehicle for purposes of S.C. Code Ann. §37-2-307;

    c. A price on a hang tag is the advertised price of a motor vehicle for purposes of S.C. Code Ann. §37-2-307;

    d. The first price given to you verbally by a salesman is the advertised price of a motor vehicle for purposes of S.C. Code Ann. §37-2-307;

    e. A price in the newspaper is the advertised price of a motor vehicle for purposes of S.C. Code Ann. §37-2-307;

    f. A price on the internet is the advertised price of a motor vehicle for purposes of S.C. Code Ann. §37-2-307;

    g. A price on television is the advertised price of a motor vehicle for purposes of S.C. Code Ann. §37-2-307;

3. Unless S.C. Code Ann. §37-2-307 is followed, closing fees are illegal; and

4. The charging of illegal closing fees is an unfair act in violation of the Dealers Act, S.C. Code Ann. §56-15-30(a).

MICHAEL E. SPEARS, PA
Michael E. Spears
E. Grey Wicker
Post Office Box 5806
Spartanburg, SC 29304
(864) 583-3535

---

[80]Specifically, is the closing fee included in the asking price and does it thereafter remain in the price throughout negotiations such that it cannot be added on to the negotiated selling price?

GEDNEY M. HOWE, III, PA
Gedney M. Howe, III
Post Office Box 1034
Charleston, SC 29402
(843) 722-8048

RICHARD A. HARPOOTLIAN, PA
Richard A. Harpootlian
Post Office Box 1090
Columbia, SC 29202
(803) 252-4848

LEWIS & BABCOCK, L.L.P.
A. Camden Lewis
Brady R. Thomas
1513 Hampton Street
Post Office Box 11208
Columbia, SC 29211
(803) 771-8000

By:

November 16, 2009

ATTORNEYS FOR THE PLAINTIFFS

CERTIFICATE OF SERVICE

I, Carly Richardson, employee for the law firm of Lewis & Babcock, L.L.P., hereby certify that I have served a copy of **Reply to Defendants' Memoranda in Opposition to Plaintiffs' Motion Asking the Court to Issue a Declaratory Judgment** upon opposing counsel, via hand-delivery, to said opposing counsel at the following addresses:

J. Gregory Studemeyer, Esquire
Attorney at Law
1804 Bull Street
Columbia, South Carolina 29201

James Y. Becker, Esquire
Mary M. Caskey, Esquire
Haynsworth Sinkler Boyd, P.A.
1201 Main Street, 22nd Floor
Columbia, South Carolina 29201

H. Clayton Walker, Jr., Esquire
Walker & Reibold
3321 Forest Drive, Suite 1
Columbia, South Carolina 29204

Steve W. Hamm, Esquire
C. Jo Anne Wessinger Hill, Esquire
Richardson, Plowden, Carpenter & Robinson, P.A.
1900 Barnwell Street
Columbia, South Carolina

Columbia, South Carolina

November 19, 2009

Carly Richardson

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SECOND JUDICIAL CIRCUIT
COUNTY OF AIKEN	)	
	)	
Heather Herron, et al.,	)	C.A. No.: 06-CP-02-1230
	)	
Plaintiffs,	)	
	)	
vs.	)	**CERTIFICATE OF SERVICE**
	)	
Dick Dyer & Associates, Inc., et al.,	)	
	)	
Defendants.	)	

I, Lindsey Russell, employee and Paralegal for the law firm of Michael E. Spears, P.A., hereby certify that I have served a copy of **the Reply to Defendant's Memorandum in Opposition to Plaintiffs' Motion asking for a Declaratory Judgment** in regards to the above-referenced case, upon opposing Counsel by hand-delivery to the following address:

Bradford N. Martin, Esquire
Bradford Neal Martin and Associates, P.A.
75 Beattie Place, Suite 910
Greenville, South Carolina 29601

November 19, 2009

Lindsey Russell
Paralegal to Michael E. Spears, P.A.

COPY
ORIGINAL FILED
NOV 19 2009
11:24 Am
AIKEN COUNTY
CLERK OF COURT

EXHIBIT A

THIS CONTRACT IS SUBJECT TO ARBITRATION PURSUANT TO THE SOUTH CAROLINA UNIFORM ARBITRATION ACT

ED CLAUSS

BUS. MGR. 669 18473

SALESMAN #LEWIS PINKSTON

SALESMAN

DICK DYER Original

1-13

BUYERS ORDER AND INVOICE

This contract is made and entered into between Dick Dyer & Associates, Inc., hereinafter called Dealer, and Customer. Any retail installment contract or other document executed by Customer in connection herewith is simply an effort to satisfy Customer's obligations under this contract.

Dick Dyer & Associates, Inc.
825 Notch Road P.O. Box 2445
Columbia, South Carolina 29202
(803) 786-8888
www.dickdyeronline.com

☐ NEW ☒ USED ☐ DEMO

41689

40843

8585

Customer # N/A

Customer MICHAEL BRADLY BLEASE

Address [redacted]

City & State [redacted]

Phone No. [redacted]

County -HORRY Birth Date [redacted]

MILES NO.

Date 12/28/2005 Stock No. P2832

Year 2002 Make VOLVO Model S60

Serial No. YV1RS61RX22113733 2 Dr. ( ) 4 Dr. ☒

Color GREEN Inspection No.

Motor No. Key Number

ALL USED CARS SOLD "WITHOUT WARRANTY" UNLESS OTHERWISE INDICATED HERE

] Radio		15000.00
] Heater	PROCESSING FEE	199.00
] Air Conditioner	SUB TOTAL	15199.00
] St. Drive No. of Cylinders 5	SALES TAX	300.00
] Auto. Trans.	LICENSE	25.00
] Power Steering		N/A
] Power Brakes		
] Power Seats	TOTAL CASH PRICE	15524.00
] 4-Speed Trans.		

wed to. TRADE IN N/A

ddress BALANCE OWED N/A

ear Make

odel Color Net Equity N/A Rec # 8

No. Equipment Cash Deposit N/A

Cash Due on $

IF BALANCE OWED IS ESTIMATED, UPON VERIFICATION BUYER AGREES TO PAY AMOUNT EXCEEDING THIS FIGURE.

ec. # Amt. Rec. # N/A

PAYMENTS: 60 @ 307.91 15524.00

BEGINNING: 02/11/06

CONTRA

The information y
(Buyer's Gulde) f
contract. Informa
overrides any contr
sale.

Please change to 0003

LIEN INFORMATION

nance Co. BANK OF AMERICA, N.A.

ddress P.O. BOX 2759

JACKSONVILLE FL 32203-2759

"AS IS": ALL VEHICLES SOLD "AS IS" UNLESS INDICATED OTHERWISE IN WRITING.
The only warranties, if any, applying to this vehicle are those offered by the manufacturer. Dick Dyer & Associates, Inc. hereby expressly disclaims all warranties, either express or implied, including any implied warranties of merchantability or fitness for a particular purpose. Buyer shall not be entitled to recover from Dick Dyer & Associates, Inc., any consequential damages, damages to property, damages for loss of use, loss of time, loss of profits, or income, or any other incidental damages.

This contract is not binding upon Dealer unless accepted in writing by an officer or a sales manager or assistant sales manager of Dealer and until a retail installment contract for any deferred balance has been approved and funded by a third-party financing source.

SEE ADDITIONAL TERMS AND CONDITIONS ON REVERSE WHICH ARE INCORPORATED HEREIN AND MADE A PART OF THIS CONTRACT.

CUSTOMER ACKNOWLEDGES RECEIPT OF A COMPLETELY FILLED-IN COPY OF THIS CONTRACT.

Accepted: Dick Dyer & Associates, Inc.

N/A BY

Mike Blease
Customer's Signature

Co-Purchaser if applicable

THIS ORDER MUST BE SIGNED BY AN OFFICIAL OF THE COMPANY

Reynolds and Reynolds DC1800411 D (05/05)

04528 00003

THANK YOU FOR BUYING THIS CAR FROM
DICK DYER & ASSOCIATES, INC.

R.000713

ADDITIONAL TERMS AND CONDITIONS

1. SPOT DELIVERY. Dealer hereby conditionally delivers the vehicle to Customer subject to approval and funding of a retail installment contract by a third-party financing source. Customer will cooperate with Dealer in arranging financing by promptly providing any requested documents and information and by executing substitute retail installment contracts if requested by Dealer. Customer may arrange for his or her own financing, insurance, service contract, or any other goods or services. Dealer does not require the purchase of other goods or services by Customer to arrange financing. If Dealer provides any goods or services, it may receive a portion of any finance charge, premium, or profit on the sale of same. Dealer may also charge a closing fee for credit investigation, preparing, handling, and processing documents necessary to satisfy or perfect a lien, and any other charges incidental to the transaction. Notwithstanding any other form, document, representation, or understanding whatsoever, title shall remain in Dealer until any retail installment contract or other instrument has been funded by a third-party financing source. Until such funding, Customer may use and enjoy the vehicle for up to 50 miles per day. Customer may not allow another person to use the vehicle nor may Customer use the vehicle to transport persons or property for hire; in any race, test, or competitive event; after drinking any alcohol or using drugs; for any illegal purpose; to carry loads beyond its capacity; for off road use; to carry hazardous or explosive substances; if further use might cause damage; to push or tow any vehicle; in violation of any of the terms or conditions of this contract; or in a reckless, abusive, or negligent manner. Regardless of fault, Customer is responsible for any loss or damage to the vehicle up to the full price together with loss of use, appraisal fees, and recovery costs. If Customer is not approved and funded by a third-party financing source within a reasonable time in Dealer's discretion, fails to keep and honor any of the terms of this contract, has obtained the vehicle by fraud or misrepresentation, or if Dealer otherwise reasonably deems itself insecure, Customer shall return the vehicle upon Dealer's demand. In any of the above events, Dealer may peacefully repossess the vehicle, without demand, and customer hereby consents to WAIVER OF HEARING PRIOR TO IMMEDIATE POSSESSION. In the event of denial or [redacted] financing approval, Customer authorizes Dealer to retain the sum of $500 as liquidated damages from any deposit, cash down payment, or [redacted] and further agrees to pay the sum of $25 per day as rent for the vehicle beginning on the date of this contract.

2. DISCLAIMER OF WARRANTIES. DEALER HEREBY EXPRESSLY DISCLAIMS ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Any description of the vehicle contained in this contract is for the sole purpose of identifying the vehicle, and does not constitute a warranty that the vehicle shall conform to the description. Any limited warranty, specifications, or representations of the manufacturer are those of the manufacturer only and are not adopted by Dealer.

3. USED VEHICLE DISCLOSURE. USED VEHICLES MAY HAVE A HISTORY OF PRIOR DAMAGE, MECHANICAL FAILURE OR BOTH. Dealer makes no representations whatsoever as to the presence or absence of such history. DO NOT RELY UPON OPINIONS OR STATEMENTS OF DEALER'S EMPLOYEES AS TO SUCH HISTORY, AS SUCH EMPLOYEES GENERALLY HAVE NO WAY OF KNOWING OF SUCH MATTERS. Customer may request information about prior ownership from the MVs of the appropriate states. Customer also has the right to have the vehicle inspected at Customer's expense by any mechanic or garage of Customer's choice prior to consummation of this transaction. Customer agrees to hold Dealer harmless from any claims arising out of the prior history of the vehicle.

4. WE OWE. Dealer agrees to provide only the labor and/or material, if any, itemized on the DUE-IN-DEAL CHECKLIST, executed by Dealer and Customer and incorporated herein by reference, at no extra charge within (90) ninety days. Customer must make an appointment with Dealer's service department before labor or materials can be provided.

5. PERSONAL USE. Customer certifies that the vehicle is intended for his or her personal use.

6. INSURANCE. Customer represents that he or she has full coverage insurance in effect and hereby releases and agrees to hold Dealer harmless from any liability in connection therewith.

7. REBATES & INCENTIVES. Customer hereby assigns all right, title, and interest in and to any manufacturer's rebates and incentives to Dealer.

8. WARRANTY OF TITLE ON TRADE-IN. For and in consideration of the trade allowance listed, Customer does hereby bargain, sell, and deliver the trade-in vehicle to Dealer. Customer warrants title to be in Customer's name and that same is free and clear of all liens and encumbrances other than those listed under TRADE-IN, that Customer has the right to sell said vehicle, and that Customer will warrant and defend said title against all other claims.

9. REPRESENTATIONS AS TO TRADE-IN: Customer verifies that the information about the trade-in vehicle is correct including odometer information, the year of the vehicle, and any and all information regarding any salvage titles, rebuilt titles, material defects or problems associated with safety related items is fully disclosed to Dealer as follows: N/A

10. BALANCE OWED ON TRADE. If the balance owed on the trade-in vehicle is less that that indicated under TRADE-IN, Dealer will refund the difference. If the balance owed is greater than indicated, Customer will pay Dealer the difference upon demand.

11. DISPOSITION OF TRADE-IN VEHICLE. Since financing approval and funding may take several weeks, the trade-in vehicle could depreciate pending same, and/or finance payments may continue to accrue, Dealer may but has no obligation to satisfy any indebtedness on the trade-in vehicle and Customer authorizes Dealer to dispose of same. If Dealer cannot obtain financing approval and funding, Customer shall immediately reimburse Dealer for all amounts paid. If the trade-in vehicle has already been sold by Dealer, Customer shall be credited with the actual cash value of the vehicle, less any expenses incurred in holding, preparing for sale, selling and the like. If said net value exceeds the lien and encumbrances on the trade-in, Dealer shall pay the difference to Customer upon surrender of Dealer's vehicle. If the liens and encumbrances exceed the net value of the trade, Customer shall immediately remit the difference to Dealer.

12. ARBITRATION. Any and all disputes, claims or controversies between Dealer or any officers, directors, agents, employees, or assignees of Dealer and Customer arising from or relating to this contract or the relationships which result from this contract, or the validity of this arbitration clause or the entire contract, shall be resolved by binding arbitration by one arbitrator, selected by Dealer with Customer's consent. **The parties expressly waive all rights to trial by jury on such claims.** Provided, however, that nothing in this contract shall require Dealer to submit to arbitration any claims by Dealer against Customer for claim and delivery, repossession, injunctive relief, or monies owed by Customer in connection with the purchase or lease of any vehicle, and any claims by Dealer for these remedies shall not be stayed pending the outcome of arbitration. The filing fees for arbitration shall be paid by the party initiating arbitration. The arbitrator may allocate the other arbitration fees as he/she deems appropriate. Any party may take on the position of an opposing party. The parties agree to exchange all exhibits to be used in arbitration 7 days before arbitration. The arbitrator shall determine the controversy in accordance with the terms of this contract between the parties and shall not consider any parole evidence which purports to alter, modify, vary, add to, or contradict such contract. The arbitrator shall give effect to all applicable statutes of limitation. Any arbitration under this agreement shall take place in Richland County, South Carolina and Customer agrees that the courts of Richland County, South Carolina shall have exclusive jurisdiction over enforcement of this contract and any award made by any arbitrator pursuant to this contract. **In no event shall the arbitrator be authorized to award punitive, exemplary, double, or treble damages (or any other damages which are punitive in nature or effect) against either party. Unless otherwise agreed in writing, no claims against Dealer shall be consolidated with other claims in the nature of a class action.**

13. PREJUDGMENT INTEREST. Any sums due Dealer from Customer not otherwise subject to a retail installment contract shall bear interest at 18.0% per annum.

14. ATTORNEY'S FEES. In the event either Dealer or Customer shall enforce the terms of this contract, the parties agree that the arbitrator or court will be given the authority to award costs and expenses, including reasonable attorney's fees to one of the parties.

15. CHOICE OF LAW. This contract shall be governed by and construed under the laws of the State of South Carolina.

16. MODIFICATION. Any modification of this contract or additional obligation assumed by either party shall be binding only if evidenced in writing and signed by Customer and an officer of Dealer.

17. SEVERABILITY. In the event any provision of this contract shall be held invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not be affected or impaired thereby.

18. ENTIRE AGREEMENT. This contract constitutes the entire agreement between Dealer and Customer and any prior understanding or representation of any kind preceding this contract shall not be binding on either party except to the extent incorporated in this agreement. N/A

04529

DEAL # 69355

Gotta Go To...
GALEANA
CHRYSLER • JEEP • KIA

180 Greystone Boulevard • COLUMBIA, SC 29210
(803) 779-7300 • ONLINE at www.galeanasc.com

DATE		INVOICE NO	STOCK NO	KEY
08/12/06		61467	63026A ✓	1

PHONE NO [redacted] DATE OF BIRTH [redacted]
SOLD TO NATALIE R ARMSTRONG
ADDRESS [redacted] 105309

TYPE	YEAR	MAKE	MODEL	BODY STYLE
USED	2002	JEEP	LIBERTY	4DR

EMPL # | SERIAL NUMBER: 1J4GK48K72W116702 ✓

SALESMAN JARRAH D JORDAN ✓ NO 523 KEY NOS DL# 68371

LIEN TO
CITIFINANCIAL AUTO
P.O BOX 3449
COPPELL TX 75019
DATE 08/12/06
AMT 10400.00

IF A RETAIL INSTALMENT CONTRACT IS EXECUTED AS PART OF THIS SALES TRANSACTION, THEN BUYER AND SELLER INTEND THAT THIS CONTRACT WILL BE ASSIGNED BY SELLER. IN THE EVENT SELLER IS UNABLE TO ASSIGN THIS CONTRACT WITHIN 7 DAYS OF THE DATE HEREOF, THE BUYER, IMMEDIATELY UPON NOTICE BY SELLER, SHALL DO ONE OF THE FOLLOWING

1 PURCHASE THE VEHICLE FROM SELLER FOR THE CASH PRICE THEREOF SET FORTH HEREIN, OR
2 RETURN THE VEHICLE DESCRIBED HEREIN TO SELLER AND PAY TO SELLER THE COST OF REPAIR OF ANY DAMAGE OCCURRING TO THE VEHICLE WHILE IN BUYERS POSSESSION

ATTENTION: "The information you see on the window Buyers Guide form for this vehicle is part of this contract. Information on the window Buyers Guide form overrides any contrary provisions in the contract of sale".

"AS IS"

The only warranties, if any, applying to this vehicle are those offered by the manufacturer. The selling dealer hereby expressly disclaims all warranties, either express or implied, including any implied warranties of merchantability or fitness for a particular purpose, and neither assumes nor authorizes any other person to assume for it any liability in connection with the sale of this vehicle. Buyer shall not be entitled to recover from the selling dealer any consequential damages, damages to property, damages for loss of use, loss of time, loss of profits, or income, or any other incidental damages

THIS IS THE FINAL PURCHASE AGREEMENT ALL PREVIOUS AGREEMENTS VERBAL OR WRITTEN ARE SUPERSEDED BY THIS AGREEMENT AND ARE NOW NULL AND VOID.

BUYER'S SIGNATURE [redacted]

CO-BUYER'S SIGNATURE

ACCEPTED BY:

DEALER INSTALLED OPTIONS INCLUDED IN VEHICLE PRICE

[redacted]		N/A
[redacted]		N/A
GAP WAIVER		N/A
	377.00	
ADMIN FEE		N/A
FABRIC PROTECTOR	199.00	
PAINT SEALANT		N/A
RUSTPROOFING		N/A
UNDERCOATING		N/A

SALE PRICE	DESCRIPTION	COST	KEY	ACCT NO	SALE	KEY
	CHRYSLER-PLYMOUTH		C		12571 00	-
			C			-
	JEEP-EAGLE		C			-
			C			-
	OTHER		C			-
			C			-
	SALES TAX			215A	300 00	-
	LICENSE & TITLE			215C	29 00	-
		TOTAL CASH PRICE			✓12900 00	
	SERVICE CONTRACT 458A/482A				N/A	-
	C/E - A/H				N/A	
	FINANCE CHARGES				5113 84	
		TOTAL TIME PRICE			18013 84	
SETTLEMENT	FACTORY REBATE			116G	N/A	+
	CASH ON DELIVERY-CR #			111	2500 00	+
	USED CAR ALLOWANCE				N/A	
	PAY OFF			201B	N/A	-
	NET DIFFERENCE				N/A	
	PAYMENTS MONTHS 72 @ 215.47 DOLLARS PER MONTH				15513 84	
				TOTAL	18013 84	
	FINANCE CONTRACT			106	10400 00	+
	CITIFINANCIAL AUTO					+
	GALEANA REBATE				N/A	+
						+
						-
						-
						-
						+
						+
	STOCK NO		ACV	127		+

USED CAR TRADED

YEAR	MAKE	MODEL	SERIAL NO

THE FOLLOWING ITEMS YOU ARE PURCHASING ARE NOT CHRYSLER PRODUCTS AND ARE NOT BACKED OR WARRANTED BY CHRYSLER CORP.

Buyer's Signature X [redacted]

Reynolds and Reynolds RD19328 D (3/02)

04564

GALEANA_000007

R.000715

HONDA

HENDRICK HONDA

4609 Calhoun Mem. Hwy.
EASLEY, S.C. 29640
Telephone (864) 855-1234

RECEIVED JUL 14 2006

INVOICE 31863

SOLD TO JULIE VALISKA FREEMAN
WILLIAM THOMAS FREEMAN

ADDRESS [redacted]

DATE 07/12/06

Home Ph: [redacted] Bus Ph: [redacted]

YEAR	NEW OR USED	MAKE	COLOR	MODEL	INVOICE	STOCK NO.	DEAL NO.	USED STK. NO.	MILES
2005	USED	HONDA	WHITE	4 DR	L000230		[redacted]	[redacted]	26553

V.I. OR SERIAL NO. 1HGCM56445L000230 | CUSTOMER NO. 41897 | SALESMAN'S NUMBER 221 | MODEL NUMBER ACCORD

INSURANCE COVERAGE INCLUDES

- ☐ FIRE & THEFT
- ☐ PUBLIC LIABILITY-AMT. $
- ☐ COLLISION-AMT. DED. $
- ☐ PROPERTY DAMAGE-AMT. $

OPTIONAL EQUIPMENT AND ACCESSORIES

GROUP	DESCRIPTION	PRICE

DESCRIPTION OF TRADE-IN

YEAR	MAKE	BODY COLOR	MODEL
1999	MAZDA	GREEN	626

V.I. OR SERIAL NO. 1YVGF22C9X5884463

Payoff to SC TELCO FED CREDIT UNION

377.57 Good Until
Verified With

PAID 07/14/06
CHECK# 43643

DESCRIPTION	ACCT. NO.	SALE	X	COST
		N/A		
			-	
CIVIC 3 DOOR	401		-	
CIVIC 4 DOOR	402		-	
CIVIC 2 DOOR	403		-	
ACCORD 2 DOOR	404		-	
ACCORD 4 DOOR	405		-	
			-	
			-	
FLEET	410			
USED CAR RETAIL	440	17975.00	-	
USED CAR WHOLESALE	442		-	
			-	
			-	
USE TAX	333	300.00	-	
LICENSE AND TITLE	321	39.00	-	
PROCUREMENT FEE		299.00	-	
TOTAL CASH PRICE		18613.00		
FINANCING		N/A		
INSURANCE		N/A		
TOTAL TIME PRICE		18613.00		
DEPOSIT	322		+	
CASH ON DELIVERY	210✓	18090.57	+	
			+	
TRADE-IN ALLOW.		900.00		
LESS PAYOFF		377.57		
MONTHS 60 @ N/A DOLLARS PER MONTH		N/A		
TOTAL		18613.00		
A & H C.L. INS. %	309	N/A		
PAY OFF BAL. OWING FINANCE CO.	320	377.57	-	
A & H C.L. INS. % INCOME	4AC	N/A	-	
SERVICE CONTRACTS	5AC	N/A	-	
AMOUNT FINANCED	205	N/A	+	
TOTAL COMMISSION	331	N/A	-	
		N/A	+	
		N/A	+	
INS. COMM. RECV.	272		+	
			+	
			+	
FINANCE RESV.	271	N/A	+	
FINANCE INCOME	3AC	N/A	+	
			+	
			+	
			+	
			-	
VALUE OF TRADE-IN(S)	06-L00123✓	250@ 250	900.00	-

ANY WARRANTIES ON THE ITEM/ITEMS SOLD HEREBY ARE THOSE MADE BY THE MANUFACTURER. THE SELLER, HENDRICK HONDA, HEREBY EXPRESSLY DISCLAIMS ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND HENDRICK HONDA, NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PERSON TO ASSUME FOR IT ANY LIABILITY IN CONNECTION WITH THE SALE OF THIS ITEM/ITEMS.

Reynolds and Reynolds DR72362 G (07/04)

04539

LAND ROVER COLUMBIA

540 Jamil Rd.
I-26 @ Piney Grove
Columbia, SC 29210
Tel: (803) 731-74WD
Fax: (803) 731-8274
www.landrovercarolinas.com

RETAIL BUYER'S ORDER

Name: HEATHER MURPHY HERRON		Spouse	
Street: 324 SHAREBROOK LN		Phone: [redacted]	
City: [redacted]	State	Zip	County: RICHLAND
Employer: [redacted]			Phone
E-mail Address: [redacted]			

Date: 02/25/06 Stock No.: 50710
Salesperson: [redacted]

PURCHASE

☐ NEW ☐ DEMO ☐ PRE-OWNED ☐ FACTORY CAR

Year	Make	Body Type	Series
2003	LAND ROVER	SUV	DISCOVERY

Cylinders: Serial No.: SALTY16423A784422 COLOR: Exterior: VIENNA/GREEN / Interior:

OPTIONS:

Mileage: 37186

TRADE

Year	Make	Body Type	Series
1999	CHEVROLET	SU	SUBURBAN

Cylinders: Serial No.: 3GNEC16RXXG153796 COLOR: Exterior: TAN / Interior:

Mileage: 110021 Options:

BALANCE OWED TO: Name & Address:

LIEN: Name & Address: CASH

Phone: Contact:

Account #:

Effective Dates:

INSURANCE INFORMATION: Company Name: STATE FARM

Agent: TERRI PHILLIP Phone: 8039519111

Policy #: Effective Dates:

Drivers License #:

Remarks: [redacted]

PRICE: (Including Transportation & Service Charges)	26950.00
Additional Options:	
TOTAL:	26950.00
Allowance on Trade-in	6950.00
Cash Difference	20000.00
SC Sales Tax	300.00
Balance Owed on Trade-in	N/A
Title and License ☐ New ☐ Trans ☐ Temp	25.00
Recording & Processing Fees	$225.00
TOTAL:	20550.00
Service Agreement	N/A
Insurance	N/A
TOTAL:	20550.00
Cash on Delivery	N/A
BALANCE DUE:	20550.00

READ CAREFULLY: Land Rover Columbia agrees to sell and the Buyer(s) agree to purchase the vehicle as above described at the price set forth. The Buyer shall remit full payment of the entire balance due on or before 02/25/06. This Buyer's Order constitutes the entire agreement between the parties and may not be changed except by an instrument in writing signed by the party to be charged.

Buyer: [signature] X Co-Buyer: _____ LAND ROVER COLUMBIA [signature]

Must be accepted by an Officer of the Company

☐ **USED CAR CONTRACTUAL DISCLOSURE STATEMENT:** - "The information you see on the window form (Buyer's Guide) for this vehicle is part of the contract. Information on the window form overrides any contrary provisions in the contract of sale."

XX

☐ **NEW VEHICLE**

Purchaser's Signature X _____

DISCLAIMER OF WARRANTIES: - I have read, understand and accept all provisions of the Manufacturer's Warranty Statement covering this new vehicle that I am purchasing. Furthermore, I understand that all warranties on this vehicle are those of the manufacturers. The seller, Land Rover Columbia, hereby expressly disclaims all warranties, either expressed or implied, including any implied warranty of merchantability or fitness for a particular purpose and Land Rover Columbia neither assumes nor authorizes any person to assume for it any liability in connection with the sale of this vehicle. This disclaimer in no way affects the provisions of the manufacturer's warranties.

Purchaser's Signature [signature]

This agreement between the undersigned buyer(s) and dealer is incorporated by reference into and is made a part of any separate retail installment or credit sale agreement between the undersigned buyer(s) and dealer ("Retail Financing Agreement"). Notwithstanding anything to the contrary in any other document, if there is a Retail Financing Agreement the undersigned buyer(s) understand and agree that the transaction evidenced by this agreement and the Retail Financing Agreement is contingent upon credit approval by, and assignment of the Retail Financing Agreement to, a third-party financial institution. If the Retail Financing Agreement is not accepted by a third-party financial institution, you must immediately return the vehicle referred to in this agreement, and the entire transaction evidenced by this agreement and the Retail Financing Agreement and this agreement shall be null and void.

Signed _____ (Buyer) Signed _____ _____ (Dealer)

Signed _____ (Buyer)

LR -03

04592

R.000717

TAYLOR TOYOTA

5425 Jefferson Davis Hwy. • North Augusta, S.C. 29841
Phone: (803) 279-8400 Fax: (803) 279-8551
E-mail: www.taylortoyota.com

JOHN F MERRITT 26963 — 06/07/2003 DATE

MICHAEL RITZ — PURCHASER'S NAME

[redacted] — STREET ADDRESS

[redacted] — CITY — STATE — ZIP

RICHMOND — COUNTY — E-MAIL

RES PHONE — BUS PHONE

YEAR 2003 MAKE TOYOTA TRUCK MILEAGE 14 VIN 5TEGN92NX3Z213491

MODEL TACOMA BODY TRK PRERUNNER EXTCB MODEL NO 7188 STOCK NO 2903

☒ NEW ☐ USED ☐ DEMO

XX ORIGINAL EQUIPMENT

DEALER INSTALLED EQUIPMENT

ORIGINAL MSRP $ N/A

TRADE IN INFORMATION

MAKE COLOR

MODEL BODY

VIN MILEAGE

PAYOFF OWED TO

ADDR

CITY, ST, ZIP

1. VEHICLE PRICE	22818.33
2. PROCUREMENT/DELIVERY FEE	277.00
3. SECURE ETCH	N/A
4. TOTAL SELLING PRICE	23095.33
5. GROSS VEHICLE ALLOWANCE	N/A
6. TRADING DIFFERENCE	23095.33
7. STATE & LOCAL SALES TAXES	1615.67
8. LICENSE, TAG & TITLE FEE	23.00
9. SUBTOTAL	24735.00
10. PAYOFF ON TRADE IN	N/A
11. TOTAL	24735.00
12. PARTIAL PAYMENT	N/A
13. SUBTOTAL	24735.00
14. SERVICE CONTRACT	N/A
15. CASH ON DELIVERY	3750.00
16. BALANCE/AMT FINANCED	20985.00

PURCHASER INFORMATION

BIRTHDATE [redacted] INS. CO. USAA

POLICY NO [redacted] EXPIRATION DATE 07/07/08

AGENT USAA PHONE NO (800)531-8111

ADDRESS 9800 FREDRICKSBURG RD.

CITY, STATE, ZIP SAN ANTONIO, TX 78288

DL # [redacted]

VERIFIED BY

OUTSIDE LIENHOLDER

COMPANY CITIZENS AUTOMOBILE FINANCE, INC.

ADDRESS P.O. BOX 255587

CITY, STATE, ZIP SACRAMENTO CA 95865

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04640

06/07/2003
PURCHASER SIGNATURE — DATE

ACCEPTED BY — AUTHORIZED REPRESENTATIVE — DEALER

WHITE - CUSTOMER COPY GREEN - SALES FACTILE YELLOW - LIENHOLDER PINK - SALES MANAGER GOLDENROD - CUSTOMER COPY

R.000718

EXHIBIT B

State of South Carolina
In the Court Of Common Pleas
County of Aiken

Heather Herron, Natalie Armstrong, Michael Ritz, Julie Freeman, Christine Watts, Alison Dannert, Michael Blease, Michael Watts, Individually and for the Benefit of All Car Buyers whom paid "Administrative Fees" as Described Below to Defendants,

Plaintiffs,

vs.

NO. 06-CP-02-1230

Century BMW a/k/a Sonic Automotive; Dick Dyer & Associates, Inc.; Galeana Chrysler Plymouth, Inc. a/k/a Galeana Chrysler Jeep, Inc.; J.L.H. Investments, LP a/k/a Hendrick Honda; Overland, Inc. d/b/a Land Rover of Columbia; Taylor Toyota a/k/a Taylor Investments; and Toyota of Greenville, Inc., et al.,

Defendants.

DEPOSITION

COPY

WITNESS: Richard Taylor
DATE: February 13, 2009
TIME: 10:00 a.m. - 11:40 a.m.
LOCATION: Richardson, Plowden & Robinson
Columbia, South Carolina

TAKEN BY: Attorney for the Plaintiffs

REPORTED BY: KATHRYN J. LINDLER

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INDEX OF WITNESSES

	PAGE
RICHARD TAYLOR	
EXAMINATION BY MR. LEWIS	6
SIGNATURE OF DEPONENT	61
CERTIFICATE OF REPORTER	62

EXHIBITS

PLAINTIFF's

1	Amended Notice 30(b)(6) Deposition of Taylor Toyota	10
2	Vehicle Worksheet Purchase Agreement	35
3	Vehicle Worksheet Purchase Agreement	37
4	Defendant Taylor Toyota Supplemental Answers to Plaintiff's Interrogatories	41

STIPULATIONS

It is stipulated by and between counsel that this deposition is being taken in accordance with the South Carolina Rules of Civil Procedure, and that the deponent does not waive the right to read and sign the deposition transcript.

Thereupon,

RICHARD TAYLOR,

being first duly sworn to tell the truth, the whole truth and nothing but the truth, as hereinafter certified, testified as follows:

EXAMINATION

BY MR. LEWIS:

Q. Good morning.

A. Good morning.

Q. What is your name?

A. Richard A. Taylor.

Q. Richard A. Taylor.

A. For Allen, yes, sir.

Q. Mr. Taylor, have you had your deposition taken before?

A. No, sir.

Q. Have you been at the depositions here during this week?

A. No, sir.
Q. A deposition is I ask questions and lucky for me you don't get to ask questions. You get to answer them.
A. Yes, sir.
Q. If you answer them, it's assumed that you understood the question. If you don't understand the question, you just ask me and I'll try to be clearer or try to rephrase it so that you do understand it.
A. Certainly.
Q. Also sometimes if I cut you off and you just say I didn't finish, I'll be quiet and let you finish.
A. Okay.
Q. I will ask yes and no questions and I would like you to answer them yes and no and then give any explanation you want to give.
A. Okay.
Q. I also may sometimes act like you don't want me to at which time you tell me that I'm acting some way that you don't like and I will try to change, okay?
A. Yes, sir.
Q. You're here on a case involving administrative fees. Do you know what administrative fees are?
A. Yes, sir.
Q. Do you know what this case is about?
A. Administrative fees.

Q. Do you know any more than that? Do you know what they say is wrong or anything? What is it that this case says causes the customer to get damaged or not to have to pay the fee?
MR. WALKER: I object to the form. It's compounded. You asked two questions.
Q. What is it that you understand why you're asked to give the fees back?
A. I don't know.
Q. You don't know?
A. No, sir.
Q. No one has ever told you?
A. No, sir.
Q. Have you ever read the complaint?
A. Not completely, no, sir.
Q. What is your job?
A. General manager of the Toyota -- I was the general manager of the Toyota store.
Q. You're not any more?
A. No, sir.
Q. What happened?
A. I now am overseeing the three stores that we currently own.
Q. You own three stores?
A. Yes, sir.

Q. And they're all different dealerships?
A. Yes, sir.
Q. What are their names?
A. Taylor Hyundai.
Q. Where is it?
A. Augusta, Georgia. Taylor Infiniti.
Q. Where is it?
A. Augusta, Georgia.
Q. Hyundai, Infiniti and what else?
A. Taylor BMW, Augusta, Georgia also, or Evans, Georgia.
Q. Those are the three?
A. Yes, sir.
MR. WALKER: When you say you all own, who are you referring to?
MR. LEWIS: I'll get to that.
Q. Is there a Taylor Toyota?
A. Not any longer, sir.
Q. Where is it?
A. It was sold in, I believe September 30 or October 1. I don't remember the date that we actually closed.
Q. Who bought it?
A. Bob Richards.
Q. Where is it located?

A. In North Augusta, South Carolina.
Q. These Hyundai, Infinity and BMW, who owns them?
A. Ann Taylor.
Q. How is she related to you?
A. She's my mother.
Q. She used to be the owner of Taylor Toyota too?
A. Yes, sir.
Q. Will you mark this as an exhibit please.
(WHEREUPON, Plaintiff's Exhibit No. 1 was marked for identification only.)
Q. Looking at Exhibit Number 1, this is the suit against dealers including Taylor Toyota or Taylor Investments?
A. Yes, sir.
Q. What is Taylor Investments?
A. Taylor Investments is actually the company that -- it's Taylor Investments DBA Taylor Toyota.
Q. Now it's no longer DBA Taylor Toyota?
A. Correct.
Q. You're here to speak on behalf of Taylor Toyota?
A. Yes, sir.
Q. Why?
A. Because I was the general manager of the store for a period I guess between '02 when I guess the beginning

of the suit here through I believe May of '04 and then again from August of '05 until February of '06 and I have been directly involved in the store even though I was not acting as the general manager during those other two time periods.

Q. When was it sold?

A. September 30/October 1 of '08.

Q. Have they changed how they do business since then or do you have any idea?

A. I don't know.

Q. I'm confused. You're here on behalf of a company that you don't know how they're operating now?

A. The company Taylor Investments, Taylor Toyota, no longer exists. The assets of the dealership were sold September 30/October 1 of '08.

Q. So it was an assets sale?

A. Yes, sir.

Q. Then the company Taylor Investments, it still owns Hyundai, Infiniti and BMW?

A. No, sir.

Q. It's a different named company?

A. Yes, sir.

Q. What does Taylor Investments own?

A. At the current time it owns a body shop in North Augusta.

Q. How much money does it have?

A. I couldn't tell you right now. As far as the body shop or Taylor Investments?

Q. No, Taylor Investments. Does it have any money?

A. I'm certain it does in the bank account, but I don't check that regularly.

Q. Give me an idea of what your best guess is. Does it got enough money? I mean is it a hundred thousand? A couple million? How much does it have?

A. It's over a million.

Q. When it sold the assets, did it make any money on the sale?

A. Yes, sir.

Q. How much did it make?

A. I'll give you -- I don't know exactly. Approximately --

Q. I understand. It's not a memory test, but just give me your best estimate. I understand.

A. After everything, approximately 9 million.

Q. What happened to the 8 million that went from 9 million they got after and now it's down to 1 million? What happened to the 8 million?

A. You asked me how much Taylor Investments had in the bank account.

Q. I'm sorry.

A. The owner of Taylor Investments, Ann Taylor, used that money to pay off some of the properties that she owned.

Q. Let me make sure I understand. Taylor Investments then have some properties?

A. No, sir. The properties are owned in a different company.

Q. She used Taylor Investments money to pay off properties owned by different companies?

A. By Taylor Family Limited Partnership.

Q. She took that money and paid off properties that were owned by Taylor Family Partnership?

A. Technically, yes, sir.

Q. She did that in '08?

A. At the time of closing, yes, sir. The money was actually disbursed to the lien holders of those properties from the closing statement.

Q. The money, let me make sure I understand. The 9 million, just whatever, went to Taylor Investments?

A. Yes, sir.

Q. Because that was the same as Taylor Toyota also known as Taylor Investments?

A. Yes, sir.

Q. Taylor Investments took the money and paid off loans for the Taylor Family Partnership?

A. The money was actually disbursed at closing. In other words, the sum amount of the money that was paid by Bob Richards at closing was disbursed by the attorneys at the closing to pay off loans on four properties.

Q. Let me make sure we understand. They used Taylor Investment money to pay off loans on properties that was not owned by Taylor Investments?

A. I'm not sure I understand. Rephrase it for me.

Q. I'm trying to make it clear.

A. May I ask a question?

Q. Let me just make it clear. Nine million dollars came to Taylor Investments no matter how you look at it.

A. Okay.

Q. That 9 million, parts of it were sent out to pay loans or mortgages on properties?

A. Yes, sir.

Q. And those properties were not owned by Taylor Investments?

A. Yes, sir.

Q. Do you have anything to do with these other dealerships?

A. Yes, sir. I oversee Taylor Hyundai, Taylor Infiniti and Taylor BMW.

Q. Are the way they handle administrative fees any different than the way Taylor Toyota handled them?

A. In what way?
Q. In any way?
A. No, sir.
Q. All four of them do them the same way except Taylor Toyota is no longer here, but when they were in business they all four did it the same way?
A. Yes, sir.
Q. Looking at Exhibit Number 1, would you turn to the last page. Have you seen that before?
A. Yes, sir.
Q. Those are the subject matters that you have been designated to talk about on behalf of Toyota Taylor?
A. Yes, sir.
Q. Administrative fees, you mentioned it started in '02 or something like that. How did it start?
MR. WALKER: Object to the form.
Q. How did it start? You can answer. I don't know what's the matter with that unless it's a signal.
A. No, the administrative fee did not start in '02. I'm saying the suit regarding the administrative fees goes back to '02 I believe.
Q. When did it start?
A. I have recollection of Taylor Toyota charging fees in the, I'm going to say the mid to late '80s.
Q. So they've been charging a fee since the '80s?

A. Yes, sir.
Q. An administrative fee?
A. Yes, sir.
Q. Have they been charging it the same way?
A. The same way, yes, sir. The same amount, no, sir.
Q. There was a statute passed about administrative fees, do you remember that statute?
A. I'm familiar with the statute, yes, sir.
Q. Do you remember about when it was passed?
A. No, sir.
Q. Did it change the way you were doing business when they passed that statute?
A. No, sir.
Q. When this lawsuit was filed, did you change anything?
A. No, sir.
Q. You charge this fee as a separate line item for each sale, don't you?
A. Yes, sir.
Q. Do you keep books on this separate line item?
A. The administrative fee is put on the other income line on our financial statement.
Q. On your what?
A. On the financial statement.

Q. You take all the administrative fees and you add them up and that is called other income?
A. That goes into the other income account, yes, sir.
Q. Is that what it is other income?
A. It goes on the line that's called other income.
Q. Is it other income?
A. Certainly, yes, sir.
Q. It's no different than the income you get from selling parts?
A. Correct.
Q. Or selling cars?
A. Correct.
Q. I would say then that the amount of it is not tied to any particular cost?
A. I don't understand exactly what you're asking there. I can tell you that the amount that we charge, we would look at the financial statements, look at the cost of doing business and adjust our fees from looking at the financial statement itself seeing where the dealership was from an expense standpoint or a profitability standpoint.
Q. Then you try to get more profit by getting a higher administrative fee?
A. Sometimes we were just trying to cover the cost, the expenses, the operating or the overhead expenses of the

dealership or operating expenses.
Q. Let's talk about this. If you did it that way, you look at the expenses, and they came to $10 and you look at the other income and it came to $9. So you would be losing a dollar, right, if you had income 9 and expenses 10?
A. In your example certainly I'd be losing a dollar.
Q. What you're telling me you'd make the admin fee big enough to make up that difference?
A. No, sir.
Q. Then how did you determine it?
A. We would take the financial statement, look at the bottom line. If we're losing money, we would look at several different areas including administrative fees.
Q. You would try to make up the loss of monies by the administrative fee and other items?
A. Yes, sir.
Q. Did you not try to make a profit?
A. That's what we were trying to do in business, yes, sir. Certainly.
Q. You would even use administrative fees to try to make a profit?
A. Yes, sir.
Q. You do that by looking at the overall financial statement of the company?

A. Yes, sir.
Q. You couldn't tell me that this administrative fee was tied to any particular expense item?
A. No one particular expense item.
Q. Or any group of them except all of them?
A. Correct.
Q. Your fee would go up each year or each several years, it continued to incline?
A. Yes, sir.
Q. That would be done by the same method, you would just sit down, look at it and come up with a fee?
A. We would take a lot of things into consideration. I mean the cost of doing business, the regulatory items that we were most recently had to increase expense for such as the OFAC, checking to see make sure that our buyer was not on the terrorist list, things like that. We would have an increase in the cost of doing business and sometimes adjust our fee accordingly, yes.
Q. You made a million dollars one year off administrative fees?
A. I don't think we made a million dollars.
Q. That's how much you collected?
A. Collected, yes, sir.
Q. How many secretaries or record checkers or administrative people do you think you might be able to

hire for a million dollars?
A. A lot.
Q. I agree. The South Carolina Automobile Dealer Association, did you have any dealings with them on the admin fee?
A. No, sir.
Q. Never talked to them?
A. No, sir.
Q. How did you all come up with the idea?
A. I don't know.
MR. WALKER: Object to the form. Which idea?
Q. The idea to charge an administrative fee. He understood.
A. I don't know.
Q. It just was there?
A. I was not in the general manager capacity in the late '80s when I recollect that there was an administrative fee.
Q. When you came on board to be general manager, there was an administrative fee being charged and you just carried forward with it and upped it according to what we've just talked about?
A. Yes, sir.
Q. You don't remember any bulletins from the South Carolina Automobile Dealers Association about the

administrative fee?
A. Not specifically, no, sir.
Q. The bulletins that they sent had no effect on how you charged the fee?
A. No, sir.
Q. They did or they didn't?
A. They did not.
Q. Are you a member?
A. Yes, sir, SCADA.
Q. I think you already told me when the law was passed that didn't change the way you did it either?
A. When the statute was passed, we certainly made our filings with the Department of Consumer Affairs from that point forward.
Q. You mean you paid $10 or whatever it was $25?
A. And filled out the proper paperwork and posted --
Q. But that's all --
MR. WALKER: Please let him finish.
Q. I'm sorry.
A. And posted the announcement or the notice that they required or they asked us to post.
Q. Did you do anything else?
A. I don't believe so.
Q. Do you know what the law says you must do to charge a closing fee?

A. Yes, sir, I think so.
Q. What does it say you must do besides put it up or disclose it in a conspicuous location and pay a $10 fee? Do you have to disclose the fee?
A. Yes, you have to disclose the fee on the purchase order or buyer's order.
Q. Buyer's order?
A. Hm-hmm.
Q. It says on the sales contract?
A. Sales contract, buyer's contract.
Q. What is the sales contract?
A. We call it a buyer's order.
Q. Is it the installment contract when they finance it?
A. No, sir.
Q. Could they buy the car if they didn't have an installment contract?
A. Absolutely.
Q. How?
A. Pay cash.
Q. What if they can't? If he fills out this -- what did you call it? An invoice?
A. Buyer's order. Sales contract is fine.
Q. Sales contract.
A. I understand where you're at now.

Q. Sales contract?
A. Yes, sir.
Q. He doesn't have cash?
A. Right.
Q. That contract doesn't mean a thing?
A. It states what he's agreed to purchase the vehicle for and then that amount goes onto the installment contract.
Q. That's the contract that buys the car, isn't it?
A. It's the contract that pays us for the car.
Q. So it pays for the car?
A. Yes, sir.
Q. But the other contract which does not pay for the car is the sales contract?
A. It's the sales contract, correct.
Q. Have you ever talked to any other dealers about the administrative fees?
A. No, sir.
Q. Ever talked to anybody at the Automobile Dealers Association?
A. No, sir.
Q. Have you ever talked to anybody about the administrative fees?
A. Yes, sir.
Q. Who?

A. Owner, Ann Taylor.
Q. Anybody else?
A. The general manager that came in after me, Louie Herron.
Q. Where is he?
A. He's in Augusta, Georgia.
Q. What company is he with?
A. He's not with anyone right now.
Q. What is his name?
A. Louie Herron.
Q. Why isn't he with anybody? He doesn't have a job?
A. He was the general manager for Taylor Toyota when Mr. Richards bought the assets. They agreed to three months employment. So at the end of the year, the end of December or I guess it was 10 days into January they decided to part company.
Q. They decided to part company. So he's out looking for a job?
A. Yes, sir.
Q. Have you ever talked to anybody about this lawsuit?
A. Yes, sir.
Q. Who?
A. Jess Black.

Q. Who is he?
A. He's with the other three dealerships. He helped me gather information.
Q. Who is he?
A. He's, he doesn't have an official title. He assists in running all three stores with me.
Q. What did he do? What did you ask him and what did you all talk about?
A. He helped gather some information that was requested for this suit.
Q. We requested like, do you know what tags are that hang on the rear view mirror?
A. Yes, sir.
Q. Do you all use those?
A. We did --
MR. WALKER: Object. All being Taylor Toyota.
A. We did from time to time.
Q. What would they be? Look like a hanging tag with a price on them?
A. Sometimes.
Q. When they had a price on them, did they ever mention the administrative fee?
A. No, sir.
Q. So they would hang off of the rear view mirror?
A. For the most part. Sometimes on the dash.

Q. They would be in your lot?
A. On the lot, yes, sir.
Q. They were there for people who would walk by to look at to see how much it would cost?
A. Yes, sir.
Q. Those numbers were not -- was that what they paid for the car or was that the starting price for negotiations?
A. We would've loved for it to have been what they paid for the car, but it was usually the starting price that the customer negotiated downward from there.
Q. It was also a price that enticed the customer to start a negotiation, wouldn't it?
A. It's a price tag, yes.
Q. To entice them to start negotiations? If you put a million dollars on a car, they wouldn't negotiate. They'd walk right by that one.
A. You'd be surprised. Some people would. They would negotiate. They don't negotiate if you put -- it doesn't matter what you put on there.
Q. It doesn't matter?
A. They will negotiate, yes.
Q. I know they will negotiate, but isn't the price on there to try to get them interested in the car? Isn't that the purpose of the little price tag?

A. Of the price tag on the lot.
Q. Yes, to get them interested in the car?
A. It's to let them know what the car would cost them if they bought it today.
Q. To get them interested in the car, that's what it's for, isn't it?
A. Yes, if it's discounted off of the MSRP certainly.
Q. Do you have used cars?
A. Yes, sir.
Q. Do they have tags on them?
A. No, sir.
Q. You never hang a tag on used cars?
A. From time to time, but we don't put prices on the stickers of the used car.
Q. Doesn't it have a little tag that that says this car is $6,000 or something?
A. Not generally.
Q. Do you do that sometimes?
A. Sometimes, yes, sir.
Q. You do that to get them interested in the car?
A. Yes, sir.
MR. WALKER: Please let him finish.
A. During a sales event or something of that nature, yes, we would put special prices on the used cars so that

the customer could come. Sometimes we would advertise the customer could come, look while we're not there and the price is clearly marked on every car.
Q. And those prices did not say anything about administrative fees?
A. No, sir, they included them.
Q. Huh?
A. They included the administrative fee.
Q. Does it say that on the advertisement?
A. No, sir.
Q. Let me take you through a sale. You say it included the administrative fee. Say a car cost $10,000 and the administrative fee is $200.
A. Okay.
Q. You say the 10,000 included the administrative fee. The guy sits down to bargain. He just bargains off the 10,000, doesn't he?
A. Yes, sir.
Q. Let's suppose he decides $8,000 is going to be a sale, everybody says, great, there's a sale. When you fill out your paperwork, do you show any administrative fee?
MR. WALKER: Object to the form.
Q. Or do you just say sales price $8,000 and there's no administrative fee?
MR. WALKER: Object to the form. Go ahead and

answer.
A. There is an administrative fee on every deal.
Q. You would add the administrative fee to the $8,000?
MR. WALKER: Object to the form.
A. No, sir. We would use a worksheet during negotiations. $8,000, $200, if you're a South Carolina customer $300 sales tax, are you transferring the tag or you're trading a vehicle, here's the new vehicle or if you're not, here's the new tag fee, equals exact amount of dollars. The customer either agrees to that or continues negotiating.
Q. He negotiates off the 10, down to the 8 and then you add those other things in and that's the price?
MR. WALKER: Object to the form.
A. Depends on how the customer negotiates.
Q. I'm sorry, what do you mean?
A. When we write the customer's offer, it comes to a bottom line. The customer then either negotiates from the bottom line or they'll abandon bottom -- negotiating anything on the buyer's order and just go strictly to a payment.
Q. Go to a what?
A. They'll start negotiating a payment.
Q. Let's go for that $10,000 again. I come in and

the $10,000 is on the car. I want to talk about that car.
A. Okay.
Q. And what does your salesman say? It's $10,000?
A. Hm-hmm.
Q. I say well I won't pay you 10, I'll pay you 8. There was 10 on the windshield, I'll pay you 8. The salesman says okay. How much am I going to owe in cash if I give it to you?
A. The negotiation is done on a worksheet. The price on the tag of the vehicle, if we sold you the car for what was on the tag, it included the administrative fee. If you negotiated a price of $8,000, it was written on a worksheet, there's no agreement at this point, the sales person hasn't agreed to anything. He's taking your offer of $8,000 plus an administrative fee.
Q. That's what I wanted to know. When you figured out this amount, was there anybody besides you that determined the amount of the administrative fee?
A. I would talk to Ann Taylor.
Q. I think you said that. Anybody else?
A. Louie Herron when he was the general manager.
Q. That's that guy that's looking for a job now?
A. Yes, sir. May have consulted or talked to Larry Clark who was our controller during part of this time period.

Q. Anybody else? That's all you can think of?
A. In information gathering, we would talk to sales people.
Q. I'm not asking about information. I want to know who you talked to about the amount of the fee.
A. Then you got it there.
Q. I noticed that you've changed the name of it from procurement delivery fee to administrative service fee and you call it vehicle purchase agreement administrative service fee. You call them different names. Who named them?
A. That would be either, that would probably be Ann Taylor and myself.
Q. Why did you change the names of them?
A. I don't know. I don't recall.
Q. Anybody tell you to change the names of them?
A. No, sir.
Q. You just did it?
A. (Shakes head yes.)
Q. You don't know why?
A. We're trying to do it in a way that explains it to a customer.
Q. Each time you changed it was it a way to be more clear to the customer? That's what you were trying to do?
A. What we felt like would be more clear, yes, sir.

May I grab a water?
Q. Sure.
(Off the record.)
Q. Let's talk about new cars for a minute. It has a sticker on them. You all have a name for it.
A. Monroni.
Q. That is the what?
A. That's the manufacturer's sticker.
Q. Does that include an administrative fee?
A. As a line item on the sticker?
Q. Yes. No. Does it include it? When someone comes in and you have that on there, is the administrative fee included in the Monroni price?
A. No, sir.
Q. We've heard about supplemental stickers. Do you know what they are?
A. Yes, sir.
Q. Do you have supplemental stickers?
A. We do.
Q. Supplemental stickers are put on the car where the Monroni sticker is to add on supplemental items, is that correct?
A. Yes, sir, or remove supplemental items.
Q. Is the administrative fee put on that?
A. No, sir.

Q. If I have a vehicle with a Monroni sticker of $30,000 and I have add-ons because I put fancy hub caps on there of a thousand dollars, the supplemental sticker would say fancy hub caps a thousand dollars and then it will be $31,000 for the price of the car?
A. Yes, sir.
Q. And then you negotiate off the $31,000 and you come to a price and then the administrative fee is added to that?
A. During the negotiation anything that you offer is written down as is the administrative fee.
Q. What?
A. The administrative fee is on our worksheets when we're working with a customer negotiating a price.
Q. It's on there as a line item?
A. Yes, sir.
Q. It's printed on there?
A. No, sir, it's handwritten and fully disclosed.
Q. It's handwritten?
A. Yes, sir.
Q. But there's a little space that says administrative fee?
A. Yes, sir.
Q. Does it have on that little space where it says on the worksheet administrative fee, does it have the

amount how much it is?
A. Yes, sir.
Q. Is there ever any time that a salesman ever fills out any different amount than what's told on that worksheet?
A. I don't understand your question.
Q. Administrative fee is $200. It's on the worksheet. It says administrative fee $200. There's a place over here in the column that you're going to add up, there's a little blank spot where you say he writes it in.
A. Right.
Q. Do they ever write in less than the $200?
A. No, sir.
Q. Do they ever not write in the $200?
A. No, sir. We had a time period of about approximately a year and a half where I did not charge employees the administrative fee.
Q. On their worksheet that would just be a blank?
A. It would be blank, yes, sir.
Q. But everybody else's it would have whatever the line says the administrative fee was?
A. Everybody else, yes, sir.
Q. Do you have copies of those worksheets?
A. Yes, sir.
Q. For every deal?

A. I can't say every deal, but, yeah. It's supposed to be in the deal jacket, yes, sir.
Q. There is a deal jacket?
A. Hm-hmm.
Q. Mark this please.
(WHEREUPON, Plaintiff's Exhibit No. 2 was marked for identification only.)
Q. You got Exhibit 2 there?
A. Yes, sir.
Q. This looks like a, what do you call it, jacket?
A. Yes. This would be -- this looks like a copy of what was in our deal jacket.
Q. On the front says Vehicle Worksheet Purchase Agreement?
A. Yes, sir.
Q. I thought it would be a worksheet where the negotiated price would be shown and it isn't shown. It just shows one price?
A. Right.
Q. Prior to 22,818.33 there must been negotiations to get down to 22,818.33?
A. I would assume, yes.
Q. Then they got to the 22,818.33, he writes it down and then he says administrative service fee and he adds

them up and just like you say, they come down to the cost of the vehicle and including everything would be 24,750, isn't that right?
MR. WALKER: Object to the form of the question.
Q. Isn't that right?
A. The math works, yes, sir.
Q. Is what I say not right?
MR. WALKER: Object to the form.
A. I wasn't there during this deal, but from my experience, the customer agreed to a bottom line price of $24,000. It's very odd that a bottom line price would come out to an even number like that. So sometime during the negotiation this customer, in my opinion during that negotiation would have said 24,000, that's it. So then we backed the numbers up from there to arrive at 23,095.33 total selling price.
Q. You think you back into the selling price on this, is that what you said?
A. On this deal, yes, sir. We backed into $23,095.33 total selling price.
Q. If you backed into it, why would you have a $750 Toyota rebate? That seems to me that was a rebate that was given at the end of negotiations rather than one that was backed into. That doesn't make a bit of sense.
MR. WALKER: Object to the form of the question.

A. We knew there was a Toyota rebate when we negotiated the deal with the customer. So when the customer agrees to a $24,000 bottom line.
Q. So you just went and backed into it?
A. We went backwards, yeah.
Q. Let me make sure I understand. If this customer did not have to pay the $277 administrative fee, he would've got the price for less than -- price of 24,000 minus 277, isn't that true?
A. If the customer did not have to pay it, correct.
Q. Mark this.
(WHEREUPON, Plaintiff's Exhibit No. 3 was marked for identification only.)
Q. Look at Exhibit Number 2. Look back at 2. If you turn over, there's a typewritten document and it looks like it's different. What is that document?
MR. WALKER: Talking about page 2, Cam?
MR. LEWIS: Yes.
A. That's done in the business office or the F and I office.
Q. What do you call that document? Is that the sales contract?
A. Yes, this is the sales contract.
Q. This is the sales contract. You use the

worksheet and the sales contract, is that right?
A. Yes, sir.
Q. And then you add into it the financing, is that right? How it's going to be financed?
A. No, we don't add in.
Q. It says here cash on delivery 3750, balance financed 20,985. It looks like to me that's what it does.
A. Right.
Q. Then there is another vehicle worksheet agreement that says void. That was just one they didn't like?
A. Evidently, yes, sir.
Q. On that one it doesn't look like they backed into that one, does it?
A. No, sir.
Q. On that one, they bargain down to a price of 24,780, isn't that right?
A. It looks like they bargain down to a price or a different figure of 23,057.
Q. So that one --
MR. HAMM: Would you identify what page you are on.
MR. LEWIS: 04641.
Q. That one he didn't back into that one you say. You looked at it and it doesn't look like it, does it?
A. It doesn't appear so, no, sir.

Q. Now look at Exhibit 3. I don't understand that one. Look at Exhibit 3 please. Do you see that?

A. Yes, sir.

Q. I don't understand. I got a retail installment contract and it has all the numbers on it, but my worksheet doesn't have any numbers on it.

A. Yes, sir.

Q. Why is that?

A. I don't -- I wasn't there again. I can tell you in certain instances a customer wants to buy a particular vehicle and because of either credit, most of the time credit, they want to know if they can get down -- number one if you can get them approved and then the bank kind of dictates the bottom line that can be financed for that particular customer depending on their credit. Then you again back into the numbers after the bank tells you what they can do for this particular customer on this particular car.

Q. You have on the financing agreement it says Taylor Toyota, Inc. 277.

MR. WALKER: What page are you referring to, Cam?

MR. LEWIS: 8530.

Q. Do you see that?

A. Yes, sir.

Q. It doesn't say anything about administrative fee.

A. Right.

Q. Now you call it Taylor Toyota, Incorporated?

A. Right.

Q. Why do you do that? Why don't you put administrative fee? Closing fee? Why don't you tell them what it is?

A. It's clear it's coming to us. It's not an administrative fee that this particular bank, I don't know whose contract, it looks like Wells Fargo is who it was assigned to, it's not an administrative fee for Wells Fargo. It's coming to Taylor Toyota that $277.

Q. You want to make sure you get $277?

A. No, sir, I want to make sure the customer knows that we are getting that $277.

Q. If he didn't have to pay that, he would get the car for $277 less?

A. Yes, sir. If he didn't have to pay that.

Q. This administrative fee, we know what we're talking about when we use administrative fee, is for both new and used cars, right?

A. Yes, sir.

Q. You had an interrogatory answer saying how much you made each year. They're not verified. Do you know what I mean by they're not under oath?

A. Right.

Q. Do you say they're under oath now?

A. May I see the document?

Q. Would you mark that.

(WHEREUPON, Plaintiff's Exhibit No. 4 was marked for identification only.)

Q. That's a document that has questions and answers. I want to know if --

A. On the back page?

Q. All of them. This should've had an oath to it under the rules that these answers are given under oath as being correct to the best of your knowledge. Is that true?

A. That is true at the time. I would like to add to I guess Interrogatory Number 8 the name Ann Taylor. She did act as the general manager during the time frame here as well as a gentleman by the name of Brad Simpson.

Q. Where is Mr. Simpson?

A. He acted as a sales manager and I don't, at this time I don't know his whereabouts. I can get a last known, but.

Q. Anything other than that so you can swear to Exhibit Number 4 as being under oath?

A. What word did you use on the amounts here? You say non-verified or non-certified? What did you say.

Q. I said these answers are not under oath. Under

the rules it says that they are to be answered under oath that they're true to the best of your knowledge.

A. Yes, they are true to the best of my knowledge.

Q. That's all I'm asking you. Because it's not on here, I want you to do it now.

A. Yes, to the best of my knowledge this is exactly correct.

Q. Did you all advertise on television?

A. Yes, sir.

Q. Do you advertise the price of a vehicle on television?

A. Yes, sir.

Q. Do you put on there that it includes the administrative fee or do you even mention the administrative fee?

A. We do not mention the administrative fee.

Q. Do you ever advertise on the radio?

A. Yes, sir.

Q. Do you advertise the price of vehicles on the radio?

A. Yes, sir.

Q. Do you put in the advertisement on the radio the administrative fee?

A. No, sir.

Q. Does the advertisement on the television, is it

your contention -- what is your contention about the administrative fee?

A. Our dealership's policy was anything that we advertise on television or any price that we advertise on television, radio, newspaper includes the administrative fee.

Q. Do you go the same way, they come in and if you advertise it for $10,000, that was to entice them to come in to look and talk about that car?

A. Yes, sir.

Q. And then you bargain the price down to 8,000 on your worksheet and then you'd add in that administrative fee and taxes and tags just like you said before?

MR. WALKER: Object to the form.

A. We try to be customer friendly. We negotiate any which way the customer wants to negotiate.

Q. You want to be customer friendly?

A. Yes, sir.

Q. I'm sure. All car dealers want to be customer friendly. I appreciate that.

A. You sound sarcastic. You sound a little sarcastic there. What was the question again.

Q. You got radio, television, print advertisement, the internet, anything. You put on there $10,000 and that's put on there to get the customer interested in the

car?

A. Right. You come in and you pay $10,00 for that car, it includes the administrative fee.

Q. How much would you show as the administrative fee on their sales contract?

A. Whatever our administrative fee was at that time.

Q. You would say it was included in there, but when you wrote it down on the sheet, you'd subtract from the $10,000 the administrative fee and show the sales price as that amount and then the administrative fee?

A. To come to a total of whatever we're advertising.

Q. But if it's not -- if they bargain off the advertised price, then you do it the other way. You come to a number and then you add in your administrative fee?

MR. WALKER: Object to the form.

A. We show our worksheet. We negotiate off a worksheet that always has the administrative fee on there, yes, sir. If you walked into the dealership and offered me $8,000 for the vehicle that I advertised for 10, we would write it up as 8,000 plus, plus the fee, plus the tags, plus the tag comes to this.

Q. The fee being the administrative fee?

A. Yes, sir.

Q. Is the $10,000 that you advertised a car on television, would that be an advertisement?

A. Yes, sir.

Q. Would it be an advertisement on the radio?

A. Yes, sir.

Q. Would it be an advertisement if you put it in the newspaper?

A. Yes, sir.

Q. Would it be an advertisement if you put it on the internet?

A. Certainly.

Q. Would it be an advertisement if it was a window sticker?

A. No, sir, it would be a price tag.

Q. A price tag?

A. Yes, sir.

Q. What's the difference of showing a car on television with the number $10,000 on it and a car in your lot with $10,000 on it? Why is one advertisement and the other one is not?

A. Because my idea of advertising is something to get you to come in and look for that vehicle or come in to my lot. When you get to my lot, I have price tags sometimes on vehicles during sales events.

Q. I'm just trying to figure this out.

A. I'm saying I don't, I don't, I don't see a price tag as an advertisement. When I go to Lowe's and they got

a lawn mower out front with a price tag on it, I don't view that as an ad.

Q. What do you view that as?

A. It's a price tag.

Q. Is it not to let you know what the price is for the purposes of you being interested in it and buying it?

A. Yes.

Q. Why isn't that advertisement?

A. Because there is a difference in price tags and advertisement to me.

Q. What is the difference?

A. I think, I just think that advertising is -- would be defined as something to get you to come in and shop at our store.

Q. Nothing on Lowe's premises, nothing on Wal-mart's premises and nothing on your premises is an advertisement, because you're already there?

MR. WALKER: Object to the form.

A. Advertisement?

Q. It's not an advertisement.

A. I say it's a price tag. That's just my way of looking at it.

Q. I want to know. Can you have advertisements on your premise?

A. Yes. We posted newspaper advertisements that we

ran in the Augusta Chronicle, we would post those in the dealership.

Q. Those are advertisements in your dealership?

A. Yes, sir.

Q. When they would have a picture of a Toyota car for $10,000, that's an advertisement?

A. Yes, sir.

Q. But if it had the same car sitting right beside that ad on the wall with $10,000 posted on its windshield, that's not an advertisement?

A. If --

Q. Is it or not? I just want to know.

A. No. The Monroni label that the manufacturer puts on the vehicle has a price on it, that's not an advertisement.

Q. I don't ask you about Monroni. Let's suppose you put in this ad and you have it on the wall for this car for $10,000, you said that's an ad?

A. Hm-hmm.

Q. An advertisement, isn't it?

A. Yes, sir.

Q. Now you come over and here's the car right there and it has a little, what do you call it, hang tag in there for $10,000, is that an advertisement? Which one is the one that's an advertisement?

A. I think it's a price tag. That's just my...

Q. What is the difference between the two of them?

A. I don't know.

Q. You don't know?

A. No.

Q. One is an advertisement and one is not?

A. Advertisement is designed to get you onto my lot.

Q. Let's start over. That sign or that daily chronicle or whatever that you say is up on the wall is an advertisement?

A. Yes, sir. It's a copy of our advertisement.

Q. It's a copy of your advertisement?

A. Yes, sir.

Q. But you could not have an advertisement on your wall, on your cars, on your premises that isn't something that was done off premise?

A. I don't understand.

Q. Let's suppose you have a car for $10,000.

A. Okay.

Q. You have a big sign up on top of the car $10,000, is that an advertisement?

A. In my view, it's a price tag.

Q. If I take a picture of that car with the big sign up on it $10,000 and I take a little poster and I walk down the street and I pin it on a wall, is that an

advertisement?

A. Yes, sir.

Q. So the difference is one's on the premise and one's off premise?

A. Yes, sir.

Q. Do you have co-op advertising?

A. With Toyota, yes, sir.

Q. Did all your advertisements in the paper, newspaper, printer or anything, were they all designed by Toyota?

A. No, sir.

Q. Did you have an agency?

A. Yes, sir.

Q. Who was your agency?

A. Mass Media Marketing and they are in Augusta, Georgia.

Q. Did Mass Media Marketing then deal with Toyota to say that the advertising was okay with Toyota?

A. May I explain Toyota's co-op?

Q. Sure.

A. Toyota would give the dealers $100 a car for co-op advertising. They had advertising covenants that we had to follow in order to receive that $100 per vehicle. Toyota hired an outside agency or outside company to monitor our advertising. We did not have to submit any of

our advertising to Toyota in order to receive the co-op. They had an outside company that was responsible for monitoring all the dealers' advertising to make sure they were adhering to Toyota's covenants. However, our policy was our agency would submit our ads to Toyota for approval, not Toyota, excuse me, to the monitoring company that would say meets covenant.

Q. Who is the monitoring company?

A. I'd have to go back and look. I think it's a company, I think it's ABC, but I don't -- I couldn't tell you what ABC stands for right now off the top of my head.

Q. These covenants, who has the covenants? Do you have copies of them?

A. I don't have them, no. Yes, I had them and my agency had them.

Q. Your agency, this Mass Media has them?

A. Yes, and we kept copies on premise too of the ad covenants.

Q. Did you furnish those to us?

A. The ad covenants, no, sir.

Q. Why not?

A. Didn't know -- I wasn't asked for them, I don't believe.

Q. None of the ads on television, radio, print advertising, internet or -- did you do direct mailings?

A. From time to time.
Q. None of those mention the administrative fee?
A. No, sir.
Q. We've already said that the window stickers or the tags or the soap you write the price on, none of those mention it?
A. No, sir.
Q. You sent us two DVDs of a closing. What are those?
A. DVDs of a closing?
Q. I don't know. DVD look like of people signing documents, doing stuff, what is it?
A. It's a recording of what took place in the business office, or F and I office.
Q. Of a particular closing?
A. No, sir.
Q. Is it staged?
A. No, sir.
Q. What is it?
A. It's a recording of what actually took place in the business office.
Q. Is it a sale of a car?
A. Yes, or the transaction in the F and I office.
Q. Transaction. Is there a customer in there?
A. Yes, sir.

Q. Do you film all your customers' transactions in the F and I office?
A. Yes, sir. That's the policy, yes, sir. It's our dealership's policy.
Q. Do you have a film of Mike Ritz, the one that is the plaintiff here?
A. I don't believe so. Or you would have it. I don't recall when we -- I don't recall exactly the date when we began taping or disking, recording, the transactions. I don't remember what date it was.
Q. Do you get the customer's permission?
A. Yes.
Q. How do you get their permission?
A. We post signs in the business office that lets them know that the transaction is going to be recorded.
Q. Do they sign any disclaimer?
A. No, sir.
Q. It's just a sign?
A. It's a sign and our business manager tells them.
Q. Why don't you get them to sign something? Who does this? Is this a common practice that some poor guy sitting in there is getting filmed buying a car?
A. Yes, sir, it's a common practice.
Q. How do you know it's a common practice?
A. I know that other dealerships do it.

Q. Who do you know does it?
A. I can't give you any specific names, but in the business, in the trade magazines, it's addressed. In other words, some dealerships do, some dealerships don't, the advantages to recording and the disadvantages to recording.
Q. Do you have a sign that says it's going to be recorded?
A. Yes, sir.
Q. Do you have a sign that says it's going to be recorded and you can refuse?
A. No, sir. It just says that the transaction is going to be recorded.
Q. Does it say they can refuse it any where?
A. It doesn't, no, sir.
Q. Does anybody ever refuse it?
A. No, sir.
Q. Did you have a policy when your manager said to them hey we're going to film you buying this car, but you can refuse it or do you never say refuse it?
A. No, sir, we don't.
Q. Do you know if Mr. Ritz' car was advertised?
A. I do not know, sir.
Q. Let's take a break and see where I am.
(Break.)
Q. You mentioned the covenants, advertising

covenants. Do you remember anything about them, what they are?
A. I do remember some things. Toyota, certain ways you can use their Toyota emblem. Can't use certain words in your advertising.
Q. What kind of words?
A. I'd have to look at the covenants to be, to get specific, but, for example, they didn't want the ad to appear to be distressed such as when you're doing a sale, a clearance sale, you couldn't say wholesale to the public, which you can't anyway.
Q. Liquidation sale, you can't say that?
A. Yeah. A lot of their covenants are the same as you'll see from the Department of Consumer Affairs in the various states. And again there are some guidelines they give you on using their brand, the Toyota emblem. And again some verbiage that you are not allowed to use in your advertisement, things like that.
Q. Does it say you have to comply with laws?
A. Yes, sir. Our dealer agreement says that.
Q. Your dealer agreement. If you don't comply with the laws, then they can jerk your dealership?
A. Yes, sir.
Q. You have to comply with the truth in advertising?
A. Yes, sir.

Q. If you don't, that would be another reason you might lose your franchise?

A. I don't know specifically, but I would imagine so.

Q. Do you know any legislative efforts to change the closing fee statute?

A. In South Carolina?

Q. Yes.

A. No, sir.

Q. You know it in other places?

A. I've read in the trade magazines where some of the other states have dictated a set dollar amount for closing fees I believe. I couldn't tell you the particulars.

Q. You've brought up trade journals several times. Are there some names of ones that are most --

A. Automotive News is the one that I read most regularly and that's not very, but it's the one that I...

Q. Are there any other ones that come to mind?

A. I think one of them is called Dealer Business, but Automotive News is the one that I refer to the most.

Q. I'm interested in the film. Why do you film people? What's the reason for that?

A. It's twofold. It offers us protection.

Q. Protection from what?

A. From a customer accusing us of or the business manager, the F and I manager, of saying something that he didn't say or saying that he gave us $5,000 down. Various, various -- it protects us and it also protects the customer himself. There have been several instances where a customer would come in and say or complain about maybe, I can give you one particular instance. We were missing money on the deal when the deal got to the accounting office. The customer says no I paid that. Where did you pay it. I paid it in the F and I office. I had the money in my back pocket, it was in a Sun Trust envelope. It was cash money. I took it out and gave it to your F and I manager, your manager. Went back and reviewed the film, never gave it to anybody. It was just a mistake on our part for not collecting it, but the customer said that they paid it, they told us the envelope exactly what it was in, who they gave it to, brought the customer in, showed them the tape and they said lo and behold, you know what, let me go home and see if I left that in my pocket. So it does offer us some protection, but it offers them protection too.

Q. You don't take pictures of the papers? The film doesn't show the papers?

A. No.

Q. I couldn't look at the film and see what the

paper says?

A. No, sir.

Q. All it is is the people in the room and generally you can hear what they say?

A. Yes, sir.

Q. Has anybody ever refused to be filmed?

A. Not to my knowledge.

Q. If they refuse to be filmed, would you refuse to close?

A. You know, I don't know.

Q. What is your policy?

A. I haven't had that to come up.

Q. Is there a policy on it?

A. No, sir.

Q. Let's right here, it just came up, what would be your recommendation to your sales manager or whatever?

A. Well, I guess I'd ask why the customer did not want to be filmed.

Q. He says I just don't want to.

A. I'd ask my sales manager did you get positive identification. Have you looked at his identification thoroughly. Is there anything odd about it. To me if a customer would refuse to have the transaction filmed, then they may not be up to all legitimate -- there's something probably not legitimate in the deal or something. I don't

know. I can't imagine why somebody would refuse.

Q. You can't?

A. I can't, no.

Q. What would you do if they did refuse? You can't tell me?

A. I don't know.

Q. You keep talking about the advertised price. How many people in your time pay the advertised price?

A. Not very many.

Q. Would you say none or every great once in a million?

A. Would you like a percentage? Just a guess?

Q. Yeah, I would like you to tell me out of --

A. I'm thinking one out of a hundred.

Q. Do you keep records of who paid an advertised price since that's pretty unusual?

A. No, sir. We keep records of how many people came on the lot during the course of a certain advertisement, but we don't keep a record of who purchased a vehicle for an advertised price.

Q. When they come on a lot, that's when they walk along and look at all the cars and see how much they are?

A. I would say that's when they come up and walk on the lot and look at the cars, yes, sir.

Q. Don't all the cars have a price on them?

A. All the new cars have a Monroni label.
Q. How about the used cars, do they have a price?
A. No, sir.
Q. They have to ask?
A. Yes, sir.
Q. When they ask for a price of a used car, is that a predetermined price for that used car?
A. Sometimes we code the sticker on the actual used car vehicle with just a price, that's the starting price.
Q. So it's code only --
A. The sales person knows the code so they don't have to run back and forth and the customer at least has an idea this is a $15,000 car, this is an $18,000, this is a $10,000 car.
Q. So what he does is he asks the salesman and the salesman will give him a price by looking at the coded price on there and then he will give him an offer?
A. Then they go inside, yes, sir.
Q. Then they go inside?
A. Yeah. If the customer wants to make an offer, yes, sir.
Q. They don't make it out there looking at the car?
A. From time to time the customer will throw a number out there.
Q. The guy will say no let's go inside or something?

A. Yeah, let's walk in, let's go ahead and put it on paper.
Q. That tag that's on the used car is coded?
A. The stock tag, yeah.
Q. It's coded with a price?
A. Yes. During certain time periods. During other time periods it wasn't coded at all. You had to go inside and get the price from the manager.
Q. Let's just talk about when it's coded with a price.
A. Okay.
Q. That was a price tag that was not intended for the public to see?
A. Yes.
Q. The advertised price that you put in these advertisements that you say, how do you come up with that price?
A. You try to make the price enticing enough so that if the customer is shopping a like make or model that they would come to your store, but you try to make it also high enough that you're not giving away every bit of profit that you got in a deal, but there's no scientific method for it.
Q. That's what you do? That's the basis of it what you just said?
A. Sure.

Q. Thank you.
MR. WALKER: No questions.

FURTHER THE DEPONENT SAYETH NOT.

SIGNATURE OF DEPONENT

I, the undersigned, RICHARD TAYLOR, do hereby certify that I have read the foregoing deposition and find it to be a true and accurate transcription of my testimony, with the following corrections, if any:

PAGE	LINE	CHANGE	REASON

RICHARD TAYLOR DATE

CERTIFICATE OF REPORTER

I, Kathryn J. Lindler, Court Reporter and Notary Public for the State of South Carolina at Large, do hereby certify:

That the foregoing deposition was taken before me on the date and at the time and location stated on Page 1 of this transcript; that the deponent was duly sworn to testify to the truth, the whole truth and nothing but the truth; that the testimony of the deponent and all objections made at the time of the examination were recorded stenographically by me and were thereafter transcribed; that the foregoing deposition as typed is a true, accurate and complete record of the testimony of the deponent and of all objections made at the time of the examination to the best of my ability.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 17th day of February, 2009, at Columbia, Richland County, South Carolina.

Kathryn J. Lindler

EXHIBIT C

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS
FLOSSIE MAE FANNING AND NATHANIEL FANNING, SR., Individually and as Representatives of All Persons Similarly Situated, Collectively Designated as JOHN DOE and JANE DOE, Plaintiffs, vs. FRITZ'S PONTIAC-CADILLAC-BUICK, INC.; VOYAGER LIFE INSURANCE COMPANY; WESTERN SURETY COMPANY and CITIZENS & SOUTHERN NATIONAL BANK; Defendants.	)	AFFIDAVIT OF STEVEN W. HAMM

PERSONALLY appeared before me Steven W. Hamm, who being duly sworn, deposes and says that:

1. I am the Administrator of the South Carolina Department of Consumer Affairs, having been duly appointed pursuant to Section 37-6-506 of the Code of Laws of South Carolina.

2. I also hold the position of Consumer Advocate for the State of South Carolina pursuant to Section 37-6-602 of the Code of Laws of South Carolina.

3. As Administrator of the Department of Consumer Affairs my duties and responsibilities include administering and enforcing the South Carolina Consumer Protection Code (S.C. Code Ann. §§37-1-101 et seq.), including credit related advertising.

4. I have reviewed the records of the South Carolina Department of Consumer Affairs kept as a part of its official responsibilities, together with those kept in the ordinary course of its business, and I base my testimony of the information contained in these records, as well information within my personal knowledge.

5. Section 37-2-202 of the Code of Laws of South Carolina sets forth permissible additional charges which may be charged in addition to finance charges on consumer credit sales within South Carolina, including additional permissible charges that may be adopted by rule of the Administrator of the Department of Consumer Affairs.

6. In 1987, the Department began to take a more active role in obtaining compliance with the advertising laws under the Truth in Lending Act and the Unfair Trade Practices Act, pursuant to its authority in §§37-2-301 and 37-2-304 of the Code of Laws of South Carolina.

7. In September, 1987, the Department sent to all members of the South Carolina Automobile and Truck Dealers Association a letter outlining several advertising practices that the Department believed violated the law. (A copy of the letter is attached hereto as Exhibit A). Item number 1 of that letter specifically addresses additional closing fees, variously called documentary fees, procurement fees, administrative fees, closing costs, as well as other names, and indicates that attempts to treat such fees as an additional cost to the advertised price would be considered as a violation of the law.

8. On July 25, 1988, the Department held a public meeting concerning automobile advertising. At this meeting certain materials were handed out to those attending. Item number 4 of the first page of these hand-out materials specifically addresses additional closing fees and states that advertising such costs as an additional charge to the advertised price would violate the law.

9. In November, 1988, the Department mailed to all members of the South Carolina Automobile and Truck Drivers Association a copy of the South Carolina Department of Consumer Affairs Advertising Guidelines & Standards. (A copy of the Advertising Guidelines & Standards is attached hereto as Exhibit B). The Guidelines & Standards were developed as a result of the 1987 letter and the public meeting in July, 1988, and they were derived primarily from standards prepared by the Association. Item number 6 of the 1988 Guidelines & Standards also specifically addresses additional closing fees and states that advertising such costs as an additional charge to the advertised price would violate the law.

10. In October, 1988, the Department sent a letter to an attorney in Charleston concerning the legality of additional closing fees. (A copy of this letter is attached hereto as Exhibit C). This letter was one of the Department's first attempts to address the fees within themselves, unconnected with advertising. This letter questioned the legality of such fees because they were not specifically permitted under §37-2-202 of the Code of Laws of South Carolina.

11. In January, 1989, the Department entered into an Assurance of Discontinuance, pursuant to §37-6-109 of the Code of Laws of South Carolina, with one South Carolina automobile dealer, whereby the dealer agreed to forego the use of add-on fees to sales contracts other than for options and protection packages. (A copy of this Assurance is attached hereto as Exhibit D).

12. Between October, 1988 and July, 1989, the Department began discussing additional closing fees and determined, during June, 1989 or early July, 1989, that such fees within themselves were a violation of the law.

13. On July 12, 1989, the Department sent a letter to a different automobile dealer in South Carolina responding to his question concerning the legality of additional closing fees. (A copy of this letter is attached hereto as Exhibit E). The letter sets forth the Department's position that such fees are a violation of the law.

14. On July 15, 1989, the Department filed suit against the same automobile dealer who had signed the Assurance of Discontinuance for violations of the S.C. Consumer Protection Code, including charging additional closing fees in violation of the Assurance of Discontinuance. This action was ended by settlement between the parties.

15. Consistently, since July, 1989, the Department has taken the position that additional closing fees are a violation of the law.

16. I have reviewed the bill of sale and work sheet in the subject action regarding a consumer credit sale by defendant Fritz's Pontiac-Cadillac-Buick, Inc., to the named plaintiffs of an automobile whereby a charge listed as a "procurement, delivery, filing fee" is set forth in the amount of $87.00.

17. This charge is the same type of additional closing fee that is mentioned above, and it is not one of the specifically permitted additional charges set forth in §37-2-202 of the Code of Laws of South Carolina. Further, this charge has never been approved by me, as Administrator of the Department of Consumer Affairs, pursuant to §37-2-202(e).

18. On June 5, 1989, the Department mailed to the Defendant Fritz's Pontiac-Cadillac-Buick, Inc., a notice that the use of add-ons, such as documentary, administrative or closing fees, was a violation of the law and that further violations would be treated as intentional violations. (A copy of this letter is attached hereto as Exhibit F).

19. On June 27, 1989, several employees of the Department met with this defendant's owner, Fritz Waidner, at his request to discuss advertising and other matters. (A copy of his letter requesting the meeting is attached hereto as Exhibit G). At this meeting the Department advised Mr. Waidner that any type of closing costs were illegal excess charges unless the charges were specifically permitted by §37-2-202. (A copy of a memorandum of this meeting is attached hereto as Exhibit H).

STEVEN W. HAMM
ADMINISTRATOR
AND
CONSUMER ADVOCATE

The State of South Carolina

Department of Consumer Affairs

2801 DEVINE STREET
P. O. BOX 5757
COLUMBIA, S.C. 29250-5757

COMMISSIONERS
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CAMDEN
THOMAS L. MOORE
CLEARWATER
W. LEWIS BURKE
COLUMBIA
RICHARD C. MOORE
GREENVILLE
TIMOTHY F. ROGERS
COLUMBIA

September 9, 1987

Dear South Carolina Automobile Dealer:

The Department of Consumer Affairs and the South Carolina Automobile and Truck Dealer's Association have worked together for sometime to obtain voluntary compliance with reasonable and lawful standards in automobile advertising. I would like to express my appreciation for the cooperation and assistance that my office has received from dealers all across South Carolina. However, problems still exist that cannot be ignored.

In order to maintain an open line of communication, I am providing you with a list of advertising and dealer practices that exist in South Carolina that constitute violations of state and federal law. Those practices include, but are not limited to the following:

(1) Advertisement of prices which are below the price at which the automobile can actually be purchased. (Use of add-ons such as freight, protection packages, documentary fees, factory and dealer installed options in addition to the advertised price);

(2) Advertisement of automobiles not actually available on the dealer's lot;

(3) Use of asterisks in a manner that make advertisements unclear or ambiguous so as to mislead the consumer;

(4) Failure to comply with Truth-in-Lending disclosures;

(5) Advertisements that appear to state that automobiles can be purchased for one-half of sticker price;

(6) Continued use of the term "free" when a purchase is required to obtain the "free" item;

(7) Statements by sales people to customers that dealers are <u>required</u> by manufacturers to charge for additional dealer preparation charges;

(8) Claims that automobiles are being sold at "factory invoice" when they are actually sold at full M.S.R.P;

(9) Advertisements that fail to clearly identify lease and sale programs and prices.

Further advertising problems brought to the attention of the Department of Consumer Affairs will not be treated as mere oversights, but as intentional violations. In addition, we will begin a regular program of identifying dealerships to the public that continue to ignore the guidelines adopted by your association. Any dealers who have questions about the legality of certain types of advertising are welcome to call the Department for clarification.

Sincerely

Steven W. Hamm
Administrator

bp

cc: Mr. Patrick L. Watson
Executive Vice President
S. C. Automobile Dealer's Association
1517 Laurel Street
Columbia, South Carolina 29201

EXHIBIT B

REV. 11/28/88

SOUTH CAROLINA DEPARTMENT OF CONSUMER AFFAIRS
ADVERTISING GUIDELINES & STANDARDS

Below is a list of advertising and dealer practices that constitute violations of state and federal law. These practices include, but are not limited to the following:

(1) Discounts, Savings - Any discounts or savings indicated in an advertisement must be those that are deducted from the MSRP. Any discounts, incentives, or savings by the manufacturer that are indicated on the Monroney sticker and used to compute the MSRP may not be claimed by the dealer in their advertisements as savings or discounts from the dealer.

(2) Rebates - If a rebate is indicated as being part of an advertised price, the amount of the rebate must be shown in the main body of the advertisement (close to the advertised price).

(3) A dealer may not advertise in any manner that is false, deceptive, or misleading or that misrepresents any vehicle offered for sale.

(4) Advertisements for the sale of new and used vehicles shall clearly and conspicuously identify the dealership by the same trade name as shown on the application for dealer's license, provided that the title or designation is not misleading. A trade or corporate name that falsely states or implies that the dealer has a special relationship or connection with a manufacturer that other dealers do not have is misleading.

(5) When the price of a vehicle is quoted, the advertisement shall clearly identify the vehicle as to make, year, model, special equipment, etc. All terms or claims, including statements about trade-in allowance, shall be factual and presented clearly and conspicuously.

(6) The advertised price shall be the full delivered cash price which the customer shall pay, except for taxes and tag fees. Dealer shall not advertise prices which are below the price at which the automobile can actually be purchased (use of add-ons such as freight, protection packages, documentary fees, administration fees, closing fees, factory and dealer installed options in addition to the advertised price). The amount of the factory rebate, if any, must be indicated in the advertisement.

(7) The term "wholesale" may not be used in retail advertising. The term "factory sale" or "liquidation

sale" may not be used in retail advertising if they imply that the dealer is selling vehicles in a manner other than through normal retail channels.

(8) The use of layout, headlines, illustrations, style, sound, length of time, lighting, color, or type size of an advertisement, or all of the above, may not obscure or make misleading any material fact in any advertisement or sales presentation.

(9) All advertising shall comply with Regulation Z and Regulation M of the Federal Truth in Lending Act.

(10) Advertisements which offer special annual percentage rate financing shall disclose any special conditions, terms, or selling prices which shall be met before the annual percentage rate applies.

(11) Unsupported selling claims or other statements, not in the public interest, may not be used. This includes statements such as: "We guarantee to sell for less"; "Highest trade-in allowance"; "Make your own deal"; "Name your own price"; and "Guaranteed minimum trade-in allowance.

(12) An advertisement for a motor vehicle lease should not be presented in a manner that a reasonable person would interpret as being an advertisement for the sale of a motor vehicle. Likewise, an advertisement for the sale of a motor vehicle should not be presented in a manner that a reasonable person would interpret as being an advertisement for a motor vehicle lease. Advertisements must clearly identify lease and sale programs and prices.

(13) Dealers shall not advertise automobiles that are not actually available on the dealer's lot.

(14) Dealers shall not use asterisks in a manner that make advertisements unclear or ambiguous so as to mislead the consumer. Graduated payment schedules must be presented in a clear and conspicuous manner so as not to mislead the consumer.

(15) Dealers shall not use the term "free" when a purchase or other consideration is required to obtain the "free" item.

(16) Sales people shall not make statements to customers that dealers are required by manufacturers to charge for additional preparation charges. Likewise, sales people should not represent to customers that any charges are required by State or Federal governments.

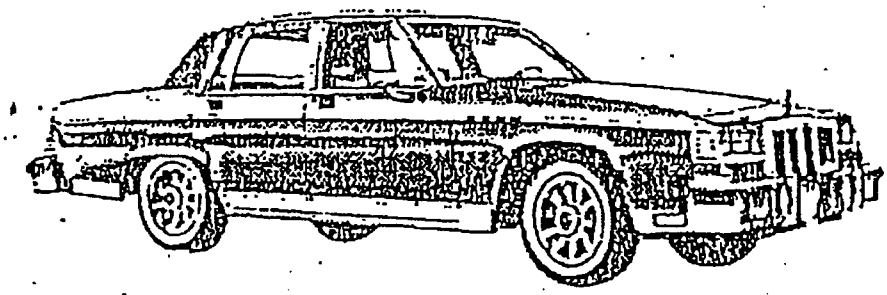
(17) Dealers shall not make claims that automobiles are being sold at "factory invoice" or "dealer invoice" when they are actually sold at full M.S.R.P. "Dealer invoice" and "factory invoice" are the manufacturer's initial invoice amount to the dealer. They are higher than the dealer's final cost because dealers often receive rebates, allowances, discounts, and holdbacks. The "dealer invoice" and "factory invoice" price include freight (destination and delivery charge) and national advertising. "Factory invoice" and "dealer invoice" mean the invoice amount at the bottom of the invoice. "Dealer cost" is the actual vehicle cost. This amount excludes the addition of holdback, freight, and national advertising.

REBATES
EXAMPLE: Wrong Way to Advertise

THIS WEEK ONLY

$9999.00

(includes rebate)



1989 Oldsmobile
Stk. #1989

ABC MOTORS, INC.
Columbia, SC
0074

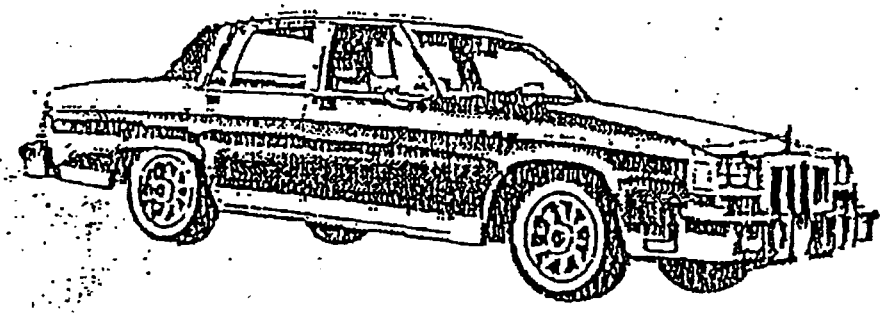
REBATES

EXAMPLE: Right Way to Advertise

THIS WEEK ONLY

$9999.00

(includes $500.00 rebate)



1989 Oldsmobile
Stk. #1989

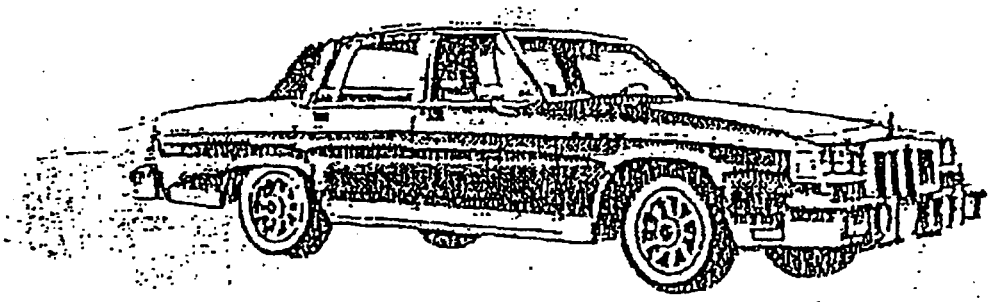
0075

ABC MOTORS, INC.

Factory Savings/Discount
EXAMPLE: Wrong Way to Advertise

THIS WEEK ONLY

Options Package Savings	$ 500.00
Factory Rebate	$ 500.00
Dealer Discount	$ 500.00
TOTAL [redacted] Savings	$1500.00



1989 Oldsmobile
Stk. #1989

ABC MOTORS, INC.
Columbia, SC

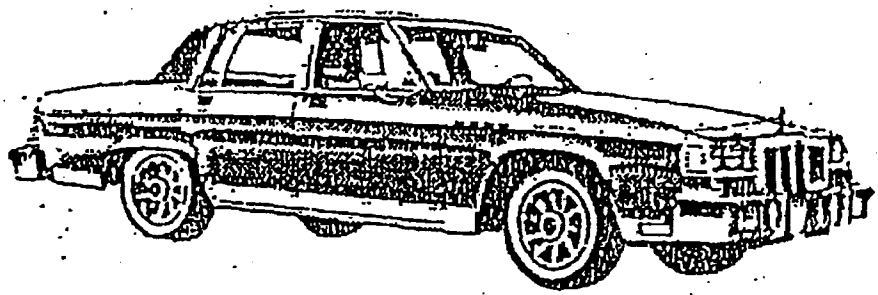
0076

EXAMPLE: Factory Savings/Discount
Right Way to Advertise

THIS WEEK ONLY

Factory Rebate	$ 500.00
Dealer Discount	$ 500.00
TOTAL [redacted] Savings	$1000.00

Window sticker reflects a FACTORY OPTIONS SAVINGS of $500.00.



1989 Oldsmobile
Stk. #1989

ABC MOTORS, INC.
Columbia, SC

0077

Closed-End Credit Disclosures

Triggering Terms

If an advertisement promoting "closed-end credit" (defined on page 4 of this manual) contains any of the following triggering terms, three specific disclosures must also be included in the advertisement. The *triggering* terms are:

1. *the amount of the downpayment* (expressed either as a percentage or as a dollar amount).
   Examples: "10% down"
   "$25 down"
   "90% financing"
2. *the amount of any payment* (expressed either as a percentage or as a dollar amount).
   Examples: "Monthly payments less than $67"
   "Pay 5% each month"
   "$9 per month"
3. *the number of payments.*
   Examples: "36 small payments are all you make"
   "48 monthly payments and you're all paid up"
4. *the period of repayment* (the total time required to repay).
   Examples: "Five years to pay"
   "36 months to pay"
   "4 year loans available"
5. *the amount of any finance charge.*
   Examples: "Financing costs less than $100"
   "Less than $100 interest"
   "$100 financing"

The following are examples of terms which do *not* trigger the required disclosures:

"No downpayment"
"18% Annual Percentage Rate loans available here"
"Easy monthly payments"
"Loans available at 5% below our standard annual percentage rate"
"Low downpayment accepted"
"Pay weekly"
"Terms to fit your budget"
"Financing available"

Required Disclosures

If any triggering term is used in a closed-end credit advertisement, then the following three disclosures must also be included in that advertisement:

(1) the amount or percentage of the downpayment;
(2) the terms of repayment; and
(3) the "annual percentage rate," using that term spelled out in full. If the annual percentage rate may be increased after consummation of the credit transaction, that fact must be disclosed.

Sample Disclosures (General)

The following example, which promotes the credit sale of a $1,000 car, illustrates the required disclosures for a closed-end consumer credit advertisement which would comply with the Truth in Lending Act *if printed clearly and conspicuously:*

R.000752

"No downpayment. 12 monthly payments of $100 each; annual percentage rate: 35%"

In displaying the downpayment, the word "downpayment" need not be used. For example, "10% cash required from buyer" or "credit terms require minimum $100 trade-in" would suffice.

Repayment terms may be expressed in a variety of ways in addition to the exact repayment schedule. For example, a creditor who offers loans might use unit cost to disclose repayment terms: "48 monthly payments of $25 per $1,000 borrowed."

Rate Disclosures

If the finance charge in a closed-end credit advertisement is expressed as a rate, it must be stated as an "annual percentage rate," using that term. If the annual percentage rate may increase after consummation of the credit transaction, that fact must be stated. If a component of that finance charge is interest computed at a simple annual rate, that rate *may* also be included. However, it must not be displayed more conspicuously than the annual percentage rate. For example, an advertisement for mortgage credit may include the contract rate of interest[5] together with the annual percentage rate.

If the finance charge is computed by applying a periodic rate to the unpaid balance, the periodic rate may also be stated along with the annual percentage rate. As with the simple annual rate, the periodic rate may not be stated more conspicuously than the annual percentage rate.

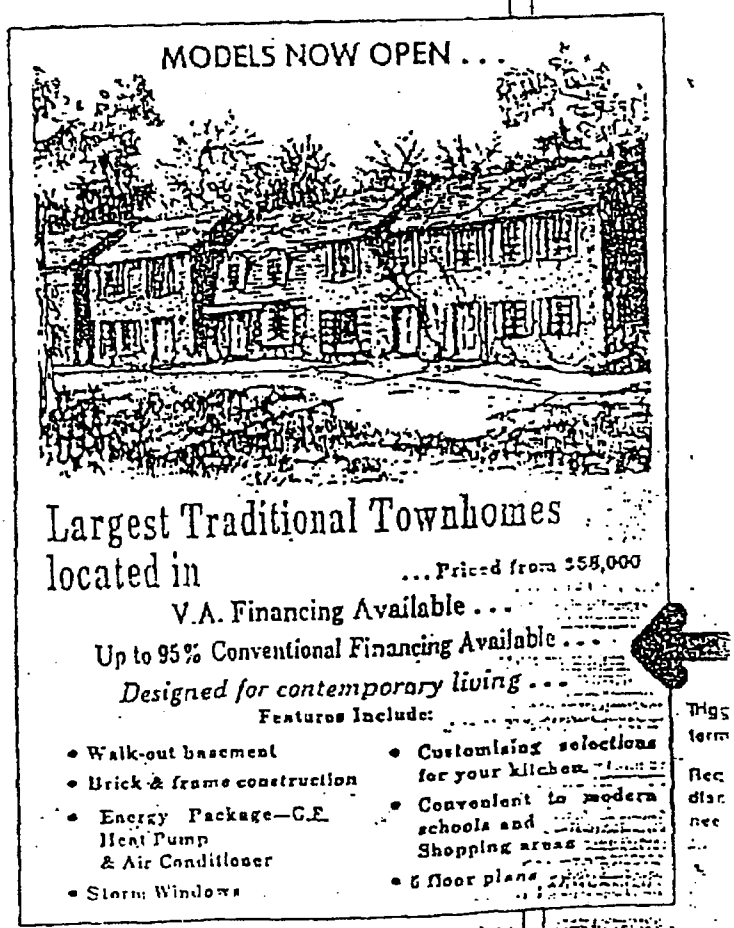
Except as noted above, no closed-end consumer credit advertisement may include any rate of finance charge other than the "annual percentage rate." An advertiser may *never* include an "add-on" rate (for example, "$6 per $100 per year") or a discount rate in an advertisement. These rates are misleading since they are significantly lower than the corresponding annual percentage rate, and their use violates the Truth in Lending Act.

Real Estate Advertisements

Real estate advertisements which also promote consumer credit must comply with the advertising provisions of the Truth in Lending Act.

1. Rate Disclosure Examples

As with other advertisements of closed-end consumer credit, if only the annual percentage rate is disclosed, additional disclosures are not required. An advertisement may simply state, "Assume 12% annual percentage rate mortgage" or "14% annual percentage rate mortgages available."



[5] The annual percentage rate may include insurance, discounts, and points which may not be included in the contract rate. For further information on the finance charge and annual percentage rate, see

Consumer Lease Disclosures

Consumer Leases in General

The Truth in Lending Act regulates consumer leases because they represent an alternative to buying on credit. Also, unless certain information is provided, a consumer might easily confuse leasing with purchasing on credit.

Triggering Terms

If an advertisement promoting a "consumer lease" (defined on page 4 of this manual) contains any of the following triggering terms, then five specific disclosures must also be included in the advertisement. The *triggering* terms are:

1. *the amount of any payment.*
   Example: "Pay a mere $128 per month"
2. *the number of required payments.*
   Examples: "$133 per month...36 month lease"
   "Low monthly payments on our four-year auto leases"
3. *a statement that any or no down-payment, or other payment, is required at the beginning of the lease.*
   Examples: "Lease now and make no payments for three months"
   "Only a small down-payment"
   "Leave your pocketbook behind and return home in your leased '63 Chevy"

The following are examples of terms which do *not* trigger the required disclosures:

"Low Monthly Payments"

"Lease for Less than It Costs to Buy"

"We Lease to Anyone"

Required Disclosures

If any triggering term is used in a consumer lease advertisement, then the following five *disclosures* must also be included in that advertisement:

(1) a statement that the transaction advertised is a lease;

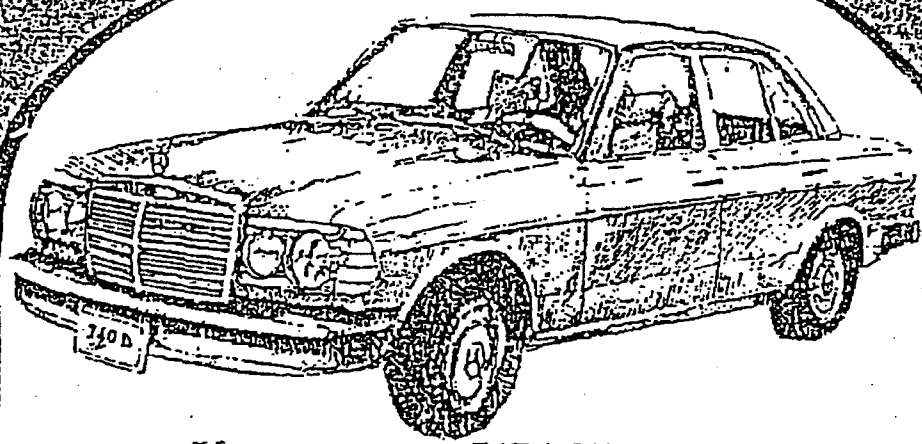
(2) the total amount of any payment (such as security deposit or capitalized cost reduction) required at the beginning of the lease, or a statement that no such payment is required;

(3) the number, amounts, due dates, or periods of scheduled payments, and the total of such payments under the lease;

(4) a statement of whether the customer has the option to purchase the leased property and at what time and price (the method of determining the price may be substituted for disclosure of the price); and

(5) a statement of the amount (or method of determining the amount) of any liabilities the lease imposes upon the customer at the

LEASE



You can now LEASE a Luxurious Mercedes-Benz 240 Diesel for Less . . .

only . . . **$283.18** **per month**

WITH AIR CONDITIONING, AM/FM RADIO, CENTER ARM REST, 4 SPEED TRANSMISSION

SALES TAX & TAGS NOT INCLUDED

36 PAYMENTS AT $283 PER MO.

Oldsmobile • Datsun • Mercedes-Benz

Triggering terms

Required disclosure needed

end of the term; and, *if* the customer has such liability, a statement that the customer shall be liable for any difference between the estimated value of the leased property and its realized value at the end of the lease term.

Sample Disclosures

The following is an example of the required disclosures for a consumer lease advertisement which would comply with the Truth in Lending Act *if printed clearly and conspicuously*:

"36 month lease. No payments at the beginning of the lease, 36 monthly payments of $128 totaling $4,608. Customer has no option to purchase at the end of the lease. Customer will have no further liability unless auto has depreciated to less than 40% of its new car price. If so, customer is liable for that additional depreciation."

Catalog and Multi-Page Advertisements

Consumer lease advertisements which appear in catalogs or other multi-page advertisements are subject to the special provisions described on page 16 of this manual.

Merchandise Tags and Multiple Item Leases

If a merchandise tag for an item normally included in a multiple item lease contains any triggering term, it must either (a) include all required disclosures or (b) *clearly and conspicuously* refer to a sign or display prominently posted in the lessor's showroom which includes all required disclosures.

0082

R.000756

EXHIBIT C

STEVEN W. HAMM
ADMINISTRATOR
AND
CONSUMER ADVOCATE

The State of South Carolina

Department of Consumer Affairs

2801 DEVINE STREET
P. O. BOX 5757
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GREENVILLE
TIMOTHY F. ROGERS
COLUMBIA

October 20, 1988

fax 934-9365

Daniel F. Norfleet, Esquire
Waldman & Associates
Remount Square
1861 Remount Road, Suite 204
PO Box 90466
North Charleston, SC 29410-1466

RE: Closing Fees

Dear Mr. Norfleet:

Administrator Steven W. Hamm has referred your letter of August 11, 1988 to me for reply. Please excuse this tardy response.

This Department has consistently taken the position both with regard to consumer credit sales and consumer loans, that if the additional charge provisions of S.C. Code Ann. §§37-2-202 and 37-3-202 (1976 as amended) do not allow for a fee or charge to be assessed as a permissible additional charge, that fee or charge must be considered part of the finance charge (or credit service charge) unless it is specifically prohibited.

While I cannot comment on nor identify any dealership presently under investigation, I can comment in general terms. We have received some information that such fees are being charged ostensibly as additional charges for the service of document preparation, notary fees, "follow-up" calls and the like.

There are two problems with the charging of such fees in connection with consumer credit sales of automobiles. First, there is no provision for them in §37-2-202. We are not certain whether they are charged on cash and credit contracts alike. Even so, certain "closing costs" fees are specifically allowed by §37-2-202 (1)(d) for real estate secured transactions. By negative implication, they are not allowed for non-real estate secured transactions. In addition, I am aware of no provision for such fees as part of the amount financed under the federal Truth in Lending Act [15 U.S.C. §1601 et seq.].

Furthermore, it would appear that certain dealerships are advertising cash prices of automobiles in full page advertisements without including the so called closing fee in the cash price. Because the fee is an easily ascertainable element of the overall

price of the vehicle, it should be included in the cash price the same as elements such as "destination charges." A copy of Mr. Hamm's advertising guidelines are included for your information. So is a copy of the recent opinion of the Maryland Attorney General's office based on substantially the same grounds.

I hope this is sufficiently responsive to your inquiry.

Sincerely,

Philip S. Porter
Counsel to Administrator

PSP:dfneb

Steve Hamm

0084

EXHIBIT D

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	SOUTH CAROLINA DEPARTMENT OF CONSUMER AFFAIRS
S.C. DEPARTMENT OF CONSUMER AFFAIRS, Petitioner, vs. ACTION CHEVROLET, INC. Respondent.	ASSURANCE OF DISCONTINUANCE

In accordance with provisions of the South Carolina Consumer Protection Code § 37-1-101 et seq., S.C. Code Ann. § 37-1-101 et seq. (amended 1976), Petitioner and Respondent hereby agree to the provisions of this Assurance of Discontinuance as set forth below. In entering this Assurance, Respondent makes no admission of unlawful or wrongful conduct. Respondent recognizes and understands, however, that any violation of the provisions herein shall constitute a prima facie violation of the South Carolina Consumer Protection Code and shall subject Respondent to the penalties as set forth therein.

In order to resolve this matter Respondent consents to this Assurance.

WHEREFORE, the Respondent does freely, voluntarily and knowingly give and assure the S.C. Department of Consumer Affairs, that

1. Respondent will not engage in any activity, conduct or practice designed to mislead or deceive the public as to the price, quality or guarantee applicable to any product for sale by

Respondent.

2. Respondent will not advertise, print, display, publish, distribute, broadcast, or cause to be advertised, printed, displayed, published, distributed, or broadcast in any manner any statement of representation that is false, misleading, or deceptive to the consumer.

3. All advertisements by Respondent will accurately reflect the manner in which the product is sold.

4. The advertised price in an advertisement for a vehicle shall be the delivered cash price which the customer shall pay, except for taxes and tag fees. The Respondent will not use add-ons in the advertisement such as freight, protection packages, documentary fees, or dealer options in addition to the advertised price. However, the actual sales transaction may include add-ons such as protection package and options, in addition to the advertised price if the consumer requests them. The Respondent will not add "fees" to the buyer's contract.

5. The Respondent will not use asterisks in a manner that make advertisements unclear or ambiguous so as to mislead the consumer.

6. All advertising shall comply with Regulation Z of the Federal Truth in Lending Act and Federal Trade Commission Act.

7. Factory rebates on cars purchased from Respondent must be accounted for and disclosed in the buyer's contract. The buyer's contract must be a true and clear accounting of the sales transaction between the Respondent and the consumer.

8. The Respondent may not use advertising that implies

the Respondent is selling vehicles in a manner other than through normal retail channels.

9. Any automobile the Respondent advertises for sale at dealer invoice must be sold at dealer invoice. The dealer invoice price includes freight and national advertising. Dealer invoice is the manufacturer's initial invoice amount to the dealer. It is indicated as the invoice amount at the bottom of the invoice. No other charges may be added to this price except taxes and tags.

10. The Respondent agrees to pay the sum of ten thousand dollars ($10,000) to the Department as a complete settlement of the matters contained in this Assurance of Discontinuance.

11. The Respondent and the Department agree that this Assurance is an Assurance of Discontinuance made pursuant to S.C. Code Ann. §37-6-109 (1976 as amended).

In consideration of the foregoing, the Petitioner agrees to forego further proceedings in this matter. However, it is specifically understood that the Administrator, Steven W. Hamm may reopen this matter if Action Chevrolet should engage in any of the conduct noted in this Assurance.

ACTION CHEVROLET, INC.

By: _____

Date: 1/4/89

S.C. DEPARTMENT OF CONSUMER AFFAIRS

By: _____
Steven W. Hamm, Administrator

Date: 1-11-89

0087

STEVEN W. HAMM
ADMINISTRATOR
AND
CONSUMER ADVOCATE

The State of South Carolina

Department of Consumer Affairs

2801 DEVINE STREET
P. O. BOX 5757
COLUMBIA, S.C. 29250-5757

July 12, 1989

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A. CLARK JENKINS
JOHNS ISLAND
GENE McCASKILL
CAMDEN

Robert F. Williams
3136 North Pleasantburg Dr.
Greenville, SC 29609

RE: Additional Costs or Fees in Auto Sales

Dear Mr. Williams:

Recently you have asked how to treat a fee that you call a procurement fee. As I understand it this fee is to cover the costs of closing the sale, doing the paperwork, and transporting or sending the documents to the Highway Department. If this fee serves a different purpose, please let me know because it may change what I say.

The Department's position is that such charges may not be charged or advertised. They may not be put on the buyer's order, the retail sales contract, or the window sticker. The Department feels strongly enough about this position that we have filed a lawsuit against one dealer, and this type of charge is the basis for one of the causes of action. This does not mean that you cannot take your expenses into consideration when pricing an auto or negotiating a sale. These expenses are part of the expense associated with the operation of an auto dealership and are to be treated the same as any other type of overhead expense. That is, you must determine how low you can go when you are negotiating the price and still make a profit. If you want to recoup an additional $89.00, then you should not reduce the price as much during negotiations.

For at least two years, this Department has been informing dealers of the problem with using such a fee in connection with the advertising of the purchase price of an auto. The problem, as it relates to advertising, arises when an auto is advertised at a cash price and then when the deal has been reached this additional charge is added to the price. The amount of this charge is predetermined or can be determined easily. It appears that the only purpose for not including the fee in the advertised price is to make the consumer think he is getting a better deal than he actually is getting. Therefore, if an auto is advertised for a cash price and the fee is added later, the price advertisement is deceptive and misleading.

Not only is the fee not permitted in advertisements, but also the fee is improper in any financed consumer transaction, unless the charge is specifically permitted by the South Carolina Consumer

Protection Code. The legal basis for this position can be seen by evaluating those provisions of the Code that set forth the permissible charges on a financed transaction. These provisions are found in Part 2 of Chapter 2 of the Code (§§37-2-201 through 210) in the case of credit sales, and in Part 2 of Chapter 3 (§§37-3-200 through 210) in the case of consumer loans. Since the present context is auto sales, I will confine my evaluation to credit sales.

Very briefly, Part 2 of Chapter 2 provides for various types of additional charges. The type of charges that are authorized are as follows:

§37-2-201 -- finance charges
§37-2-202 -- permissible additional charges
§37-2-203 -- delinquency charges
§37-2-204 -- deferral charges
§37-2-205 -- service charge on refinancing
§37-2-206 -- service charge on consolidation
§37-2-207 -- service charge for revolving charge accounts
§37-2-208 -- advances to perform covenants of the buyer

The only other sections of Part 2 do not permit any type of charges. In fact, the remaining sections give certain rights to the buyers.

§37-2-209 -- gives the buyer the right to prepay the debt
§37-2-210 -- provides for the rebate due to the buyer upon prepayment

Of these possible charges it would seem that only two may apply. Those two are §§37-2-201 and 37-2-202. Section 37-2-201 provides that a seller making a consumer credit sale may properly contract for and receive a finance charge as permitted in the provisions of §37-2-201. As I understand it, you do not want this fee to be considered a finance charge. If my understanding is incorrect, please let me know.

Section 37-2-202 provides for certain additional charges that may properly be made. I am attaching a copy of this code section for your convenience. This section is divided into three parts. The first part, §37-2-202(1), provides for five specified types of charges. The second part, §37-2-202(2), provides for the permissible insurance charges. The third part, §37-2-202(3), provides for permissible additional charges when the buyer assumes an existing obligation. Neither the second nor the third part of this code section apply to the procurement fee. Therefore, unless one of the specified additional charges in the first part authorizes the procurement fee it is not permitted. These permissible charges are:

(a) Official fees and taxes;
(b) Charges for insurance as described in subsection (2);
(c) Annual charges for the privilege of using a credit card, when the card and the charges meet the conditions set forth;

(d) Closing costs when the debt is to be secured by an interest in land if the costs are bona fide and paid to third parties;
(e) Charges for other benefits conferred on the buyer if these charges meet the criteria set forth in this subsection.

The first three types of charges do not apply to the procurement fee. Official fees and taxes are charges made by and paid to the government. There is no question that the procurement fee is not a government fee. Therefore, this part does not make the fee permissible. Also, there is no question that the procurement fee is not for insurance, so the insurance provision does not authorize the procurement fee. Finally, there is no question that the fee does not relate to a charge for the privilege of using a credit card, and, as a result, that this part does not authorize the fee. Therefore, only the fourth or fifth parts of the subsection could possible authorize the fee.

Part four is for closing costs. Many of the dealers that want to charge what you call a procurement fee call the fee a closing fee. Part four does not authorize such a fee in the sale of an automobile because the fee is permitted only when the debt is secured by an interest in land. This paragraph, §37-2-202(1)(d), lists five types of closing costs that may be made when the debt is secured by an interest in land. The first of these charges is for title examinations and title insurance. Due to the nature of establishing title to real estate, a title examination is essential. The second type of closing cost that is permitted is a fee for the preparation of the deed and other documents. This fee is permissible only if the fee is paid to a third party who is not related to the creditor. The third type of closing cost is escrows for future payment of taxes, insurance and such like. The fourth type of closing cost is fees for notarizing deeds and other documents. This type of fee is permitted only if the fee is paid to a third party who is not related to the creditor. The fifth type of closing cost is fees for real estate appraisals when the real estate is the property that is the subject of the sale. This type of cost is permitted only if the fee is paid to a third party who is not related to the creditor. While some of these type costs may appear to be similar to the purpose of your procurement fee, they are quite different in some cases, and they are not permitted if paid to the creditor in the cases that would be similar. Since the procurement fee is paid directly to the dealer, these closing costs would not authorize the fee as a permissible closing cost even when their use is for purposes similar to the purpose of the procurement fee.

The only remaining possibility is the fifth specified permissible additional charge. This charge is for other benefits conferred on the buyer. To be permissible the charge and the benefits must meet several requirements. I do not believe the fee meets the requirements, but I will identify each of them a give a brief discussion of the reasons why I do not believe the fee is authorized under this part of the Code section.

The first of these requirements is that there must be a benefit conferred on the buyer. It is very doubtful that a procurement fee

confers any benefit on the buyer. In fact, it would seem that the real benefit of the fee is conferred upon the seller. The second requirement is that the benefit must be of value to the buyer. It is even more doubtful that the procurement fee is of any value to the buyer. The third requirement is that the charge must bear a reasonable relation to the benefit to the buyer. I do not believe that a charge of $89.00, much less one of $199.00 as some dealers charge, has any reasonable relation to the benefit that a buyer may receive. The fourth requirement is that such a charge must not be of a type that is for credit. If the charge is of a type that is for credit, then the charge is a finance charge and must be treated as one. The fifth requirement is that the charge must be authorized as permissible by a rule adopted by the Administrator. As of now there are no rules authorizing any additional charges as permissible.

The only permissible charges are those set forth in the Consumer Protection Code, and the procurement fee, regardless of the name actually given to the fee, is not authorized by the Code. Therefore, the fee is an illegal excess charge and cannot be charged.

I have tried to state our position and the basis for it as clearly as I can. If you have questions or want to discuss this matter further, please let us know. We would be happy to try to arrange a meeting with you, the Dealers' Association, and your attorneys if you desire.

With best regards, I am

Sincerely,

s/

Danny R. Collins
Staff Counsel

cc: Patrick E. Watson,
Executive Vice-President of
the South Carolina Automobile
and Truck Dealers' Association

STEVEN W. HAMM
ADMINISTRATOR
AND
CONSUMER ADVOCATE

The State of South Carolina

Department of Consumer Affairs

2801 DEVINE STREET
P. O. BOX 5757
COLUMBIA, S.C. 29250-5757

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JOHNS ISLAND
GENE McCASKILL
CAMDEN

June 5, 1989

Fritz Waidner
Fritz Pontiac-Cadillac-Buick, Inc.
P. O. Box 878
Newberry, SC 29108

RE: Auto Advertising Standards and Guidelines

Dear Mr. Waidner:

As you are aware the S.C. Department of Consumer Affairs has worked with South Carolina auto dealers to obtain voluntary compliance with reasonable and lawful standards in automobile advertising. We have endeavored to maintain an open line of communication in order to be available to assist dealers who may have questions about the legality of certain types of advertising. We appreciate the cooperation and assistance that our Department has received from dealers all across South Carolina.

Enclosed is a copy of the S.C. Department of Consumer Affairs auto advertising standards and guidelines.

In your recent television advertisement, the use of fees in addition to the advertised price is a violation of state and federal law.

A dealer may not use add-ons such as documentary fees, administration fees, closing fees, or any fees in addition to the advertised price.

Your cooperation and assistance in voluntary compliance with lawful advertising standards is appreciated. Further advertising problems brought to the attention of the Department of Consumer Affairs will not be treated as oversights, but as intentional violations.

I would appreciate your written acknowledgement within ten (10) days of the date of this letter indicating your understanding of

0092

and voluntary compliance with the law as set forth in this letter. If you have any questions about this letter, please feel free to call the Department at (803) 734-9460.

Sincerely,

Steven W. Hamm
Administrator

SWH/cam

enclosures

PONTIAC
Cadillac
BUICK

FRITZ'S
Pontiac-Cadillac-Buick, Inc.
"WE'RE HERE TO SERVE YOU"
4010 College Street Extn.
Newberry, South Carolina 29108
(803) 276-8970 (Newberry)
(803) 254-5131 (Columbia)
1-800-426-7433

RECEIVED
JUN 20 1989
DEPARTMENT OF
CONSUMER AFFAIRS

June 17, 1989

Dear Steve,

Thank you for your letter of June 5th. This area of advertising, guidelines, etc. is somewhat unclear to us and I would like to meet with you at your office when its convenient to you to discuss the situation.

Thanks,
Fritz Dantzler

P.S.
Home # 345-2777
Business # 254-5131
1-276-8970

We got a meeting with Danny Collins June 27th so you don't have to reply to this letter.

0094

EXHIBIT H

M E M O R A N D U M

TO: File

FROM: Danny Collins

RE: Meeting with Fritz Waidner

DATE: June 28, 1989

On June 27, 1989, several members of the Staff met with Fritz Waidner to discuss various matters. Those attending were Danny Collins, Helen Fennell, Annette Murphy and Karen Yongue, as well as Fritz Waidner. Three primary issues were discussed at the meeting: closing costs (documentary fees, procurement fees or administrative fees), secondary financing and an active complaint filed against the dealership.

Closing Costs

After some discussion, I think Mr. Waidner understood our position on closing costs as an excess, unpermitted additional charge. We gave him a copy of §37-2-202, and explained that if a charge was not specifically permitted by that section, it would be considered an excess charge. Mr. Waidner wanted to know why the bank could make him a loan and add different types of charges. We explained that certain additional charges are specifically permitted in loans secured by real property. Mr. Waidner countered that the loan was not secured by realty but by equipment. We explained that that was a commercial transaction (business to business) and was not governed by the Consumer Protection Code. Mr. Waidner once again countered that he was personally liable on the loan. We explained that the purpose of the loan was still a business purpose and was not governed by the Code.

Secondary Financing

After our discussion of the method of secondary financing used by Mr. Waidner, it appears that he has no hidden finance problems. We asked Mr. Waidner to describe the operation of the high-risk financing he uses. He told us that when a person was turned down by the primary source of financing, then the credit application would be given to another company. The negotiated terms would remain the same, except for the changes made necessary by a higher finance charge. The higher finance charge is disclosed and there is no extra fee that is charged to accept the high risk customer. We explained to Mr. Waidner that if that is how they operated, then there was probably no problem with respect to additional charges or hidden finance charges.

After discussing the first two matters, we briefly discussed the complaint filed by Dennis and Charlotte Hunter. Mr. Waidner confirmed that he was aware of the problem, and he added that this particular matter was one that he felt strongly enough about to hold his ground, even when it meant that he would be kicked out of Autocap. We informed Mr. Waidner that we felt this complaint had to be resolved. This is one of the few times where a dealer, instead of the consumer, would be bound by a contract he wanted to break, and our position was the same as it would be if the consumer wanted out of the contract -- i.e. the contract is binding and must be performed. Mr. Waidner relies on a clause in the agreement that attempts to make the contract binding only if the financing is approved. The contract form provides a signature line immediately below this condition precedent, but the consumer never signed the line. After some discussion, Mr. Waidner agreed that he would try to resolve this complaint. If he is unable to reach a resolution, we agreed to offer a proposal that may help resolve the matter.

The State of South Carolina

Department of Consumer Affairs

2801 DEVINE STREET
P. O. BOX 5757
COLUMBIA, S.C. 29250-5757

STEVEN W. HAMM
ADMINISTRATOR
AND
CONSUMER ADVOCATE

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JOHNS ISLAND
GENE McCASKILL
CAMDEN

July 26, 1990

Fritz Waidner
Fritz Pontiac-Cadillac-Buick, Inc.
P. O. Box 878
Newberry, SC 29108

RE: Auto Advertising Standards and Guidelines

Dear Mr. Waidner:

As you are aware, the S.C. Department of Consumer Affairs has worked with South Carolina auto dealers to obtain voluntary compliance with reasonable and lawful standards in automobile advertising.

If a rebate is indicated as being part of an advertised price, the amount of the rebate must be shown in the main body of the advertisement (close to the advertised price). Enclosed is a copy of one of your ads not in compliance with this rebate advertising guideline.

Please note a dealer may not use add-ons such as documentary fees, administration fees, closing fees, or any fees in addition to the purchase price. Enclosed is a copy of the S.C. Department of Consumer Affairs Automobile Advertising Guidelines and Standards. Your cooperation and assistance in voluntary compliance with lawful advertising standards is appreciated. I would appreciate your written acknowledgement within ten (10) days of the date of this letter indicating your understanding of and voluntary compliance with the law as set forth in this letter. If you have any questions about this letter, please feel free to call the Department at (803)734-9460.

Sincerely,

Danny R. Collins

Danny R. Collins
Counsel/Enforcement Unit

DRC/cam

enclosures

0097

EXHIBIT D

CONTENTS REDACTED

Claude Burns requested that the Association do something to allow for Documentary Fees to be charged in South Carolina. President Goodwin referred this matter to the Executive Committee for review.

CONTENTS REDACTED

04295

EXHIBIT E

DICK SMITH AUTOMOTIVE GROUP, INC.

RECEIVED
MAR - 8 1999
SCADA

Mr. Bob Pulliam
Pulliam Motors
2800 Two Notch Rd.
P.O.Box 908
Columbia, S.C. 29202

Dear Bob:

I received a letter dated February 22, 1999, indicating that "my SCADA Board of Directors" had voted unanimously to oppose legislative action which would legalize the practice of charging documentary fees. I was astounded that the Board would oppose such dealer friendly legislation and disappointed that a vote was taken without providing a forum for a discussion of this issue. I was especially disappointed because I have spoken directly with the Executive Vice President about my interest in this particular matter.

When I first spoke with Pat Watson about this matter, he indicated that some dealers were in favor of charging doc. fees while others opposed this concept. In a group as large as ours, I was not surprised to learn that automobiles dealers in this state had different points of view on this issue. For that reason, I thought I understood Pat's position when he indicated that SCADA would have to take a neutral position on any proposed legislation.

With this understanding, contact was made with a lobbyist who was informed that the SCADA would be taking a neutral position. This gentleman then proceeded to contact members of the General Assembly about the idea of legalizing these fees, with the understanding that SCADA was neutral. This letter dated February 22, 1999, came as an embarrassment both to me and to the lobbyist who has had to backpedal with those same members of the General Assembly by letting them know that SCADA has abruptly changed its position.

In this letter, Pat indicated that it is the Board's position that dealers currently have the right to charge a reasonable fee. When one of us gets sued for charging these fees, I doubt seriously that any Circuit Court Judge will be persuaded by an informal opinion of SCADA. Rather, it is my belief that a judge will confine his inquiry to what is stated in the law.

I strongly disagree with the Board's interpretation of the law on this issue. If doc. fees are legal as the Board contends, why have Newsome Chevrolet-Buick, Fritz's Pontiac-Cadillac-Buick, and Charleston Lincoln-Mercury all had to defend themselves in class action lawsuits over this issue?

04429

4030 WEST BELTLINE BOULEVARD • COLUMBIA, SC 29204
(803) 256-6600 • 1-800-944-8570
INTERNET ADDRESS: www.dicksmith.com

I have personally reviewed a copy of the Fritz's case. Although the South Carolina Supreme Court agreed that charging doc.fees was not a violation of the Consumer Protection Code, the Supreme Court also included a footnote stating:

> By our holding, we do not imply that inclusion of such fees may not be attacked on other grounds, such as claims for fraud, misrepresentation, or unfair trade practices. The Fannings have done so here and their claims remain pending in circuit court. We express no opinion as to the merit of those claims.

Perhaps, the Board overlooked that footnote. I view the Fritz's case as a warning shot. The Supreme Court has been kind enough to paint a target for trial lawyers who may be interested in class action litigation. Anyone, who reads and understands footnote 8 might just ring the bell the next time around.

Pat also indicates that the Board's opposition to legislative action is based upon a recent decision from Charleston in Ferguson v. Charleston Lincoln-Mercury. Unfortunately, any reliance upon that decision is misplaced. That decision has been appealed to the S.C. Supreme Court based in part on footnote 8 in the Fritz's decision. It may take up to 2 years before a final decision is rendered in the Ferguson case.

I am concerned that SCADA may be exposed to liability for expressing its interpretation of the law to its members. If a dealer relies upon the advice set forth in this letter, is SCADA going to step forward when the next lawsuit is filed and defend that dealer against these types of claims?

Since it appeared that this issue had not been finally resolved, it made sense to me to seek approval for charging these fees from the legislature before exposing myself to liability. I never expected that SCADA would attempt to sabotage my efforts.

This issue is far too important to simply sweep under a rug. I would ask that the Board schedule a meeting of the members to discuss this issue and to give some consideration to returning to its neutral position. Under those circumstances, the General Assembly just might help us to avoid expensive and time consuming litigation on this unsettled issue.

Sincerely,

Brian K. Smith

BKS:11
cc: Pat Watson

EXHIBIT F

SCADA
SOUTH CAROLINA AUTOMOBILE DEALERS ASSOCIATION

Administrative Offices
1517 Laurel Street / Columbia, S.C. 29201-2696
(803) 252-0205
FAX 252-5965

February 22, 1999

SCADA OPPOSES LEGISLATIVE EFFORT TO CHANGE "DOC FEES"

Your SCADA Board of Directors has voted unanimously against supporting any efforts to have the SC Legislature enact specific legislation dealing with a Dealer's right to charge "Doc Fees" (henceforth to be referred to as "Procurement Fees"). Being aware of an effort by some Dealers to hire a contract lobbyist for the purpose of getting this type of legislation passed, your Board has reviewed the matter in detail and taken the position to not favor this action.

The Board's position is that Dealers currently have the right to charge a reasonable fee. Any legislative activity in this area could very well result in unneeded attention by the legislature of the fee, which could in turn lead to unneeded regulation of the fee or could very well result in legislative action to prohibit the fee. Either of these actions would be very detrimental to our Dealer Body.

The decision to not take this matter to the Legislature was based partly on two court cases, a conversation with the Director of the SC Department of Consumer Affairs, and a legal opinion rendered specifically to SCADA from the former Director of the Department of Consumer Affairs, Steve Hamm: Steve is currently practicing law in Columbia.

The first court case, Fanning vs Fritz's Pontiac, has been reported to you earlier. In this case, a Circuit Court found that the $89.00 Procurement Fee charged was "not illegal nor unconscionable". The South Carolina Supreme Court affirmed this decision in June of 1996. Just recently, December 23, 1998, in Ferguson vs. Charleston Lincoln Mercury, a Circuit Court Judge granted a Summary Judgement to the defendant, saying the charging of a closing fee was not an "unfair" act. In this case the fee charged was $189.00.

SCADA met with the Department of Consumer Affairs in mid December 1998. We were informed that in the Department's opinion, based primarily on the June 1996 Supreme Court Decision above, there was nothing in law to prevent a Dealer from charging a fee as long as it was reasonable and no attempts were made to deceive a customer by hiding the fee or using false advertising.

(over)

04425

In an effort to get further clarification on the issue, SCADA asked for a legal opinion from former Department of Consumer Affairs Administrator Steve Hamm, who had called the fees illegal in 1989. As we stated earlier, in an opinion dated January 25, 1999, Mr. Hamm has concluded that within reason and with proper disclosures and precautions, the charging of these fees is not prohibited under SC Law.

Included in your Board's decision to keep this issue out of the Legislative arena, is the precarious position that our $300 Sales Tax Cap finds itself. Rest assured, people are coming out of the woodwork to proclaim that raising the Cap is the way to fund all kinds of programs for the state. Legislation was introduced last week to increase the Cap to $500.00; the Department of Transportation, being pushed by the road contractors, is studying the feasibility of raising the Cap to fund highway construction; and even the AARP is calling for the Cap to be readjusted to help those persons buying less expensive vehicles. There will certainly be additional attempts to raise the tax as the Budget process continues.

One of the best arguments we have in defense of the Cap is that if the Cap is raised some customers won't be able to come up with the necessary downpayment. If we have some Dealers asking the General Assembly to pass a law that gives Dealers the right to charge a specific fee on each sale, some Legislators are going to wonder how a customer has enough money to pay a fee to a Dealer and still come up with a downpayment, but he doesn't have enough to pay a higher tax and still make the downpayment.

In summary, your Board sees no reason to open up this fee issue for full discussion by the General Assembly, when Dealers already have the right to charge the fee. There is far too much too lose and actually nothing to really gain in this venture. We encourage your full support and cooperation with SCADA in this issue. We really need to be together on this position.

If you have any questions concerning this issue please don't hesitate to call. Copies of Court Cases and Opinions are available at your request, however we hope that you will keep them confidential.

Patrick E. Watson
Executive Vice President

EXHIBIT G

STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF AIKEN

HEATHER HERRON, NATALIE ARMSTRONG, MICHAEL RITZ, JULIE FREEMAN, CHRISTINE WATTS, MICHAEL BLEASE, MICHAEL WATTS, INDIVIDUALLY AND FOR THE BENEFIT OF ALL CAR BUYERS WHOM PAID "ADMINISTRATIVE FEES" AS DESCRIBED BELOW TO DEFENDANTS,
Plaintiff(s),

vs. Case No: 06-CP-02-1230

CENTURY BMW A/K/A SONIC AUTOMOTIVE; DICK DYER & ASSOCIATES, INC.; GALEANA CHRYSLER PLYMOUTH, INC. A/K/A GALEANA CHRYSLER JEEP, INC; J.L.H. INVESTMENTS, LP A/K/A HENDRICKS HONDA; OVERLAND, INC. D/B/A LAND ROVER OF COLUMBIA; TAYLOR TOYOTA A/K/A TAYLOR INVESTMENTS; AND TOYOTA OF GREENVILLE, INC.,
Defendant(s).

D E P O S I T I O N

30(b)(6)

WITNESS: PATRICK WATSON

DATE: Thursday, October 15, 2009

TIME: 10:13 a.m.

LOCATION: Richardson, Plowden & Robinson, P.A.
1900 Barnwell Street
Columbia, South Carolina

TAKEN BY: Attorneys for the Plaintiff(s)

REPORTED BY: SHERI L. BYERS
Registered Professional Reporter

- -

COMPUSCRIPTS, INC.
A Full-Service Court Reporting Agency
Post Office Box 7172
Columbia, South Carolina 29202

Q. The Senate floor. What committee did it come out of?

A. It didn't come out of a committee.

Q. Was this under conference -- preconference powers?

A. No.

Q. How was this put in the bill from the floor?

A. Budget proviso.

Q. And who was -- obviously the Senator Phil Leventis made the motion?

A. He introduced the amendment, yes.

Q. Okay. Was it voice voted on?

A. Voice voted on.

Q. Any objections to it?

A. To my knowledge, no.

Q. Accepted by acclamation?

A. If you want to call it that in the Senate, yes.

Q. Did you let Senator Leventis know that SCADA opposed this proviso before he made it?

A. Yes, I did.

Q. And what did he say to you in response?

A. He thanked me and went back in the Senate.

Q. Okay. And did the opposite of what you would have him do?

Q. From 1978 to this minute right now, is it still SCADA's position --

MR. HAMM: I object to the form.

MR. SPEARS: -- that this charge, the fee, must be reasonable and for a service actually performed?

THE WITNESS: Yes.

BY MR. SPEARS:

Q. Number two question: Is it still SCADA's position today, since 1978 continuously until today --

MR. HAMM: Object to the form.

BY MR. SPEARS

Q. -- that, number two, the fee should be referred to with language which actually describes the service.

A. Where did you go to then?

Q. Number two, where it says, "What must this fee be called?"

And the first sentence says, "The fees should be referred to with language that actually describes the service."

Is that still SCADA's position?

A. No. SCADA's position today is there would be a closing fee.

Q. Okay. Next issue. Is it still SCADA's

Consumer Affairs to see if they have titled their fee properly?

A. Now go back.

Q. You don't remember whether you have ever advised any of your dealer membership to check with the Department of Consumer Affairs to see whether or not they have titled their fee correctly, labeled it correctly?

A. I don't remember advising a dealer for that specific purpose to contact the Department of Consumer Affairs.

Q. Okay. The fourth asterisk says, "Do make certain it is reasonable for the service provided."

Now, what do you mean by that?

A. Exactly what it says. Do make certain it's reasonable for the service provided.

Q. Well, who tests the reasonability of the amount of the fee in regard to the service provider?

A. Prior to, I guess it was 2000, I guess the Department of Consumer Affairs did it.

Q. Okay. Why would you advise your dealers to make certain that the fee is reasonable for the service provided?

A. Because that's what the Department of Consumer Affairs had said to do.

EXHIBIT H

SCADA
SOUTH CAROLINA AUTOMOBILE DEALERS ASSOCIATION

Administrative Offices
1517 Laurel Street / Columbia, S.C. 29201-2696
(803) 252-0205
FAX 252-5965

June 26, 2000

LEGISLATURE ADJOURNS – BUDGET INCLUDES ADMIN FEE PROVISO

The South Carolina General Assembly officially adjourned sine die on Thursday, June 22, bringing to an end one of SCADA's busiest and most successful sessions in a while. The Primary Elections were held on June 13, the Runoffs will be held tomorrow and the General Elections will be held on November 7. A new Senate and House of Representatives will be seated in December and a brand new Session will kick off on January 9, 2001. Please participate in this continuing cycle so that our united Dealer voice will continue to be heard.

The final version of the 2000-01 Budget Bill adopted on the last day of the Session contains a proviso worked out by SCADA, the SC Department of Consumer Affairs, Senator Phil Leventis and other interested parties dealing with administrative fees, procurement fees, or closing fees charged by Dealers. The proviso states Dealers who charge such a fee must pay an annual $10.00 filing fee with the Department of Consumer Affairs. It further states that such fees must be disclosed on the sales contract and displayed conspicuously in the dealership. The proviso also states that any fee of this type must be included in any advertised price for the vehicle. We will send out information on the proper filing with the Department of Consumer Affairs as soon as the information becomes available.

BELLAGIO SELECTED AS SCADA LAS VEGAS HEADQUARTERS

President Al Arnett has announced that the Bellagio Hotel has been selected as the SCADA Headquarters Hotel for the 2001 NADA Convention in Las Vegas in February. NADA will be sending out registration packets in the near future and we suggest that you return your registration form quickly if you want to get the accommodations of your choice.

(over)

CONGRATULATIONS TO SCADA'S DENA FEAGIN

Congratulations are in order for SCADA Executive Assistant Manager Dena Feagin for being elected President of the South Carolina Society of Association Executives. The Society is the professional association for association executives from across the state.

Patrick E. Watson
Executive Vice President

EXHIBIT I

June 7, 2001

Administrative Interpretation 2.307-0101

- **The assessment of a "closing" or "documentation" fee (also occasionally denominated as an "administrative," "processing," or "procurement" fee) in a consumer credit sale of a motor vehicle is dependant on four factors: 1.) The dealer must pay the Department a registration fee each state fiscal year in the amount of ten ($10.00) dollars prior to the assessment of a closing fee; 2.) The existence of a closing fee must be disclosed on the sales contract; 3.) The closing fee must be disclosed in a statement displayed in a conspicuous location in the motor vehicle dealership; and 4.) If the closing fee is charged, and the vehicle is advertised, the closing fee must be included in the advertised price. A dealership may use the attached form to make its filing with the Department. A closing fee may only be assessed once these factors are met and the dealership has in its possession a date stamped copy of its disclosure stamped by the Department. The charging of a "closing," "documentation," or similar fees in connection with a consumer credit sale of a motor vehicle in the absence of any of these requirements constitutes the charging of an excess charge for Consumer Protection Code purposes.**

In Part II, Section 82 of the 2000-2001 General Appropriations Act, the General Assembly passed an amendment to the Consumer Protection Code to add § 37-2-307 which reads as follows:

> Every motor vehicle dealer charging closing fees on a motor vehicle sales contract shall pay a one-time registration fee of ten dollars during each state fiscal year to the Department of Consumer Affairs. The closing fee must be included in the advertised price of the motor vehicle, disclosed on the sales contract, and displayed in a conspicuous location in the motor vehicle dealership.

Previously, there had been some question concerning the propriety of charging such fees. The Supreme Court, in the case of *Fanning v. Fritz's Pontiac-Cadillac-Buick*, 322 S.C. 399, 472 S.E.2d 242 (1996), clarified the issue somewhat by stating that based on the stipulated facts of that case (that the fees were charged to cash and credit customers alike, and that the fees were disclosed and subject to negotiation prior to the consumer being obligated to the contract), the dealership did not violate

DEFENDANT'S EXHIBIT

the Consumer Protection Code's provisions concerning excess charges [S.C. Code Ann. § 37-2-201 and -202] or unconscionability [S.C. Code Ann.§ 37-5-108].

With Section 37-2-307 the General Assembly provided further clarification concerning whether and under what circumstances such fees may be charged. The section does not give an indication of the meaning of the term "motor vehicle dealer." For purposes of construing this section, the Department will assume the intended meaning of the term "motor vehicle dealer" will be the definition used elsewhere in the Code, at S.C. Code Ann. § 56-15-10(h).

As clearly indicated from the terminology of Section 37-2-307, from the effective date of that section (June 30, 2000), any dealer choosing to assess a closing or documentation fee must: 1.) File a registration fee of ten dollars ($10.00) with the Department each state fiscal year prior to the assessment of a closing fee; 2.) Disclose the closing fee on its sales contract; 3.) Display in a conspicuous place in the dealership a statement that indicates the closing fee may be charged; and 4.) If the closing fee is charged, and the vehicle is advertised, the closing fee must be included in the advertised price so that consumers cannot be unfairly surprised by having the closing fee added on after the acceptance of an advertisement's terms. In the absence of any of these requirements, the charging of a closing or other similar fee is an excess charge for Consumer Protection Code purposes.

The section clearly contemplates that the registration fee must be charged in future fiscal years but is silent as to what date, if any, in the fiscal year might be deemed as a due date beyond which the filing is ineffective under the then existing statute. The only analogous statute of which the Department is aware requiring similar filings in a fiscal year are Sections 37-2-305(8) and -3-305(8), concerning the maximum rate schedule filing. Subsection 37-2-305(8) was amended by Section 6 of Act 142 of 1991 to specify that the deadline for filing maximum rate schedules was January 31 of each year, as subsection 37-3-305(8) for consumer loans had been previously amended pursuant to Section 3 of Act 119 of 1989. Previously, the subsection had not affirmatively stated a deadline but simply specified that the filings had to be made once each state fiscal year. The Department construed such filings to have lapsed as of July 1 of any year in which there had been no filing on any day during the previous State fiscal year (July 1 to June 30). The court of Appeals upheld this construction in *Bell Finance Co., Inc. v. S.C. Department of Consumer Affairs*, 297 S.C. 111, 374 S.E.2d 918 (1988). We construe Section 37-2-307 similarly to the versions of Sections 37-2-305 and -3-305 as they existed prior to the enactment of Act 142 of 1991.

While the section does not directly say so, the registration fee is referred to as a registration fee and not merely as a fee, with the apparent implication that the

dealership seeking to charge closing fees should likewise file or register the disclosure it seeks to use. The attached disclosure may be used for this purpose. It is not required that the dealers use the attached form, but if they do, they will be deemed compliant if the form is properly filled out. Forms considered to be deceptive or to misstate the law will be rejected by the Department.

The section does not specify the content of the disclosure other than to indicate that it must be displayed in a conspicuous place. Regarding this conspicuousness requirement, the word "conspicuous" is defined in Section 37-1-301(9) as follows: "'Conspicuous' means a term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. Whether a term is conspicuous or not is for decision by the Court." Thus, the disclosure should be displayed in order to ensure that the consumer has an opportunity to see it prior to making a purchasing or financing decision.

The Supreme Court specifically indicated in its holding in *Fanning* that it did not imply such fees might not be actionable under other applicable law. 322 S.C. at 404; 472 S.E.2d at 245, N.8. Likewise, the General Assembly did not further clarify the issue other than to indicate the fees might be legally charged for Consumer Protection Code purposes if the requisite filing and disclosures are made. The Department is aware of nothing in the General Assembly's enactment that legitimizes a closing fee or any fee or charge if it is assessed through fraud or misrepresentation.

NOTICE– CLOSING FEES

THIS DEALERSHIP CHARGES CLOSING FEES AS A MEANS OF REIMBURSING IT FOR CERTAIN OVERHEAD COSTS SUCH AS DOCUMENT RETRIEVAL AND DOCUMENT PREPARATION. IT IS A CHARGE THAT IS PERMITTED BUT NOT REQUIRED BY LAW. THE FULL CASH PRICE CHARGED AT ANY DEALERSHIP DEPENDS ON MANY FACTORS, INCLUDING ALL PRODUCTS AND SERVICES BOUGHT WITH THE VEHICLE.

THE CLOSING FEE CHARGED BY

DEALER NAME
DEALER ADDRESS
CITY, S.C. ZIP CODE

WILL NOT EXCEED $_____
PRIOR TO July 2, 1001

EXHIBIT J

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF AIKEN

HEATHER HERRON,

Plaintiff,

vs. CASE NO. 2006-CP-02-1230

DICK DYER & ASSOCIATES, INC., ET AL,

Defendants.

DEPOSITION OF:	DANNY R. COLLINS
DATE:	June 24, 2009
TIME:	10:00 a.m.
LOCATION:	Law Offices of Haynsworth Sinkler Boyd 1201 Main Street 22nd Floor Columbia, SC
TAKEN BY:	Counsel for the Defendant, Land Rover of Columbia
REPORTED BY:	L. Skyler Hare, Court Reporter

APPEARANCES OF COUNSEL:

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ALSO PRESENT:
Alison A. Dannert, Paralegal
Lauren Spears, Paralegal
Elliott F. Elam, Jr.,
Accompanying Mr. Collins

(INDEX AT REAR OF TRANSCRIPT)

STIPULATION

It is stipulated by and among Counsel that this deposition is being taken in accordance with the South Carolina Rules of Civil Procedure, Rule 30; that all objections as to Notice of this deposition are hereby waived; that all objections except as to form are reserved until the time of trial; and that the deponent waives reading and signing of this deposition.

* * * * * * * * * * * *

DANNY R. COLLINS,
being first duly sworn, testified as follows:

EXAMINATION

BY MR. HAMM:

Q. Good morning, Mr. Collins. Have you been deposed before?

A. Been a long time, but I have.

Q. In the course of this deposition, would you prefer that I call you Mr. Collins, Danny? What would you be most comfortable with?

A. It doesn't matter to me.

Q. So if I call you Danny?

A. That would be fine.

Q. Do you and I know each other?

A. For 20 years.

Q. Yes, sir. And in fact, are you the Mr. Collins who's the author of the Hornbook on Evidence for South Carolina?

A. I wrote a book on Evidence for South Carolina. It was published by the bar.

Q. Yes. For purposes of this deposition, I intend to ask you a number of questions. I hope my questions will be clear. To the extent that they are not, I ask that you indicate to me that you don't understand the question, either to repeat it or rephrase it. I'll be happy to do that.

Are you under -- are you taking any medications that might affect your ability to testify truthfully or affect your ability to concentrate on this deposition?

A. I don't think so. I did have some fairly significant dental work done within the last four days, and my mouth is still somewhat sore.

Q. But you don't think that will affect your ability to respond truthfully to the questions posed to you?

MR. SPEARS: Object to leading.

THE WITNESS: I do not think so.

BY MR. HAMM:

Q. One request that I'll make because of

Page 6

the -- this matter is being transcribed is that any answer that you give me be verbal and not by the shake of a head since the reporter will be unable to record an answer.

A. That's fine.

Q. Would you please state your full name for the record?

A. Danny Raymond Collins.

Q. What is your educational background, starting after high school?

A. Went to the University of Central Florida, had a double major in English and Humanities. Then I did one semester of grad school at the University of Texas in Austin. And then after about a five-year gap, I went back to law school here at the University of South Carolina School of Law.

Q. And you graduated in what year?

A. I graduated from law school in 1983.

Q. Where do you currently work?

A. I work at the South Carolina Department of Consumer Affairs.

Q. And what is your position with the department?

A. My title is Deputy for Regulatory

Page 7

Enforcement.

Q. What does that mean that you're the Deputy for Regulatory Enforcement?

A. I am over the legal division. At one time, the position was also called Counsel to the Administrator, but I think when Mr. Porter was there, he deleted that title.

Q. You indicated that you graduated in 1983 and you passed the bar exam?

A. First time.

Q. Good. When did you join the Department of Consumer Affairs?

A. In February of 1989.

Q. Give me an overview of what your responsibilities are at the Department of Consumer Affairs.

A. All right. The legal division -- well, we've got several different sections in it now because over the years, we've taken on a lot of new responsibilities.

We are responsible for administering and enforcing the Consumer Protection Code and counseling the administrator on how things will be interpreted or how we would interpret them legally.

We are responsible for overseeing the

Page 8

licensing of mortgage loan brokers. We are responsible for their originators. We are responsible for the licensing of palm brokers. We are responsible for the licensing of physical fitness facilities.

We have prepaid legal services for companies and their representatives, not the attorneys. We have the pre-need funeral contract business that we got in 2006. Rent to own is a part of the Consumer Protection Code. And we have advertising compliance program that I have somebody that does that and I oversee that.

Q. So you're ultimately responsible for advertising issues from a legal standpoint at the department?

A. Unless it deals with -- oh, yes, we also deal with consumer credit counseling now. And if it is in one of the more specialized areas, like if it were in physical fitness facilities, the attorney that directly oversees that might be the one to write a letter on advertising there.

If it is in mortgage broker, the attorney that oversees that might do it. If it's credit counseling, the attorney that oversees that does it. But for the most part, I am the one

Page 9

directly over it.

Q. Are you the individual responsible for advertising relating to automobiles?

A. I am.

Q. Okay. In your role as the deputy for legal --

A. Regulatory enforcement.

Q. -- regulatory enforcement do you have the responsibility to establish interpretations of the statutes that you enforce and that the people under you enforce?

MR. SPEARS: Object to the form.

THE WITNESS: It depends in part which statutes they are. Some of the ones we got authority by statute that we can issue administrative interpretations and they will afford protection to the person who receives it. But some of them would have to be informal interpretations because there is no direct statute authority to issue such an interpretation. So it doesn't offer the same protection.

Q. Are you -- I want to make sure. When you offer the same protection, are you referring to the type of opinion that the department might issue?

A. There is a provision in Chapter 6, of

Page 10

Title 37, that says that if the department issues an opinion or interpretation and even if it is later determined to be wrong by a Court, that the person who was relying on that opinion has the right to rely on it without liability for that.

Q. Has the department issued an interpretation regarding what we'll refer to as the closing fee statute?

A. There was one interpretation in 2001. Phil Porter wrote it. It primarily was to just set out a procedure for people to follow when they started filing those closing fees, actually the law changed.

Q. Does the department have any guidelines regarding automobile advertising?

A. We're still using a real old set that was, I think, negotiated between you and Pat Watson at the South Carolina Automobile Dealers Association, and I think the most recent edition is sometime in 1988.

Q. What do you know about the current closing fee lawsuit?

A. I know that it's going on. I talked with a few people and -- but I have not seen the pleadings, and I do not know in detail what's

Page 11

happening.

Q. Have you read -- are you -- who is Herbert Walker.

A. He is the Deputy for Administrative Services I think is the title. I'm not positive of his title. It might be Administrative of Regulatory Services.

Q. Are you aware that he was recently deposed?

A. I am.

Q. Did you -- have you read his deposition?

A. I read it last night. As I say, I've been out for about four or five days and I didn't see it at all until last night.

Q. Tell me what you did to prepare for this deposition. What did you read? Who did you talk to?

A. I talked mostly to Mr. Elam but not even a lot there. I talked a little bit with Brandy Pinkston. I read Mr. Walker's deposition. I've read all the documents that he had put together to produce.

Q. Is Mr. Walker an attorney?

A. No, he's an accountant.

Page 12

Q. Have you been -- have you been contacted by any of the plaintiff's lawyers about the department's interpretation of this statute?

A. We got the subpoena and we got the notice of the deposition, but -- and I talked with one person very briefly and it was about responding to the subpoena, and that was the only plaintiff's attorney I've talked to.

Q. And you're here today as a result of a notice of subpoena for your deposition, correct?

A. That's correct.

(DFT. EXH. 1, Closing Fee Statute, was marked for identification.)

BY MR. HAMM:

Q. Let me hand you a printed version of the closing fee statute.

A. Okay.

Q. It refers to 37-2-307.

A. Yes.

Q. Are you familiar with that statute?

A. I am familiar with it, and I even know when it got put in and sort of why it got put in.

Q. Let's start about with when.

A. It was done, I believe, in the year 2000.

Page 13

Q. Okay.

A. And Senator Leventis from Sumter is the one who introduced it. He introduced it. He was the chair of our agency's budget subcommittee in the senate, and he attached it to our agency's budget.

Q. Do you understand this to be the law in South Carolina with regard to closing fees?

A. Yes. There is one case on it, but this sort of modifies the case.

Q. Right. Prior to the year 2000, was there any statute that specifically dealt with an automobile closing or administrative fee?

A. No, there was no statute at all.

Q. Let me go back and be clear. You are an attorney?

A. Yes, sir.

Q. Mr. Walker is not an attorney?

A. That's correct.

Q. Would your responsibilities -- do you have official responsibilities for interpreting this particular statute within the Department of Consumer Affairs?

A. If it came down to a question about it, but we've not been asked that many questions about this particular thing. The only thing that we have

Page 14

done very frequently with this is the person that does the advertising reviews for me looks at the newspapers and other publications, and if he sees a problem, he -- I've given him form letters, and he writes up the advertising compliance letter and brings it to me for me to review.

Mostly, we've just said that when you advertise closing fees, you have to make it a part of the total purchase price. You cannot separate it out as an additional charge.

Q. Well, let's go through the statute. Walk me through what you -- looking at the statute, walk me through what you believe the statute requires.

A. Well, it says every motor vehicle dealer charging closing fees, motor vehicle sales contract should pay a one-time register fee of $10. That's how they tied it into our budget because it involved a $10 fee.

Q. So in order to charge a closing fee, a dealer must?

A. They have to pay the registration. And that's all it is is a registration.

Q. All right. Keep going.

A. All right. It says, during each state

Page 15

fiscal year to the Department of Consumer Affairs. That means they have to do it annually and at some point during the fiscal year, which for the state runs from July the 1st through June the 30th.

Q. Take me to the first part of the next sentence. We'll just sort of break it up.

A. The closing fee must be included in the advertise price of the motor vehicle.

Q. And what does that mean?

A. When they advertise a price -- and it's easier to see in the newspaper because you've got that, you can take it with you, you can look at over and over. But A lot of times they'll have a price -- and if they want to leave out, they can leave out the taxes, tags, and title because the Government imposes those charges.

But if it is a type of charge that the dealer knows in advance, it needs to be included in the advertised sale price and that goes to back to those advertising guidelines from 1988.

Q. Does -- and we're going to go to the interpretation. Has the department issued any interpretation or directive to automobile dealers that they have to separately list the closing fee in an advertisement?

Page 16

A. No. We said that they have to make it a part of the advertised price. And if they want to advertise it separately, they can as long it's part of the advertise price but that's not required to even advertise it.

Q. All right. Take me to the next.

A. Disclosed on the sales contact, that means they do have to separate it on the sales contract but not the advertise price and show how much the amount is. And it's got to be displayed in a conspicuous location in the motor vehicle dealership, which means they have to have it posted along with some other things.

If they charge maximum rate of over 18 percent, they have to have that posted. There is no special requirement that consumer credit grantor notification has to be posted, but most of them post that right next to the maximum rate. And the only dealership I've been in within the last year had all three of these things posted.

Q. And did you consider that to be in compliance with the law?

A. They had all our forms up like they were supposed to. I believe they were.

Q. Does the law -- read the last part of

Page 17

the sentence again for me.

A. Starting with disclosed on the sales contract?

Q. No. Next.

A. And displayed in a conspicuous location in the motor vehicle dealership.

Q. In a conspicuous location, what do you understand that to mean?

A. It means where the customer can see it.

Q. Does the statute require multiple disclosures at a dealership?

A. Just the disclosure at -- that is displayed plus any individual contracts.

Q. So if -- let me give you. If a dealer -- let's go through the following: A dealer has properly filed with the Department of Consumer Affairs that they intend to charge a closing fee and they paid the $10 fee. They have to do that in order to be authorized to charge a closing fee?

A. It's just a registration, but yes, they are supposed to do that before they can charge a closing fee.

Q. All right. A dealer's paid the registration fee. Has the department issued any construction of the statute that limits the

Page 18

composition or what the fee might include or not include?
MR. SPEARS: Object to the form.
THE WITNESS: We have not. The only thing that we have issued other than advertising compliance letters that I'm aware of before this started, was that administrative interpretation.
BY MR. HAMM:
Q. All right. And you're referring to the 2001 administrative interpretation?
A. Right.
Q. And that -- is the administrative interpretation issued in 2001 on closing fees the official interpretation of the Department of Consumer Affairs?
A. That one was primarily set up as guidance for the industry to comply with the law.
Q. And if the industry complied with that administrative interpretation, what is the effect of doing what the Department of Consumer Affairs has set?
A. Except for the advertising, I've not looked at anything else until this case was brought to our attention.
Q. Let me go back to the question. If an

Page 19

automobile dealer follows the terms of the administrative interpretation, what benefit is that to a dealer?
A. Well, that is the official interpretation under Title 37, and that's where it would go back to that statute that would give them full protection that even if we were wrong in it, that they would not be liable.
Q. So automobile dealers have a legal incentive to do exactly what the Department of Consumer Affairs opinion says?
A. It gives -- they have better protection if they will do that, yes.
Q. So if a dealer has properly filed with the Department of Consumer Affairs that they intend to charge a fee -- again, does the department have any ability to say, well, you can't charge more than X dollars?
A. We have had one time where we rejected a filing and that would have been last fall, I believe in November, but it might have been December.
That person was running a used car dealership and they put down that they were not going to charge over $60,000 on each closing fee.

Page 20

And we said that you're making a mockery of the law, and we're not going to accept this kind of filing.
Q. All right. And until the filing was accepted, could that dealer charge any fee?
A. Until they could accept it, no, they can't charge a fee legally.
Q. And in that particular circumstance, the department did not accept the filing?
A. I think they originally recorded it, but it was sent back and said that it's revoked. Herb Walker did that. I did not.
Q. Do you understand -- again, looking at 37-2-307, does the statute give the department any authority to limit the amount of the fee?
A. This particular statute?
Q. Yes.
A. No.
Q. What other statute do you look at for purposes of --
A. Well, in Chapter 6, Part 1 of Title 37, that's the administrative authority that gives the administrator the power to bring actions, to require the refund of excess charges, things of that nature. 37-5-108 gives us the authority to look at what might be an unconscionable act.

Page 21

Q. Right.
A. And Ms. Pinkston, when she saw the 60,000 was somewhat outraged, and if she got outraged, I believe that reached unconscionability in her mind.
Q. Beyond the question of unconscionability, does the department have any authority to say 399 is acceptable but 425 is not acceptable?
MR. SPEARS: Object to the form.
THE WITNESS: We've never done anything like that. I mean, after that guy did the $60,000, we said if it's $1,000 or more, we want to look at it and look at the circumstances, but if it's -- I mean, it makes a difference what kind of car they're selling or if it's a new car dealership or a used car dealership.
That one guy was running not even a high-end used cars that wanted to do the 60,000. So that makes a difference on different circumstances.
Q. Does the statute -- has the department interpreted the statute to require multiple displays of the form at a dealership?
A. As far as I know, it's only one location and one place that they have to do it, but

Page 22

does need to be conspicuous so the customers can see it.
Q. Does the department have the authority to go beyond what the statute says?
A. According to the Supreme Court, we do not.
Q. All right.
A. But I will add that reading this, now as a part of an entire code and so the other things have to be read in conjunction with it.
Q. And we talked about the code, we're talking about Title 37, the Consumer Protection Code?
A. That's correct.
Q. I want to make sure that I'm -- before we leave the statute, again, I understand you to be the attorney -- let me do it this way: The department hasn't changed its legal interpretation of the statute contained in the 2001 administrative interpretation, has it?
A. No, it has not.
Q. All right. I want to now go to the administrative interpretation issued by the department.
MR. HAMM: Mark that as Exhibit No. 2.

Page 23

(DFT. EXH. 2, Administrative Interpretation Issued by the Department, was marked for identification.)
BY MR. HAMM:
Q. Danny, are you familiar with this administrative interpretation?
A. It's been a while since I've read it all the way through, but yes, I was very familiar with it at one point in time, and I have used it since then in some of the advertising letters just for some of the language.
Q. Okay. So you have -- are you exercising the department's regulatory authority when you contact dealers about their advertising practices?
A. Yes.
Q. Do you believe the department has the authority to do that?
A. There are two different statutes that -- well, actually, there are four separate statutes that specifically give the department authority.
37-2-301 gives us the authority to enforce Part 1 of the Federal Consumer Protection Law which includes truth in lending and truth in

Page 24

leasing.
37-2-304 gives us the authority and credit sales context to look at what might be misleading and deceptive advertising and then they're similar provisions in Chapter 3 for loans.
Q. The Consumer Protection Code applies to what kind of transaction?
A. It depends on what part. There are several parts. There have been quite a few things added over the years.
The main thing when it was a part of the Uniform Consumer Credit Code, when it was first adopted back in the mid 1970s, had Article 1 with general provisions -- or Chapter 1 with general provisions; Chapter 2 dealing with credit sales. Slightly after that there was an added Chapter 3 dealing with consumer loans; Chapter 4 deals with credit insurance; Chapter 5 is remedies; Chapter 6, Part 1, is the administrative authority; Part 2, deals with notification; and then Parts 3 and 4 deal with -- when this passed, it was before the Administrative Procedures Act was enacted in South Carolina. And Part 4 actually developed some administrative procedures similar to what eventually became the law.

Page 25

Parts 5 and 6 deal with the commission and deals with the Consumer Advocacy Program. But then we have added Chapter 7 with consumer credit counseling; Chapter 8, still reserve; Chapter 9 was a repealer or just getting it set up to start with; Chapter 10 deals with miscellaneous items. And these do not necessarily include a straight consumer transaction as defined in Chapters 2 and 3.
And we've added a Chapter 11, a Chapter 13, a Chapter 15, a Chapter 20, and Chapter 23 and now a Chapter 22 and a Chapter 27.
Q. All right.
MR. SPEARS: We need a little break, if you don't mind.
MR. HAMM: Absolutely.
(Off-the-record conference.)
BY MR. HAMM:
Q. We're now back on the record.
You have in front of you the 2001 administrative interpretation, Mr. Collins?
A. I do.
Q. Does it represent the department's interpretation of 37-2-307?
A. It does.
Q. And if an automobile dealer relies on

Page 26

and acts in accordance with that interpretation, what is the benefit to a dealer?
A. Under the department's interpretation and the department's statute in part -- or in Chapter 6 of Title 37, it would mean that they were in compliance with the law.
Q. All right. Let's walk through -- I'd like to take the time to go through this interpretation.
The starred area on the top, is that a summary of the opinion?
A. Yes, it is.
Q. And walk us through what the summary says, please.
A. It says that the assessment of the closing or documentation fee, occasionally denominated as an administrative, processing or procurement fee in a consumer credit sale of a motor vehicle is dependent on four factors.
Q. Can I get you to stop for just a second. During the break, I was surprised to hear you talk faster than I do. So I'm going to try to talk slowly, and if you talk a little bit slower, it may be beneficial to the court reporter and some of the elderly people on the other end of the table.

Page 27

A. Okay.
Q. Thank you, Danny.
A. The assessment of a closing or documentation fee, also occasionally denominated as an administrative, processing, or procurement fee in a consumer credit sale of a motor vehicle is dependent on four factors.
Q. All right.
A. And they are: Number one, the dealer must pay the department a registration fee each state fiscal year in the amount of $10 prior to the assessment of a closing fee.
Q. All right. And that's consistent with our --
A. That's consistent with the --
Q. -- with the statute that we discussed just a moment ago.
A. Yes.
Q. All right.
A. Two, the existence of a closing fee must be disclosed on the sales contract.
Q. What do you understand that to mean?
A. Means they have to disclose it separately to the consumer so they're well aware that they are paying a closing fee.

Page 28

Q. All right.
A. Number three, the closing fee must be disclosed in a statement displayed in a conspicuous location in the motor vehicle dealership.
Q. All right.
A. Number four, if the closing fee is charged and the vehicle is advertised, the closing fee must be included in the advertised price.
Q. All right. Stop there for a moment.
If the closing fee is charged and the vehicle is advertised, what does that -- what do you understand that to mean?
A. If they advertise the price, the -- one of the things in the advertising standards and guidelines says that the advertised price shall be the full delivered price except for government fees.
Q. All right.
A. And that's what we understand it to mean. That if they advertise the car, then they have to include that in the price.
Q. We'll get to the advertising guidelines in a moment but in Number four, the closing fee must be included in the advertised price. That's consistent with the department's advertising guidelines; is it not?

Page 29

A. It's consistent with the guidelines and that particular guideline, as I understand it, came from the South Carolina Automobile Dealers Association where they wanted the full price.
I wasn't a part of -- when those were adapted back in '87 and '88, but I have heard Pat Watson, the executive director, put that -- I've seen him put it up on a screen when he was talking to dealers about advertising and said that was one of the first things that they agreed to.
Q. Right. Read the next sentence.
A. A dealership may use the attached form to make its filing with the department.
Q. Was that -- help me understand when it says may use.
A. Well, it gives them a way of doing it. And they know that they would be deemed in compliance.
Q. All right.
A. If they choose to do something different from that, they do not have that same protection, but it is not a mandatory form.
Q. All right.
A. Closing fee may only be assessed once these factors are met, and the dealership has in its

Page 30

possession a date-stamped copy of its disclosure stamped by the department.
Q. All right. Let me -- let's stop right there. Consider the following example: A dealer has a copy of the date-stamped copy of the disclosure. They have to have that first before they can do anything else?
A. That's what this says. That they are supposed to have that done before they can start charging the closing fee.
Q. All right. And they would have paid their $10?
A. Right.
Q. And then under this summary -- in order to lawfully charge a closing fee, a dealer would have to do what?
A. They would have to have it already registered with the department, have to receive back their stamped date copy -- date-stamped copy.
Q. All right. What else?
A. The next sentence?
Q. No. I just want to go through the -- I want to make sure I'm understanding the department's official interpretation of the statute.
So they have to file with the

Page 31

department and then what else do they have to do in order to lawfully charge Danny Collins a closing fee?
A. Well, they have to pay the $10 and they have to receive back their date-stamped copy of the disclosure that's stamped by the department.
Q. So if a consumer is buying a vehicle on a date subsequent to the date on the stamped copy, what else must happen for the dealer to lawfully be able to charge a closing fee?
A. Well, they would have to have the closing fee conspicuously displayed at the dealership. They would also have to have it separately disclosed in the sales contract.
Q. All right. If they had paid the fee -- charged the fee -- paid the $10 fee to the department, had a date-stamp copy of the form back from the department, they sell a vehicle to a consumer after that date on the date-stamped copy, they have posted that form or some form in a conspicuous location telling the consumers that the dealer charges a closing fee, and they have it on their contract or buyer's order, is that -- would that constitute compliance with the statute?
MR. SPEARS: Object to the form.

Page 32

THE WITNESS: Under this interpretation, that would be deemed to be compliant.
BY MR. HAMM:
Q. Let's continue. Did a statute exist authorizing a closing fee prior to the year 2000?
A. No, it did not.
Q. Okay. Take me -- go to the second page. It is an Appendix B. I think it's B268. I think it's coming out of the Consumer Protection Code Volume. So it's Page -- it's essentially Page 2 of Defendant's Exhibit No. 2 that we're discussing. Okay?
A. I'm not sure what you want.
Q. Well, I want to start on the second -- we've talked about the first page. I'm just now going to the second page. I want to make sure you and I are on the same document.
A. All right.
Q. It starts at the top, it continues the sentence, the Consumer Protection Code Provisions. What is the Consumer Protection Code Provision dealing with excess charges?
A. There are two separate ones. One, in Chapter 5 dealing with consumer remedies, and then

Page 33

another one in Chapter 6 where it allows the administrator to bring an action on behalf of consumers to get excess charges back for consumers.
Q. All right. Since the year 2000, has the Department of Consumer Affairs filed any actions against any dealers under either one of those sections?
A. No, we have not.
Q. Does this interpretation address the authority of the department to limit the amount of the fee that might be filed with the department?
MR. SPEARS: Object to the form.
THE WITNESS: No, it doesn't have anything to say about the amount, but it does say later on about fraud or misrepresentation.
BY MR. HAMM:
Q. Absent fraud or misrepresentation, if a dealer filed a $399 closing fee with the department, would the department deem that to be in compliance with the law?
A. We would accept that, we would stamp it, and we would send it back to them.
Q. I think I understood from an earlier response that you have perhaps a threshold if it goes above $1,000?

Page 34

A. We just look at it to make a determination. But it's also going to depend on the facts of the individual dealership and the type of cars they're selling, things of that nature.

But that just -- a starting point to be looked at. As I said before, the only one we ever had a real problem with was the used car dealer that said he would not charge over $60,000 per car for a closing fee.

Q. The remainder of that page is addresses, the need to file once a year?

A. The page? The second page?

Q. That you and I have just been discussing, yes.

A. All right. There are a total of three full paragraphs on that page. The first one deals with how a motor vehicle dealer is defined and we went to the Motor Vehicle Code to get that definition. The second part deals with the four different things that have to be met in order to charge the closing fee. And then the third one deals with the effective dates of the filing and when they will be handled.

Q. All right. Now, let's go to the third page, which is B268. What does this interpretation

Page 35

say with regard to the document that must be filed with the department?

A. At the beginning of the very bottom of B267, it addresses the fact that it is a registration fee, and since it is a registration fee, the implication is that they should disclose the amount of the fee to the department.

Q. Would you accept a filing with the department that did not disclose a dollar amount?

A. They haven't complied with what we need, no.

Q. So you would not accept it?

A. No, they would not because we have no idea what to charge you and that's one of the things that we have had -- I assume we've had people ask if they've done it. I know we have individual complaints as opposed to coming to the legal division.

Q. So they don't have to use the form as part of the official interpretation of the statute?

A. No. The form is not required. It is just a guidance. If they do follow it, they will be deemed compliant.

Q. And what do you consider the essential elements of any form that would have to be filed?

Page 36

A. I would go back and look at the language at the statute itself and see what it said first, and then I would look at this interpretation next. Only thing that we got is -- and Phil Porter wrote it. But it's a notice about closing fees and he wrote down that this form will be deemed compliant if the dealership charges closing fees as a means of reimbursing it certain overhead costs such as: Document retrieval, document preparation. It is a charge that is permitted but not required by law.

Q. All right.

MR. SPEARS: Objection. He hasn't finished his answer.

MR. HAMM: Excuse me?

MR. SPEARS: Have you finished your answer?

THE WITNESS: I was just reading the exact language that's on the last part of this closing fee statement that Phil Porter put down as something that could be used and it would be deemed compliant.

BY MR. HAMM:

Q. You've identified the name Phil Porter. Who is Phil Porter?

Page 37

A. Phil Porter was former administrator. Before that he was counsel to administrator. Phil Porter, when he became administrator, a few months later, that's when he promoted me to Deputy for Regulatory Enforcement.

Q. Okay. I think I asked this before, but has the department changed any material interpretation of the statute since that 2001 interpretation?

A. No, we have not.

Q. All right. The interpretation expressly says that forms considered to be deceptive or to misstate the law will be rejected by the department?

A. It does say that.

Q. And do you exercise that authority?

A. It would normally go to the accounting section of the administration division first. I would only be asked to look at it if they had a question about it. If they did not have a question about it, I would probably never see it.

Q. If a form simply stated that XY dealership intended to choose a closing fee of not more than $300 and that they were going to post a notice that said they -- there was a fee that was

Page 38

authorized but not required by law, would that be compliant with the interpretation?
MR. SPEARS: Object to the form.
THE WITNESS: All right. Now, what all would be included in what they are going to register and post?
BY MR. HAMM:
Q. Yes. That they would identify the dealer, the location, the amount, and that the fee was authorized but not required by law, would that be in any way deceptive or misstate the law?
A. No, I don't think it would.
Q. Okay. So the department would not and does not accept forms it deems to be deceptive?
A. If we deem it to be deceptive, we would reject it, contact the dealer, and give them a chance to make adjustments.
Q. And that's apparently what you did in the example you mentioned earlier regarding the $60,000 fee?
A. I don't know that they ever adjusted it, but they were contacted.
Q. Go back to the last page we've just been discussing.
MR. SPEARS: Steve, are you referring

Page 39

to the closing fee notice or you're talking --
MR. HAMM: Yeah, the interpretation, Mike.
MR. SPEARS: Interpretation?
MR. HAMM: The administrative interpretation.
MR. SPEARS: Exhibit 2?
BY MR. HAMM:
Q. I want to go back to this. What must a dealer disclose at a dealership in order to comply with the department's interpretation of the statute?
A. Well, they would have to disclose that they are charging a closing fee. They would have to identify the dealer so that the customer knows who is charging the fee. The dealer would have to register that closing fee with the department and get the date-stamped notice back so that they could legally start charging it, and then they post it where it's conspicuous so that people can see what it is and what's being charged.
Q. Has the department ever advised a dealer that posting that notice in the dealer showroom in a conspicuous location is not acceptable under the statute?
A. I'm not aware of any.

Page 40

Q. If you're not aware, who would be aware?
A. It would be somebody in Herb Walker's section. It would be probably Brenda Cokier.
Q. Again, you're a lawyer employed at the Department of Consumer Affairs, and I understood you to testify that you have the legal responsibility to interpret and enforce this particular area of the law; is that correct?
MR. SPEARS: Object to the form.
THE WITNESS: The legal division does, and I'm head of the legal division, so primarily would be me. Even if I had someone else do it, I would have to go over it to approve it.
BY MR. HAMM:
Q. Have you ever -- has the department ever advised a dealer that posting a single posting in a dealership showroom is not compliant with the law?
MR. SPEARS: Object to the form.
THE WITNESS: I have never written a letter like that.
BY MR. HAMM:
Q. Do you believe it's a violation of the law to post in a conspicuous place, in following

Page 41

this interpretation, that that is a violation of the law?
A. No, I don't. Because the thing says in Part 3 there, back on Page B267, Page 2 of the exhibit, and the second full paragraph. It says for Number three: Display in a conspicuous place in the dealership a statement that indicates the closing fee may be charged. It doesn't say in multiple places. It just say a conspicuous place.
Q. Would you consider that to be standard statutory construction?
MR. SPEARS: Object to the form.
THE WITNESS: I would guess it is but I'm not 100 percent certain since I have not looked that particular matter up.
Q. All right.
MR. SPEARS: Object to speculation.
BY MR. HAMM:
Q. Have you -- has the department ever told a South Carolina automobile dealer that in order to comply with the statute the department enforces, it must disclose in more than one conspicuous location?
A. Not that I'm aware of. And if it came to a legal question, it should have come to me.

Page 42

Q. And your answer would have been?
A. Yes, they can -- they don't have to do it one time is the way we would read it.
Q. But do they have to do it more than one time in order to comply with the department's interpretation of the statute?
A. No, not to comply with this interpretation, they do not.
Q. So has the department ever addressed that the statute requires separate posting on individual vehicles?
A. No, we have never addressed that.
Q. Does the law require that?
A. The law just says it has to be posted in a conspicuous location in the dealership. That's all it says.
Q. And that's consistent with the department's interpretation of the statute?
A. It is.
Q. Have you ever spoken to automobile dealers about the department's view of the statute?
A. I did before the statute passed. I did quite a few times. In fact, going back to about 1989 or 1990 I had pretty much got all the financial institutions where they refused to buy the paper if

Page 43

they had a closing fee on it. Then in 1996, the Supreme Court came out with their opinion in the Fanning case, and they told me more or less that I was wrong. And so after that, all I would do is just point out footnote to them that it said there may be other areas of the law it may violate but it does not violate the Consumer Protection Code.
Q. Let me hand you what will be marked as Defendant's Exhibit No. 3.
(DFT. EXH. 3, Reference of the Statute from the Credit Sales Chapter, was marked for identification.)
BY MR. HAMM:
Q. I believe you referenced this statute in an earlier response to a question I asked you about advertising; is this one of those statutes that you referenced?
A. It is, in the credit sales chapter.
Q. All right. And has the department -- well, let's just first, for the record, read what the statute says.
A. All right. 37-2-304, Advertising, Subsection One: A seller or lessor may not advertise, print, display, publish, distribute, broadcast, or cause to be advertised, printed,

Page 44

displayed, published, distributed, or broadcast in any manner any statement or representation with regard to the rates, terms, or conditions of credit with respect to a consumer credit sale that is false, misleading, or deceptive.
Subsection Two: Advertising that complies with the Federal Truth in Lending Act does not violate this section.
In Subsection Three: This section does not apply to the owner or personnel, as such, of any medium in which an advertisement appears or through which it is disseminated.
Q. Now, what do you understand that statute does with regard to the authority of the department?
A. If it is a credit sale transaction, this statute let's us look at what would be misleading and deceptive. But if they comply with the Federal Truth and Lending Act, then it's going to be deemed in compliant with state law. And then it also tells me that the people who are, like the media that's doing the advertising, they're not going to be held responsible.
Q. Has the department ever informally, through letter or by action, informed a South

Page 45

Carolina automobile dealer that its advertising regarding to rates, terms, or conditions of credit with respect to a credit sale is false and misleading? Have you ever asserted that to a dealer?
A. In many cases.
Q. Okay. And what was the basis of that?
A. Well, there are a lot of different basis. One of them there's Federal Trade Commission rule of using the word free.
Q. Right.
A. And when they start using the word "free," we tell them what the Federal Trade Commission rule says and caution them that that is misleading and deceptive because it's an unfair trade practice to violate that rule.
We have also had them make claims that are not substantiated. We referred to the Federal Trade Commission rule on substantiation of claims and let them know what that rule says also.
Q. Okay.
A. We've had dealers that would advertise, such that: If I can't beat this price, I'll give you $10,000 but they put so many conditions on it that it's an illusory promise. They're saying if I

Page 46

can't beat the price and I can't buy it somewhere else and I can't make one or two or three of these other things happen, then the whole offer is void anyway.

Q. All right.

A. And there are other examples but those are the ones that come to mind.

Q. All right. We have been discussing the 37-2-307, the notice of closing fees on vehicle sales contractor registration fees. Has the department -- what has the department done with regard to that statute today?

A. I have written a number of letters from that for advertising compliance telling them what our law requires and that leaving out different kinds of fees.

At one point in time, there were all kinds of fees added to -- at the bottom, they were not being added but to the price that was being advertised, destination charges where the dealer knows well ahead of time what they are.

Charges -- the closing fee charge. Our statute requires that it be disclosed as a part of the price. I tell them that the advertised price is something that allows the consumer to be able to

Page 47

understand what you're buying and at what kind of price they're going to be paying.

And then using the add-ons separately without them being a part of the price when the dealer knows what they're going to be can be deceptive and mislead the consumer as to how much they're actually going to have to pay.

Q. So again, if I handed you an advertisement in which the advertised price was $20,000 plus tax, tags and title, has the department issued an opinion that a dealer has a legal responsibility to separately reference a closing fee in that advertisement?

A. Not in the advertising. They do have to in the sales contract but not the advertising.

Q. All right.

A. This is totally confusing for the people, like in Gaffney and Rock Hill and Charlotte because North Carolina law actually works the exact opposite. It must be separated out of the advertised price and disclosed separately where South Carolina requires it be included in the advertised price and not separated out separately.

Q. So the department has interpreted the words included in the advertised price that you

Page 48

don't separately denominate the closing fee, but it needs to be in it, and you can't add it with the small print at the bottom?

A. No, you cannot add it as an add-on with the small print at the bottom. Now, there are a lot of dealers that when they advertise it, they'll have the advertise price and they'll put down at the bottom, includes a closing fee of whatever amount it might be.

Q. All right. But is that required by 37-2-307?

A. No, the statute does not require it.

Q. And does the administrative interpretation issued by the department require it?

A. No, the interpretation does not require it.

Q. And so even if the interpretation is wrong, if a dealer follows the interpretation issued by the Department of Consumer Affairs, do they have any protection under the law for doing what Consumer Affairs said to do?

A. There is that statute in Chapter 6 that does say that even if it's declared to be an error by a court later, that they are still not liable because they followed the instructions of the

Page 49

department.

Q. And I'm going to get to your advertising guidelines in a moment, but if they're following the advertising guidelines issued by the department and they're doing what the administrative interpretation says they're supposed to do, does that conduct constitute compliance with the department's interpretation of the statute?

A. According to the interpretation, that would be deemed compliant and there is one thing about the advertising guidelines. Now, there has been a minor modification in the way they apply because of the Fanning versus Fred case with Supreme Court apparently made some adjustments to some of that. One particular provision doesn't apply very well anymore.

Q. All right. Let's go to the advertising guidelines, Danny.

(DFT. EXH. 4, Advertising Guidelines, was marked for identification.)

BY MR. HAMM:

Q. Danny, I've handed you the advertising guidelines marked as Defendant's Exhibit No. 4. On the lower left-hand bottom portion of that page it says, I think it must stand for revised 5132008-2.

Do you recognize this document?
A. I recognize it. I drafted it. But we have not actually adopted this yet.
Q. All right.
A. Because I was seeking comments from the South Carolina Automobile Dealer Association. I'm seeking comments from the Independent Automobile Association of the Carolinas.
Q. All right. Well, let's just go through this. You'll be able to tell us what the difference is between this revised or proposed revised. So that means that the existing advertising guidelines still apply until the department --
A. Officially adopts --
Q. -- officially -- and it has not done that yet?
A. We have not done that, and we have not posted it, we have not sent it out to people, except for the two associations.
Q. Well, walk us through the advertising guidelines -- standards and guidelines, please, Mr. Collins.
A. All right. You mean the ones that we have here?
Q. Yes, sir.

A. Oh --
Q. Let me ask the first question: Is this substantially the same as the existing guidelines?
A. This is shorter and it has removed one or two provisions that the Fanning Case would have pretty much done away with anyway. It's a lot similar, but it's not exactly the same.
Q. But for purposes of your review of the activities of dealers charging closing fees for which they have filed and paid the fee, posted, disclose, and put on their buyer's order, these are the general standards you'd look at regardless of whether it's the original or the revised since -- if you take out the Fanning because remind me -- Fanning was a case issued in 1996 and that would have been before the statute was created, right?
A. That's correct.
Q. So for purposes of current law, Fanning doesn't have much guidance because they were referring to a circumstance for which the general assembly is not active, right?
MR. SPEARS: Object to the form.
THE WITNESS: The general assembly would have overridden it and what he put down in 37-2-307.

BY MR. HAMM:
Q. Right.
A. But other parts of Fanning would seem to me to still be in place.
Q. Walk us through this document.
A. Well, I shortened it as much as I could trying to keep it all on one page. One association wanted things shorter, one association wanted things longer so this is why it was never finalized. And the first one is: All required disclosers must be clear and conspicuous.
Q. Right. So let me stop right there. Required disclosures. Does the closing fee statute address required disclosures?
A. For advertising, no, it's got to be a part of the advertised price.
Q. What about the posting in the dealership? Is that a required disclosure?
A. That one is required and the disclosure on the sales contract is required.
Q. All right. I'd like to walk our way through this, Mr. Collins.
A. Number two: Credit advertisements must comply with the Truth in Lending Act and Regulation Z.

Q. For the purposes of the record, advise what the Truth in Lending Act and Regulation Z is.
A. It's a disclosure law for credit terms.
Q. All right.
A. And Reg. Z implements the Truth in Lending Act. The Act itself is not very many pages long but the Reg. Z -- counting the appendix is over 200 pages.
Q. Has the department ever told -- issued an opinion or written letters advising that complying with the department's 2001 interpretation in any way -- dealing with closing fees -- in any way, violates Truth in Lending or Regulation Z?
A. Truth in Lending Regulation Z had nothing to do with closing fees because that -- it is a federal law that applies throughout the country and the closing fees are handled state by state.
Q. All right. Take me to item Number three.
A. Lease advertisements must comply with the Truth in Leasing Act and Regulation M.
Q. And briefly tell me what Truth in Leasing and Regulation M are.
A. It's not quite as comprehensive as Truth and Lending and Regulation Z but Truth in

Page 54

Leasing Act and Regulation M deal with the required disclosures in consumer leases. There are some substantive provisions that actually have more severe penalties than violating Truth in Lending in Reg. Z, but there are some disclosers that are not required at all.

Q. All right.

A. And by the way, both of these has an advertising statute.

Q. All right. Keep going, please.

A. All right. And then I've got a sub under Number three: Advertisements for lease, vehicles must clearly display the word lease in the text of the advertisement.

Q. All right.

A. And then Number four: A dealer may not advertise in any manner that is false, deceptive, or misleading or that misrepresents any vehicle offered for sale.

Q. All right. Let's stop right there. Has the department ever issued an opinion or taken an enforcement action against a dealer that filed and paid the fee to the department, has a date-stamped copy of that document that was filed, that advertised a vehicle that did not separately

Page 55

disclose the closing fee and post it in a single conspicuous location, that that conduct was false, deceptive, misleading, or represents any vehicle?

MR. SPEARS: Object to the form.

THE WITNESS: We have never brought a case like that.

BY MR. HAMM:

Q. As the chief enforcement lawyer for the Department of Consumer Affairs, if a dealer complies with the terms of the 2001 Administrative Interpretation, would the department consider complying with it's interpretation to constitute false, deceptive, misleading, or misrepresentation of any vehicle?

MR. SPEARS: Object to the form.

THE WITNESS: No, we would not. We would deem it to be in compliance with the law.

BY MR. HAMM:

Q. All right. Let's go through these examples.

A. These are some of the more common examples that we were seeing and that's why I did it. But there were some others that probably needed to be on here, at least from one of the association's point of view.

Page 56

Q. All right.

A. The first one I did is: Discounts and savings. Any discounts or savings indicated in an advertisement must be those that are deducted from the manufacturer's suggested retail price, as stated on the Monroney sticker.

Q. What is a Monroney sticker?

A. It's a federal law that required that manufacturers put on their suggested retail price. Then they added some things to it to require disclosure of gas mileage and other EPA requirements.

Q. And that's a federal requirement?

A. That's federal law.

Q. Does the administrative interpretation in any way require a dealer to in any way alter the Monroney sticker?

A. Our interpretation does not.

Q. Okay. Does a Monroney sticker only apply to a new vehicle?

A. It applies to new vehicles, and unless they changed the law, it does not apply to pickup trucks.

Q. All right. Keep going.

A. All right, rebates: If a rebate is

Page 57

indicated as being part of an advertised price, the rebate must be one that is available to the majority of the general buying public. If the rebate is not available to the major of the buying public, the advertisement must clearly explain the eligibility and any limitations of the rebate in the advertisement.

Q. All right. The next one.

A. Price: When the price of a vehicle is quoted, the advertisement shall clearly identify the vehicle as to make, year, and model.

Q. So when it refers to price, what implications does the administrative interpretation have about the price?

A. It's just that the advertised price -- I mean, the advertised price has got to be the full delivery price and a closing fee has to be a part of the advertised price.

Q. All right.

A. And that's what the next one is: The advertised price shall be the full delivered cash price, which the customer shall pay except for taxes and tag fees. The advertised price must include the closing fee, if such a fee is charged.

Q. Let's go back to Exhibit No. 1 that we

Page 58

were discussing, Mr. Collins. You recall our discussion of the language in 37-2-307 dealing about in the question of advertise price?
A. I'm familiar with that language, yes.
Q. All right. Is using the department's advertising guidelines, and as I understand it the -- whether it's the revised or the original and the original still applied, that language is exactly the same, is it?
A. No, it's not.
Q. Okay.
A. The difference would be that that last sentence of that paragraph we just read, the advertise price must include the closing fee if such a fee is charged. When the original guidelines were prepared, that sentence would not have been included because there was not statute --
Q. Right.
A. -- that required it that way then.
Q. Okay. So this advertising standards and guidelines, where in the -- under Number four, one, two, three, four, the indented four, fourth reference to price: The advertise price must include the closing fee if such a fee is charged. Is that consistent with the terms of 37-2-307?

Page 59

A. It is consistent with that and it is consistent with the interpretation from 2001.
Q. And again, in order to comply with the statute, the department's interpretation is that using the sale price of $20,000. If there's $20,000 and there's an asterisk, it says plus tax and tags, and the closing fee was included in the advertise price --
A. We would not send a compliance letter.
Q. All right. You would consider that to be in compliance with the law?
A. I would.
Q. And that would be consistent even with these advertising guidelines?
A. It would be consistent with those.
Q. And again, has the department ever advised motor vehicle dealers that they had to separately list a closing fee in order to be compliant with the department's interpretation of the closing statute?
A. You mean in advertising?
Q. Yes.
A. No, we have not. In fact, I have told them that they can if they're going to list it separately, they're going to have to stay it's

Page 60

included in the price. And if they do not want to list it separately, they don't have to as long as that is the actual delivered cash price.
Q. All right. What's the next indentation?
A. The next is using the term "free." Dealer shall not use the term "free" when a purchase or other consideration is required to obtain the free item.
Q. All right. Keep going.
A. Misleading claims: Advertisements must include the name of the dealership and may not imply that the dealer has some special arrangement with the manufacturer that is not available to other similarly situated dealerships.
Q. All right. Final one.
A. Misleading claims: Advertising shall not include statements that guarantee values for trade-in vehicles unless the price of the vehicle is for sale is nonnegotiable and advertised accordingly.
Q. All right. Let's walk through. Has the department ever received similar complaints about closing fees?
A. I'm not made aware of any, but the

Page 61

complaints don't come to me. They go to the complaint division, and unless the director of the complaint division has a question that she wants me to help her with, I wouldn't know about it because she's also an attorney.
Q. You're the chief enforcement lawyer?
A. Well, I'm over that. We got a person entitled chief enforcement attorney that works for me.
Q. All right. And who is that?
A. Helen Fennell.
Q. And for purposes of the closing fee statute, if a consumer had a question or complaint about a closing fee, walk me through how the department would evaluate it.
A. If they had a question or complaint about the closing fee, it would go to the complaint division.
Q. All right.
A. They enter it into their computer system. Then they assign it to some complaint analyst and the analyst sends out a letter to the business to give them a chance to respond.
After that, it would depend on how the response went. And I don't know exactly how they

Page 62

have the organization set up in the complaint division. I know who the head of it and I know who the assistant head is, but as far as how otherwise they answer to each other, I don't really know that.

But they're not likely to get me involved unless the director of complaint services has a legal question that she would want me to help her with.

Q. Have you ever purchased a vehicle?

A. I've purchased quite a few.

Q. Have you ever paid a closing fee?

A. One time, but they marked down the price a fair amount.

Q. So you negotiated the impact of the closing fee?

A. Somewhat, yes.

Q. So when you would look at an issue involving a closing fee transaction, would your analysis involve all aspects of the transaction?

A. Mine would, yes, but in this particular case, I got it marked down enough that it didn't bother me.

Q. All right. But you knew about it?

A. I was well aware of it, and while I was at the dealership, I walked around and saw that they

Page 63

had all of the things posted. They had the notification posted. They had the maximum rate posted. They had the dealer closing cost posted. And they were all within the showroom area where it was not hard to find.

Q. So you, as the lawyer dealing with the closing fee statute in that circumstance, concluded they had complied with the law?

A. I was satisfied they had.

Q. And what year did you purchase that vehicle?

A. September of last year.

Q. So if someone were asserted that Danny Collins was unlawfully charged a closing fee because there was not a separate disclosure in an advertisement delineating a closing fee --

A. There was no advertising on this particular vehicle.

Q. All right. Talk to me about that.

A. I think it had the Monroney sticker on it and they did pinstriping. I don't know if they did anything else to it or not. But I actually picked out my vehicle over the phone.

Q. Okay.

A. But it's the same dealership, this is

Page 64

third car I've bought from them. And when I went there, I knew exactly what I was expecting to pay, and that's what I ended up paying.

Q. So under your view of the law, should you get a recovery of whatever's listed as the closing fee based on your own personal transaction?

A. I don't think I've been injured.

Q. And you've testified that you saw the notice in the dealership?

A. Oh, yes, it's there.

Q. The notice, it was displayed on, say, the buyer's order, I suppose?

A. It was on the sales contract. I don't remember. It might have been the buyer's order.

Q. So in your particular situation, you weren't responding to an advertisement?

A. No, I was not. Actually, it was in part, but it was one that was a direct mail to me at home, and they just had a total price. And when I started checking it, it was worth looking at.

Q. All right.

A. However, that same dealership, the first time I bought a car they did have a form that they wanted me to sign, and I told them that it did violate the Consumer Protection Code, and they had

Page 65

to make certain changes. And before I left, the finance manager brought it out and said, here, does this look better?

Q. Good. So again, if you have bought a vehicle recently and you just testified in your individual circumstance, you were aware of the fee, it was posted, it was disclosed in the buyer's order, the sales contract, and in your official capacity the Department of Consumer Affairs, that transaction complied with the law?

MR. SPEARS: Object to the form.

BY MR. HAMM:

Q. With regard to the closing fee.

MR. SPEARS: Object to the form.

THE WITNESS: I had no problem with it. I knew what it was going to be, and I knew what my terms were.

BY MR. HAMM:

Q. So from an enforcement standpoint, would the department do an individual examination of transactions or what? How would they know whether or not Danny Collins versus Elliott Elam transaction? Would that require a detailed review of each transaction?

A. We would not do that kind of thing

Page 66

unless we had an individual complaint because we don't have direct authority to go to a dealership. I mean, we look at the filings that we would require, but as far as looking at the contract, that's done by the Department of Motor Vehicles.

Q. All right. If a consumer files a complaint and you determine that the dealership had filed -- paid the fee, charged the fee after the date that the filing was made, disclosed the fee in a conspicuous location in a dealership, and disclosed it on the buyer's order contract -- I believe a buyer's order is a contact but be that as it may --

A. It's part of the contract.

Q. All right. Okay. Does the department have any legal basis to tell the consumer, well, that dealership has violated the law?

MR. SPEARS: Object to the form.

THE WITNESS: We would not do that. What we would do at that point, since the dealer had given a reasonable explanation for what happened, we'd post a complaint satisfied whether the consumer was fully satisfied or not.

BY MR. HAMM:

Q. So you would -- the department would --

Page 67

MR. SPEARS: Object. He's not finished.

MR. HAMM: I'm sorry, I didn't --

THE WITNESS: I was just going to say, sometimes consumers are not really happy with the way we close them but if they had given an explanation that satisfies the law or that they have tried in a reasonable way to resolve a complaint, then we close it satisfied.

And I can give you an example of that. Some years ago, we had a lady that had her foot broken when she took her granddaughter to the skating rink. And they charged -- anybody that went in they charged them $2.

Well, after the woman paid her $2, she filed a complaint and wanted her $2 back. And we ended up trying to say you knew in advance what was going to happen. You had to pay that to get in. And they have given a satisfactory explanation.

BY MR. HAMM:

Q. What I'm trying to understand, though, does the department, as part of responding to a complaint, try to look into the elements of the transaction before they make a judgment as to whether there is a violation or not?

Page 68

A. The first thing that we would do would be to assign it to -- you know, record in the system, assign it to an analyst, let the analyst send out the complaint to the business, and then when the business responded, I don't know that they would look at in too much detail before they send it to the business. They look at it briefly so they get a feel for what it's about, but they want to have both sides before they try to make a decision.

Q. So the department would attempt to get both the consumer and the business's version of the transaction before trying to make a judgment?

MR. SPEARS: Object to the form.

THE WITNESS: That is correct. And in most cases, our authority is only mediation. We do not have direct enforcement authority except in certain areas. But we get complaints about almost anything because there's a special statute that says that if nobody else takes the complaint, our office can.

BY MR. HAMM:

Q. But again, focusing on the closing statute. If the department determined that it was properly filed, it was posted in the business -- let's just say it's not even advertised one way or

Page 69

the other. And it was disclosed on the buyer's order, has the dealer complied with the department's interpretation?

MR. SPEARS: Object to the form.

THE WITNESS: If they have registered it, got back their stamped copy, then they have it posted in a conspicuous location, and they have it on the sales contract, then they would have complied.

BY MR. HAMM:

Q. In a conspicuous location, one location?

A. That is all the statute says.

Q. All right.

A. And the interpretation says.

Q. Now, we've talked about in Exhibit No. 3 advertising 37-2-304, correct?

A. Yes, we have.

Q. And for purposes of advertising and compliance with the closing statute, the department has issued an opinion regarding what must be done in order to comply, that's what the administrative interpretation does in 2001?

A. That's correct.

Q. If Danny Collins walked up to an

Page 70

individual vehicle, has the department issued interpretation that directs dealers in order to comply with the administrative interpretation, that it plays some individual notice on each vehicle regarding the closing fee?
A. No, we have not done that.
Q. What has the General Assembly done about what must happen at a dealership?
A. I'm not sure I know what you mean there.
Q. Look at 37-2-307, the statute. What does the General Assembly require to have happen at a dealership?
A. Must be included in the advertised price, disclosed on sales contracts, displayed in a conspicuous location in the motor vehicle dealership, and that's after they have registered with our office.
Q. So has the General Assembly established the standard of what must take place at a dealership?
MR. SPEARS: Object to the form.
BY MR. HAMM:
Q. With regard to the closing fee?
A. No more than just what is in the

Page 71

statute itself.
Q. All right. Let's go over again. What does the General Assembly in this statute require a dealer to do to charge a lawful closing fee?
A. They've got to register it with our department.
Q. Right.
A. Pay a $10 fee. They have to include it in the advertised price, if it is advertised, they have to disclose it on the sales contract, and they got display it in a conspicuous location in the motor vehicle dealership.
Q. Now, does the inclusion of a reference to a conspicuous location in a dealership give the department the ability to expand beyond the terms of the statute?
A. The statute is going to be controlling. Even if we did that, the Supreme Court has said actions taken in violation in excess of our authority would be deemed void.
Q. All right. Now, are you familiar with the Lexington Law Firm decision issued of May of this year?
A. I am.
Q. And what did the South Carolina Supreme

Page 72

Court say about construing interpretations of the Department of Consumer Affairs with regard to the law they enforce?
A. Well, they give difference to a state agency when it does an interpretation of the law that it enforces. They also in that case said that the agency must make an initial determination whether or not the law applies.
Q. All right. With regard to the closing fee statute, does the 2001 administrative interpretation exceed the boundaries of the statute itself?
MR. SPEARS: Object to the form.
THE WITNESS: It does not exceed the boundaries. It does try to explain some things. Like it defines what motor vehicle dealer is, it defines what conspicuous is, and it gives a method of being able to comply with the law. And it goes back to some other interpretations that were made, I believe, internally on how to construe once in each fiscal year.
Seems like there was one more thing. Oh, and it refers back to the Fanning case, saying that they did not say that it couldn't be actionable under other law, and the General Assembly didn't put

Page 73

anything other than just saying that if they pay the fee, post the disclosure, include it on sales contract and include it in the advertised price of the vehicle, that it would not violate the Consumer Protection Code.
BY MR. HAMM:
Q. Are you familiar with the Davis versus Nation Credit decision?
A. I am.
Q. Did that involve a department's interpretation of the Consumer Protection Code?
A. It involved interpretation Number 8302, I think it was. It might have been 3 but I think it was 8302. I think it was 3 -- 1983 interpretation dealing with the attorney insurance preference form that was required by Code Section 37-10-102.
And the statute itself said that it had to be on the front page of the application. Some of the federal loan applications had the entire front page taken up with federal documentation. The department issued an interpretation saying that, if they did it, the disclosure of the right to select closing attorney and insurance agent on a separate form, but gave it to them both simultaneously that it would be deemed to be in compliance the law.

Page 74

The Supreme Court in Davis mentioned the opinion, did not indicate one way or the other what they thought of it, but they did say that it might be a technical violation of the statute, but when it was given together, there was no harm done, and they would consider that to be substantial compliance.

Q. And in fact, they quoted the language in the administrative interpretation regarding contemporaneously with the loan application, which is language in the interpretation and not in the statute; is that correct?

A. That's correct.

MR. SPEARS: Object to the form.

THE WITNESS: That's correct.

BY MR. HAMM:

Q. In the Lexington Law Firm decision issued in May, the Supreme Court reversed the administrative law court's decision and upheld the department's construction; isn't it Chapter 7, your credit counseling section?

A. Chapter 7 of Title 37.

Q. And that statute, again, the Supreme Court construing the department's construction of that statute, in fact, reversed the lower court and

Page 75

said the department's construction was reasonable; is that right?

MR. SPEARS: Object to the form.

THE WITNESS: They actually did a little bit more than that, but they did do that. They said that the department has to be able to make an initial determination whether or not the law applies.

In this case, there's a second step in the analysis and that is interpreting the language of the legislature which had to do with in the regular course of their business or profession. And then they also addressed an issue dealing with unauthorized practice of law.

BY MR. HAMM:

Q. All right. Now, let's go to -- again using both the Davis versus Nation Credit and the Lexington Law Firm case, again, you're the lawyer construing this statute and you're the lawyer that is in this deposition advising that the department still stands by the interpretation that it issued in 2001 on the closing fee, correct?

MR. SPEARS: Object to the form.

THE WITNESS: Right.

Page 76

BY MR. HAMM:

Q. In terms of the interpretation issued in 2001, does the department's interpretation -- do you as its lawyer in that area believe that that interpretation is consistent with legislative intent and properly construes the motor vehicle -- the closing fee statute?

MR. SPEARS: Object to the form.

THE WITNESS: We believe it does, but Supreme Court's disagreed with us before.

BY MR. HAMM:

Q. All right. And I want to go to that.

But what if the Supreme Court says the department is wrong and all these dealers have relied upon the department's interpretation?

A. Well, from the statute in Chapter 6, they should still be not held liable because it says that even if the Court later determines it to be invalid, that they did have the right to rely on it and that reliance gives them protection.

Q. All right. Does the administrative interpretation -- let's start with it. Does the administrative interpretation direct dealers seeking to charge closing fees to place some sort of disclosure on each and every vehicle that it's

Page 77

selling?

A. No, the administrative interpretation does not deal with that question at all.

Q. All right. And does the statute contain any language that makes that requirement?

A. The statute doesn't deal with that at all.

Q. So the department's interpretation is the absence of a direction to you must disclose it on every vehicle under statutory construction? Has the department concluded that it is not required on each and every vehicle?

MR. SPEARS: Object to the form.

THE WITNESS: That's not exactly how we looked at it. We looked at it, it's got to be disclosed at a conspicuous location.

BY MR. HAMM:

Q. Right.

A. And after that, we didn't go any further.

Q. Okay. At a conspicuous location. I want to be very clear on the department's construction of that. At a, how many disclosures does the statute require?

A. Well, it requires one in the dealership

Page 78

and requires it again on the sales contract.
Q. All right.
A. And it requires the registration with our office.
Q. All right.
MR. HAMM: I want to take a break.
(Off-the-record conference.)
(DFT. EXH. 5, Filing Form for Motor Vehicle Dealing Closing Cost , was marked for identification.)
BY MR. HAMM:
Q. Let's go back on the record.
Mr. Collins, I have handed you a document that's been marked as Exhibit No. 5. Do you recognize that document?
A. I recognize what it is. I don't remember seeing it.
Q. Well, that's fine. I'm not asking you whether you've seen that but what is it?
A. It is a filing form for motor vehicle dealing closing costs that looks like it was done on the form that the department put -- printed out for people to use.
Q. So is this the form – is Exhibit No. 5 the form that was initially included with

Page 79

Defendant's Exhibit No. 2, which was the administrative interpretation?
A. I think there's a minor modification, but for the most part, it's substantially the same.
Q. Okay.
A. It's got a mailing address and a physical address. That's the only difference I see.
Q. Okay. And by looking at this and seeing the date stamped in the upper right-hand corner of December 29, 2005, that means that the Department of Consumer Affairs accepted it and deemed it compliant?
A. That means we accepted it. Yes, that's compliant.
Q. And go down to the box. You see where it says, will not exceed $350?
A. I do.
Q. As long as a dealer charges $350 or less, they don't have to file a new form in any fiscal year; is that correct? This is the maximum they can charge?
A. That's the maximum they can charge, and they will have to file a new form the next year.
Q. No, I know, I understand. But I'm talking in any particular year they can charge 350

Page 80

or less than 350?
A. Oh, yes.
Q. They don't have to file a new form to charge less? Like if they want to charge more, they'd have to do it immediately?
A. Yeah, they can't charge more, but they can always charge less.
Q. Okay. And do you have any personal knowledge of whether or not dealers are, in fact, charging less than what they're filing?
A. I don't know that.
Q. Okay. All right. Attached -- let's go to the second page of that. I just want to walk through. The second page, it's same form, it has a date stamp from the Department of Consumer Affairs, July 17, 2006.
A. Right.
Q. And this form filled out authorizes Land Rover of Columbia to charge up to $350 as a closing fee?
A. It does.
Q. And that the charging at or less than $350 the department would deem that fee to be compliant with its interpretation of the closing fee statute?

Page 81

A. That is correct.
Q. All right. Let's go to the third document. It's got a state stamp on it of July 23, 2007; does that stamp indicate that the department had received the filling?
A. It's got a certified stamp, yes.
Q. All right. So and receiving the certified stamp means that the department has determined that Land Rover of Columbia could charge up to $350 and be in compliance with the department's interpretation.
A. That's correct.
(DFT. EXH. 8, Current Advertising Guidelines, was marked for identification.)
BY MR. HAMM:
Q. Mr. Collins, with the aid of your counsel, chaperon or adviser, depending on the appropriate salutation, I understand this Exhibit No. 8 to be the, quote, current advertising guidelines?
A. They are the last ones to officially be adopted.
Q. So is it a fair reference them as current -- as the current authorized view of the department?

Page 82

A. That's what's being sent out if someone asks for a request.
Q. Let's -- I think your earlier testimony was that you endeavored to make the current guidelines somewhat more concise. I know this is two pages. The one you and I talked about was one.
A. That's correct. I tried to do that.
Q. In fact, let's look at what is currently marked a Exhibit No. 4, Mr. Collins. Look at in Exhibit No. 8. I want you to read --
MR. SPEARS: Is that 8 --
BY MR. HAMM:
Q. Let me make sure for the record. Have you confirmed that what has been marked as Defendant's Exhibit No. 8 constitutes the current advertising guidelines and standards of the Department of Consumer Affairs?
A. That is what we would send out currently if someone asked for them.
Q. Okay. And these are the guidelines and standards that the department reads with regard that they apply under the closing fee statute in terms of advertising?
A. These were developed before, long before the closing fee statute, so that's the kind

Page 83

of thing. But with the closing fee statute, we make specific reference to the statute itself.
Q. Okay. Well, let's look at Number 6 on exhibit marked -- Defendant's Exhibit No. 8. Why don't you read that, please.
A. The advertised price shall be the full delivered cash price which the customer shall pay, except for taxes and tag fees. Dealers shall not advertise prices which are below the price of which the automobile can actually be purchased. Use of add-ons, such as freight, protection packages, documentary fees, administration fees, closing fees, factory and dealer installed options in addition to the advertised price.
Q. All right. Does Number 6 in Exhibit No. 8 is it consistent with Exhibit No. 4, Item 4 sub indentation referencing price? I mean, are they consistent?
A. They're consistent. I took out some of the wording in Number 6, so that we could shorten it, but they are consistent.
Q. So with regard to advertising a price, the same standard has applied since whenever these original guidelines were put out?
A. Right.

Page 84

Q. Okay. That's what I wanted to be clear of.
Who is responsible -- who has the authority to enforce the Truth in Lending Act in South Carolina?
A. The Department of Consumer Affairs.
Q. All right. Has the Department of Consumer Affairs issued any rulings or made any challenges with regard to the disclosure of a closing fee in connection with Truth in Lending Act?
A. Not in connection with Truth in Lending Act.
Q. So even though the department has the authority to enforce the Truth in Lending Act, has the department concluded that disclosing a closing fee on a buyer's order which gives you your total cash price, has it concluded that the law requires a any subsequent disclosures in any financing documents?
A. On the sales contract, it's got to be disclosed.
Q. All right. But has the department issued any opinion stating that in the financing document they needed to break that out for any reason?

Page 85

A. We have not issued an opinion other than this administrative interpretation and the language of the statute itself.
Q. All right. So as long as the advertised price includes the closing fee and the closing fee is not separately denominated, as long it's in the advertised price, that's consistent with the department's interpretation?
MR. SPEARS: Object to the form.
THE WITNESS: Correct. For advertising purposes.
BY MR. HAMM:
Q. Right, right. But again, for even Truth in Lending purposes has the department advised any dealer, financial institution or others that the department's view will be that the closing statute or the Consumer Protection Code generally requires any specific action with regard to a closing fee?
A. We have not.
Q. Okay. I'm going to make sure I'm clear about your previous testimony. Does Exhibit 4, which are -- I guess is it fair to characterize them as a proposed revised advertising standard and Exhibit No. 8, which is the currently -- current advertising standards, if a dealer called or anyone

else, this is what -- Exhibit No. 8 is the one that you would send, right?

A. If they needed it, at this point in time, that is what we would send.

Q. All right. Is it your testimony that Exhibit No. 4 essentially distills Exhibit No. 8 in terms of its sort of essential elements into one page?

A. Most of it. There are a few things that have been dropped. But most of it should still be similar.

And one of the things that I did, the one in Number 8's got some specific things laid out as possible violations of being deceptive, and I just went back and said it can't be deceptive or misleading, and then gave some specific examples that we had had more than one problem with.

Q. Right. Okay. And that sort of claim wouldn't necessarily require an individual examination of any individual ad to make that determination, right?

A. That's correct.

(DFT. EXH. 6, A Letter Dated October 28, 2007 to a Steven Hamm , was marked for identification.)

BY MR. HAMM:

Q. Now, let's go to Exhibit No. 6.

Danny, I have handed you a document that has been marked as Defendant's Exhibit No. 6. It is a letter dated October the 28, 2007 to a Steven Hamm signed by Brandolyn Thomas Pinkston, is that what you have in your hand?

A. This is what I have.

Q. What do you know about the production of this letter?

A. It was an earlier draft by Herb Walker. He e-mailed it to Brandy and then she sent it to me. I read the earlier one and we didn't like the wording and we didn't like the tone so we decided not to use that one.

And then I -- apparently, it was me -- it was either me or Brandy, but apparently it was me that revised it to look like the current form.

Q. Okay.

A. Because I have something where it shows that I e-mailed it to her.

Q. Okay. Does this letter in any way change the substance of the interpretation issued by the department in 2001 with regard to the closing fee?

MR. SPEARS: Object to the form.

THE WITNESS: No, it doesn't. And, in fact, it cites the interpretation.

BY MR. HAMM:

Q. All right. Did I have anything -- did Steve Hamm have anything to do with the creation of this letter in terms of drafting it, proposing it or having any say in its content?

A. I would say it was written in response to you but no, you were not present when this was done. And as I said, I'm pretty sure that I was the one who did this particular version. But if it was not, it was Brandy, and she and I did work together on it. And we did not consult anyone else, just the two of us.

Q. So no other outside third party, whether Steve Hamm or anyone else, were involved in the creation, production or mailing of this document?

A. No outside third party and, in fact, not anybody else internally, just me and her.

Q. Okay. Do you know where -- in my absence I've heard all kinds of interesting claims, where did the department find this letter?

A. Brandy had it in her files.

Q. Okay.

A. And when we searched for it the first time, Brandy was at the legislature that was still finishing up their session. And we were having -- sometimes had trouble getting in touch with her because she was over there for some fairly significant legislation involving the department.

Q. Okay. And in fact, Mrs. Hill and I brought this letter to the department's attention, did we not, when we found it in our file and didn't find it in your production?

A. She sent a letter to me and Herb Walker about it. I was out of the office for most of the end of May.

(DFT. EXH. 7, Revised Filing Form, was marked for identification.)

BY MR. HAMM:

Q. Ms. Collins, I'm handing you what's been marked as Defendant's Exhibit No. 7. Please take a look at that.

A. (Witness complies.)

Q. Have you looked at it, Mr. Collins?

A. I have.

Q. Okay. Is this the, quote, revised filing form?

Page 90

A. That's what it appears to be with the instructions attached to the back.
Q. Okay. Let's go back to Defendant's Exhibit No. 2, which is the interpretation issued by the department in 2001. And go to the -- go to the third page, Mr. Collins, where it's in caps, notice closing fee.
A. I see it.
Q. Do you find that? In that initial notice, it contained the language stating this dealership charges closing fees, a means of reimbursing it for certain overhead costages, document retrieval and document preparation.
A. That's the first sentence of that.
Q. Right. And did that interpretation present or limit closing fees to document retrieval and document preparation? Is that what the department intended to do?
MR. SPEARS: Object to the form.
THE WITNESS: I don't think that they did but, as I said, Phil Porter wrote it and I don't really know for sure what he was thinking. But I think he was just trying to make a form that would be easier for them to file.
BY MR. HAMM:

Page 91

Q. Okay. But if I recall your earlier testimony, you told me that the department did not construe the statute as limiting the amount of the fee that a dealer could charge subject to unconscionable?
MR. SPEARS: Object to the form.
THE WITNESS: That's correct.
BY MR. HAMM:
Q. Okay. And that's how the department construes the administrative interpretation?
A. That's correct.
Q. All right. So that language is not -- the department has not actually expressed an opinion that dealers are limited under 37-2-307 to document preparation fees.
MR. SPEARS: Object to the form.
THE WITNESS: We've not said that.
BY MR. HAMM:
Q. Okay. I want to make sure. I didn't think you had either.
Now, the revised document, which is the -- Defendant's Exhibit No. 7, which is the new or and I guess the revised -- the only difference is the elimination of that language, correct?
A. It's the change in the first sentence.

Page 92

Q. But again, Exhibit No. 7 is the document that the department provides to automobile dealers for purposes of receiving information about the amount they want to charge for a -- the maximum amount for a closing fee?
A. That, and the registration, yes.
Q. And again, once a automobile dealer who wants to charge a closing fee submits and receive this document back with the department's official stamp, they are then authorized to charge the closing fee if they've posted it and put it on their buyer's order and whatever?
A. They can charge it, right.
Q. Right.
A. Not to exceed the amount they put down.
Q. So Exhibit No. 7 reflects exactly the interpretation of the statute by the department as reflected in the 2001 opinion?
MR. SPEARS: Object to the form.
THE WITNESS: It's not inconsistent with the interpretation.
BY MR. HAMM:
Q. Right.
A. And the letter that Exhibit No. 6 indicates that that form in the administrative

Page 93

interpretation, Exhibit No. 2, is not absolutely required, it was a form that they could use.
Q. Right.
A. And it would be deemed compliant.
Q. All right. Well, let's go back to Exhibit No. 6 if we can.
Did the department view any request to look at the form as a effort to change the 2001 administrative interpretation on closing fees?
A. No, we did not.
Q. Okay. Mr. Collins, if you'll look at Exhibit No. 7 again, which is, I guess, I'm -- I'm trying to think of how I correctly reference it in this deposition. Is Exhibit No. 7 the department's current approved closing fee filing document?
MR. SPEARS: Object to the form.
THE WITNESS: It is.
BY MR. HAMM:
Q. So, again, a motor vehicle dealer that fills out the form and the blanks contained in the form itself, dates it, establishes the maximum that it would charge for a closing fee, and follows the instructions -- that's where I want to go to, these instructions -- and follows the instructions, they will have complied with the department's official

Page 94

interpretation of the closing fee statute, yes?
MR. SPEARS: Object to the form.
THE WITNESS: If they fill it out correctly, submit the $10, and then it will be accepted and approved.
BY MR. HAMM:
Q. Well, if it's being accepted and approved, have they complied with the law?
A. Up to that point, then they have to make sure that they conspicuously post it and make sure that it's a part of a contract. And if it's advertised, they have to make sure it's part of the advertised price.
Q. So if they follow these instructions, we know that's got to happen first, they get this document back or I guess our $10 -- the $10 check is cleared. What happens if the check doesn't clear?
A. I don't know that we've had one that didn't clear.
Q. Good. I'm happy to hear that.
A. But the first thing that would happen, the accounting department would have a letter to send to the person that tells them that their thing is still pending until that is taken care of.
Q. Right.

Page 95

A. But it would come through the accounting department unless there -- it was -- for some reason an unusual situation then it might be referred to legal.
Q. Take me down to -- again, we're on the second page of Defendant's Exhibit No. 7. I have it stapled to the current closing fee form. These are instructions that were created by the Department of Consumer Affairs, yes?
A. Yes, someone in the department created them.
Q. Okay. And if you'll please look at those instructions, I want you to tell me whether or not those instructions are consistent with the administrative interpretation.
A. They are. Looks like the accounting department has put some things in here to make it easier for them to identify and process them. The part that deals with the law is consistent with the statute and the interpretation.
Q. Look at the middle of the page references the 2.307 interpretation. No. 3, the closing fee must be disclosed as a statement conspicuously located in the dealership. And now go look at -- read to me the language in the statute.

Page 96

A. The statute?
Q. Yes, that would be I think Exhibit No. 1.
A. The closing fee must be included in the advertised price of the motor vehicle, disclosed in the sales contract and displayed in a conspicuous location in the motor vehicle dealership.
Q. So the department, again, even in the instructions on this form says that in order to comply, you have to disclose the closing fee as a statement. I read that to mean a single statement. It doesn't say several statements, two statements, ten statements, a statement.
A. That language was taken and adapted from the administrative interpretation.
Q. Okay.
A. And they both refer to a statement and administrative interpretation refers to a location.
Q. Right. And I'm asking, that's consistent with the statute?
A. It's consistent, just a little bit -- worded a little bit differently.
MR. HAMM: Can we take a break just for a moment.
(Off-the-record conference.)

Page 97

(DFT. EXH. 9, Letter to Brandy Thomas from Elliott Elam, was marked for identification.)
BY MR. HAMM:
Q. Mr. Collins, I'm handing you a document that's been marked as Defendant's Exhibit No. 9. For the record, would you indicate what that is.
A. It is a letter to Brandy Thomas from Elliott Elam.
Q. And what is it referenced to?
A. Documents responsive to subpoenas issued to me, Herb Walker and Brandy Pinkston.
Q. All right. Thank you.
(DFT. EXH. 10, E-mail from Brandy Pinkston, was marked for identification.)
BY MR. HAMM:
Q. I'm going to now hand you what has been marked as Hearing Exhibit No. 10. It is a single piece of paper. Is this part of the information included in the cover -- referenced in the cover letter that you just identified as Exhibit No. 9, Mr. Collins?
A. Yes, it is.
Q. All right. And Mr. Collins, would you identify what has been marked as Hearing No. 10?
A. It is an e-mail from Brandy Pinkston to

Page 98

Celeste Brown, Herb Walker, Linda Anderson, Monica Chapman, Tonisha Vasquet. And the subject is the trigger for DMV closing costs and it's got a CC to me.

Q. All right. And Brandy Pinkston is who?

A. Brandy Pinkston is the administrator for Department of Consumer Affairs.

Q. And the to line, are those all employees, staff members of the department?

A. The one that's on the to line are all in the accounting section in the administrative portion.

Q. Okay.

MR. SPEARS: Steve, can you give us a clue where --

THE WITNESS: It's in the very back --

MR. HAMM: Oh, I'm sorry, Mike.

MR. STUDEMEYER: It's in the very back.

MR. HAMM: I've marked it as Exhibit No. 10.

Mr. Martin, do you have it?

MR. MARTIN: I do.

MR. HAMM: All right.

MR. SPEARS: Got it.

MR. MARTIN: Is 9 the entire thing?

Page 99

MR. HAMM: No. No. All I did was the cover letter because it had been marked and I just didn't want to get this thing more confused.

MR. MARTIN: Just the cover letter.

MR. HAMM: Just the cover letter and what had been mark as Hearing Exhibit No. 10 was included in those materials.

Anybody else want to put other stuff in, I'll leave that to your judgment.

BY MR. HAMM:

Q. Okay. Mr. Collins, during our earlier discussion of the closing fee statute, you made reference to a $1,000 I guess, trigger when documents come in if a closing fee is greater than the $1,000 y'all would give it additional scrutiny?

A. That's correct.

Q. All right. And this Exhibit No. 10, is that e-mail reflective of a decision made by the administrator of the Department of Consumer Affairs?

A. I may have been the one to suggest the $1,000 but she embraced it. And this e-mail was as a result of a section meeting rather than a full agency meeting.

Q. Right.

A. And the section meeting was the

Page 100

administration division, I don't know if it was the entire division, but it was the entire accounting section. And I stopped into the meeting just to tell her I was going somewhere and she asked me about it. And I told her this is the figure I had told Linda Anderson that after that that's when we might need to look at it and I might need to see it.

Q. All right.

A. And this came as a result of that $60,000 filing.

Q. All right. So this is the internal communication that demonstrates that the administrator has directed the accounting staff who reviews these forms as they come in, if you see something over $1,000, we need an additional examination even if everything else is correct?

A. We need to examine that there's full circumstances at that stage.

Q. Okay.

(DFT. EXH. 11, Materials responsive to subpoena, was marked for identification.)

BY MR. HAMM:

Q. What I'm now -- I want to now identify is Hearing Exhibit No. 11.

MR. MARTIN: You mean deposition

Page 101

exhibit?

MR. HAMM: Deposition. Don't mind me, it's a long day.

BY MR. HAMM:

Q. Let me hand what has been marked as a packet of documents. Is that also materials responsive to the subpoena that Exhibit No. 9, which is the letter from Elliott Elam's, that's part of those materials, Mr. Collins?

A. I don't know if it's exactly responsive but we decided to go ahead and turn out everything that we had dealing with closing fees. But none of those letters have anything to do with the change in the language as far as the form.

Q. Right.

A. These are advertising letters. The top one is the form letter that I put together looks like back in 2001. And then when I moved Charles Hayward into the office to oversee advertising compliance for me, I e-mailed him this form letter. And all of these others are actual letters that have been sent to dealers throughout South Carolina.

Q. All right.

MR. BECKER: Has that been made an exhibit?

Page 102

MR. HAMM: It has been made Exhibit No. 11. It is not -- I have put it in as a block.
THE WITNESS: That starts with dealership in Charles's files. It starts with an A and it goes all the way through the Hs.
BY MR. HAMM:
Q. Right.
A. We put all those together. But and I did look to see and every one of them has at least one part dealing with the closing fees.
Q. All right. And let me hand you back Exhibit No. 11 and all of the enforcement letters and communications that the department has sent to dealers since 2001. Do any of those letters --
A. These won't go back to 2001. We don't have the records that far back.
Q. Okay.
A. These would be mostly 2000 -- might be a few from 2006 but mostly 2007 to the present.
Q. All right. But the documents that are included as part of Exhibit 11, do any of them contain any directive to an automobile dealer that they had to separately disclose a closing fee as part of an advertised price?
A. No, they all tell them exactly the

Page 103

opposite. That they have to make it a part of the advertised price.
Q. And that is consistent with department's 2001 administrative interpretation?
A. With the statute and the interpretation from 2001.
Q. So if someone is arguing that you had to separately disclose it, that is not the position of the Department of Consumer Affairs, is it?
A. I've never taken the position that that's a violation. In fact, we've never written an advertising compliance letter for that purpose.
Q. I do have a -- I'm going to hand this to you. This is one of the documents in that file and I'm going to need to for the record purposes.
Do you see where it's highlighted in yellow, Mr. Collins? Why don't you read it -- why don't you identify what I just handed you and we'll make it a separate exhibit.
A. All right. This is a letter dated April 29, 2008 to the general manager of Automax of Columbia on Two Notch Road. And refers to the statute that tells them how to advertise closing fees. And then we refer to the publication where we found it.

Page 104

And in this one it said sale price include closing fees. That was one that we were not quite certain what they meant and we wanted to bring it to their attention so that they could explain it to us. If they had --
Q. If the sale price --
MR. SPEARS: Objection, if he could finish.
MR. HAMM: I'm sorry, I didn't mean to interrupt.
THE WITNESS: Sales price include -- we don't know if they mean you have to include that later or if it is already included and that we wanted them to clarify that. That's what this letter is about.
BY MR. HAMM:
Q. So if it was the sale price, in fact, included whatever the closing fee, they would be in compliance with the department's interpretation of the statute?
A. Right. So what we told them was if they'd added the letter S after the include said that the sale price includes closing fee, we would have been fine.
Q. Right. For purposes of the record,

Page 105

that is the third letter in the packet of documents marked as Exhibit 11.
A. I think it's the only one to Automax.
Q. Well, I wasn't particularly concerned about who it was addressed to. I wanted to make sure that that didn't reflect a different interpretation --
A. No, we just could not tell for sure which way it was meant and that we wanted clarification.
MR. STUDEMEYER: Is this letter going to be marked separately as Exhibit 12?
MR. HAMM: Yeah, why don't we just out of -- just to make it easier. Yeah. We'll mark --
MR. BECKER: So we take it out of --
MR. HAMM: Take it out of what is now included as the third document in Exhibit 11 and we'll mark it separately as Exhibit No. 12. And I will tender it to the court reporter to so mark.
(DFT. EXH. 12, Letter to Automax, was marked for identification.)
MR. STUDEMEYER: Can I ask for Exhibit 11, could it be possible for the court reporter to mark these individual pages in whatever manner she deems appropriate later maybe so that we'll all know

Page 106

we have the same documents?
MR. HAMM: I think that's entirely reasonable.
(Off-the-record conference.)
MR. HAMM: Mr. Collins, I don't have any further questions and I thank you for your courtesy to me. Thanks. Very good to see you.
Who intends to ask questions of Mr. Collins next?
MR. MARTIN: I just have a few.
EXAMINATION
BY MR. MARTIN:
Q. Mr. Collins, we met earlier this morning. It seems like a long time and I know you've done a great job, and I know it's taken some time. But again to remind you I'm Brad Martin. I'm from Greenville and I represent Toyota of Greenville.
I would like you to agree with me that if I you questions that you don't understand, please tell me before you give an answer. Is that fair?
A. Yes, sir.
Q. And if you give an answer is it fair for me to assume you understood the meaning of my question?

Page 107

A. Unless I ask you for clarification, yes.
Q. Okay. And can we have an agreement that if you're tired or you need a break, you'll ask first?
A. I smoke so we'll definitely do that.
Q. Now, and if I ask a question you don't understand, would you please let me know before you answer?
A. Right.
(Off-the-record conference.)
BY MR. MARTIN:
Q. Now, Mr. Collins, I am not an expert in the area of consumer affairs but I want to make sure I understood what you told Mr. Hamm. You two probably are the most well educated people in consumer affairs in the State of South Carolina so forgive me if I didn't quite understand it.
But as I understand it, the South Carolina legislature created the Consumer Affairs Commission; is that right?
A. Right. The way it's organized, the legislature did create it and Chapter 6 of Title 37, Part 5, is the part that creates the Commission on Consumer Affairs and it sets up the administrator

Page 108

as the head of the office.
The Commission on Consumer Affairs is the policy making body but they do not get into the details of running the agency. And the Commission is quasi independent politically. Four of them are afforded by the governor, four of them are elected by the General Assembly and the ninth member is the Secretary of State.
Q. Okay. So as a creature of statute, you possess only those powers which are specifically delineated in that statute; is that fair to say?
A. If you add that the others that are necessarily inferred in order to be able to carry out the responsibility of the statute, which is what the Lexington Law Firm recently was about.
Q. Right. So and isn't it true that when a statute creates you or the statute tells you what to do, you're suppose to give the words in the statute their plain and ordinary meaning?
A. That's what we normally try to do, yes.
Q. Okay. And you shouldn't resort to subtle or forced instructions in trying to interpret those words?
A. We try not to do that.
Q. Good. And you agree with me that's the

Page 109

policy of the agency?
MR. SPEARS: Object to the form.
THE WITNESS: Yes, we try to interpret the statute based on what language we have in front of us but also in the context of the full Consumer Protection Code.
One of the main purposes and there's a case from the early 90s, '93 I think, where the Supreme Court said that is the primary purpose of the Code is to protect consumers. But there's another provision that also says we have to give due regard to businesses that operate honestly and fairly.
Q. Okay. And giving businesses notice of a problem is a way to be honest and fair with them, would you agree with that?
A. We'd always try to give them notice. Even when we send advertising letters, we give them a chance to make corrections and comply. If we have a second letter on the same thing within a six or eight-month period, we remind them that this is the second time. But we still or at that stage, we're going to give them a chance to comply. We'd rather have them in compliance then have to sue them.
Q. Now, don't you also agree that in your

Page 110

role as Consumer Affairs legal head that if the Supreme Court decides something that you have been doing is wrong, you go with the Supreme Court from that point on?
A. I don't have much choice.
Q. Okay. But that's fair and reasonable, isn't it?
A. That's what we did after the Fanning case. We had been sending letters -- in fact, we had stopped charging documentary fees in 1989, I think, it might be 1990, and they stayed stopped up until the Supreme Court decision came out. After that, we could not say this is a violation of the Consumer Protection Code anymore because the Court said it was not.
Q. And you also couldn't say that it was unconscionable to charge a closing fee, could you?
A. Not within itself, no.
Q. Okay. And that's been your position since 1996?
A. That has been our position since 1996.
Q. Okay. Now, you agree that the Fanning case still controls these areas of closing fees as far as what the Supreme Court has stated?
MR. SPEARS: Object to the form.

Page 111

THE WITNESS: You know, it's been modified by the statute that it's passed in 2000.
BY MR. MARTIN:
Q. Right. So subject to the statute?
A. Right.
Q. Okay. Now, in Fanning --
A. There is one more thing. In the Fanning case, there is a footnote that says that it might violate other provisions of law even though it does not violate the Consumer Protection Code. And when I would go out and speak to car dealers, I would remind them of that footnote until this statute passed and then I just dropped that part of it in my presentation.
Q. Okay. So do you agree with me that with the Fanning case and the statute it covers the basis on closing fees in South Carolina, basically?
A. Basically what we've got in this state, yes.
Q. Okay. Now, do you agree with me that you have never found any closing fee to be charged since 1996 to be unconscionable to the state?
MR. SPEARS: Object to the form.
THE WITNESS: No, I don't. We had that one where the guy sent the thing in for $60,000 that

Page 112

that was very bothersome.
BY MR. MARTIN:
Q. Okay. Now, he didn't actually charge it, he just put it in his form, right?
A. I don't know if he charged it or not or tried to charge it or not.
Q. Okay. Now, listen to my question again. My question was you have never made a finding that any closing fee charged in the State of South Carolina since 1996 was unconscionable; is that fair?
A. I don't think we've made such a finding.
Q. Okay. Thank you. So you agree with me?
A. Yes.
Q. Okay. Good. All right. Have you ever made a finding that the charging of a closing fee after the 1996 Fanning case and the 2000 statute was unconscionable?
A. We have not made such a finding.
Q. Now, do you agree with me that the whole essence of making something unconscionable is usually a situation where the consumer doesn't have a chance to make a meaningful choice?

Page 113

MR. SPEARS: Object to the form.
THE WITNESS: That would be a basic understanding. But in Title 37, Section 5-108 there are specific things that would have to be looked at that are -- go beyond the common law that decided what might be unconscionable in a similar case but that would be the basic understanding.
BY MR. MARTIN:
Q. Okay. And what statute are you citing?
A. The statute dealing with unconscionability and unconscionable debt collection. Title 37-5-108.
Q. Okay. And that deals with credit sales?
A. That was -- we amended the definition of the consumer back some years ago so that for purposes of that section -- purposes of Chapter 15 of Title 37 and seems like there was another chapter but I can't remember what that is right off. That the definition was going to be broader and apply to more than just credit sales.
Q. Okay. And when you say we amended the statute, who's we?
A. Well, Phil Porter --
Q. The legislature?

Page 114

A. The legislature amended it and Phil Porter and I drafted it and took it to the legislature and they amended it.
Q. Okay. And what provision is that under? What is the statutory site?
A. It's in the definition section, 37-1-301. And I can't remember if it's subsection 10 or subsection 11.
Q. Okay. And what does that say, essentially?
A. It just defines -- it defines what consumer is it. It has the original definition that they are a -- I forget the language, but it dealt with consumer credit sales, a consumer lease, a consumer loan or a consumer rental purchase agreement.
And we added two subsections that the legislature adopted that made it broader for the 37-5-108, Chapter 15 and I'm thinking, 37-6-117 or 118 but I'm not positive.
Q. And how did it make it broader? What was the language that was adopted by the legislature?
A. Well, it was anybody that was involved in purchasing goods or services for personal, family

Page 115

or household use that was not limited to that.
Q. Okay. Good. Now, would you agree in the Fanning case that Mr. Fritz did not accept your advice about closing fees?
A. I would say a little more than that. Not only did he not accept our advice, he was using a double set of books so that the bank would not know he was charging a closing fee or they would not have taken it from him.
Q. Okay. So that meant in one document the closing fee was disclosed and the other document it was not; is that correct?
A. It was disclosed in what he gave the consumer but was not disclosed with what he sold on the open market.
Q. And the Supreme Court said that was okay in that opinion, didn't they not?
A. They sort of ignored the fact that there were two sets of documents.
Q. Well, they didn't ignore the fact that if you disclose it on one document, it was okay not to disclose it on the second; is that fair to say?
A. Well, they said it was not a violation of the Consumer Protection Code.
Q. Right. Would you agree with that?

Page 116

A. No.
Q. Well, are you compelled or required to agree with that now in your official position as a South Carolina employee --
A. I have to follow that.
Q. Okay. And do you?
A. Yes, we do.
Q. So in conclusion, if there is a car dealer in South Carolina that disagrees with the advice from the Consumer Affairs, that's not necessarily -- Consumer Affairs is not necessarily the last word; is that fair to say?
A. That's fair to say. That's why the other statute, the one that gives protection, that's all it does, it gives them protection in case it's determined that our opinion is wrong.
Q. Okay. You told us a little bit about something that was over my head, so forgive me for going back here. But you mentioned that there was interpretive bulletins that were formal and informal. Can you tell me the difference between the two?
A. If it's a formal one, it applies to the industry as a whole that -- it looks like it would be useful for the industry as a whole. An informal

Page 117

one is just to one individual company.
Q. I see. I see. So the 2001 administrative interpretation was a formal one?
A. That is a formal opinion.
Q. Okay. And do you agree that the car dealers and you would use the normal and usual understanding of the words that were used in that interpretation?
A. I think so. I mean, I don't know for sure what the car dealers would do. But that's what we would do and I think that they would do.
Q. Would you expect them to do that?
A. We definitely would expect them to do that.
Q. Okay. Good. Now, you also mentioned guidelines for automobile advertising that predated Fanning and predated the statute; is that fair to say?
A. Predated even me being there.
Q. Even you. So they are -- they've been around a long time.
A. The thing that was brought in -- I don't remember what exhibit number, but it shows the last amendment was -- and at that point in time and it's the last one that's been formally adopted, was

Page 118

in November of 1988.
Q. Now, that's different from an interpretive opinion, is it not?
A. Yes. Yes, that is guidance. It is not necessarily binding unless there is law to back it up to make it binding.
Q. Okay. And you don't necessarily send that to all the car dealers in South Carolina, do you?
A. We have done that, yes.
Q. You sent it to all the car dealers in South Carolina?
A. We have. I don't know if we've sent -- included is a copy now in every letter we send when we send a compliance letter. I do know at one time I sent it to every single one of them every single time.
Q. Okay. When you say -- I didn't see anything in the things that were produced today that showed where you were sending them to car dealers. Do you have documents -- do you know when the last time you sent it to a car dealer?
A. Sent the guidelines?
Q. Yes.
A. I don't know because Charles Haywood

Page 119

faxed the envelope and I don't usually see it after that. I do know I go over the letter, I look at the ad and make sure that what he has seen is corrected.
Q. Oh, so you're saying that you send it when you have an objection about an ad?
A. No, when we send a compliance letter. But I don't know if he's still sending it all the time now or not. But he does --
Q. Okay. When you send a compliance letter, tell me what you mean by a compliance letter.
A. Well, we saw something in the paper or some magazine or someplace that we feel that did not comply with one of our --
Q. All right. So if I have a dealership and you don't find an ad that you think that is not in compliance, I won't necessarily get one of those, will I?
A. No, but, I mean, the --
Q. Okay. So --
MR. SPEARS: Objection, he hasn't finished.
BY MR. MARTIN:
Q. Is it fair to say that you haven't sent it to all the car dealers in South Carolina?

Page 120

A. I don't know.
Q. Well, let me ask it this way: Have you objected to every single car dealer's ad at one time or another?
A. I don't know that either.
Q. Well, what's your best guess?
A. I would guess that we've hit a large number of them but a lot of the ones we get are new car dealers not used car dealers. And the used car dealers, if they're a member of the Independent Auto Dealers of the Carolinas, they do have a full one-day program and they do include advertising.
The new car dealers that are members and I'm told all but one is a member of the South Carolina Automobile Dealers Association and I know he has sent it out and he has put it in a publication.
Q. Okay. Well, I want to know what you know and not what someone else does and someone else does and someone else does.
A. Well, I don't know how many car dealers there are.
Q. Okay. Well, is it fair to say that you and I can agree today that you don't know whether you sent this out to all the car dealers in South

Page 121

Carolina or not?
MR. SPEARS: Object to the form.
BY MR. MARTIN:
Q. Is that fair to say?
A. I don't know if our office has so it's fair.
Q. Okay, good. And would you agree that if there's anything different or anything that is inconsistent between your guidelines and the interpretive bulletin or the statute that the bulletin and the statute control over the guideline, do you agree with that general statement?
A. No, they're not different.
Q. I said if there was, if there was.
A. They're not different.
Q. I'm -- please listen to my question. Did you understand my question? If there's a difference between what you put in the guidelines compared to what's in the interpretive bulletin or the statute would you agree that the bulletin and the statute control?
A. Yes.
Q. Thank you. That was all my question. I wasn't trying to imply there were.
What is your common, everyday

Page 122

understanding of the word "advertising"? What does that mean to you, common ordinary usage?
MR. SPEARS: Object to the form.
THE WITNESS: It's different today than usual. But if something is pleasing, desirable.
BY MR. MARTIN:
Q. Okay. Webster's defines it as something that draws public attention to something. Would you agree that that sounds about right?
MR. SPEARS: Object to the form.
THE WITNESS: I don't know.
BY MR. MARTIN:
Q. Don't know?
A. No. I mean, I would think of it as pleasing or desirable.
Q. Advertisement --
A. Oh, you're talking about advertising.
Q. Yeah.
A. I thought you said appetizing.
Q. No. Well, you're going to pull an Emily Latella on me, are you?
A. No, I thought that's what you said.
Q. No.
A. That's why I said different because --
Q. Okay. I was trying to figure out how

Page 123

we would get there. Advertising.
A. Then I misunderstood you.
Q. Okay. What is your common, everyday understanding of the word "advertising"?
MR. SPEARS: Object to the form.
THE WITNESS: Displaying it to the public to try to attract attention.
BY MR. MARTIN:
Q. Okay. Good. So and you have a department that actually reviews advertising from time to time; is that correct?
A. I don't know if I'd call it a department.
Q. Or a group?
A. No. We've got me and Charles Haywood total.
Q. Okay. Two people?
A. And he does the primary review and then I sign off on the letters but I do check what he sent. And most every letter he's got and every major issue, I have written the thing and given him the form letter to use. And then I do check the ad itself to make sure it's what he thinks it is.
Q. Okay. And what ads have you been checking on a regular basis?

Page 124

A. Well, we check -- we don't usually check the audio media or the visual media simply because, first off, we don't have a TV in our offices. And second, people would think we're wasting state money if we sat there watching TV and advertising all the time.
But we check the newspapers in Columbia, Charleston, Spartanburg, Greenville. It's either Myrtle Beach or Florence and I cannot remember. We used to get the Anderson Independent Mail. I don't know if we still do.
In addition, the little magazines that the -- I don't know if it's a dealer or association or who puts it out but the ones that go out and you see them in the racks that are free. We also pick those up and go through those. We also get a lot of things sent to us from competitors.
Q. That's interesting.
MR. SPEARS: A lot of things from --
THE WITNESS: Competitors.
BY MR. MARTIN:
Q. Okay. And what kind of things do they send you? Ads from newspaper, things of that like?
A. That's not all they have sent. I've actually received a video disk and a videotape.

Page 125

Q. Okay.
A. And I've also received a disk with some advertising on it.
Q. Okay. And you have reviewed that under your general responsibility to make sure the advertising is done properly?
A. We try to do that. But see, there's certain rules that are different for radio and TV advertising. If you looked at the TV when they show the disclosures, they're up there about five seconds and you can't read them because the print is so small.
Q. Uh-huh.
A. Well, the way we understand it the Federal Trade Commission said that's not a violation.
If it is an advertisement for a lease and they do it on the radio, there's certain disclosures they do not have to make. They only make that exception for radio.
Q. Okay.
A. It's the same non-readable as still on TV.
Q. And do you feel that the radio and the TV are preempted by the Federal Regulatory Boards

Page 126

that handle that?
A. No. It's just too hard to keep up with the staff I have.
Q. Okay. That's fair.
A. And I give you an example of somebody who sent a disk. It was in the Upstate, it was from I believe Gaffney and Spartan -- not Gaffney -- yeah, Gaffney and Spartanburg on Joe Gibson Suzuki and I got an advertising disk from them.
Q. Now, the statute, which is Exhibit 1, if you want to turn to Exhibit 1, Mr. Collins, says: Every motor vehicle dealer charging closing fees on a motor vehicle sales contract shall pay a one-time registration fee of $10 during each State fiscal year; is that correct?
A. That's correct.
Q. Would you agree with me that the statute requires the dealer to pay it during the fiscal year but doesn't say exactly when during that year?
A. That's correct. And the interpretation addresses that.
Q. Okay. But as far as the statute is concerned they didn't say you must pay it by -- on July 1st every year. They just simply said, during

Page 127

the fiscal year you need to pay it; is that fair?
A. That's what the statute says.
Q. Okay. All right. You told us earlier that the idea of including something in the advertised price that if the dealer knew it would be included then he needs to include in the advertised price?
A. If it's something the dealer can have control of like the state fees, like the tax, title and tags, that, the dealer has no control of so they don't have to be included.
Q. I know, but let me go back to my question. My question, and I thought you said this, was that if the dealer knows that it will be included, it should be included in the advertised price, did you say that earlier?
A. If the dealer knows it, they need to charge it, yes.
Q. Okay. Well, what happens if a dealer isn't sure that the customer, A, is going to actually pay the closing fee? What if the customer comes in --
A. It's always optional to negotiate. I mean, that's what the Fanning case says.
Q. Right. So in that situation would you

Page 128

agree then he wouldn't necessarily have to include it in the advertise price because he doesn't know whether it's going to be paid or not?
A. No, I would not agree to that.
Q. So you're disagreeing with your earlier testimony?
A. No, I'm not disagreeing with the earlier testimony. I'm saying if he plans on charging it and he knows what the amount is, he needs to include it in the advertise price. Once you get into the car dealership, you can negotiate the price with the car dealer.
The part of the price might be, as in my case, were that that they marked the price down so that even though it says I'm paying the fee, I'm coming away not paying it.
Q. I see.
A. But no, I would not agree that they can say no, they don't have to put it in the advertise price.
Q. So is it fair to say that if a consumer goes into a dealership and agrees on a sale price and then the closing fee is discussed and the consumer says I'm not going to pay that fee, even though it's actually allocated on the buyer's order

Page 129

but the sales price is reduced, that would be in compliance with --
MR. SPEARS: Object to the form.
MR. MARTIN: -- South Carolina law; is that fair to say?
THE WITNESS: That's fair to say because they have not charged more than they advertised for or whatever they agreed to.
BY MR. MARTIN:
Q. Okay. Good. Now, the statute, as I said earlier, says that you're suppose to pay during the -- each state fiscal year, correct?
A. That's correct.
Q. So if a dealer pays during the fiscal year, but after they charge the fee, technically there's nothing in the statute that prohibits that, do you agree with that?
A. The statute does not address that particular question that's why it's addressed in the administrative interpretation. And the interpretation says they can't charge it until they have already paid that and got it filed.
Q. Right. And we've already established like in Fanning but the Supreme Court disagrees with you they can change that.

Page 130

A. They can.
Q. Okay.
A. I will add that the thing in Fanning was not one of our official interpretations. It was written just to one car dealer in Greenville. The letter where they said they disagreed.
Q. Or was it Laurens? Was it Fritz in Laurens?
A. Fritz was in Newberry at one time. But no, this wasn't written to Fritz.
Q. Oh, okay.
A. Fritz got a copy of it because the financial institution started sending it around to everybody telling them they would not do it.
No, the letter that got the financial institutions concerned about it was written to a car dealer in Greenville. And that same time frame we filed a lawsuit in Dorchester County that included an allegation that the -- whatever fee that they called it at the time -- was improper under the Consumer Protection Code but that case got settled so it never got to the Supreme Court.
Q. What dealer was that in Greenville?
A. I don't remember now. I mean, that was almost 20 years ago.

Page 131

Q. Now, Mr. Hamm asked you if you had purchased cars and you said yes. I want to be a little more specific. I want to know about all the cars you've purchased between August of 2002 and November 30th of 2008.
A. I've only purchased one since then.
Q. And when was that?
A. In September of last year.
Q. And who did you purchase it from?
A. Saturn of Columbia.
Q. Okay. Now, we had talked about Exhibit 2, which was the administrative interpretation of June 7, 2001. And my question to you, Mr. Collins, is: Is there anything in this document that tells the dealer that if you advertise a price of let's say $20,000, you cannot then say plus a $200 closing fee in the advertisement? Is there anything in here that says you can't do that?
A. Well, the part where it quotes the statute says that.
Q. Okay. Show me what you're talking about.
A. Closing fee must be included in the advertised price of a motor vehicle.
Q. Okay. Well, let's stop for a second.

Page 132

You're saying that's what the statute requires, correct?
A. That's correct.
Q. Okay. And if you have an advertisement and say $20,000 plus $200, wouldn't you agree that the $200 is included in the advertisement?
A. Not in the price that's being advertised. It's being added as an add-on and that's what we have problems with.
Q. Okay. Well, let me stop you again. Would you agree that if you have $20,000 plus $200 on your advertisement, the $200 is included in the advertisement? Would you agree with that statement?
A. I would have to see it before I can agree with that. Because it may be a problem for me.
Q. Okay. Well, no, I'm just saying let's assume the ad -- for the purpose -- this is hypothetical --
A. If you've got the ad up here that says $20,000 and down here it says plus $200 closing fee, I will send you a compliance letter because --
Q. Oh, I know, but that's not my question. And remember we were going to have an agreement if you didn't understand my question, you were going to

Page 133

ask me before you answered it, remember?
So if you please listen to my question, we'll get to your answer maybe. But I want to know is, if you have an advertisement, it's in a newspaper, and it has $20,000 plus $200 closing fee, would you agree that the $200 closing fee is part of the advertisement?
MR. SPEARS: Object to the form.
THE WITNESS: I would have to see the ad right then before I would answer that because if it is disclosed in as large of print, that might be something that we could talk about. If it's disclosed in smaller print, I would have a problem.
BY MR. MARTIN:
Q. Well, I don't want to know if you have a problem with it. I'm not asking you to give me an opinion about whether it's good or bad. My question simply is: Would you agree with me that if you put the $200 closing fee in your advertisement, it is in the advertisement? It's physically there, would you agree with that?
MR. SPEARS: Object to the form.
THE WITNESS: It is physically there.
BY MR. MARTIN:
Q. Okay, that's my question. Thank you

Page 134

very much. That's all I wanted to know.
Would you agree with me that the purpose of the statute is to inform the consumer that a closing fee is going to be paid?
A. That is one purpose.
Q. Okay. So if let's say a dealer forgets to pay the $10 but they disclose the closing fee by putting it on their wall in a conspicuous place and they put it on their sales contract, would you agree that the consumer was notified of the closing fee before they paid it?
A. They probably were. But I don't think that was the only purpose of the statute.
Q. Well, I didn't ask you that. I just asked you if they would --
MR. SPEARS: Object to the form.
MR. MARTIN: -- be informed.
BY MR. MARTIN:
Q. So you agree with me they would be?
A. They would be informed.
Q. Okay. Thank you. Do you agree with me that not all cars are advertised?
A. I certainly do.
Q. Now, the interpretive bulletin, Exhibit 2, on Page 2, in the second paragraph, is

Page 135

talking about if a closing fee is charged, on Number 4. You can read with that with me, Mr. Collins.
It says: If the closing fee is charged and the vehicle is advertised, the closing fee must be included in the advertised price so that the consumers cannot be unfairly surprised by having the closing fee added on after the acceptance of the advertisement's terms. Did I read that correctly?
A. You appear to have read that correctly.
Q. Okay. Now, in your situation, let's assume the car that you bought was advertised and that you went in there, when was the time that you actually accepted the advertised price of that car in the --
A. I already had the price pretty much negotiated before I went in.
Q. Okay. Well, when did you actually accept it? Okay. This talks about acceptance.
A. Well, after I --
Q. Wouldn't it be when you signed your sales document?
A. -- after I test drove it and after I signed the document.
Q. Okay. So isn't it fair to say that the

Page 136

way this is written that the whole idea is is that it's got to be fair to the consumer not to be surprised at the time they're actually signing the deal and agreeing to take the car?
MR. SPEARS: Object to the form.
THE WITNESS: That is part of what that says, yes.
BY MR. MARTIN:
Q. Okay. And is that a fair interpretation of this administrative interpretation?
MR. SPEARS: Object to the form.
THE WITNESS: As far as it goes.
BY MR. MARTIN:
Q. Okay. Good. Thank you. I might be through. Just one second. Let me check this.
Isn't it fair to say that Consumer Affairs is an independent administrative agency to serve the consumers and public of South Carolina?
A. That's fair.
Q. And isn't it fair to say that you are open to suggestions by the public and by businesses as to how things should be done fairly?
A. Public in general, similar groups, business groups, yes.

Page 137

Q. And if someone comes and says we have a problem with one of your forms, there's nothing untoward about that, is it?
MR. SPEARS: Object to the form.
THE WITNESS: No, I mean, we've had people question forms before and different things and if it's based on this particular interpretation, the law does not require them to use that. It's very similar with the notice of right to cure before repossession.
The law says you've got to have this information and if you've got something in substantially this form, it will comply. But they don't have to quote the exact language.
BY MR. MARTIN:
Q. Okay. And if some consumer or some representative of business comes and makes a suggestion, isn't it fair to say that your agency meets and independently decides whether to change a form or not? That is solely within your discretion?
A. Usually, yes.
Q. Okay.
A. But there is one thing, I'm not sure one of these particular forms that we've met, but that is the usual procedure.

Page 138

Q. We talked about the Fanning case and we talked about the statute, the 37-2-307, are you aware of any other statute or court decision of South Carolina that says charging a closing fee is illegal?
A. Those are the only two things I'm aware of dealing with closing fees in South Carolina.
Q. Okay. And based on those two things, wouldn't you agree that it is legal in South Carolina to charge a closing fee?
A. Since they passed the statute, I think it's clear that it's legal.
Q. Now, we had mentioned earlier today Section 37-2-304. Remember that?
A. Right.
Q. And let me read that to you and tell me if I read it correctly. It says: A seller or lessor may not advertise, print, display, publish, distribute, broadcast or cause to be advertised, printed, displayed, published, distributed or broadcast in any manner any statement or representation with regard to the rates, terms or conditions of the credit with respect to a consumer credit sale that is false, misleading or deceptive. Did I say that correctly?

Page 139

A. That sounds correct.
Q. Do you agree with me that the legislature is making a distinction between the items that are merely printed or displayed in those that are advertised in that statute?
MR. SPEARS: Object to the form.
THE WITNESS: No, I think that what they're trying to do is make sure they cover everything involving in advertising.
BY MR. MARTIN:
Q. Well, don't you agree that in normal rules of statutory construction you have to give each word in the meaning that it's normally used?
A. Normally, yes.
Q. And also, that you don't assume that words are repetitive, but that they're put in there for a meaning? Isn't that a normal statutory construction rule?
A. That is.
Q. Okay. So if the legislature says we're going to say, don't advertise, don't print, don't display, don't distribute, don't broadcast, they did that for a reason; isn't that fair to say?
MR. SPEARS: Object to the form.
THE WITNESS: They did it for a reason.

Page 140

BY MR. MARTIN:
Q. Okay. And what I'm asking you isn't it fair to say that they were making this distinction between let's say a broadcast or a display in an advertisement.
MR. SPEARS: Object to the form.
THE WITNESS: I still don't see it that way. What I see is advertising is the controlling word and then these are all the examples that they can think of that would deal with different ways of advertising.
BY MR. MARTIN:
Q. Okay. Do you see anywhere where it says a seller or lessor may not advertise by that we mean print, display --
A. I do not see that.
Q. Okay. But that's how you read it?
A. That's how I read it. It's the advertising is the general word and then they go into the specifics of the different kinds of advertising to make sure they didn't leave anything out.
Q. Okay.
A. And notice it doesn't deal anything with computer-type stuff because PCs were not

Page 141

invented back when this came back.
Q. Well, don't you think broadcast would cover that?
A. I don't know.
MR. SPEARS: Object to the form.
THE WITNESS: I don't know. Broadcast to me would be TV and radio.
BY MR. MARTIN:
Q. Okay. Well, in this modern world, don't you think computers get signals broadcast to them?
A. They get sent around the world, I know that.
Q. Okay.
A. But I wouldn't know for sure if they would be picked up there or not.
Q. Are you aware that a Monroney label cannot be altered or removed by a dealer?
A. I'm aware they're not supposed to.
Q. And that's a matter of federal law, are you aware of that?
A. Right. You know what they do, they put their own label underneath it to add on the things that they have done to it. And --
Q. I didn't ask you about that. Just

Page 142

asked you about --
MR. SPEARS: Object to the form. Let him finish his answer.
MR. MARTIN: Well, it was not responsive.
BY MR. MARTIN:
Q. So I would ask you if you would keep your answers just to my question. My question again was: Are you aware that a Monroney label is subject to federal law?
A. Yes, I am.
Q. Okay. So would you agree with me that a Monroney label is not an advertisement by the dealership?
A. No, it's required by federal law.
Q. Would you agree with me in general that customers expect to negotiate the price of their car when they come to buy?
A. Yes, they do.
Q. And do you agree that until they actually sign the contract, they're free to walk away from a deal?
A. And sometimes after they sign the contract.
Q. Okay.

Page 143

MR. MARTIN: Thank you very much, Mr. Collins. I appreciate your answers.
THE WITNESS: Because there's something known as a conditional contract.
MR. SPEARS: Break time.
(Off-the-record conference.)
EXAMINATION
BY MR. SPEARS:
Q. Mr. Collins, I'm Mike Spears. I've been here all day and we've met. I represent the plaintiffs in this particular case. Could you tell me what you know about the case?
A. Other than it's about the closing fees?
Q. Yes, sir.
A. I don't know a whole lot. I don't remember every single pleading so I don't know the details of it.
Q. Okay. What have you been told?
A. I've been told that it's a class action, that they are suing car dealers and I don't know -- I understood it's all over the state but I don't know exactly where they are. I mean, I don't know all the defendants. And it had to do with in part our form.
I don't know a whole lot more. I don't

Page 144

know the details. Nobody that I'm aware of showed me what it says in the pleadings.
Q. Okay. Now, in Plaintiff's Exhibit 11, if I've got my numbers right, it's a rubber band, a bunch of documents that I believe you said you were able to retrieve A through --
A. A through H. I got them this morning.
Q. Yes, sir.
A. And they are advertising letters. All of those had at least a reference to closing fees but none of them had anything to do with changing the language or saying anything else other than it's got to be a part of the advertise price.
Q. I understand. Then would I through Z or whatever still be the group of letters that you would need to retrieve?
A. I can get those for you. But it's going to be a little bit slower than I wanted it to be because the person who's got the files, I had to go through his files this morning to even start finding them. He is on vacation. The administrative assistance for me is on vacation.
Q. I understand. And I understand that or I would suspect that you've got many things that you need to do in your own capacity that don't have

Page 145

anything to do with retrieving documents for this case.
So let me ask you this, and I won't hold you to it, but in the best of all possible worlds, could you, and if you wish to consult with Elliott, please do. In the best of all possible worlds, without straining, do you know would it be reasonable that we could anticipate getting the rest of these documents within 30 days?
A. Oh, you can have them next week.
Q. Okay, that's fine with me but I don't want you to --
A. No, that should not be a problem. Everybody will be back.
Q. Okay. So do you think realistically speaking we can get these by July the 4th?
A. Before.
Q. Before then? Okay.
A. Before the 4th.
Q. Okay. Would you communicate with your attorney and have him communicate with us if there's any problem or road block that was unforeseen?
A. There should not be once the investigator that does this gets back because he knows where all of them are and he knows his files

Page 146

better than I do.
Q. Okay. And what's the name of that investigator?
A. Charles Haywood.
Q. Charles Haywood. Okay. All right. Before I leave Exhibit 11 for the moment, I have here a number of letters that I haven't counted but they start with Audi of Columbia and go to Baker Motor Company and Beach Ford?
A. It should be in alphabetical order all the way through the last H that we've got.
Q. They are. They are. But I was looking at the numbers of them in total count and I wanted to ask you in general, you have been asked about whether or not every dealer in this state at one time or another, so far as you know, more likely than not got a copy of Exhibit 8.
A. I believe at one time or another they did but there's been some go out of business and new ones come in so I am not as certain. And I don't know if Charles includes a copy of this in every compliance letter he sends. I used to do that when I sent the letters directly.
Q. Okay. So would I be fairly recounting your testimony when I say that so far as you're

Page 147

aware, you're of the opinion that more likely than not most, if not all dealers, got a copy of this Exhibit A?
A. New car dealers --
MR. MARTIN: Object to the form of the question.
THE WITNESS: New car -- new car dealers.
MR. MARTIN: Same objection.
BY MR. SPEARS:
Q. Most if not all of the new car dealers.
A. Right. And I don't know about -- I don't know about all the use car dealers because all of them do not belong to the Association.
Q. And the Association, are you talking about SCADA?
A. No, that is for new car dealers and the used car dealers are the Association of Independent Auto Dealers of the Carolinas.
Q. Okay. Now, what would their membership or nonmembership in the Association of Independent Car Dealers have to do with whether they got this form No. -- Exhibit No. 8 or not?
A. The executive director of the Association tries to keep his members informed of

Page 148

these kinds of things and sends them out too. And if he's got questions about it, he or his assistant will either e-mail me or call me about it.
Q. Okay. Now, similarly, did I understand you to say that you did not produce the documents going back to 2002 in Plaintiff's Exhibit 11?
A. They don't exist anymore. We don't keep them that long.
Q. No, I understand. And I have no complaint about that. I'm just saying, when you do give me the rest of Plaintiff's Exhibit 11, those will only go back to 2007 more likely than not?
A. More likely than not 2007, possibly the end of 2006 but I don't think so. I think that we -- everything goes back to early 2007 forward.
Q. Okay. Going back to 2002, as best you can estimate for us, would you tell me what percentage of new car dealers at one time or another more likely than not got one of these standards and guideline letters?
A. I honestly don't know that far back.
Q. I just mean over that period, from 2002 to now. Would you think one-tenth of them got a letter?
A. I do not know because we didn't have

Page 149

the program in full swing at that time. That was before I took Charles Haywood off the road and had him come into the office so he could help do this kind of thing. That was mostly only the people who sent me something in, usually competitors or advertising agencies that were competitors complaining about somebody. That's usually all we got back then.
Q. Okay. But of late, you correct me if I'm wrong, I thought I understood you to say that y'all would check various publications in the absence of a complaint?
A. We do.
Q. And some of those publications you listed for us. And --
A. They're identified in those letters if it was from other those. I mean, the Auto Trader-type magazines that do that where we pick that up and take it to Charles and let him look through it. Since we've been doing that, we didn't start that until he started doing the program and that would have been early of 2007.
Q. Okay. Do you have any such program where you require car dealers to mail you their proposed advertisements for approval by your

Page 150

division?
A. No, we can't do it that way because that would be prior restraint. It would be unconstitutional.
Q. Okay. And if you don't then either require or them voluntarily send you ads and asking if they're okay, is your sole and exclusive way of checking the ads just the perusal of the newspapers?
A. And lots and lots of competitors turning people in.
Q. Okay. In any given year, how if -- and again, we can do the count, but in any given year would you have a guesstimate has to how many letters you would send out based on advertising you had seen whether it came from papers you did or competitors or whatever?
A. I am not positive of the last two or three years but it's been well over 100 each year, maybe as many as 200. I know at one time it could be as many as 300 in a year. But I had somebody that was devoted full time to that and nothing else and we're getting back closer to that with Charles but we're not exactly all the way there.
Q. Okay. And these would be either 100 or 200 or 300 letters to dealers, not just new car

Page 151

dealers?
A. Oh, none of those are not new car dealers at all.
Q. Okay. So we're talking about car dealers as a whole?
A. Car dealers as a whole. And until we started looking at the trade publications and that kind of thing, we didn't get that many used car dealers but now we get a lot more of them.
Q. Okay. And for what period of time would you say, and I'm trying to graft this in my mind, in 2002, 2003, 2004, did you have a person dedicated to perusing papers?
A. No.
Q. When did you begin that initially?
A. Well, we had it a long time ago back in the late 80s and the early 90s. That person left, there were staff cuts and ended up having investigators look at the papers one day a month. And that just didn't catch up too much because we were sort of short-handed in other areas. And I didn't always get the letters out as quickly because I had to go through and check everybody's letter to make sure that what they had marked was something I wanted to send a letter on.

Page 152

So once we dedicated Charles in early part of 2007, he goes through them. I showed him what to do, I gave him a lot of material from the Federal Trade Commission and from the Federal Reserve Board so that he could see the Reg. Z stuff, he could see the Federal Trade Commission rules.
And then when he has a question even now, he will bring it to me and say what will we do about this. And then I usually make the decision and then he will go and he puts the letter together mostly from form letters that I had given him so that he can do it.
I think the type of Exhibit No. 11 is an example of the form letter I sent to him for dealer closing fees.
Q. I understand. If you have done 100 or 200 or 300 in some years and then some years less, do you know if you have done any repeat warnings --
A. We have and usually if it's the same thing we wait for like the third time. If it's within a certain period of time. I mean, we don't make it the lifetime of the dealership.
And you're probably -- you're going to see I know at least two different car companies in there that have several letters but they have

Page 153

several dealerships and the different dealerships had the same kind of problem and that's why it's going to be repeat but it's not at the same location.
Q. Do you, as you sit here today, know any or remember any dealerships that stand out in your mind as being some of the most problematic?
A. The most recent one that was extremely problematic was Joe Gibson up there in Gaffney and Joe Gibson in Spartanburg.
Q. Other than Mr. Gibson. And what I'm talking about is in relation to advertisements that do not include the closing fees.
A. There are two dealers as I was going through the files that their file was a good bit thicker than others. And one of them was I think Benson and I can't remember right off who the other one was. But when you start going through those, you will see the same name. Well, I don't know if you will or not because most of those didn't deal with closing fees. They dealt with other issues.
Q. Okay. I believe you said as you started going through the files, do you have individual dealer files?
A. That's how Charles keeps them.

Page 154

Q. Okay. And are those files composed of the different correspondences to and from the Department of Consumer Affairs?
A. For the most part, yes.
Q. Okay. Within those files would all the letters of warning that you sent them be included?
A. They should be there. Now, some of the things that he marked down I said we're not sending so I didn't sign the letter and he may have put an X on it or he may not have kept it in there. But we didn't send it if I didn't sign it.
Q. Okay. Let me go over some scenarios with you and get your response, okay? If a dealership under the law in South Carolina, as you understand it to be, charges a closing fee without ever acquiring a certificate from your department permitting such, is that legal or illegal?
MR. MARTIN: Object to the form of the question.
THE WITNESS: We would say that is a violation of the law and it's an access charge because under the interpretation that Phil Porter wrote it specifically says you must do all of these things and have your stamped copy before you can legally charge the closing fee.

Page 155

BY MR. SPEARS:
Q. Okay. If a dealer charges a closing fee in access of the amount that he has applied for and gotten approval for from your department within the same year, is that a violation?
A. That would be an access charge because they're not authorized for that particular matter above what they filed with our office.
Q. Okay. Now, I have many other examples that I want to ask you about. Excuse me, many other situations but let's just take those two. Okay.
First one, dealer never gets permission from you or pays his fee to charge a closing fee. And the second one, he does get permission but he charges more. Okay. If you find that to be true, within your ambit of responsibility, what can y'all do about that?
A. Well, the first thing we would do is look at how we found out. And like if it came from an individual consumer complaint and we had just one, we would tell them they have to reimburse that money and say that they have to get their file in and they have to get it straightened out.
If we've got several so there's now a pattern or practice, then we actually can take legal

Page 156

action and we sue for the access charges.
Q. Okay. Now, have you ever brought a suit against any dealer who was charging closing fees and didn't have a certificate that permitted it?
A. I have not brought an action against any dealer concerning closing fees because I'm not aware – I mean, nobody has made me aware of anybody that was charging it that had not filed. Otherwise, we would have taken an extra step.
But if it was one individual complaint, I don't have a pattern or practice yet, so I have to -- we just tell them that they have to reimburse that one and they have to get their filing straight.
Q. Okay. Let's suppose – I believe your fiscal years goes from July 1 to June 30?
A. That's correct.
Q. Let's suppose someone did not have a certificate from you until December of that year. I assume, and you tell me if I'm wrong, that he then can charge whatever you permitted him to charge after he gets that certificate in December?
A. That's the way we would look at it, yes.
Q. Okay. What if you found out that he

Page 157

had been charging closing fees in that year prior to December?
A. We would ask him to reimburse as access charges.
Q. Okay. Would you ask him to reimburse only the people who complained?
A. That, once again, is going to depend on the number I get. Once I get enough to make it a pattern or practice, then that's the way our statute is drawn up for bringing legal action. Then I can do so and do it for everybody. But if it is just one complaint and I don't have anything else on that person, I don't have a basis yet to bring a case.
Q. Okay. Which kind of leads to my next situation. Do you, and I'm not talking about you personally, I'm talking about does the Department of Consumer Affairs investigate complaints and make decisions as to whether or not those complaints are merited or not?
A. The complaint analysts do. And theirs is not -- I mean, they don't leave their office to do this. They don't go out and check things. And they do try to make that determination. And the Director of Complaint Services is an attorney so they can take it to her. And only when she's got

Page 158

legal questions does it come to me.
Now, they call me regularly about all kinds of questions just to help them get a quick answer. But she would have to make that determination.
Q. Well, is Helen the compliance services attorney?
A. No.
Q. Who is?
A. Donna DeMichael.
Q. Okay.
A. No, Helen works directly for me and with me. Donna is in a totally different position. She doesn't work with me.
Q. But she's an attorney.
A. She is an attorney but she's not in an attorney position.
Q. Okay.
A. She's got the training for it and the degree and she does the CLE and all of that.
Q. I understand. Now, with the letters that were sent out in Plaintiff's Exhibit 11, which you're going to supplement for us later on.
A. That's correct.
Q. These were generated as a result of

Page 159

some sort of input to your department.
A. Either we did it ourselves through getting the newspaper or those trade magazines and having Charles go through them, looking at them or somebody else sent them to us.
Q. Okay. I don't have and maybe I'm just not looking at it right, but I don't seem to have the advertisements that you're citing or complaining of.
A. I did not include all of those.
Q. Okay. Do you have those?
A. We usually have most of those.
Q. Okay. Could I ask you through your attorney --
A. You might want to send somebody to the office and just go through the files and make copies of what you want because we've got two file drawers, the regular size file drawers, pretty much packed.
Q. Okay. Would that be okay with your attorney if we were to come and peruse the files?
A. We can make arrangements for that.
Q. Okay. Because what we would like to get, and we'll take on the cost and the time of that, is the advertisements that generate -- cause the generation of the letter.

Page 160

A. Yeah, I think we kept all of those because he always has to show it to me so that I can say yes, that is correct. And all I saw this morning did have advertising in there.
Q. Okay. Now, we've talked about the two violations that are kind of the most patent type earlier, types one and two where you don't even have a certificate but you're dealer and you charge closing fees.
A. Right.
Q. And number 2, where you have a certificate but you charge more than the closing fee. I believe you said it is not been made aware -- you have not been aware of the fact that that situation has existed.
A. I have not.
Q. Okay. Does that mean to you that that situation has no existence?
A. Oh, no. We've had a lot of things happen that we didn't know existed until something came up about it.
Q. Okay. Other than perusing the newspapers, is your main conduit for finding out about violations of the Consumer Protection Code or Act complaints?

Page 161

A. Not for advertising.
Q. I said other than.
A. No. Our investigators -- we've got certain areas for certain kinds of businesses that we actually go out and look at their records. People that we license. We license palm brokers and we actually physically go and look at their records. We license mortgage brokers. We physically go and look at their records. We do physical fitness facilities. We go and look at their records.
Q. I'm sorry, I don't mean to interrupt your answer and perhaps my question was inarticulate. I'm really only talking about car dealers, okay?
A. We don't. There is one time and I had somebody but he has since retired. And because we had not done it in 15 years and I sent him around to do or making sure that he was checking to see if the used car rule was posted like it was supposed to be and that's what he was looking for. And he found a few but most of them were doing it and anybody he contacted got it corrected fairly quickly.
Q. Okay. Is there anybody that you generally send around to make sure that these are -- car dealers are not improperly representing the

Page 162

closing cost on the buyer's order or bill of sale?
A. No, but there is one thing that does happen. Brenda Cokier is the only one that actually goes out and it's not usually for dealer closing fees. It's usually for maximum rate schedules.
And unless we have some basis to go into the car dealership, since we don't license them, we don't have the right to look at much of their stuff unless there is a complaint or other basis.
Q. Okay. Unless there's a complaint or other basis, you don't have the right to look into their records; is that fair?
A. That's fair. We don't have that authority. The Department of Motor Vehicles has got that.
Q. Okay. Suppose I had a dealer or suppose I were a dealer that had a buyer's order that had prefilled in a closing cost amount and that closing cost amount was $10,000, but you never got a complaint about it?
A. I probably wouldn't know about until somebody brought it to my attention.
Q. Okay. So if I sent you my $10 every year and I got my certificate.

Page 163

A. If you put the $10,000 on there, it will be pulled now.
Q. No, I wouldn't put the $10,000. I'd put some other number that obviously would be underneath your target zone of a 1,000.
If I never told -- if nobody every called you about that, you would not have unearthed it on your own?
A. Not normally because we can't go look at their records like we can the other people. But what would normally happen in that case is people that did see that on their contract or whatever or see that posted on the wall would start talking in that community and it'd get back to a competitor and they would usually let us know.
Q. Certainly at the $10,000 level you would anticipate.
A. Right.
Q. But I'm just trying to establish that in your monitoring situation, you can't really monitor the dealers but through a complaint process.
A. For the most part with dealers, that is correct.
Q. Okay. Now, in car dealers let's suppose a complaint is not turned in to you by

Page 164

someone, a competitor or otherwise, but the dealer is advertising cars saying -- putting a specific amount by the car picture, et cetera. And on the advertisement he says, does not include the cost of closing cost, would you know about that unless your people picked it up in the newspaper or something?
A. That one, probably not unless we picked it up someway either a competitor or the newspaper or it could happen through a complaint.
Q. Okay. If you were to find out, and I'm going to give an extreme example, okay? If you were to find out that a dealer had advertised and sold cars in that fashion for five years, what can y'all do? What authority do you have about that advertising and that method of selling cars?
A. Well, I would say first off if they are turning in one amount to us and then trying to use a different amount, that that is misleading. We would have the authority to sue for an injunction, we would have the authority to sue for the access charges to be refunded and we would have the authority to sue for civil or administrative remedies or penalties.
Q. Okay. Do you contend in any way that there is no private right of action in that a

Page 165

private person could not bring a lawsuit if he had such a situation happening?
MR. MARTIN: Object to the form of the question.
THE WITNESS: Under the dealer closing thing, I would think there might be a way to get to it especially if it were misleading or deceptive if it is for Truth and Lending Violations, the federal law very clearly says there is no private right of action.
Q. True. True. But if we're talking about under the Consumer Protection Code or if we're talking about under misleading, et cetera, do you in any way claim that the Department of Consumer Affairs has exclusive rights to bring suit against the dealers?
A. Only under the Truth and Lending portion of it, not under the other part. Deceptive and misleading is not in the same statute as the one that says that we've adopted Part 1 of the Federal Consumer Protection -- from the Federal -- yeah -- Consumer Protection Code.
Q. Yes.
A. And it's in a different section. There are two primary remedies -- well, there are three

Page 166

counting access charges. But one of them has a list of enumerated violations and I don't know that the dealer closing costs is in that list of things that say that you can sue this way.
Q. Uh-huh. Well, I'm asking you about preclusion. Okay. Do you think that individuals are precluded --
A. There's a listing of remedies in Chapter 5 under the Consumer Protection Code and those apply to consumers. And then we can pick them and in many cases we do in Chapter 6 and the agency can do that too.
Q. Okay. And what, as you understand it, in Chapter 5, are the consumer's available remedies should the consumer wish to bring the matter himself?
A. Actual damages plus 1,000 or $100,000 penalty and then there is a provision that says except in a class action for the statutory penalty.
Q. Okay. And the statutory penalty is?
A. 100 to $1,000.
Q. Okay. What, if anything, in your mind bars an individual from suing if he thinks he was a victim of deceptive or misleading practices in the sale of a car?

Page 167

A. I would say go into the State's Unfair Trade Practices Law and sue that way.
Q. So nothing bars him from doing that?
A. No, but there is one provision under the Unfair Trade Practices Act that does not let a case be brought except for the government in a representative capacity.
Q. But that would not be applicable example, would it?
A. Not for an individual, no.
Q. No. Now, if we get the advertisements that accompany the various letters, and let me ask you this maybe in a different way a little different. Would you have an opinion as to whether or not you have sent out over a thousand warnings letters in the last few years?
A. I can go back and pull a report that we run every year. I just didn't do that.
Q. That's what I need. Even if I don't get the document.
A. It should have been in our accountability report.
Q. Okay. And maybe I missed it. I do have your accountability report but --
A. But I don't know exactly where it's

Page 168

located there. I didn't put that together. I just did the portion that deals with the legal division.
Q. Okay. And I didn't see it. And I apologize if I just missed it.
A. Well, it should be toward the back. There should be some --
Q. There's a graph. It's a chart.
A. That's where it would be.
Q. The one that I highlighted here it says that you had highest category for refunds and adjustments was under vehicles in 2007, 2008.
A. That would be out of the complaint division, not the legal division. And that's pretty typical. Vehicles is usually the number 1 area of complaints.
Q. Okay. And the --
MR. MARTIN: What page are you looking on?
MR. SPEARS: Page 38 of 46.
BY MR. SPEARS:
Q. And then on Page 37 of 46, you listed someone, your accounting division, I believe, not the legal division --
MR. MARTIN: Are you going to make that an exhibit?

Page 169

MR. SPEARS: It's an exhibit to -- it was a production from Herbert Walker.
MR. MARTIN: Are you going to make an exhibit to this?
MR. SPEARS: Oh, I planned on it.
MR. BECKER: It's Exhibit 2 of Herbert Walker deposition.
MR. SPEARS: It's under Category 7, business results and there are many charts.
THE WITNESS: Well, one of those charts might have something to do with advertising letters.
BY MR. SPEARS:
Q. Can I just hand it to you, maybe?
A. I would have given him that information to put it in there. He's not the one that compiles it anymore. Herbert Walker used to compile that but he doesn't anymore.
Q. Okay. Now, the charts are at the back but -- that's the whole accountability report which is Exhibit No. 2 to Herbert Walker.
A. I just got to get these charts.
Q. Uh-huh.
A. Those complaints would be my division.
MR. BECKER: What page are you on?
THE WITNESS: Page 36 of 46, the one

Page 170

down at the bottom.
Now, these filings on Page 39 of 46 would include everything put together. They would not include the refunds or reimbursements. They do not include complaints. They include maximum rate filing, the dealer closing cost filing, the notification filing. And then all the other industries that we license and regulate, it includes all of the filings combined.
Q. Uh-huh.
A. And I would have given my numbers and Herb Walker would have put his numbers in there and added them up and we'd all give them to Alice Brooks.
Q. But if I'm looking at that graph that you just referred to, we can't tell from that how many complaints were for closing costs violations.
A. Oh, none of those these are complaints.
Q. I mean --
A. How many of the filings?
Q. Yes.
A. No, this is a compilation.
Q. Okay.
A. Then on Page 41 of 46, it's got revenue for general fund and DCA operations. Part of the

Page 171

money we collect we keep, part of it we send to the general fund. Then the fines for violations, these would be most likely people that we regulate and not people we do not regulate. Because almost all of our cases have to do with the people that we directly have responsibility for and we do not have any authority to refer to anywhere else, we're the first line.
Q. Okay.
A. So that's where most of that would come from.
Q. All right. Now, on that topic, would it be fair to say that amongst the parties that you regulate, car dealers are not one of them?
A. That's correct.
Now, this is a listing of what the investigators do when they go out and look at the physical fitness, mortgage brokers, pre-need funeral contracts and --
MR. BECKER: What page are you on?
THE WITNESS: It's Page 43 of 46.
But it just says on-site audits of regulated businesses, that is what the people in my division would be doing.
BY MR. SPEARS:

Page 172

Q. And again, that does not concern car dealers?
A. That would not concern car dealers, except part of that number might have to do with the person that's now retired going out and checking to see if they had the used car thing posted in the window.
Q. Now, what's the used car thing posted in the window?
A. The used car rule is from the Federal Trade Commission and it has a form that is supposed to be posted in all used cars, in the window or somewhere where it can easily be read. We wouldn't object if they had it laying on the dashboard even though it's not attached to a window but you can read it from outside.
Q. And what does it say?
A. It tells you whether there's any kind of warranty on the car, it tells you whether -- if there is a warranty, what is covered on it. There was talk about revising it, but it has not been revised yet.
MR. BECKER: The buyer's guide.
THE WITNESS: The buyer's guide is the name of it, that's correct.

Page 173

All right, this is one that we would do in my area, prepaid legal companies.
MR. MARTIN: What page is this?
THE WITNESS: Still 43 of 46.
MR. MARTIN: What are you referring to?
THE WITNESS: The chart at the bottom right.
All right. Advertising letters.
MR. BECKER: I think the way this was printed it observes the actual chart.
THE WITNESS: There were more than 24 and 20 in '07 and '08, I know that for here. And then 25 and 10, there were more than that for that year. But some of these years, there's probably -- no, these are enforcement actions. The advertising letters are not even included in this chart. It's covered.
BY MR. SPEARS:
Q. Right.
A. These are enforcement actions that we brought.
Q. Against?
A. Mostly regulated businesses.
Q. Okay.
A. And then here is a breakdown on Page 45

Page 174

of 46 of the type or the table of licensing application reviews. And -- this is one that I prepared and it does not include the motor vehicle closing cost because I would not have -- be the one taking those applications in. They would not come to me at all. They'd go to the accounting division.

Q. May I ask you, who's the head of the accounting division?

A. Herb Walker.

Q. Okay. Now, from what we've been able to glean so far from Plaintiff's Exhibit 2 in the Herbert Walker deposition, which is the South Carolina Department of Consumer Affairs annual accountability report, is there a chart that tells us anything about how many closing cost warning letters that may have been sent out?

A. I don't know if it's included in the accountability report and I have to go back and look at our progress report because I think when I set that up we had a category to break down the different things.

Q. Okay.

A. Now, there could be like in some of letters do, it could have Truth and Lending Violation rebate problems and dealer closing fee and

Page 175

it's all from one letter even though it identifies three categories.

Q. Well, I guess what I'm asking, if I understood you correctly, you can print out a report even though you may not have retained the letters from prior years, prior to '07. You can, if I understand you, can give us a number of letters for each year?

A. It would not include the dealer closing fee, probably just be a total number.

Q. Oh, of every letter sent out by the department for any reason?

A. No, no. Just advertising.

Q. Advertising?

A. Advertising issues for compliance.

Q. For car dealers?

A. Most of it's car dealers and we did set it up so that it's different. We had some for credit counselors, some for mortgage broker, some for physical fitness. We've done them for jewelry stores, we've done them for manufactured housing dealers. We used to do a lot more for manufactured housing dealers than we do now but most every one of those letters would be for car dealers.

Q. Most every one of those letters would

Page 176

be for car dealers?

A. Right.

Q. Okay. And so you can give me that printout?

A. Well, it's not exactly like a regular printout. It's something we have to compile each month.

Q. Do you keep those compilations, your monthly compilations?

A. We do.

Q. Can I get a copy of your monthly compilations?

A. Some of them are rather lengthy and some of them deal with things that have nothing to do with what you're interested in but I can get you the advertising part.

Q. That's all I want is the advertising part.

A. Okay.

Q. And the document you're going to give me will show the number of advertising letters sent out in any given month?

A. It should show month to month and it should have a running total for the number of the year.

Page 177

Q. Okay. And how far back do you think that goes?

A. That will not go back before -- I don't know if it's 2001 or 2002.

Q. That's all I need. You can just do it with 2002 forward.

A. I don't know for sure if it goes that far back but it will not go back further than that.

Q. Okay. If you've got 2002 forward --

A. Well, now, I would have it earlier than that but it would not be where it's a running total of how many is going on each year. So that the -- like for instance, in most years, the June report would give you the total that was done for that year, that fiscal year. We start from July the 1st to June 30th.

Q. Okay. I'm satisfied with whatever form you keep it, okay.

Now, let me give you a third example of a type of dealer behavior, okay? And I think this is probably when I'm going do find when y'all allow us to go through the advertising section of your file cabinet.

If a dealer does an ad that list cars for a price in the newspaper and says at the bottom

Page 178

the above price does not include taxes, tags or closing costs.

A. That's where we would write those letters.

Q. Okay. Would you write that letter because that activity and advertising by the dealer you would find to be not compliant with your statute?

A. I would find it not having nothing to do with statute, I would find it would have the potential to mislead because once you've disclosed in really large print up here and then have really tiny print down here, the person does not always see it or always notice that that was supposed to be left out.

And I do know that when I went through those letters this morning there is one of them that I've included but it does not include a closing fee, it includes a destination charge that they wanted to add to it. But we put them in the same category as add-ons.

Q. I understand. Then may I assume that there can be violations of what the Department of Consumer Affairs considers to be proper that are not per se violations of the statute?

Page 179

A. Well, that's because we've got two other statutes that deal with it, not just 37-2-307. We've got 37-2-304 that deals with misleading and deceptive advertising. And then we've got 37-2-301 that deals with credit advertising.

Q. Okay. So from those statutes taken together and the Consumer Protection Act as a whole, you might find that disparate print size in a particular advertisement may be deceptive or misleading?

A. There will be some letters in there that talks about mouse print where it's so small it's almost impossible to read. And the way Charles Haywood does it, when he gets the paper, if it is real small -- Charles keeps a magnifying glass in his desk. If he has trouble reading it with a magnifying glass, we're going to write him a letter on it because there's no way the normal person is going to be able to read that and notice what's going on.

Q. Okay. But even if it were in plain size and the same size as the advertise price of the vehicle, without any difficult for reading, hence, not in mouse print, okay, if the advertisement said the above prices do not include taxes, tags or

Page 180

closing fees, would that be a violation?

A. I would send him a letter telling him the stuff in the guidelines that we put out, the standards and guidelines which the -- for the most part but especially that one part on the delivered price, the full delivered price, that was what agreed to by the dealers, they're the ones that suggested that to us some years ago. So if it is not in the full advertise price, we very likely would send him a letter.

Q. Okay. And that's responsive to my question. But are you sending him the letter because you consider it to be a violation?

A. We don't send a letter if I don't think it's a violation.

Q. Does that mean yes, you think it's a violation?

A. Yes.

Q. Okay. Now, what about the case where an individual goes to a dealership not because of some print advertisement but because of some audio or video advertisement which you generally do not monitor?

A. Right, we just don't have the manpower to do that.

Page 181

Q. Okay. But let's say that's what attracts someone. By the way, do you monitor Internet advertising?

A. No, not really. That one is one that's jurisdictionally a little bit more complicated.

Q. Okay. But let's suppose something attracts them there that you don't monitor, video, audio, whatever. And when they get there, the car has a sticker on top of it, a board, let's say, 2 by 3 feet, that has the price of the car advertised --

A. You mean something other than like the Monroney sticker –

Q. Yeah, oh yes.

A. -- or the dealer sticker, something much, quite a bit larger?

Q. Yes.

A. That would probably be a display.

Q. A display? Oh, I'm -- yes, you're talking about under the statutory definition?

A. Right.

Q. Yeah. I don't disagree with you. I'm just saying for the purposes of this example, they have a thing on the car, other than the Monroney, that has the price of the car on it. If the individual is attracted there but finds out later

Page 182

when they get to the F and I office to buy the car that that price on the car that had the board on it does not include the closing cost, would that be a violation?

MR. MARTIN: Object to the form of the question.

THE WITNESS: If it is a display as opposed to just the price sticker itself, then that is probably going to be a violation.

BY MR. SPEARS:

Q. Okay.

A. Because the display is up there as an advertising-type purpose.

Q. Okay. Now, if you would, let's look at -- let's look at Defendant's Exhibit 3 in this case and that is 37-2-304.

A. Right.

Q. Mr. Hamm had you read this specifically and Mr. Martin addressed it. What is the title of that section above the paragraph of print?

A. The print is titled as advertising.

Q. Okay. Now, so far as you're aware, do all three paragraphs of this section have to do with advertise?

MR. MARTIN: Object to the form of the

Page 183

question.

THE WITNESS: Yes, all of these three have to do with advertising.

BY MR. SPEARS:

Q. Okay. And is that the official position of the department?

MR. MARTIN: Same objection.

BY MR. SPEARS:

Q. Of Consumer Affairs?

A. That this has to do with advertising?

Q. Yes.

A. Yes.

Q. Okay. In 37-2-304-1, the first paragraph, when it says a seller, and I'm not talking about leasing today, so a seller may not advertise, print, display, publish, distribute, broadcast or blah, blah, blah, blah, blah.

If the dealer does anything in the form of a display that represents the price of a car without including in that price the closing cost, is that a violation?

A. If it is advertising, yes.

Q. Well --

A. And I would think it would be if it's a display as opposed to just regular price sticker.

Page 184

Q. Okay. If he publishes something with the price of the car, meant to attract people there, without including the cost of the closing fee, is that a violation?

MR. MARTIN: Same objection.

THE WITNESS: That's where we would -- that's what we see in the newspapers, they're publishing, so yes.

BY MR. SPEARS:

Q. What if he distributes something that has the price of the car without the closing fee in it?

A. Like a handbill or a mail out?

Q. Yeah.

A. Then, again, it's got to be included in the price that's advertised.

Q. Okay. Now, it has print, okay, what if he puts a dealer supplemental sticker next to the Monroney that he's had printed and it list the add-ons to the car as far as undercoating or whatever he adds and it has a total price of the car on the supplemental sticker, but that price does not include on the supplemental sticker?

A. I've never considered that a violation.

Q. Okay. If he doesn't list with the

Page 185

add-ons the cost of the closing --

A. I've never considered that -- that particular thing of not listing the closing fee there a violation.

Q. Have you ever considered that before?

A. Well, we've never been asked to.

Q. Okay. So would it be fair to say you've never even considered it or entertained it?

MR. MARTIN: Wait a minute. Object to the form.

THE WITNESS: We've not entertained it but I'm pretty sure that even if somebody sent it to us I would not do anything with that.

BY MR. SPEARS:

Q. Okay. But you're giving me your first impression, right?

A. Right.

Q. The issue has never come up before?

A. No, not out in our office.

Q. Okay. Now, let's suppose I take this car that's on the dealer's lot and it has the supplemental sticker that doesn't include the closing cost, although it has the price on the supplemental sticker. And I drive it into the middle of Richland Mall and put it there --

Page 186

A. You're going to run into a different problem there.
Q. Well, I have their permission. I don't mean I'm just driving through.
A. I mean from Motor Vehicles. You're not to suppose to display them outside like that without a special permit and you cannot sell unless you have a license for the dealerships. In South Carolina, that runs into a problem if they don't have the other stickers.
Q. No, I didn't -- I appreciate what you educated me on. I had no idea about any of that. But I'm saying it's a dealer, he's got a permit and he puts it in the middle of Richland Mall. I don't even know if Richland Mall is open. Some mall that's still open in Columbia that you're familiar with.
And it has on the top of the car, you know, whatever dealership in Columbia, South Carolina. And it has the sticker, the supplemental sticker on the side that has a price on it, okay? And I know this is first impression or I assume it is.
But if that car, not on the dealer's lot, but in the middle of the mall, has a price on

Page 187

it that doesn't include the closing cost, is that a violation?
A. My first impression is no but as I say, that's a first impression.
Q. Okay. All right. Does the writing in your view need to be bigger or on a separate piece of paper?
A. There needs to be something other than just the regular price sticker that is trying to attract attention that goes beyond the regular price sticker attracting attention.
Q. Tell me why you say that.
A. That's just the way I've always looked at advertising. I don't consider the price sticker there to be advertising.
Q. I know you don't but you've never entertained it before, right?
A. Right.
Q. Okay. Would it make any difference if I put balloons on the car?
A. I don't know that. I've never considered that but I don't know that the balloons by themselves would be enough. Now, if you started putting prices on the balloons, then that is much different than that might change it.

Page 188

Q. Okay. Let's suppose then instead of just the window sticker I also had a hang tag on the rear-view mirror, okay, and it -- do you know what a hang tag is?
A. Yeah. Pretty small but --
Q. Okay. I had a hang tag that had nothing on it but the price of the car, okay. So it's written in 3-inch high letters. But that price of the car does not include the closing cost. Would that be advertising to you?
A. That's what I see a lot of times in used car dealerships and I had never considered that as advertising unless they have done something more than that.
Q. Okay. Is this kind of a beauty-is-in-the-eye-of-the-beholder situation, you kind of know it when you see it?
A. Well --
MR. MARTIN: Object to the form of the question.
MR. SPEARS: I'm mixing metaphors.
THE WITNESS: I don't know that. It is that way. It just when they have it displayed to attract attention then that's advertise but if it's just for the price itself and it's nothing more than

Page 189

that, then we -- I've never looked at that as a violation.
MR. SPEARS: Okay. We're going to take about ten minutes.
(Off-the-record conference.)
BY MR. SPEARS:
Q. Mr. Collins, I'm going to go ahead and start asking you questions despite the conversation going on there at the bottom of the table, okay?
I believe I heard you testify earlier that you had some disagreements with the Supreme Court's holding in the Fanning case but that you were obliged to follow the ruling in Fanning.
A. That's correct. I think they were wrong on one part of it but I still think that that's the state law and I have to follow it.
Q. Okay. So far as what the meaning of advertising is, would you defer to the Court system?
A. If we've got a Court case telling me, yes.
Q. All right. If I were to give you various definitions of what comprises advertisement from Black's Law Dictionary to Webster's to whatever, would that hold any credence with you as to what the definition of advertising is?

Page 190

A. I would have to see it before I can give a real answer.
Q. Okay. In regards to what we were talking about, which is 37-2-304, it goes further to say in regards to conditions of credit, et cetera, with respect to a consumer credit sale that is false, misleading or deceptive. Can I ask you what barometer you use in the Department of Consumer Affairs to judge whether or not a car dealer's advertising may be false, misleading or deceptive?
A. We look to the guideline published by the Federal Trade Commission.
Q. And where may those be found?
A. They're in the Federal Regs.
Q. Okay.
A. And there are several different ones out there. There's one on advertising free, there's one of them on unsupported selling claim, there's one on using stars or movie stars or something as a spokesperson, there are some on pricing.
Q. Okay. In that thing, do you even know by memory so that I can look up those regs that you're saying, what those are or may I get a copy of them if they're not too lengthy?
A. There were several things that we

Page 191

pulled up. When we pulled it off the Web site, it's 16CFR and then you have to go down to somewhere around Part 2 something before you start running into them. And some of those can go as far as into the Part 400 and something.
Q. Part 200 and something?
A. Right, part 200 and something through part 400 and something. And there are a lot of different things some of which have absolutely nothing to do with what we do at our office.
Q. Right. If I were to look at 200 and something to 400 and something --
A. You'd find probably most all of them that deal with the advertising that we would use.
Q. Okay. Now, let me ask you this: In a consumer sale situation, so far as you understand it, if a customer agrees with a car dealer to finance a $10,000 vehicle, let's say, and then prior to the commencement of the financing process the car dealer adds a $300 fee for closing cost making the financed portion $10,300 --
A. They should have notified the customer before they did that.
Q. And if they didn't?
A. If they didn't, then it's going to

Page 192

depend on the customer in part. I know that they still have the ability to walk away but most of the time if they get them -- the car dealership gets them on the lot, they think their best chance to make the sale is that first time and they try to get them really interested in the car so they will try to get them to go ahead.
If they didn't otherwise and the customer does not agree to their counteroffer, because that's how it would be because this was the price and then they come back with something different, now it's a counteroffer and they are not bound to anything yet, just whether or not they would walk away or do it under protest or if they didn't know it at all, then that could be a different problem.
Q. Well, let's suppose I'm the car dealer and you come to me and we haggle out on the lot, we have a tentative number, we go inside, you go and you check with the sales manager, you come back and you tell me that's the lowest number, and I say okay, I'll pay your number, $10,000.
And the advertisement for the car has been that closing costs are included, okay. Yet when we go to sign the sales contract, the buyer's

Page 193

order, the dealer adds back in the $300 closing cost.
A. The dealer should have let her know that before the deal.
MR. MARTIN: Object to the form of the question if the question is finished.
MR. SPEARS: It is.
BY MR. SPEARS:
Q. The dealer -- I'm sorry, I didn't hear you because of the interruption.
A. The dealer -- they should let the person know ahead of time if they're going to charge that closing cost. That's why the disclosure is required, that they are supposed to let them know that that's going to be added to it.
But, now, if the advertise price were 15,000 and they got it down to 10,000 and then added the 300, that is still well below the advertise price so then you'd have to look at the sales transaction itself rather than the advertising.
Q. Well, that's certainly true. But let's suppose I'm dealing with the car that's advertised for $20,000 including closing cost.
A. Okay.
Q. Okay. And we dicker back and forth.

Page 194

Your my customer, I'm the seller. And you understood the 20,000 to include closing cost because they said it did.
A. Right.
Q. All right. And then we go and we strike a deal orally for $17,000, okay. And you're the customer and I'm the seller, okay. When we go in and we get ready to sign the documents, I, the seller write down $17,000 as the cost of the car and then I add the $300 closing cost.
A. And I as the customer should be questioning why you're adding to the total price that we had agreed to.
Q. But my real focus there is haven't I, the dealer, added the closing cost twice?
MR. MARTIN: Object to the form of the question.
THE WITNESS: I don't see how.
BY MR. SPEARS:
Q. Well, I told you the car was $20,000 including the closing cost. You and I bargain back and forth and I said I'd sell it to you for 17,000, would you have the right to rely on that including the closing cost?
A. You might.

Page 195

Q. And then when I go into the F and I office to close, I add the $300 back.
A. As the customer, I would be questioning that because I said no, we had agreed to a different price and that's not part of what we agreed to.
Q. Might that sort of practice if it's system wide throughout that dealership of haggling from a price that included the closing cost down to a negotiated price and then announcing at document signing time that I'm going to add on the closing cost, might that not be deceptive?
MR. MARTIN: Object to the form of the question.
THE WITNESS: That's the footnote in Fanning, footnote No. 8 where that said that it could possibly, because of the way it's presented to the customer and the way it's handled, it could be considered misleading or deceptive.
BY MR. SPEARS:
Q. Okay. That's directly addressed in the Fanning case under footnote 8, isn't it?
A. Footnote 8.
MR. MARTIN: Object to the form of the question.
BY MR. SPEARS:

Page 196

Q. The purpose of putting in the language included in the advertise price of the vehicle is to prevent a surprise add-on at the end, isn't it?
MR. MARTIN: Object to the form of the question.
THE WITNESS: That is what the advertising letters will say and that is what the administrative interpretation says.
BY MR. SPEARS:
Q. Okay. Now, I think we've covered the situation of the violations where a dealer includes a closing cost when he didn't have a certificate from you permitting it?
A. And we considered that a violation.
Q. The second one was where a dealer included a closing cost, had a certificate from you but the closing cost was higher than the certificate permitted.
A. That would be a violation.
Q. Where the dealer advertised the vehicle as the price without and specifically said it did not include the closing cost.
A. If it advertised the price and does not include the closing price, that's at a violation.
Q. Okay. And then the dealer advertises

Page 197

the price, says it does include the closing cost, negotiates with the buyer and then when they reach an agreement as to the price, they go in and the dealer adds the $300 back up?
A. And that's the individual transaction. I wouldn't see that as an advertising violation. But that is the individual transaction and how it is conducted and how he is or she is -- how they're explaining it to them.
I'm aware of one dealership, and you'll be happy to hear it's in Spartanburg, that told my chief investigator that state required that they charge closing cost. And that is clearly a violation. The state law does not require it. It says for the dealers who want to charge it.
Q. Okay. Let me ask you this: Frequently, have you not heard reports that people who go to closing on a car in the finance and insurance office are told that taxes, tags and closing cost are mandatory?
MR. MARTIN: Object to the form of the question.
MR. STUDEMEYER: Object to the form.
THE WITNESS: I had not been aware until the chief investigator came back and told me

Page 198

that the dealership told him it is mandatory. I had heard that in the past but I don't think I've heard it too often since the statute was passed. But that would be -- we'd consider that a violation. It's highly improper. It's definitely a misstatement of the law.

BY MR. SPEARS:

Q. Okay. So as far as the CFR -- 16CFR, Parts 200 to 400 that we had talked about.

A. Right.

Q. Do any of those regulations address the print-type size and location of disclosed cost on a form?

A. I don't remember any of them addressing that. If they do, it's in a very indirect way because they have a general policy on deception and a general policy on unfairness. And they may say something in there but I haven't read those in a number of years.

Q. Okay. Are you familiar with -- you've seen different bills of sale or purchase orders or buyer's order, have you not?

A. Yes.

Q. And in the old way, the way it was done was list the sales price of the vehicle, less any

Page 199

trade-in, plus any add-ons, and then that was a set of boxes at the top. And then later on down, it would say have a box for tags, a box for taxes and a box for closing cost or administrative fees. Have you seen such a form?

A. I have seen some. They're usually the buyer's order as opposed to the retail installment contract.

Q. Yes, I meant the buyer's order. Have you seen those?

A. Yes, I have.

Q. Okay. Do you as the attorney for the Department of Consumer Affairs and/or the Consumer Affairs as a whole, have y'all ever addressed the issue of the placement of the closing cost fee which is -- I want you to assume it's preprinted on the form in a certain amount, to be in any way suspect? Have y'all ever looked at that?

A. Before they passed the statute, I did consider that. But once they passed the statute, it sort of took that out of my hands in the same way, like the Fanning case took some of it out of my hands.

Q. Well, the statute is passed in 2000.

A. 2000.

Page 200

Q. Is the statute that we've been over and it permits the charging of closing fees, does it not?

A. It does.

Q. But it does not require the charging of closing fees.

A. It does not. It just says if the dealers want to do it.

Q. Okay. Can you see how any purchaser may be mislead if the closing cost or administrative fee is placed in proximity to the mandatory fees of taxes and tag as opposed to the negotiated boxes at the top?

A. Prior to the statute being passed, I did tell people they should not have it preprinted because we were still saying that it is subject to negotiation under the Fanning case. Even though they said it's not a violation if it's in the Protection Code, they still said it is subject to negotiation.

We caution them against having it preprinted. After they passed the statute, I sort of backed off of that issue.

Q. But my question really relates to proximity of the placement for closing costs to

Page 201

mandatory items separately stated from the sales price or the trade-in allowance or whatever. Have you ever considered and if you haven't, it's fine?

A. Not since the statute was passed.

Q. Okay. So that issue is one of first impression that you've never looked at?

A. Not since the statute passed. Before that, I was very, very conscious of it.

Q. Okay. As we sit here today, the preprinted nature of a closing cost on a form where all the other blanks, all the other sections are blank for numbers expect the closing cost number, does that in any way strike you as appearing to be a mandatory number as a purchaser?

MR. MARTIN: Object to the form of the question.

THE WITNESS: I don't know that it does. But then I would know the difference. What it would do would be -- I would ask them what this is for and why I'm being charged this. If they tell me that the law requires it, that is clearly a violation.

BY MR. SPEARS:

Q. What if they tell you you got to pay that or you can't get the car? Now, remember we're

Page 202

talking about a car in which they said initially closing costs are included in the price.
A. All right. I know of someone in our office, in fact, she's the director of the complaint services division where she did exactly that, when to it, got down to the thing and they had the closing cost and she says I'm not paying it.
They told her that she -- they would mark down enough to cover that so that she would not be paying any more if they could just leave that on there and she did agree to it like that.
Q. I understand. Can you see how that might be deceptive whether it causes harm or not?
MR. MARTIN: Object to the form of the question.
THE WITNESS: If people don't know -- I mean, she and I knew the law when we were looking at ours. If they don't know the law, they could possibly get that impression that it is required especially when the dealer might say it's required of every customer.
BY MR. SPEARS:
Q. Isn't that the terminology generally used by dealers, it's required of every customer?
MR. MARTIN: Object to the form of the

Page 203

question.
THE WITNESS: I'm not certain what they say.
MR. MARTIN: Excuse me, sir. Mr. Collins, I really don't want to be rude and interrupt you but under the Rules of Evidence in a deposition, since I am the opposing party to Mike, I have to get my objections on the record before you answer.
So to avoid my seeming rude, would you mind just maybe counting to ten and give me a chance to object. Is that okay?
THE WITNESS: That's fair.
MR. MARTIN: Is that all right, Mike? I'm sorry to interrupt but I just don't want to be rude and talk over you. It causes a lot of problems for our court reporter who's probably tired by now.
BY MR. SPEARS:
Q. Do you remember the identity of the lady in your department or in the Department of Consumer Affairs who went to buy a car and they told her it was mandatory?
A. They didn't tell her it was mandatory. They told her they were charging it to cash and customer. It's Donna DeMichael, who's the director

Page 204

of complaint services.
Q. Is she an attorney?
A. Yes, she is.
Q. And they told her that they wanted to write the number down there although they would take it off the cash price?
A. They would reduce the cash price so that they would still have to have the number on the form but at the same time she would not be paying any additional for it.
Q. Okay. Now, do you know in your position at Consumer Affairs why a dealer would agree to lower the price of a car in the exact amount of the closing cost fee just so he could write in a closing cost fee?
MR. MARTIN: Object to the form of the question.
THE WITNESS: The only thing I know is that they just want to say that they charged it to everybody cash and customer -- cash and credit customer alike.
BY MR. SPEARS:
Q. And they want to say that to the next customer?
MR. MARTIN: Object to the form of the

Page 205

question.
THE WITNESS: I don't know.
BY MR. SPEARS:
Q. Who would they want to say it to?
MR. MARTIN: Same objection; speculation.
THE WITNESS: Probably the one to say to our office if there's a complaint filed so that they can refer back to the Fanning case because the Fanning case specifically says if it's charged to a cash and credit customer alike, it is not a type of finance charge.
BY MR. SPEARS:
Q. Not a type of finance charge?
A. Right.
Q. But it still may be a misleading or deceptive charge.
MR. MARTIN: Object to the form of the question.
MR. STUDEMEYER: Object to the form.
THE WITNESS: That is note 8, Footnote 8 in Fanning.
BY MR. SPEARS:
Q. Okay. Now, when you're talking about a closing fee, can you tell me, and if you can't, it's

Page 206

okay, but can you tell me what the department means when it says a cost? What is a cost? A cost anywhere? Not just in the sale of a vehicle. What do you mean by a cost? Dealer cost?,

MR. MARTIN: Object to the form of the question. Multiple question at a type. I'm not sure what his answer is.

BY MR. SPEARS:

Q. What is a dealer cost?

A. A dealer cost -- now, that's going to depend on two or three different things. A dealer cost in advertising doesn't necessarily mean the same thing as dealer cost in keeping up their overhead, their inventory and things like that.

Q. All right. What then is meant when the department uses the term closing cost?

A. It's a fee that's added on by the dealer at the closing of the transaction.

Q. Yes, but what does it reimburse the dealer for?

A. It could be various things. I don't know.

Q. Okay. Need it be tied to anything that has to do with closing or does the heading of the statute not mean anything when it says closing cost?

Page 207

MR. MARTIN: Object to the form of the question.

THE WITNESS: We've not looked at closing cost in car dealer transactions like that I don't think ever.

BY MR. SPEARS:

Q. So is this a case of first impression?

MR. MARTIN: Object to the form of the question.

THE WITNESS: I think it could be.

BY MR. SPEARS:

Q. Okay. When Statute 37-2-307, which is Plaintiff's Exhibit 1 -- do you have that in front of you? Defendant's -- I'm sorry, Defendant's Exhibit 37-2-307.

A. I have that.

MR. BECKER: That's Exhibit No. 1, Mike.

MR. SPEARS: Yes, I said that.

BY MR. SPEARS:

Q. Every motor vehicle dealer charging closing fees on a motor vehicle sales contract shall pay a one-time registration fee of $10 during each state fiscal year to the Department of Consumer Affairs. The closing fee must be included in the

Page 208

advertise price of the motor vehicle, et cetera, et cetera, et cetera.

Now, am I correct in saying that the Department of Consumer Affairs has never considered what comprises the cost that comprise the closing cost?

A. No, because if you look at the administrative interpretation, it's going to refer that it has also been variously called other names, administrative fee among them, procurement fee was one of them, processing fee was one of them.

And in the early days, back almost 20 years ago, I actually saw a form from a dealer who was charging a -- and I don't know what he called it, it was a type of closing fee. And at the bottom, he said that it was to reimburse them for certain overhead cost and additional dealer profit.

Q. Did you find that to be okay?

A. Back then?

Q. Yeah.

A. That was long before Fanning and no, we didn't like the closing fee at all.

Q. Okay. And the administrative interpretation, Plaintiff's Exhibit 2. On the last page, you show the notice for closing fees. Okay?

Page 209

And it says: This dealership charges closing fees as a means of reimbursing it for certain overhead cost.

And before I go any further, in the contemplation of the Department of Consumer Affairs, what were those certain overhead cost?

A. I do not know for sure what Phil Porter had in mind when he wrote that particular language.

Q. Okay. Can we without disagreeing between us agree that those were certainly reimbursement for costs and not just for profit?

MR. MARTIN: Object to the form of the question.

THE WITNESS: As I said, I'm not sure what he had in mind. I know he wrote this and I know he said certain overhead cost. What kind of costs he had in mind, I have no idea.

BY MR. SPEARS:

Q. Did he give an example of the type of overhead costs he was thinking of in the rest of that phrase?

A. He did not.

Q. Did he not say such as document retrieval and document preparation?

A. Right. I'm mistaken, he did.

Page 210

Q. Does that give us some glimpse into what Mr. Porter was contemplating as what an overhead cost might be?
MR. MARTIN: Object to the form of the question; speculative.
MR. STUDEMEYER: Object to the form.
THE WITNESS: It gives the example that he gave but I don't know -- he was not a car dealer so I don't know that he knew for sure what they would use that. I don't know.
BY MR. SPEARS:
Q. Right. Well, I think I'm correct in saying that Plaintiff's Exhibit 2 is the only administrative interpretation that we've had and it was created in 2001 by Mr. Porter?
A. That's correct.
Q. Okay. And that particular administrative interpretation is what we still go by.
A. That particular administrative opinion, yes, that's still the opinion for what we believe at the office.
Q. Okay. And although we have removed the language from the dealer certificate that says certain overhead costs such as retrieval and

Page 211

document preparation, is there -- has there been any redefinition of what closing costs consist of?
MR. MARTIN: Object to the form of the question.
THE WITNESS: There is nothing other than this that we have.
BY MR. SPEARS:
Q. Okay. Are you aware of anything in the Department of Consumer Affairs, interpretations or opinions or anything from the Commissioners that would permit a dealer to charge a fee merely to add to his profit and call that a closing fee?
MR. MARTIN: Objection to the form of the question.
THE WITNESS: There is no opinion for any of those and the Commissioners don't write the opinions. The statute says it's done through the administrator.
BY MR. SPEARS:
Q. Well, do you know from any administrator, whether it be Mr. Hamm or Mr. Porter or Ms. Pinkston, where there has ever been an opinion written that a closing fee is not for reimbursement of closing costs but, in fact, for dealer profit?

Page 212

A. I am not aware of any such opinion ever.
Q. Okay. As you sit here today, have you ever been under the opinion that closing cost reimbursement to the dealer was really just dealer profit?
MR. MARTIN: Object to the form of the question.
THE WITNESS: That's still my opinion, yes.
BY MR. SPEARS:
Q. Okay. Do you think it has anything to do with truly reimbursing the dealer for certain overhead cost?
MR. MARTIN: Object to the form of the question.
THE WITNESS: It deals with that but other things also such as additional profit.
BY MR. SPEARS:
Q. Okay. Do you think then calling it a closing cost or reimbursement for dealer overhead, as referred to in the interpretation of 2001, when it is, in fact, merely possibly dealer profit might be misleading?
MR. MARTIN: Objection to the form of

Page 213

the question.
THE WITNESS: That one, I don't know.
BY MR. SPEARS:
Q. Okay. And that's fine. Okay. In Plaintiff's Exhibit 2, Page 2, second paragraph, Mr. Martin asked you about Item 4 and, again, Paragraph 2 is merely a delineation of the four points that the dealers must meet in order to qualify, is it not, for charging closing fees?
A. It is.
Q. Okay. And Item 4 said: If the closing fee is charged and the vehicle is advertised, the closing fee must be included in the advertise price so that consumers cannot be unfairly surprised by having the closing fee added on after the acceptance of an advertisement's terms; is that correct?
A. That's what it says, yes.
Q. Okay. You were asked earlier by Mr. Martin whether or not the acceptance of the terms of an advertisement doesn't really occur until the buyer's order is inked. Is that really your opinion that the acceptance of the advertise price or the terms of the agreement doesn't really happen until ink is put to the paper?
MR. MARTIN: Object to the form of the

Page 214

question.
THE WITNESS: In contract terms it's not finalized until that happens. So it's -- there can be a preliminary acceptance but it is not final acceptance until it's agreed by both parties.
BY MR. SPEARS:
Q. Right. And I'm not really actually dealing in the law of contract between attorneys as we are. I'm talking about the average consumer that we don't want to have unfairly surprised by having the closing fee added on after the acceptance of an advertisement's terms.
So I'm speaking about the condition where I, the seller, and you, the purchaser, have seemingly met -- had a meeting of the mind on the cost of a car, and then I, the seller tell you I'm going to charge an additional fee for closing.
MR. MARTIN: Objection to the closing argument and the form of the question.
THE WITNESS: If we had already agreed on a particular price, then I would have a problem adding anything else to that price other than what the government requires.
BY MR. SPEARS:
Q. Okay. And you would have that problem

Page 215

in your capacity as your position at the Department of Consumer Affairs?
MR. MARTIN: Object to the form of the question.
BY MR. SPEARS:
Q. Not as a mere purchase?
MR. MARTIN: Same objection.
THE WITNESS: That is something that we would probably contact the dealer about but that would come from an individual complaint rather than something else in most cases.
BY MR. SPEARS:
Q. Okay. If a dealer advertises a car for $20,000 without mentioning the closing fee at all and then negotiates on the price down to say $15,000, we still haven't talked about the closing fee, then he adds a closing fee, is this a violation of 37-2-307 because the closing fee was not included in the advertise price that you begin with?
MR. MARTIN: Object to the form of the question.
THE WITNESS: I can't say whether it was included in the advertise price or not because the negotiation came down below the amount with the negotiated price and the closing fee added together.

Page 216

So I can't tell for sure whether it was included in the original advertise price.
BY MR. SPEARS:
Q. I'm sorry, I was giving you that as a given. Okay. I'm saying that the dealer says that the closing fee is not included in the advertise price.
A. They specified that it's not?
Q. Yeah.
A. Then that's a violation already.
Q. That's what I'm getting to. See, we had already treated the situation where the dealer said that the $20,000 car did include the closing cost. We negotiated down to 17,000 and he tried to add the closing cost back on it. Remember when we did that?
A. I remember.
Q. Okay. Now, we're dealing with the situation where the dealer says I'll sell the car to you for $20,000, okay, that doesn't include the closing cost. Is that legal?
MR. MARTIN: Objection to the form of the question.
THE WITNESS: If it is advertised at 20,000 and does not include the closing cost, then

Page 217

that is a violation.
BY MR. SPEARS:
Q. Okay. Okay. So we've kind of dealt with both situations vis-à-vis the closing costs, whether it was advertised as being included in the price or advertised as not being included in the price.
Is there a situation where you can find that you might want to describe to me where there is the proper way for the dealer to disclose the closing cost to a purchaser prior to presenting it to him for buyer's contract that way?
A. It's got to be posted in the dealership in a conspicuous place so that they say we do charge closing fees and how much.
Q. Well, that's one way, okay. But we're out on the lot, you and I, we haven't been inside. By the way, I know you did your shopping over the Internet, but have you ever seen the practice where when you're out on the lot looking at the car, the dealer's salesman will bring you a form, tell you it's not binding, but before he takes your offer to the sales manager he needs for you to sign the form with your offer on it.
A. I have not seen it but I have heard of

Page 218

it.
Q. Okay. Now, the salesman and you on the lot before you go inside have a number written down. There's no agreement. You just said, fundamentally, that I'll buy this car for $15,000. And you sign it and he says he needs for you to sign it so he can take it to his sales manager, okay.
You go in with that after he tells you the sales manager said, oh gosh darn it, go ahead and sell it to him. Maybe or maybe not he accompanies that with some, this is the lowest we've ever sold this car for, but we're going to sell it to you today.
And you go in and then they tell you as you sit down that the true cost is not the 15,000 that you offered them, but it's 15,000 plus the closing cost.
MR. STUDEMEYER: Object to the form.
BY MR. SPEARS:
Q. Is that a violation?
MR. MARTIN: Object to the form of the question.
THE WITNESS: There are two problems I see with that particular scenario. One, when they have that person sign the buyer's order, even though

Page 219

they've not filled out everything, they are making sure that that person is going to agree to do it and they will try to hold it against them and say that they have to -- that they've already agreed to buy it.
BY MR. SPEARS:
Q. Yes.
A. Second -- well, three problems.
Second, at that stage with the buyer's order, it does not include the financing terms so it looks look they're making a cash purchase.
Q. Yes.
A. And then third, if you have agreed to the price and they want to change it, it could be deceptive.
Q. Now, when you bought your car and perhaps you know about others who have bought cars too, and you're in the office -- did you go in the office with the F and I guy to buy the car?
A. No, the salesperson did all the paperwork and he was in a little cubical.
Q. Okay. The typical little cubical.
A. Now, he did bring the manager, not the F and I guy because they didn't have -- apparently, they don't use them anymore. But the first one I

Page 220

brought there, they did do that kind of thing. But this last time, no, he was in a cubical. And the only time the manager came out was to discuss what we were going to get for my trade-in.
Q. Okay. If you're sitting there in the little cubical across from whoever is doing the selling, whether it's the salesman or the manager or whatever, and y'all struck a bargain on the price of the car, and let's say that's $15,000, okay.
And the man across the desk with you in his cubical puts that big long form, the buyer's order, in his printer and it comes out and he attaches a whole bunch of other documents to it, an agreement to arbitrate and this and all that other stuff, and than passes you the buyer's order and you look down there at the bottom and it's $15,000 that you agreed on, plus taxes of $300, plus tags, and then it has a closing cost on it and that's the first you ever knew about it.
MR. MARTIN: Object to the form.
A. They should have let the person know before that.
Q. And to not do so?
MR. MARTIN: I object to the form of that question. I didn't know it was going to stop

Page 221

before my -- if you would put my objection in that order before Mr. Collins' answer, I would appreciate it.
BY MR. SPEARS:
Q. All right. Let's suppose that in the stack of documents in the scenario I just gave you the sales manager tells you you need to sign this here and this here and then sign this here and just put your initials there. Do you go ahead and sign the buyer's order without carefully reading it and only after you've done it do you notice that they've added a $600 closing fee, what are your remedies?
MR. MARTIN: Object to the form of the question.
THE WITNESS: That one's going to be more complicated because we also have case law that says we don't want to help perpetrate a fraud but we also don't want the person to not be diligent about their own business.
BY MR. SPEARS:
Q. Okay. Now, if that same contract which the person said he did read as opposed to my prior example where he didn't read, has the negotiable item such as sales price, trade-in allowance, add-ons to the car, extras, wheel covers, whatever,

Page 222

in one area and then down at the bottom or excuse me, in the middle of the page it has taxes, tags and closing fees, which is the situation we discussed before, and that total including the closing fee is financed, without that closing fee being added -- being included in the original advertise price of the car, is that a violation of the Consumer Finance Act that you enforce?

MR. MARTIN: Object to the form of the question.

THE WITNESS: That's not necessarily going to be a violation.

BY MR. SPEARS:

Q. Okay. If -- is the increase in principal amount financed without notice to the customer a violation of the Consumer Financing Rules?

A. If they increase the price after it's agreed to and then not explain it or the person, you know, didn't question it, that's where it gets more hazy because it depends on each individual situation.

Q. Okay. Are you aware of whether or not a dealership makes not only a purported profit on the sale of a car but might also make a profit on

Page 223

the financing of a car?

A. Normally, with what I understand about the car dealership business, they don't make the profit on the financing. What they do is they sell it at a discount to a bank or a finance company or acceptance company, then they take the payments in order to let the dealer buy new inventory.

Q. Okay. So you're --

A. Now, but they do make the profit on credit insurance if they can sell that.

Q. Are you unfamiliar with the dealership getting a point or a half a point on any financing transaction from the lender?

A. I don't know for sure that they do that. I'm sorry, I just don't know.

Q. Okay.

A. I do know that they get some kind of credit later in the year for volume sold but I don't know how it works.

Q. On Defendant's Exhibit No. 4, which is a policy not yet adopted but I believe written by you as an abbreviation as nearly as possible of I think what was Defendant's Exhibit 8.

A. I don't know that I would call it nearly as possible but it is an abbreviation of what

Page 224

is in Exhibit 8.

Q. All right. Now, it is still, if this is adopted by the Department of Consumer Affairs, it is still mandatory, is it not, for a dealer in order to properly charge a closing cost, that the closing cost must be contained within the advertise price?

A. If they advertise it, then, yes, it must be.

Q. Okay. Now, as you sit here and talk about if they advertise it, that means if they advertise it through print or display or publishment or distribution or broadcast, correct?

MR. MARTIN: Object to the form of the question.

THE WITNESS: It would include the things in 37-2-304.

BY MR. SPEARS:

Q. All of them, right?

A. It would include all of them because they're all forms of advertising. Advertise is a more general term and the others are more specific forms of them.

Q. Okay. Let me read you something and tell me if you agree or disagree with this as the definition of advertising. Well, let me just show

Page 225

it to you. This is the Black's Law Dictionary of advertising.

MR. MARTIN: Can I have a copy of that, please?

MR. SPEARS: You have it.

MR. MARTIN: I have it?

MR. SPEARS: We're not making it an exhibit. It's in the memorandum.

MR. MARTIN: If you're giving it to a witness --

MR. SPEARS: I'll read it for you.

MR. MARTIN: -- I'm entitled to see it.

MR. SPEARS: Yeah, I'll read it for you.

THE WITNESS: For the most part, I would agree with it.

BY MR. SPEARS:

Q. All right. The definition that I just submitted so you can have it is the definition of advertisement on Black's Law Dictionary, Sixth Edition is: To advice, announce, appraise, command, give notice of, inform, make known, publish.

To call a matter to the public attention by any means whatsoever. Any oral, written or graphic statement made by the seller in

Page 226

any manner in connection with the solicitation of business and includes without limitation because of enumeration statements and representations made in a newspaper or other publication or radio or television or contained in any notice, handbill, sign, catalog or letter or printed on or contained in any tag or label attached or accompanying any merchandise.

Is that -- did I read that correctly?

A. That sounded correctly to me, yes.

Q. Okay. And you have no disagreement with that as the definition of advertisement?

MR. MARTIN: Object to the form of the question.

THE WITNESS: I would want to look at two or three parts of that a little more closely before I could give a definite answer because I'm not real sure of what command would mean in that context.

BY MR. SPEARS:

Q. Show me what you're talking about the command.

A. Well, advise, I would want to know a little bit more about how they're using advise. I'd want to know more about how they use command. And I

Page 227

guess there's a way to use appraise in this context.

But those three I would want to know more on how they're trying to use them before I could agree with those three but most of those I would agree.

Q. Okay. Absent those three --

MR. HAMM: Mike, excuse me a moment. Before you ask a question, I'd like -- I'm a visual person. I need to look at it.

BY MR. SPEARS:

Q. Absence those three, would you agree with the definition?

MR. MARTIN: Object to the form of the question.

THE WITNESS: Pretty much, yes.

BY MR. SPEARS:

Q. All right. Now, in the situation where Plaintiff's Exhibit No. 5 was referred to -- I mean, Defendant's Exhibit No. 5, I'm sorry. We have a form here that is Page 1 of Plaintiff's Exhibit 5 there, has what I would refer to as the old language, does it not?

A. Yes, it does.

Q. Page 2 has the old language, does it not?

Page 228

A. Yes, it does.

Q. Yet Page 3 also has the old language.

A. Yes, it does.

Q. For how long did this old language exist between the passage of the statute -- from the passage of the statute?

A. It existed continuously until the accounting department changed it. I think Herb Walker directly changed the language in 2008 but I don't remember exactly when.

Q. Was it the accounting department who made the change?

A. It was somebody there but he is the only one who had the authority to make the change.

Q. Okay.

A. The others would not have that authority.

Q. Did you have the opportunity to read Herb Walker's deposition?

A. I read it last night for the first time.

Q. Okay. Did you see where Mr. Walker indicated that the first time a request to change the form had been brought to his attention was by Mr. Hamm?

Page 229

A. That's correct.

Q. Did you see where a meeting was held?

A. There was a meeting.

Q. Mr. Walker indicated that you had been present at it.

A. I was present.

Q. Could you tell us what Mr. Hamm's request was. What was the meeting about? What went on? What was said?

A. I can only give you sort of a substance of it now because it's been about two years ago and I just don't remember the details. But it had to do with -- he mentioned there was a lawsuit, that it involved the dealer closing fee. He also mentioned the interpretation in saying that that form was not mandatory and that it was not -- they could use a different kind of form. He proposed some language to us to change our form.

At some point after that, not very long after that, I don't know exactly when, the letter from Brandy Pinkston was sent, the one that we've already identified and I said that I am probably the one who made the changes and then submitted to her for her signature. And at that point in time, we told him we were not planning to change our language

Page 230

in the -- on the form.
Q. Okay. Yet, ultimately, you did change the language.
A. It was changed.
Q. Who changed it?
A. From one of the e-mails I read last night when I saw this packet -- I mean, I hadn't seen much of -- a lot of that packet before at all. It appears that Herb Walker changed it.
Q. Did he clear that in any way with you?
A. He didn't talk to me about it.
Q. Okay. Do you know anybody else who might have -- do you know if the Commissioners were involved in that decision?
A. The Commissioners -- I'm almost 100 percent certain none of the Commissioners would have been aware of any kind of change made in that because as I said they don't get in to the day-to-day operations.
Q. Okay. Do you know if -- excuse me, let me get -- did Mr. Walker do it unilaterally?
MR. MARTIN: Object to the form of the question.
THE WITNESS: Based on the one memo I saw or the one e-mail is what it was, it wasn't a

Page 231

memo, he and the accounting staff did talk together. Now, I don't know if he did it unilaterally or he just approved it unilaterally but even with the one e-mail I saw there's a note that he did not even inform Ms. Pinkston before he proposed to change the language.
BY MR. SPEARS:
Q. That is the e-mail that I also have dated Monday, August 18th at 3:55 p.m. Is this the e-mail that you're speaking of?
A. Is that Celeste Brown on there?
Q. That's Walker Exhibit 11. Is that the e-mail you're speaking of?
A. Yes.
Q. Part of No. 11 to this depo. That is the e-mail you're speaking of?
A. That is the e-mail I'm speaking of.
Q. Okay. And so from all you remember independently about the change and all you know from the documents you've seen, it appears that Herbert Walker changed the language of the dealer posting form unilaterally without even Ms. Pinkston agreeing to it?
MR. MARTIN: Object to the form of the question.

Page 232

MR. HAMM: I object as well. Object to the form. Conclusory.
THE WITNESS: That e-mail indicates that she was not aware that he had made certain changes. There were two major changes made and I was not aware until after the fact that the language had been changed. In fact, it was sometime in this lawsuit before I was even aware that it had been changed.
BY MR. SPEARS:
Q. Okay. So would it be fair to say that you weren't involved in the change?
A. I had no say-so in it because I didn't know it had happened.
Q. And as far as you know Ms. Pinkston didn't know?
A. Based on that one e-mail, that is -- the only thing that I have knowledge of based on what she would know about it.
Q. All right. Normally and in the usual habit and custom of the Department of Consumer Affairs, to change such a public notice form as the disclosure form for the dealers, what would be the normal process for changing?
MR. MARTIN: Objection to the form of

Page 233

the question.
THE WITNESS: The normal process would be to at least run it by the legal counsel so that they can see what is being changed and make sure that the change complies with the law. Then we would have to get the administrator to normally approve it.
BY MR. SPEARS:
Q. But so far as you're aware, that was not done in this case?
A. Not at that point in time, no.
Q. Does Mr. Walker, so far as you know, have the authority to issue an administrative interpretation by himself?
A. No, that would be a legal opinion and he's not an attorney.
Q. Okay.
A. Now, he does create his own forms. The people in the respective areas for the filings --
Q. Yes.
A. -- they do create their own forms.
Q. Okay. But this form normally would be a legal issue if changed?
MR. MARTIN: Object to the form of the question.

Page 234

THE WITNESS: Only because it had been brought to our attention as a legal question. If it had not been brought to our attention, I doubt that we'd even consider it.
BY MR. SPEARS:
Q. Even consider changing it?
A. Well, consider changing it or consider it a legal question if we decided to change it. Because we've changed forms over the years.
Q. Yet it was a brought to your attention in a meeting, was it not?
A. It was brought to our attention and at that point, it should have been passed by legal counsel.
Q. Okay. Let me ask you, in the meeting that you had with Mr. Hamm, I know that you were present, Mr. Walker was present, I believe Celeste was present, was she not?
A. I don't think so. I think it was Brandy Pinkston and someone from Mr. Hamm's office.
Q. Okay.
A. It would have come later that Celeste got involved.
Q. Mr. Hamm was told at the meeting that y'all did not intend to change the form, right?

Page 235

A. I don't know that he was told that at the meeting. Usually what Brandy does is leaves it open and says we will consider it and I'll get back to you.
Q. She subsequently told him by letter, Mr. Hamm, that she was not going to change the form, correct?
A. She did.
Q. Okay. Yet the form got changed without her knowledge or your knowledge?
MR. MARTIN: Object to the form of the question.
MR. HAMM: I object. I want to state on the record what letter you're referring to.
MR. SPEARS: The letter --
MR. HAMM: And whether the letter was attached sent.
MR. SPEARS: Excuse me.
BY MR. SPEARS:
Q. I think it was undisputed, was it not, that the letter from Brandy Pinkston to you --
MR. HAMM: Well, identify it, that's all I'm asking.
BY MR. SPEARS:
Q. -- of August 28, 2007, Exhibit B to

Page 236

Walker's deposition. Let me show it to you.
This is the letter where Ms. Pinkston notified Ms. Hamm, is it not, that she was not going to change the --
A. That is the letter that was sent back in 2007.
MR. HAMM: Can I see that one, Mike, I'm not finding mine, that's all.
BY MR. SPEARS:
Q. Is that correct?
A. That is the letter Ms. Pinkston sent.
Q. Okay.
MR. STUDEMEYER: Can we stop for just a second? Apparently, I don't have a copy.
MR. HAMM: Identify -- are we talking about Defendant's Exhibit No. 6? I just want to make sure the record is clear.
MR. SPEARS: That's correct.
MR. HAMM: I do object to the form of the question as being --
MR. SPEARS: Okay. You've objected.
MR. HAMM: -- encouraging speculation.
BY MR. SPEARS:
Q. Okay. Now, you're not sure -- I'm going to see if I can reconstruct this after the

Page 237

interruptions to make sure that I understand what happened.
There was a meeting. Do you know who called the meeting in which Mr. Hamm appeared and Brandy appeared?
A. I think he probably called and asked if he could meet with us.
Q. Mr. Hamm is he?
A. Mr. Hamm. I would think so, yes. Normally, when you would call and do that and it involves Ms. Pinkston in a meeting, you arrange it through her administrative assistant, Dolores Hill.
Q. Okay.
A. Because the rest of us don't have her schedule and we could not commit her to anything like that without clearing it first.
Q. How were you made aware of the meeting?
A. I don't recall right now who told me.
Q. Do you know if it was on your calendar and you knew that tomorrow at sometime I'm going to have a meeting with Brandy and Herbert and Steve Hamm?
A. I don't recall that right now. I mean, I was told about it and I was there but how it developed, I don't know.

Page 238

Q. Do you remember if you were there for the whole meeting or did you just blow in and blow out or?
A. No, no, I stayed for the whole time.
Q. Can you tell me about how long it lasted?
A. I don't remember how long anymore. Because -- let's see -- over the years we've had meetings with Mr. Hamm that lasted as short as ten minutes and we've had meetings that lasted over an hour so I don't know.
Q. Okay. Well, in this particular meeting, do you know whether it seemed unusually short or it seemed lengthy?
A. It doesn't seem either way right now.
Q. Okay. Kind of a mediocre meeting, somewhere between ten minutes and an hour?
MR. HAMM: Object to the form; speculation.
THE WITNESS: I don't remember the time frame, I really don't.
BY MR. SPEARS:
Q. Where was the meeting held?
A. It was held at the Department of Consumer Affairs. It was either -- and I'm thinking

Page 239

it was in the small conference room, which is our law library, but it could have been the big conference room but I'm thinking it was the small one.
Q. When you met or when you arrived for the meeting, did you know what the topic of the meeting was going to be?
A. If I did not, I found out very quickly but I don't remember if I knew beforehand or not.
Q. Okay.
A. I mean, I knew it had something to do with closing fees but the specifics, I don't know that I knew.
Q. Did you know at any time during the meeting that litigation had been filed in regards to closing fees and that Mr. Hamm was defending a car dealer or so?
A. If I didn't know before, it was made clear.
Q. Okay. What did Mr. Hamm indicate, if anything, about why he wanted the language of the disclosure form changed in regards to the lawsuit?
MR. MARTIN: Object to the form of the question.
MR. HAMM: I object as well.

Page 240

THE WITNESS: As I recall, it was to say that -- the plaintiffs were saying that our language was binding and that was the only reason they could use a closing fee.
BY MR. SPEARS:
Q. As best you recall, is that what Mr. Hamm was alleging?
A. I'm thinking he said that.
Q. Okay. Now, did you get an indication from anyone at the meeting including Mr. Hamm that a change in the language would help his position in the lawsuit?
MR. MARTIN: Same objection.
MR. HAMM: Objection.
THE WITNESS: I don't believe it would have.
BY MR. SPEARS:
Q. But did anyone allege that?
A. Not that I recall, no.
Q. Okay. Do you know why Mr. Hamm would seek to change in the very essence of a lawsuit the language of the closing disclosure --
MR. HAMM: Object to the form.
BY MR. SPEARS:
Q. -- that would not help his defendant's

Page 241

position in that lawsuit?
MR. MARTIN: Object to the form.
THE WITNESS: I don't know what he thought about it for sure but I personally don't think changing the language would have helped him one bit.
BY MR. SPEARS:
Q. Okay. Do you think that the new language imposes the same obligations upon the dealers in regards to the closing cost that the old language did?
A. I would say it's substantially the same, if not the same.
Q. Okay. Do you feel to the contrary that the new language in any way relieves the dealers of any obligation that they had under the old language?
A. On this form? No, I don't.
Q. Okay. Since what was removed from the form are the words -- let me get back Plaintiff's Exhibit 5. What was removed are the words: As a means of reimbursing it for certain overhead costs such as document retrieval and document preparation. Now, we've already discussed that those words were composed by Mr. Porter, right?
A. They were composed by Mr. Porter.

Page 242

Q. And we've talked about what Mr. Porter must have considered to be within closing cost as the two examples of document retrieval and document preparation.
MR. MARTIN: Object to the form of the question.
THE WITNESS: He gave two examples.
BY MR. SPEARS:
Q. Now, do you see any impact difference if the closing cost permitted to be charge by the dealer are no longer tied to reimbursement for overhead cost on the form?
A. I don't see any difference because the form itself is not an obligatory form. It is one that they were allowed to use and when Mr. Walker created this form, I didn't know at first where he got the language. I had to go back and reread the administrative interpretation. He took it straight out of there.
Q. I'm sorry, did you mean Mr. Porter?
A. No. I say Mr. Walker when he created this form, took that language straight out of Mr. Porter's administrative interpretation.
Q. I'm sorry, I'm showing the first page which has the old language in it, not the new one.

Page 243

A. Right.
Q. Okay.
A. That's what I'm talking about.
Q. Are you saying Mr. Walker created Page 1 of Plaintiff's Exhibit 5?
A. That is my understanding that he created his own forms including that and he picked the language directly out of the administrative interpretation.
Q. I thought you earlier said that this old language was created by Mr. Porter.
A. Mr. Porter created the language in the interpretation, Mr. Walker just drafted it out of there and put it on the form.
Q. Oh, well, he copied it verbatim, did he not?
A. That's what he did.
Q. Oh, okay. So the language here that Mr. Walker copied verbatim is the language developed by Mr. Porter in the administrative interpretation.
A. Yes.
Q. Okay. Do you not see a difference between the linkage of closing cost being for reimbursement of certain overhead cost and the old form and the new form which does not require such

Page 244

linkage?
A. I don't really see the difference because the other form was not -- well, it was not mandatory. They didn't have to use it. They could create their own form. If they use their own form, they don't have the same protection in case it's declared to be illegal or something -- you know, a violation at some point later.
Q. Oh, I understand that. I'm just saying in the old days would -- if a dealer turned in a form, who was responsible for approving an alternate form? Which department?
A. Accounting would be the first one to get it to look at it.
Q. Okay.
A. And then if they had a real problem with it or real question, they would probably bring it to me.
Q. All right. Now, we know that on many occasions alternate forms were reviewed and disapproved by your department.
A. The accounting department, they were rather sticklers for making people use their own form.
Q. Okay.

Page 245

A. Not just the closing form either, the notification form, the maximum rate form.
Q. Isn't it true that any dealer-drafted form in the old days that did not have in it the language as a means of reimbursement for certain overhead cost such as document retrieval and document preparation was declined as being adequate?
MR. MARTIN: Object to the form of the question.
THE WITNESS: I don't know that for certain but I have heard that that is what happened.
BY MR. SPEARS:
Q. And you've heard that from Mr. Walker?
A. No, from somebody in his staff and I don't remember who it was. It might have been Celeste but I'm not sure.
Q. Okay. You have at least -- you don't know personally, but you have heard that if that language was not in a dealer-drafted form, it was rejected in the past?
A. That's what I have heard.
Q. Okay. Do you know if a dealer turns out a form now that says exactly what is contained on the front page of Defendant's Exhibit 5, which is the old form, would that be acceptable or

Page 246

unacceptable?
A. That should be acceptable.
Q. Okay.
A. Because it complies still with the administrative interpretation and that language is directly out of the interpretation.
Q. Okay. And the new form, which does not mention reimbursement for overhead cost such as document retrieval and document preparation, if that form was drafted by a dealer and substantially said what that says, would that be okay?
A. Now it would be but the -- we had to have a meeting on that when there was some amended forms being brought in. I think there was an e-mail somewhere about Jocelyn Newman.
Q. Right. Right.
A. She came to the office to file some amended forms. The people in accounting refused to accept it. She went back to her office. Somebody from there called me. I do not recall who it was. I don't know if it was her. I don't know if it was Mr. Hamm. I don't know if it was Joanne Hill.
But somebody called me and I told them to tell her to come back and ask for me. When she did, I looked at the form. It said amended form.

Page 247

Under the way we looked at the law, there was no need to amend the form.
If they wanted to file it again and pay 10 more dollars, we -- I told the people in accounting we should accept it. But as far as we're concerned, the original filing is all that's needed.
Q. Okay. And the original filing was the old form or the new form?
A. The old form.
Q. The old form. Okay. So was, in fact, a new form permitted to be filed with the payment of an additional $10?
A. We allowed them to do it. But we told them, we advised them that they did not have to as far as we were concerned because they were already approved for that fiscal year.
Q. And is it true that although you told them they didn't need to for your rules, they did pay another $10 and did file a new form that did not include the language, reimbursement for certain overhead costs such as document retrieval and document preparation?
A. Some of them did and I don't think all of them did but some of them did do that.
Q. Okay.

Page 248

A. And I don't know exactly which ones because the ones that Jocelyn Newman brought over, I'm not even sure I could tell you which company it was for.
Q. But we do know that Jocelyn Newman worked for Richardson Plowden?
A. I do know that.
Q. And she worked for Mr. Hamm?
A. That's where I first met her.
Q. And who hired you to come to the agency?
A. Phil Porter.
Q. Okay.
A. And by the way, until Brandy Pinkston became head of the agency, the only person I ever worked directly for was Phil Porter.
Q. I understand.
MR. SPEARS: Let's take a break.
(Off-the-record conference.)
MR. SPEARS: By consent of the deponent's counsel, I would ask now that we recess with the deposition. It is 6:15 and he's been going since 10:00 a.m., as have I, and that we reconvene, after the production of documents, his deposition at a later time. Any disagreement?

Page 249

MR. HAMM: Wonderful idea.
(The deposition was adjourned at 6:15 p.m.)

CERTIFICATE OF REPORTER

I, L. Skyler Hare, Certified Shorthand Reporter and Notary Public for the State of South Carolina at large, do hereby certify that the foregoing transcript is a true, accurate and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

WITNESS MY HAND, I have hereunto affixed my official seal this 24th day of June, 2009 at Charleston County, South Carolina.

L. SKYLER HARE
My Commission Expires
April 20, 2019

INDEX

WITNESS/EXAMINATION	Page/Line
DANNY R. COLLINS	3 11
EXAMINATION BY MR. HAMM	3 13
EXAMINATION BY MR. MARTIN	106 11
EXAMINATION BY MR. SPEARS	143 7
CERTIFICATE OF REPORTER	250 1

REQUESTED INFORMATION INDEX

(No Information Requested)

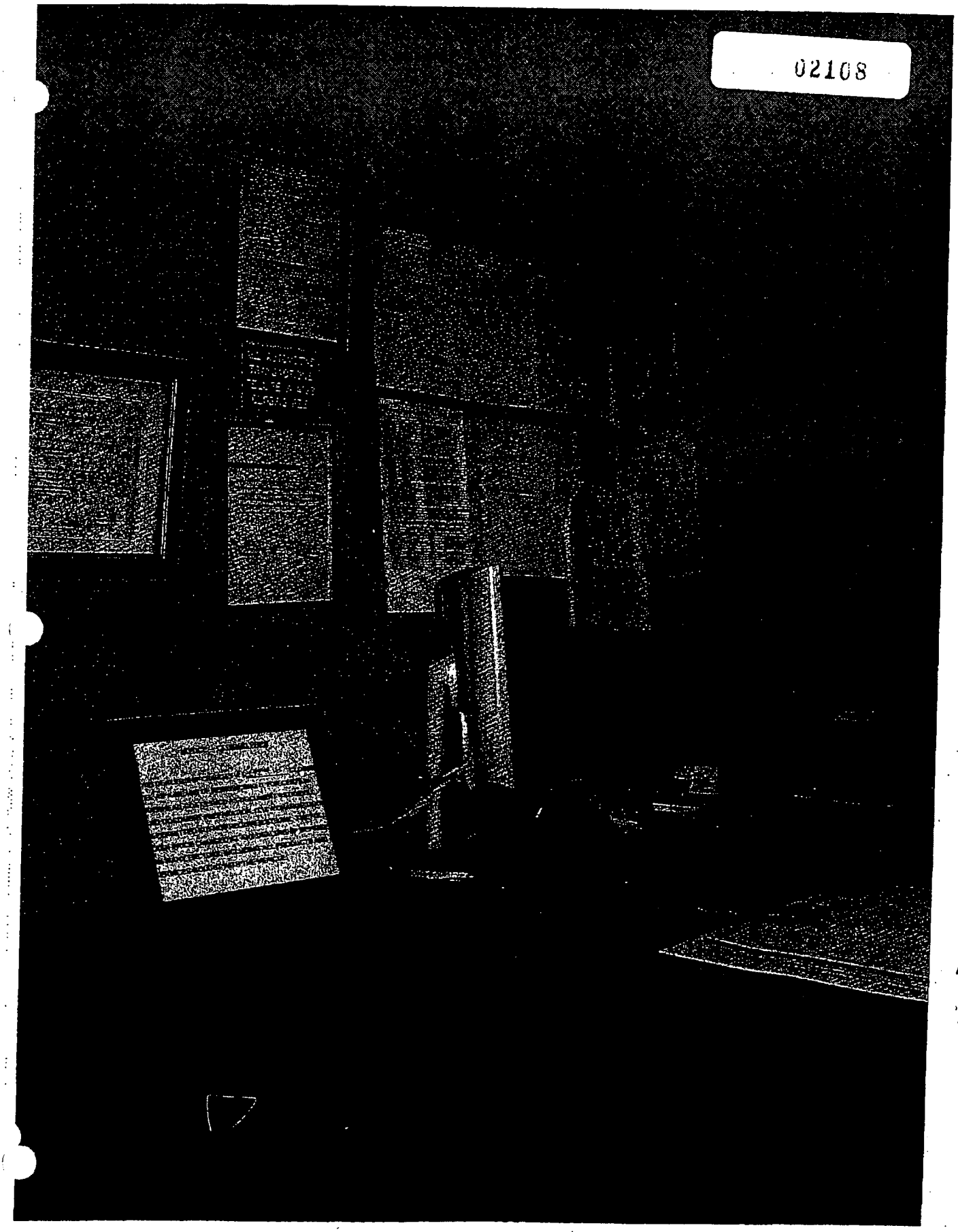
EXHIBITS

	Page/Line	
DFT. EXH. 1, Closing Fee Statute	12	12
DFT. EXH. 2, Administrative Interpretation Issued by the Department	23	1
DFT. EXH. 3, Reference of the Statute from the Credit Sales Chapter	43	10
DFT. EXH. 4, Advertising Guidelines	49	19
DFT. EXH. 5, Filing Form for Motor Vehicle Dealing Closing Cost	78	8
DFT. EXH. 8, Current Advertising Guidelines	81	13
DFT. EXH. 6, A Letter Dated October 28, 2007 to a Steven Hamm	86	23
DFT. EXH. 7, Revised Filing Form	89	15
DFT. EXH. 9, Letter to Brandy Thomas from Elliott Elam	97	1
DFT. EXH. 10, E-mail from Brandy Pinkston	97	13
DFT. EXH. 11, Materials Responsive to Subpoena	100	20
DFT. EXH. 12, Letter to Automax	105	20

EXHIBIT K

Notice - Closing Fees

Galeana Chrysler Jeep Kia charges a $199 closing fee as a means of reimbursing the costs of document retrieval and document preparation. It is a charge that is permitted but not required by law. The full cash price charged at any dealership depends on many factors, including all products and services bought with the vehicle.


02108

NOTICE

CLOSING FEES

THIS DEALERSHIP CHARGES A **$299.00** CLOSING FEE AS MEANS OF REIMBURSING IT FOR CERTAIN OVERHEAD COSTS SUCH AS DOCUMENT RETREIVAL AND DOCUMENT PREPARATION. IT IS A CHARGE THAT IS PERMITTED BUT NOT REQUIRED BY LAW. THE FULL CASH PRICE CHARGED AT ANY DEALERSHIP DEPENDS ON MANY FACTORS, INCLUDING ALL PRODUCTS AND SERVICES BOUGHT WITH THE VEHICLE.

JANUARY 1, 2005

on the walls of the dealership showroom. + in offices

HENDRICK_HONDA_EASLEY_000001
R.000860

NOTICE -- CLOSING FEES

THIS DEALERSHIP CHARGES A $ 289.00 CLOSING FEE AS A MEANS OF REIMBURSING IT FOR CERTAIN OVERHEAD COSTS SUCH AS DOCUMENT RETRIEVAL AND DOCUMENT PREPARATION. IT IS A CHARGE THAT IS PERMITTED BUT NOT REQUIRED BY LAW. THE FULL CASH PRICE CHARGED AT ANY DEALERSHIP DEPENDS ON MANY FACTORS, INCLUDING ALL PRODUCTS AND SERVICES BOUGHT WITH THE VEHICLE.

NOTICE -- CLOSING FEES

THIS DEALERSHIP CHARGES A $289 CLOSING FEE AS A MEANS OF REIMBURSING IT FOR CERTAIN OVERHEAD COSTS SUCH AS DOCUMENT RETRIEVAL AND DOCUMENT PREPARATION. IT IS A CHARGE THAT IS PERMITTED BUT NOT REQUIRED BY LAW. THE FULL CASH PRICE CHARGED AT ANY DEALERSHIP DEPENDS ON MANY FACTORS, INCLUDING ALL PRODUCTS AND SERVICES BOUGHT WITH THE VEHICLE.

7313

R.000862

NOTICE – CLOSING FEES

THIS DEALERSHIP CHARGES A $499.00 CLOSING FEE AS A MEANS OF REIMBURSING IT FOR CERTAIN OVERHEAD COSTS SUCH AS DOCUMENT RETRIEVAL AND DOCUMENT PREPARATION. IT IS A CHARGE THAT IS PERMITTED BUT NOT REQUIRED BY LAW. THE FULL CASH PRICE CHARGED AT ANY DEALERSHIP DEPENDS ON MANY FACTORS, INCLUDING ALL PRODUCTS AND SERVICES BOUGHT WITH THE VEHICLE.

NOTICE -- CLOSING FEES

THIS DEALERSHIP CHARGES A $ 225.00 CLOSING FEE AS A MEANS OF REIMBURSING IT FOR CERTAIN OVERHEAD COSTS SUCH AS DOCUMENT RETRIEVAL AND DOCUMENT PREPARATION. IT IS A CHARGE THAT IS PERMITTED BUT NOT REQUIRED BY LAW. THE FULL CASH PRICE CHARGED AT ANY DEALERSHIP DEPENDS ON MANY FACTORS, INCLUDING ALL PRODUCTS AND SERVICES BOUGHT WITH THE VEHICLE.

LR-02

EXHIBIT L

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

HEATHER HERRON, ET AL,
Plaintiffs,

Docket No.: 2006-CP-02-1230

vs

DICK DYER & ASSOCIATES, INC., ET AL,
Defendants.

D E P O S I T I O N

WITNESS: JACK LESTER FRASHER, JR.

DATE: Thursday, February 12, 2009

TIME: 10:17 a.m.

LOCATION: Law Offices of
Richardson Plowden
1900 Barnwell Street
Columbia, South Carolina

TAKEN BY: Attorneys for the Plaintiffs

REPORTED BY: GINA M. SMITH
Certified Shorthand Reporter
Registered Professional Reporter

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ALSO PRESENT:
MELANIE BLEASE
MELANIE S. OSBORNE

(INDEX AT REAR OF TRANSCRIPT)

STIPULATION: It is stipulated by and among Counsel that this deposition is being taken in accordance with the South Carolina Rules of Civil Procedure, and that the deponent does not waive the right to read and sign the deposition transcript.

- - - - - - - - - - - - - - - - - - - -

JACK LESTER FRASHER, JR., being first duly sworn, testified as follows:

MR. HAMM: Dick, for the record -- and Brady and I talked ahead of time -- we have given some updated information. We asked our client and his staff do you use window stickers. They go no, so we tell you we don't use window stickers.

What we found yesterday, just going back through this, that what we've handed you is what they put on the dash of the vehicle. So they didn't -- so that's -- it's in the vehicle. It wasn't a, quote, window sticker.

So we didn't ask the followup question, but this was what was on the dash of the vehicle, so we're giving it to you --

MR. HARPOOTLIAN: And he can describe these?

MR. HAMM: And he can describe them, yes,

Page 5

but I just wanted you to know.
MR. HARPOOTLIAN: That's fine. And those are Bates stamped --
MR. HAMM: Yes.
MR. HARPOOTLIAN: It's labeled Exhibit A.
MR. HAMM: Yes. And you can do it in any fashion that you want.
MR. HARPOOTLIAN: Bates stamped, for the record, LR-429 through LR-436.
MR. HAMM: Right.
Do you want to make that Exhibit 1?
MR. HARPOOTLIAN: Not yet.
MR. HAMM: Okay, that's fine.
MR. HARPOOTLIAN: I mean, I'll probably put it in at some point, but that's not really where I want to start.
MR. HAMM: That's fine. I just wanted you to know why it is you're getting it now.
And I take responsibility for that.
MR. HARPOOTLIAN: Absolutely. I don't want any doubt about that one.
EXAMINATION
BY MR. HARPOOTLIAN:
Q. Let me -- first of all, tell me your full name, please.

Page 6

A. Jack Lester Frasher, Jr.
Q. And you are a doctor?
A. Doctor of Optometry. I'm not practicing. I'm licensed. I keep my 20 hours continuing ed a year, but I'm in the automobile business.
Q. And what's your position with the Defendant, Land Rover, or Overland, Inc., d/b/a Land Rover?
A. I'm the president and stockholder.
Q. Have you ever had your deposition taken before?
A. Maybe once many, many years ago. Nothing to do with anything.
Q. What kind of case was that?
A. I don't even remember. I'm talking so long ago. It just seems like as I watched this the other day --
Q. Everything looked familiar?
A. Yeah, a little bit, you know, but nothing that I can recall. I couldn't begin to tell you.
Q. I don't think I drew as big a crowd as Louis here today, and this should be a little different, sort of.
Let me first of all explain to you, I'm going to ask you some questions. We expect you,

Page 7

since you're under oath, to answer those questions truthfully. If you don't know, I don't know is a perfect response.
If you think that -- and I may follow up saying, well, if you don't know, who would know. If you understand in the organization who that might be, that would be helpful.
It's important for you to articulate your answers yes or no verbally, because this young lady is taking it down stenographically, and I believe she's recording it, and from that she will prepare a transcript which at some point will be furnished to me and your attorney.
And you'll be asked whether you want to read and sign it, which I'm sure you're going to want to do. Okay?
MR. HAMM: Yes.
BY MR. HARPOOTLIAN:
Q. When you read and sign it, typically you can't change your answer in the sense of if you said yes today, then you can't go back six months from now and say no, with some very limited circumstances. Creative lawyers happen to think you can do that, but I'm not one of them.
So, likewise, during this process, your

Page 8

lawyer may object, and all he's going to say is I object or I object just to the form. He's not going to give an objection in which he states why he's objecting because that would be contrary to the rules, and Mr. Hamm knows that, we've discussed.
So -- where's Becker? Is Becker here?
MR. HAMM: No.
BY MR. HARPOOTLIAN:
Q. I was going to instruct him today.
But Steve was going to be an example for him, to show him how to do it right.
But -- so, I mean, this is a fairly simple process. You can't stop and ask your lawyer questions, except under very limited circumstances. I don't think those are going to come up today. So we have an understanding?
A. Sure.
Q. That would be a yes?
A. Yes.
Q. See, it's important that you say yes or no.
A. Okay.
Q. Now, let's talk a little bit about Overland, Inc., d/b/a Land Rover.

Page 9

Did you start it? Are you the creator of it?

A. Yes, my wife and I.

Q. And what's your wife's name?

A. Victoria C. Frasher.

Q. Okay. And are y'all from here, from Columbia?

A. Greenville. She was a military brat, and she was in Greenville when I met her.

Q. And you're from Greenville?

A. Yes, other than school and four years as a baby while my dad was in dental school, but, you know --

Q. And where did you go to school?

A. I went to Clemson to undergrad.

Q. What year did you get out?

A. '73. I went to optometry school -- '72, I guess, I went to optometry school.

Q. I was there. I got out in '71.

A. Really?

Q. Yeah.

A. '72 to '76 in Chicago.

Q. And you went to optometry school?

A. Optometry.

Q. And when you got out of optometry school,

Page 10

what did you do?

A. Well, I opened cold.

Q. Where?

A. Greenville.

Q. And did you practice medicine up there?

A. Full time 20 years.

Q. Until when?

A. Around '98. I phased down. A buddy of mine, a colleague, took over my practice, and I worked less and less because the business that -- the automobile business challenged me timewise.

Q. And did you go into some other business?

A. Well, I was already in the business that I'm in now.

Q. Car business?

A. Right.

Q. In Greenville?

A. Right.

Q. And what was the name of that dealership?

A. Land Rover of Greenville.

Q. Do you still have that?

A. Yes.

Q. And there's Land Rover of Greenville, Land Rover of Columbia?

A. Right.

Page 11

Q. Are there other little Land Rovers?

A. We have Jaguar Land Rover Asheville.

Q. Asheville. North Carolina?

A. Right.

Q. Anywhere else?

A. No.

We have a motorcycle business in Greenville.

Q. What's the name of that?

A. Touring Sport BMW.

Q. BMW motorcycles?

A. Yes.

Q. Any other?

A. Brand?

Q. Yeah.

A. We added over the years Ducati, Aprilia, and Vespa scooters.

Q. That business doing well, motorcycle business?

A. Yeah, most -- I mean, it's doing okay. It had a little spurt during the fuel scare with the scooters, but it's doing okay.

Q. Better than the car business?

A. Yes.

Q. Anything's doing better than the car

Page 12

business, isn't it?

A. Yes.

Q. Now, this entity Overland, Inc., does it own all those dealerships or are they owned by other entities?

A. No. Touring Sport was -- we actually opened it earlier. It's a different corporation.

Q. And do you have -- and Overland, is it you and your wife or anybody else?

A. Just us.

Q. And these other -- as to the other Land Rovers up in Greenville, is that owned by Overland also?

A. Right. Yes.

Q. And the motorcycle dealership, that's in -- where is that, Greenville?

A. Greenville.

Q. And who's that owned by?

A. You mean -- I mean, it's still my wife and myself --

Q. Different corporation?

A. -- only stockholders.

Right, different corporation.

Q. And the one in Asheville?

A. That is a d/b/a, Jaguar Land Rover

Page 13

Asheville, but it's with Overland, Inc.
Q. So all these entities are owned by Overland, which the stockholders are you and your wife?
A. Other than the bike dealership, right. Other than the motorcycle dealership is not Overland, Inc.
Q. No, but it is another entity, which is --
A. Right.
Q. -- owned by you and your wife?
A. Yes.
Q. Now, have you looked at the 30(b)(6) Deposition Notice?
A. Yes.
Q. Did they show that to you?
Let me make that an exhibit, if I could. Mark that, please.
(DEPO. EXH. 1, 30(b)(6) Deposition Notice, was marked for identification.)
BY MR. HARPOOTLIAN:
Q. Going to -- this would be Exhibit Number 1. You are the person most knowledgeable regarding the charging of administrative fees and/or processing fees as described in the lawsuit?
A. Yes.

Page 14

Q. And then there's a series of topics A through P, and you've reviewed these, I assume, with somebody, your lawyer or somebody else, and determined you're the person most knowledgeable about each one of these?
A. Yes, I believe so.
Q. Okay. Alrighty then.
Now, tell me, then, when we say -- and we use definitions in here of administrative fees includes those fees referred to in the Amended Complaint often referred to as administrative fee or recording and processing fee, a closing fee, or dealer documentation closing fee. I mean, are we speaking -- we understand what we're talking about here?
A. Yes.
Q. When did you start doing that? When did the -- let me ask you this: The Columbia Land Rover and Greenville Land Rover, do they operate differently, or do I need to ask you about each one separately, or do they do the same thing at the same time?
A. Well, that's our intent. And, you know, I would think certainly the question you're getting ready to ask me, they --

Page 15

Q. Which is when did y'all start doing it?
A. Right.
Q. When did y'all start doing it?
A. January 25th was the first documentation fee --
Q. What year?
A. '06 -- that we charged in Columbia. Around that time frame is when we finally decided, you know, we were going to do it.
Q. Okay. And how many years do you contend --
MR. HAMM: Dick, for the record, the only named Defendant in this or any lawsuit is Land Rover Columbia.
MR. HARPOOTLIAN: I understand that.
MR. HAMM: I just wanted to make sure.
MR. HARPOOTLIAN: I understand that. I'm just -- if there was some difference, I'd want to know why.
MR. HAMM: That's fine. I just wasn't sure if you were aware of that.
MR. HARPOOTLIAN: I am.
BY MR. HARPOOTLIAN:
Q. What is your understanding this lawsuit's about?

Page 16

A. Well, the lawsuit is about closing fees, documentation fees and the charging of them.
Q. And what -- what -- you said you started in January of '06. Why? What brought that about?
A. Well, you know, the General Assembly authorized it.
Q. When did they authorize it?
A. Several years ago, 2000 or so.
Q. They authorized it in 2000. Why did you --
A. We were aware of this for several years, and I didn't think we needed to do it for the longest. And I think you've been furnished information with some conversations.
But it's -- almost a year before we did start charging, we had pretty much decided we were going to. Business, you know, there were slight profitable years, slight losing years.
As costs kept increasing and the requirements kept escalating, it just was something we had felt we had to do, so -- to recoup some of -- to recoup some of our costs.
Q. And to make additional monies?
A. Well, to not in effect lose and have no recovery of what we felt we were spending that we

Page 17

normally in the old days, so to speak, did not have to spend.

There's just a lot of things that are required today and things that we do to try and give a legitimate experience that, again, costs money, so --

Q. Well, did you do any cost analysis on -- first of all, how much did you charge in '06 when you began doing this?

A. 225.

Q. Okay. And did you -- was there any accounting or cost analysis of why it should be 225?

A. Well, there was no official study or anything like that. We didn't hire anyone to do a study, but, you know, just knowing the business, watching our expenses and seeing the types of things.

We did -- I think maybe you were furnished something with a list of some of the items that do cost us. And we just decided this was a reasonable fee, it would not be a hardship on customers. It hasn't appeared to be that way. At the same time it would -- might recoup, you know, most of our costs, some of our costs.

Page 18

Q. Costs for what?

A. Well, I mean, again, I think you've seen the things, but one simple thing is the, you know -- the Car Fax. We subscribe to that so that we can be sure that we get a history on the car so we can represent it properly before the purchase.

Q. What do you call this thing when you put it on the form or you --

A. We've called it documentation fee. Early on we've called it closing fee. You know, based on advice of our counsel just --

Q. Okay. I guess what I'm asking is, first of all, y'all submitted a form to the Consumer Affairs folks --

A. Right.

Q. -- and you asked for or you said you were going to charge how much?

A. Well, I don't really know the wording, but I know that we're authorized to charge up to 350.

Q. 350, okay. And yet you charge how much?

A. 225.

Q. 225. So you could charge up to 350 under what you filed with the Department of Consumer Affairs --

A. Yes.

Page 19

Q. -- but you charge 225?

And when you did that initially, you called it what, a documentation fee or a closing fee?

A. I believe initially that we called it a documentation fee. You know, the application that we received from the Department of Consumer Affairs referred to several names. That was one of them, and I believe that's what we charged it initially -- or called it initially.

Q. They called it a closing fee, did they not?

A. Who?

Q. Department of Consumer Affairs.

A. Well, no. The application that they send to us, the only correspondence we have with them refers to closing, refers to documentation fees, administrative -- you know, several things.

So we didn't know that -- and again, until recently -- that there was a preferred wording. If there was, we'd certainly use it. We've certainly tried to follow the law.

MR. HARPOOTLIAN: Let me have that marked, please?

MR. HAMM: What are you referring to?

Page 20

MR. HARPOOTLIAN: I'm referring to -- and I'll hand you a copy of it. It's LR-01. Is that your --

(DEPO. EXH. 2, South Carolina Department of Consumer Affairs Motor Vehicle Dealer Closing Fees Form, LR-01, was marked for identification.)

BY MR. HARPOOTLIAN:

Q. You've been handed Exhibit Number 2, I believe. Have you seen this document before?

A. Yes.

Q. And did you sign it or somebody else sign it?

A. That's my signature.

Q. And let's look at it. It's the South Carolina Department of Consumer Affairs Motor Vehicle Dealer Closing Fees form.

Do you know how you came to get one of these? How did you get it? Did you call Consumer Affairs? Did your lawyer do it? Do you know --

A. No, someone in my office did it way back. I think we actually -- I'm doing this from memory. I think we applied for it the year before we did it and then again for '06 when we did it, and --

Q. So is there a form for '05?

A. There may be. No, I mean, I'm just

Page 21

telling you we never did it in '05. We had planned on doing it. And, again, I had -- I just was not -- I was doing everything possible to not ever -- we like to be straightforward in the way we do business, and I was trying to be as straightforward as possible, and so when we did it, we made sure that we did that, but we did not.

Q. And this says -- this form was filed on, it looks like, 12/20/05. It says, will not exceed 350 prior to July 1, '06. Is that right?

A. That's right.

Q. Okay. So between this date and July 1, '06, you can charge 350. Is that your understanding? Up to.

A. Sure. Yes.

Q. Now, it says here -- if you look, it says, disclosure of closing fees notice. This dealership -- I'm going to publish this so we can make sure we understand what we're talking about.

This dealership charges closing fees as a means of reimbursing it for certain overhead costs such as documents retrieval and document preparation. It is a charge that's permitted but not required by law. The full cash price charged at any dealership depends on many factors including

Page 22

all products and services bought with the vehicle. The closing fee you put as 350.

Now, what was your understanding, based on filling -- when you filled this form out and signed it, what your closing fee to be composed of?

MR. HAMM: He's just struggling -- tell him where you were reading.

BY MR. HARPOOTLIAN:

Q. Just says, disclosure of closing fees notice.

MR. HAMM: I'm just pointing him to it. He didn't see what you're --

THE WITNESS: I was not following along.

BY MR. HARPOOTLIAN:

Q. This dealership charges, do you see that?

A. Yeah, okay.

Q. That's the paragraph. Why don't you just read it to yourself again so I don't have to publish it again. Just let me know when you're done.

A. Right.

Q. Now, it says, it is a charge that is permitted but not required by law.

A. That's right.

Q. It says it's a means of reimbursing it for

Page 23

certain overhead costs such as documents retrieval and document preparation. Okay.

Now, my question to you is: How did you determine 225 as a means for reimbursing for certain overhead costs such as documents retrieval and document preparation?

A. We basically -- I had our people just, you know, come up with a list of the items that are involved in each transaction. And we have a computer system that requires, you know, that it be entered into that. There's just all sorts of fees involved with it.

And so we -- we just listed a bunch of them -- and you really have that information, I think -- but, you know, from compliance with all the different governmental things, and, you know, preparing documents for moving a vehicle from one ownership to another, dealing with the Department of Motor Vehicles. There's just numerous things.

And we just analyzed it as best we could. No official study, just simply tried to estimate how much time people were using, how much expense in the forms and documentation. We spend probably six, $7,000 a month in Columbia just on the computer system support.

Page 24

Q. I guess now -- you're talking about Exhibit B to the --

A. Right.

Q. -- Second Revised Supplemental Answers to Revised Interrogatories For Plaintiffs, right?

A. And that represents some of the items, yes.

Q. In 2005, was there a meeting in which this list was generated? Was this list generated?

A. I have not really -- to be honest, I didn't recall this list. This is another document that I saw.

Some of the items are very familiar because we obviously tried to figure what, you know -- what should we charge.

Q. What I'm asking you is: In 2005, before you decided to charge 225, asked for 350, did somebody generate this list then or is this generated in response to the lawsuit?

A. I am not sure. I'm not aware of -- I would assume this might be a response, because ours was more of an informal study. That would be my speculation, but I can't assure you.

Q. Well, let me see what your Interrogatory says.

Page 25

MR. HARPOOTLIAN: And these Interrogatories are sworn to.
MR. HAMM: Yes. We have given --
MR. HARPOOTLIAN: Okay. We got verifications today. So let's see where Exhibit B is referred to.
MR. HAMM: I'm not sure what you're looking for, Dick.
MR. HARPOOTLIAN: I'm looking for -- there's an Exhibit B, which is on the list on the Interrogatories, and I'm assuming it's referred to somewhere on your Responses.
MR. HAMM: It is.
MR. HARPOOTLIAN: That's what I'm looking for.
MR. HAMM: If we find it, we'll be happy to tell you, Dick. Eleven.
MR. HARPOOTLIAN: So let's -- do we have this in -- let's make it an exhibit.
(DEPO. EXH. 3, Response to Interrogatory Number 11, was marked for identification.)
BY MR. HARPOOTLIAN:
Q. So what we have here is in your Response on Number 11. It says, describe why you charge the administrative fee including in this description

Page 26

what the fee covers, how you came up with it, and why the fee is broken into a separate category from the sticker price on the sales invoices.
Are you reading along there with me?
A. Yes.
Q. Response: Beginning on January 25, '06, at the time of Plaintiff Heather Herron's purchase in February of '06, Defendant Land Rover charged a closing fee/recording and processing fee permitted by statute and properly registered with the South Carolina Department of Consumer Affairs.
The amount of the fee is related to certain expenses, including expenses for document preparation and retrieval, storage and other costs associated with transferring title to vehicle sold, a more complete listing attached as Exhibit B hereto.
The closing fee, recording and processing fee is listed as a separate category from the sales price on the buyer's order if required.
Now, having read that, this Exhibit B, was this something prepared in '05, before you submitted that, or '06, before you decided what to charge, or is it something that was drawn up --
A. I told you -- I told you what I know. I

Page 27

don't know. I would assume this was -- you know, as a result of -- at least presenting it would be a result of the lawsuit, but I don't know.
Q. So you're the person designated most knowledgeable about how the administrative fee was composed?
A. Right.
Q. And you can't tell me when this list was --
A. Not this piece of paper, not this exact order.
Q. Did you put this piece of paper together?
A. No.
Q. Do you have a copy of it in your dealership in your files?
A. No.
Q. Okay. So I think we can assume, then, it was not composed by your dealership and was a response composed by your lawyer to the Interrogatories. Does that make sense?
MR. HAMM: Objection.
BY MR. HARPOOTLIAN:
Q. Or in conjunction with you.
A. No, that's an assumption that's incorrect, because basically we responded to the lawsuit. And

Page 28

certainly we have counsel, but we prepared any information from our dealership. When I say we, I pay people to do this. I mean --
Q. I understand that.
Who did you pay to do this?
A. Well, I mean, I've got an office with a controller in it and other ladies, and just -- we, you know -- I just said gather the information we need to help us make an intelligent decision.
As far as this sheet, I can't -- like I said, I can't tell you for sure whether this was --
Q. Well, prior to filing Exhibit Number 2, were there -- was there -- I mean, this is a large list in Exhibit B. Did anybody put numbers on those? Did anybody say for a year it costs us X number of dollars to do preparation of logs, manual and electronic; it costs us X to do receipt of monies; X for administratively processing new or used vehicles? Did anybody --
A. There were discussions regarding that, and I think you've been -- if you look back, there's probably an e-mail where the number was really going to be higher. And I think it was 289 or something like that. And that was what we thought, based on just discussions and trying to dig into

Page 29

what we were actually paying to help a transaction occur.

But, you know, the -- we were just simply trying to do what was authorized. And, you know, this had been authorized for a long, long time, and we just tried to go in at an amount that we could feel really good about and be very, very comfortable and not put a hardship on our customers. It was authorized and we simply, you know, decided we needed to charge it.

Q. Why did you ask for 350?

A. Again, that was probably early in our discussions, and I was not doing physically every piece. So that was what was authorized, because I think the feeling was that it could be as high as that.

But then when it came right down to the decision-making, we just decided that we wanted to, you know, hold it to a minimum, and that was it.

Q. Did you call around to see what other people were charging?

A. I did not, although I think that --

Q. Did somebody do that?

A. -- I think some calls were made. And there's some data that shows some estimates from

Page 30

back -- probably back in '05 that -- just to -- basically we're coming up with a figure that we think is right, but at the same time let's make sure we're not way off base. That was the purpose of that.

Q. I guess what I'm saying is, is there a document in existence in which you sat down and figured out what the cost of these items was?

A. I don't believe so.

Q. Was there a meeting, or meetings, where people recorded anything about those discussions?

A. I don't believe so, but there were discussions. And this was -- I had an outside consultant at the time.

Q. Who was that?

A. It's in that information about where -- the e-mail that shows the disclosure.

Q. What's his name?

A. Gary Palmer.

Q. And who's he with?

A. I don't know the name of the company.

Q. And he was the one that helped you come up with the --

A. Well, I just noticed there was an e-mail, when reviewing documents from him to our office

Page 31

manager, basically stating that it will be 289 after, you know, our discussion, blah, blah, blah.

And nearly a year later when I finally decided to begin charging it, I just said, no, I'm not comfortable. We came to 225 and let's do that.

Q. Well, this Gary Palmer, did he do any analysis, to your knowledge?

A. I don't know.

Q. What are centres guides, C-E-N-T-R-E-S, guides?

A. Sales guides, salespeople. Centre is the term used by Land Rover. We have a Land Rover centre. It's spelled R-E because Land Rover's British, and that's just one of their standards, that your salespeople are not salespeople, they are sales guides at a Land Rover centre.

Q. Salespeople are called centres guides?

A. Sales guides.

Q. What's a centres guide?

A. Would be the same thing. They work in a Land Rover centre, so I assume that would be the same thing.

Q. Are these people that work for you or do they work elsewhere?

A. Well, they work in our dealership like a

Page 32

salesperson would.

Q. Now, Mr. Palmer, Gary Palmer, had an e-mail at your -- from Land Rover. He worked for you?

A. For -- he worked as a consultant. And for two months or so he worked with us officially and at the time was, you know, just considering actually, you know, working for us full time, and we were considering it.

Q. And these e-mails were sent to Land Rover in Asheville?

A. Well, like I say, we probably did everything regarding this documentation fee, closing fee simultaneously.

Q. Did you do that also in North Carolina, then?

A. Oh, yes.

Q. Do you have to file a form in North Carolina?

A. That's a good question. I don't know. I should know, but I don't know.

Q. And the 289 that he talks about here and the 225, is that a fee, then, you charged in Columbia, the same fee in Greenville and the same fee in Asheville?

Page 33

A. Yes.
Q. And are any of those entities, that is, the dealerships, are they all the same size, same volume?
A. Very similar. Very similar. Year to year it can vary, but, yeah, our markets are very similar in size.
Q. And the amount of revenue generated is the same?
A. I wish it were consistent, but it's kind of up and down, teetering around where I told you. We'll have a good year in one, or a reasonable year, and we'll have a bad year in the other.
Q. Same size building in each one of them?
A. Pretty much. The buildings are -- I would say all of them are generally similar, but not the same and not the same size, but in general.
Q. Same number of salespeople?
A. Pretty much. There may be one less in one store, you know, but we only employ three to four sales guides.
Q. In each store?
A. In each store.
Q. And the cost of filing documents and doing business in North Carolina is the same as it is in

Page 34

South Carolina?
A. I don't know that I can answer that accurately.
Q. Well, when you did this analysis, did you look at that?
A. Well, yes, but again, I wouldn't want to say exactly the same because the states are different, and, you know, one's more of a stickler on how you title the vehicle and that sort of thing. So I don't want to answer that.
Q. Well, was this number, because -- was this number that you came to, the 225 or the 289 or the 350, was that something you looked at for each dealership or did you look at it for all the dealerships owned by this entity?
A. We looked at everything in the Land Rover dealerships pretty much. Even though we have Jaguar in Asheville, it's primarily Land Rover business. It's very similar for the reason that I mentioned, the market size.
Q. But, I mean, did you look at it in the aggregate or did you look at them individually?
A. We looked at them individually, and, like I said, they're very similar.
Q. And so if we looked at your income tax

Page 35

returns for each one of those entities, the costs would be the same, what you've -- expressed costs in each one of them?
A. It would be very close.
Q. Well, very close plus or minus 10 percent? Plus or minus --
A. I don't know.
Q. Well, when you came up with this document fee, again, did you determine that this fee was proper for Columbia individually, being proper for Greenville individually, being proper for Asheville individually?
A. I believe so. But again, in the interest of consistency and what I was comfortable with, I know that the cost would be equal or higher than the fee we're charging. There's no doubt about that. So we simply -- that was a number I was comfortable with as far as recouping part of our expenses.
Q. Did somebody sit down and -- did you ever see a figure or were you ever in a meeting where there was a figure that told you what the annual administrative processing new or used vehicles were for -- by the dealership, the dollar amount?
A. The dollar amount once we started

Page 36

charging?
Q. No -- well, yes, before -- well, in '05.
A. You mean planning?
Q. Right.
A. No.
Q. Did anybody give you a number for what it costs you to do truth-in-lending compliance?
A. I think that's more of those general discussions we had, estimates.
Q. Well, if you answer yes or no, then you can explain.
Did anybody ever give you a dollar number --
A. I don't remember.
Q. -- by dealership?
A. I don't remember.
Q. Well, you've been designated the person most knowledgeable about how these numbers were come up with, how they were determined, and you can't tell me whether you got a dollar number for these individual items you've listed --
A. You didn't say the individual items. You said one item.
Q. Well, any of them.
A. Okay. Certainly then we figured based on

Page 37

estimates for the dollar expense, but I would challenge you to remember what was done in 2005.

Q. Sir, I'm not under oath here --

A. I understand.

Q. -- testifying, and I haven't been designated as an expert, as the person most knowledgeable.

A. Right.

Q. So if you'll answer the questions and not attempt to argue with me. This is not a medical malpractice deposition. I understand your position, but if you'll answer the question --

MR. HAMM: I object.

BY MR. HARPOOTLIAN:

Q. -- I would appreciate it.

Sir, did you or did you not have a dollar amount for preparation of logs, manual or electronic, before you determined what amount to charge for the administrative fee? Yes or no and then you can explain your answer.

A. You said "I don't know" is an answer.

Q. You don't know?

A. I don't know if --

Q. Who would know?

A. I don't know that anyone would know exact

Page 38

numbers, because I said there was not anything that was an official study.

Q. What I'm asking you is: Did you have an exact number for preparation of logs, manual or electronic, in 2005, before you came up with the number? Was there an exact number?

A. Exact number, I would say no.

Q. Well, if it wasn't exact, how was it presented? It cost us about 10,000? It cost us about five?

A. I would think so.

Q. Was that written down somewhere?

A. I don't think so. I don't know.

Q. What about receipt of monies?

A. Receipt of --

Q. I'm sorry, it's your phrase, receipt of monies.

A. We're going down the list?

Q. Yes, sir, we are.

A. I think that's somewhat of a general term. There's personnel involved. We pay our people. So that's one form of it.

The other thing is just the paperwork that's involved in receipt of monies. So, again, I would think it would be a general amount.

Page 39

Q. Well, how many people do you have receiving monies in a dealership?

A. I would think that you could involve the sales guide. You could involve the office manager. You could have maybe someone else involved in that, but in general, two, I would think.

Q. That would be the person selling the car?

A. Yes.

Q. Of which you said you had probably four per dealership?

A. Uh-huh.

Q. And then the person who actually receives the money, the cashier -- is that a cashier?

A. It could be the same person. We have a -- I mean, the sales guides in our dealership deal directly with the customer. There's not much switching off.

And so it could be that they took the check and then hand it over to the office manager in most situations.

Q. So were you considering the sales staff and the office manager or just the sales staff?

A. I would think anytime anyone's involved, it's costing you money.

Q. I'm asking you back in '05 when you did

Page 40

this analysis to determine that amount, what did you --

A. Certainly two.

Q. I'm sorry?

A. Two people.

Q. Two people for each transaction?

A. Right, minimum.

Q. And so all four people, all four salespeople, would be involved in the receipt of money?

A. Yes.

Q. And the -- you called her the -- he or she the office manager?

A. Right.

Q. Now, what percentage of their salaries did you allocate?

A. I don't know.

Q. Have you ever thought about allocating a percentage of their salaries?

A. To that exact task?

Q. Yes.

A. No.

Q. They do more than that, right?

A. Obviously.

Q. Did you allocate their whole salary to

Page 41

this when you started doing the addition?
A. Of course not.
Q. Of course not.
So how did you determine what -- when you went down this list, which didn't exist at the time, but these are the factors you considered, how much -- what do you pay a salesperson a year?
A. It varies dealership to dealership.
In our case, we start sales guides with a salary and then they earn flat fees as they, you know, sell more, produce more.
Q. Did you allocate just part of the flat salary or did you allocate part of the fees or --
A. I think I just told you we did not allocate anything.
Q. So when you went to come up with this fee and you were considering receipt of monies, how much of that -- I mean, how did you figure out what that was in approximate numbers?
A. I think this is a very difficult thing to answer accurately, and I don't know that anyone could.
Q. I'm not asking you how you would do it now. I'm asking you what you did before you did the fee. Did you do that? Did you go through and

Page 42

allocate some portion of the sales staff salaries or salaries plus bonuses --
A. We went through and decided what we felt our costs would be without -- I mean, did we allocate, no. You won't see that we allocated, accountingwise, a portion of each person's salary. If we did that on everything, every task like this, I mean, my God, I mean, what are you looking for, an accounting nightmare?
Q. I'm looking for how you reached the number of 225.
A. Like I said --
Q. Did you guess at it? Did you just pull it out of some orifice? What did you do?
A. I think we guessed at it.
MR. HAMM: Objection. Asked and answered.
BY MR. HARPOOTLIAN:
Q. I'm sorry, I didn't hear your answer.
A. I think it's a best estimation.
Q. When you say best estimation, you've given us a list of things you've considered, and I'm asking you how you estimated them.
Administratively processing new or used vehicles, what does that mean?
A. Have you bought a car?

Page 43

Q. No.
A. The reason I'm asking is because there are so many documents -- there are so many documents that you are signing that we have to prepare for the bank, for the DMV, for the Truth of Lending and these --
Q. Who does it? Who does it? Who prepares them, the sales associate or somebody else?
A. In some cases you may have a sales guide, a lead sales guide or a sales manager that helps generate that. An office manager in some of our dealerships is fully capable of doing that.
That can vary. We like to keep the salesperson involved as long as possible so they can communicate full understanding, no mysteries.
Q. So did anybody attempt to estimate what percentage of or what piece of a sales associate's time or the office manager's time --
A. Yeah, we tried to estimate that, but again, it was in discussions, and we didn't hire anyone to really do a formal study on that. We just simply, you know, did our best estimates.
Q. Well, your best estimate for that was what?
A. I don't know that.

Page 44

Q. Was it written down somewhere?
A. I don't think so, and I know it was a long time ago.
Q. Well, there's one, two, three, four, five, six, seven, eight, nine, ten, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25 separate elements that went into coming up with that fee.
A. Well, there's more than that. I mean, as I'm sitting here --
Q. There's more than that?
A. Certainly.
Q. 30? 40? 50?
Now, when you're going through and considering how to come up with this $225 number, there has to be an addition of these elements, correct, to get to 225 or 350 or 450, or whatever the number is? Don't you have to add it up?
A. You're adding up time and you're adding up materials and you're adding up, you know, a number of different factors. So I don't know how you add different items. I mean --
Q. Well, the way you add different --
A. Maybe you need to restate that. I'm not real sure --
Q. How do you get -- I mean, if each one of

Page 45

these composes the whole, right, when you add it up -- I mean, when you sell a car, there's the base price of the car and then there are things you add on, right? I mean, people want -- I don't know whether you charge extra for air-conditioning or for rust-proofing or for Sirius Radio. There's pieces that go into that price of the car.

A. Options, right.

Q. Options, that's what y'all call them, options.

Well, so the guide is sitting there figuring out how much they're going to charge them for the car, he takes those things, does a little adding machine, and then he says the price is X, right?

A. Right.

Q. These are the things that you considered in reaching that 225 or 350, whatever the number is. Did somebody sit there with a calculator and say, preparation for logs is X, or 50 bucks, or receipt of money is 20, and add it up and come up to 225?

A. Quite honestly, I think --

Q. Could you say yes or no and then explain? Did anybody do that? And if so, who? And if so,

Page 46

when? I'm sorry.

MR. HAMM: Compound.

MR. HARPOOTLIAN: I'm not excited.

MR. HAMM: I'm not either.

MR. HARPOOTLIAN: I'm hungry, but I'm not excited.

MR. HAMM: There's cookies and fruit in there.

MR. HARPOOTLIAN: I know. A little sugar will help me.

THE WITNESS: Restate, please.

BY MR. HARPOOTLIAN:

Q. Did somebody sit down and go item by item and assign a numerical value, a dollar value, to each one, add it up and get to 225 or 350 or whatever the number was?

A. I think some of the answer would be yes, but I think it would be an estimate. I don't think anyone did an analysis that would be, you know, exact.

Q. Somebody sat down, did an estimate of each one of these items?

A. I'm assuming so.

Q. Who was that?

A. Probably, again, discussions between the

Page 47

sales manager, accounting manager, office manager, controller. You've got -- you've got financial statement information. Yeah, you see the categories and all that.

So I would think, again, numerous discussions, and, you know, surely some -- there was a total, but again, I wouldn't want to insinuate this was an exact science.

Q. I'm not saying exact science, but --

A. You said exact several times so I want to make sure I'm clear on that.

Q. What I'm saying is, who sat down and assigned a value to each one of these and added it up?

A. It was discussionary. I would say it would be the people I've mentioned.

Q. Huh?

A. The people I've mentioned: the controller, the manager at the dealership. It was a group decision on what are we -- what are we able to say is the total cost for the items that we're -- that we are in effect going to look at getting some sort of reimbursement for, well within the law.

And, you know, it's been authorized a good

Page 48

while, and we just simply were -- felt it was time to have to charge for some of that.

Q. You agree that you can't charge more --

A. I agree.

Q. -- than what you're -- let me finish the question -- than what you're being reimbursed for? You can't make a profit on it, can you?

A. Right. That's our understanding.

Q. Now, I'm going to go into this area one more time, then I'm going to leave it alone.

You said it was a group effort, all these people met. Is there a single piece of paper, which -- or several pieces of paper or a dozen pieces of paper where these items were assigned numeric values and added up -- that would be Exhibit B -- and added up to come up to a number of 225, 350, 2,000? And yes or no and then you can explain your answer.

A. No, I don't believe so.

And if it were, it would be the higher amount that, again, was written down in correspondence.

Q. But you know of no such document?

A. No.

Q. You never saw such a document?

Page 49

A. No.
Q. And you would agree or disagree -- you can answer this yes or no -- that -- look through the list. Are any of these costs -- strike that.
When dealing with a customer, you're required to distribute contracts to various finance companies so you can get a response from them as to what they'll charge the customer to loan the money. Is that what that is?
A. Yes.
Q. And that's done typically by fax?
A. Yes. There's some -- there's some electronic applications, but yes, typically.
Q. But a lot of them by fax?
A. Right.
Q. You fill out what I would call a loan application, y'all call it something else.
A. Right.
Q. What do you call it? There's a name for it.
A. Loan application.
Q. Loan application. And you fax it to five different banks or four --
A. Not necessarily. If we know we're getting an excellent rate from one source or another --

Page 50

typically there are those banks that do a better job than others on certain types of -- whether it be a lease, whether it be a purchase. Oftentimes a captive finance company is best for, for example, a lease. Finance company works more with the manufacturer and you get a price advantage with the customer.
But other times you end up, like you say, sending it to multiples, particularly if a person is difficult to get financing.
Q. And when you send that, do you sometimes fax it, sometimes e-mail it?
A. Right.
Q. Do you attempt to -- do you keep track of your charges for faxes? Are there telephone charges?
A. No.
Q. Are there charges for e-mails?
A. Are there telephone charges, yes, but no, we don't keep up with those individually.
Q. So when you attempt to get reimbursed for your costs for doing that, you have no way to know what that fax would have cost, the actual -- the actual distributing the contract to the various finance companies. The actual process of doing

Page 51

that is a fax or e-mail, but y'all don't keep up with the cost of doing that?
A. No.
Q. Now, let me ask you this: And when you fax that contract to the finance company, they fax a document back to you with an interest rate on it, correct?
A. Yeah, the whole -- the terms of the loan, interest, length of term.
Q. What is a buy rate?
A. The buy rate is the rate that we as a dealer would be able to get the financing for the purchase of the vehicle.
So, in other words, if the buy rate is 7 percent, that is what they will approve, and --
Q. And is there another rate the customer's charged?
A. Well, just like any source that's financing anything, they allow a margin. Some do, some don't. Some of our factory rates do not. You know, if there's an advertised, an obvious low rate, like we'll see on a lot of vehicles today, our experience is usually there's nothing -- other than there could be a small flat fee, and it varies.

Page 52

Sometimes there's nothing, sometimes there's a flat fee. But the other rate you're speaking of is the retail rate.
Q. And is it disclosed to the customer what the buy rate is?
A. I don't believe so.
Q. So the bank -- and the different --
A. If it varies?
Q. If it varies. But where it does vary, it's not disclosed?
A. I don't believe so.
Q. And where it does -- and when it varies and it's not disclosed, the bank pays some portion of the difference between the buy rate and the retail rate to the dealer in a lump sum or some -- not a lump sum, but a -- you'll get a lump sum up front and maybe something down the road?
A. Sometimes -- you're right. Sometimes there is a lump sum, not as a big a lump as we might like, but sometimes there's that.
Other times they charge you back. If, for example, the customer sells the car early, or certainly if they default and that type thing, there's a time frame that in effect you're at risk or your lump sum is at risk, if you will, when you

Page 53

are getting a markup on the rate.
Q. Do you still charge the -- today, do you still charge this administrative fee?
A. Yes.
MR. HARPOOTLIAN: I want to mark that e-mail from Gary Palmer as Exhibit Number 4.
(DEPO. EXH. 4, E-Mail from Gary Palmer, was marked for identification.)
BY MR. HARPOOTLIAN:
Q. This is from Gary Palmer, who we've established was a consultant that worked for you during '05. He no longer works for you. Is that correct?
A. Right.
MR. HAMM: Can you tell me what exhibit number that is?
MR. HARPOOTLIAN: Four.
BY MR. HARPOOTLIAN:
Q. He is who?
A. He is a -- someone who consulted with us, with the group, for a few years, I guess, really, and worked with manufactures. And he was very objective and, you know, good with what we were trying to do, which was to improve our business processes, and again --

Page 54

Q. Sorry, improve what?
A. Our business processes and, you know, trying to develop consistency between the stores, because I'm only in one place at one time, as you can imagine.
Q. And who's Gwen?
A. Gwen is our controller.
Q. It says, thanks, Gwen. Right, guys and gals. Just remember, as Gwen says in her note, we do not -- and that's in all caps -- start this until I give you the go-ahead, which I will only do when Gwen and I have completed all the legal obligations, et cetera.
What is he referring to?
A. He was referring to the closing fee until we, you know, file with the State, have the permitted approval back, and, you know, the postings handled, the buyer's order, the disclosure on the buyer's order, all -- everything had to be, of course, in order. I think this is just an example of how we're just trying to comply with the law.
Q. And this goes on to say, just to remind everybody what we agreed yesterday regarding doc fees, one -- number one -- one set fee across the

Page 55

group of 289 for doc fee new and used; two, I will provide and talk to centres guides -- that would be your salespeople. Is that right?
A. The centres guides. Yeah, he's referring to the sales guides.
Q. So as to ensure this is positioned the right way to them and their customers. Thanks, Gwen, for getting this ready for us. Regards Gary.
And that is Gwen -- in response to an e-mail from Gwen where she says, I've attached the document of Consumer Affairs application guidelines for the when, where, and how-to questions we had yesterday. Please wait until I let you know we are authorized to start charging this fee. Please read the disclosure rules. Thanks, Gwen.
Now, where's Gary now?
A. Gary's from Florida. I haven't had conversations with Gary in, I guess, about a year or something like that.
Q. Before he worked for you, who did he work for?
A. Well, he was continuing to work for a number of manufacturers and --
Q. Which manufacturers?
A. I believe he worked with Porsche, maybe

Page 56

Kia or Hyundai, but he worked with Jaguar and Land Rover.
I say worked with, consulted for, you know. It was not he was an employee of theirs.
Q. Was he recommended to you by them?
A. Well, basically, not formally, but, you know, he was involved in analysis for the manufacturers. And I don't know, one thing led to another, and we felt like we, you know -- it would add potentially some more --
Q. And who is rover507@aol.com?
A. Me.
Q. And gpalmer@landrover, we know who that is.
Who's gbebtz@landrovergreenville?
A. He is the manager of the Greenville dealership.
Q. What's his name?
A. Greg Babetz.
Q. Is he still there?
A. Yes.
Q. And joconner@landrovercolumbia, who is that?
A. He was the former manager.
Q. Jim O'Connor?

Page 57

A. Right. You know Jim.
Q. Right. And where's he now?
A. I believe he's operating on his own. He's maybe in the car business on his own, not with a dealership.
Q. And fchilders@landroverasheville.com?
A. The former manager of the Asheville dealership.
Q. And where's that person now?
A. I have no idea.
Q. And cc ispivey@landrovergreenville.com. Who's that?
A. She works in the accounting office.
Q. Now, when you've had these discussions, were these the people that were in the discussions?
A. I would say more than likely everyone -- perhaps not L. Spivey, Lizette Spivey. But otherwise, yes.
Q. Anybody else?
A. No, I don't think so.
Q. Now, does Gwen still work for you?
A. Yes.
Q. And where is she? Is she here in Columbia?
A. She's in Greenville.

Page 58

There are certain accounting functions we have that are common to the dealerships, and those are done -- she manages that from Greenville.
Q. Now, in terms of how you presented this closing administrative fee, it was listed as a separate item in the closing documents?
A. Yes.
Q. Are you aware of some dealers who just include it in the price or --
A. Again, I've heard the depositions, but I -- I'm really not very aware of what's going on at the other dealerships.
Q. I understand. But were you aware of it, that they were doing that when you -- when y'all called around and found out what they were charging?
A. No.
Q. Why do you -- do you believe it's required that you break it out as a line item?
A. Well, yes, I mean, that was how we interpreted the law.
Q. In discussing these fees at any point, have you ever e-mailed or had any written communication with other dealers about their fees and how they charge them?

Page 59

A. No, I don't think so.
Q. What about letters?
A. No, I don't think so.
Q. Did you have bulletins from the SCADA about these fees?
A. You know, the Automobile Dealers Association --
Q. Excuse me one second.
If you would answer yes or no and then explain, then I'll know where you're going --
A. Okay. Repeat the question because I want to be sure I'm answering what you're asking for.
Q. Do you have any documents -- we went through the letters and e-mails that reflect how you or why you or should you charge administrative or closing fees. We went through -- you said there were no e-mails from other dealers about it.
A. Yes.
Q. No letters from other dealers and you have not in your possession any of those.
Do you have any bulletins from the Automobile Dealers Association about that?
A. There may be an old bulletin giving instructional things, you know, again, to comply with the law.

Page 60

But as far as discussing to do it or not do it or how to do it, other than just making sure you comply with the law, we've had -- there was a meeting they -- I guess that was, though, after the lawsuit was filed to make sure dealers understood and complied with the law.
Q. In terms of -- we've discussed at length how you came up or guesstimated the fee.
A. Right.
Q. Whose idea was it to charge that fee? Who had the initial idea to do that?
A. I don't know. I do know that it became a discussion over the years. And, you know, many people bought cars elsewhere, and it just became common knowledge. And of course we got memos, I guess, periodically about, you know, if you are charging a --
Q. Memos from who?
A. From SCADA or whatever, the automobile dealers. South Carolina --
Q. When you say SCADA or whatever, I want to make sure I understand.
A. Well, I'm not sure I can tell you for sure who. But, in effect, it may be the National Automobile Dealers Association, correspondence, if

Page 61

you are charging a closing fee, documentation fee, giving guidelines or suggestions. And, you know, for years this didn't -- this was not relevant to what we were doing, but it was common knowledge.

Q. Now, I asked you a moment ago who participated in the decisions to come -- how this was to be done, and in response to Interrogatory Number 12 on Exhibit Number 3, it says, set forth a list of all persons who participated in the decision to charge administrative fee and all persons who participated in any decision to charge the amount or location of the administrative fee. For each person indicate whether they have an ownership interest.

And you listed, I guess, you and Jim O'Connor.

A. Jim O'Connor was the manager of the Columbia dealership at the time. As far as the decision, though, I was the one that made that.

Q. Well, it asks who participated in the decision, not who made it.

A. I sought input, but as far as --

Q. Well, it says you and Jim O'Connor.

A. Well, I think that's basically an attempt to say regarding Columbia, Jim O'Connor's the

Page 62

manager. I didn't stuff anything down anyone's throat, so to speak. He was fully engaged on that and very much aware that it was a -- you know, a fair fee.

Q. But today you're apparently saying that this decision was made after participation by the people on -- that are in the e-mail, Exhibit Number 4, some who are in addition to Mr. O'Connor and you, including Gwen Patton, this guy Babetz, Childers, I think -- now, who's Chuck?

A. Where is Chuck?

Q. Chuck, up at the top, right before I. Spivey. Who is that?

A. Chuck took over for Frank Childers up in Asheville as the manager at some point.

You know, you got me there. I'm not -- I mean, I would assume that's -- I could be wrong there. That could be -- this is '05. That is probably -- and it must have not -- I don't know why it would not continue along, but basically that would probably be -- well, you know how e-mails are. I would think Chuck may be -- I'm probably mistaken. I would think this is Chuck who was in Hilton Head at the time.

Q. And what was in Hilton Head?

Page 63

A. We had a dealership there for a while.

Q. So I guess when we asked this Interrogatory and we said who participated in coming up with -- who participated in the decision to charge an administrative fee and all persons --

A. Right.

Q. -- whom -- I don't know whether that's correct or not -- participated in any decision to charge the amount or location of the administrative fee, you put down O'Connor and you. Today you're saying there were more people involved?

A. Columbia, Jim would have been the implementer, but I've told you over and over we looked at it as a group, yes.

Q. For all the dealerships together?

A. Right.

(DEPO. EXH. 5, E-Mail from Gary Palmer to Chuck, was marked for identification.)

BY MR. HARPOOTLIAN:

Q. Have you seen this e-mail before?

A. Yes.

Q. Obviously from Gary Palmer, that would be your consultant, to Chuck, who we think was in Hilton Head, right?

A. Right. That's who I think that was.

Page 64

Q. Frank, who's that?

A. That would be Asheville.

Q. Is he on the --

A. Yeah, he was F. Childers. He was the former manager at Asheville.

Q. Greg?

A. Manager of Greenville.

Q. What's his last name, Babetz?

A. Babetz.

Q. And you and Gwen, and it says doc fees. And Gary says, can I ask that you send me details of what your areas, other than tier one brands, charge their customers in the way of doc fees, and tier one being BMW, Mercedes, Lexus, Audis, et cetera.

So Palmer -- you've seen this -- was it sent to you?

A. I was copied on this. This is the first time I've really --

MR. HAMM: Dick, you missed -- you added a word that was not in there. Take a look again at the question.

BY MR. HARPOOTLIAN:

Q. Can I ask you to send me details of what your areas other than tier one brands --

Page 65

MR. HAMM: There is no "other than." That's what I'm just --
BY MR. HARPOOTLIAN:
Q. Other -- I'm sorry -- other tier one brands charge their customers. Not other than, you're right. I was trying to exclude it. He was including it. Tier one brands charge their customers in the way of doc fees, tier one being BMW, Mercedes, Lexus, Audi, et cetera.
So Palmer's asking the people in Hilton Head, Asheville, Greenville -- and is he here in Columbia?
A. At that moment, let me see, he may have been sitting in Columbia.
Q. But he's asking all the other dealers that you have what -- your areas, what does that mean?
A. I would imagine region.
Q. It says, can I ask that you send me details of what your areas other tier one brands -- that would be other dealers in their areas?
A. Right.
Q. Charge their customers in the way of doc fees?
A. Yeah. And again, I wasn't aware of this, but that's what it is. I'm assuming based on what

Page 66

you --
Q. It was e-mailed to you.
A. I understand what you're saying, but our -- in our review, I don't remember the specific -- this specific e-mail.
But it's -- I guess it goes in line with the document you were furnished with where there were some estimated prices.
But again, at this point, I'm starting -- you know, the first e-mail you had from him was February. We didn't implement this until the following January. So again, they're trying to basically get me to buy in at this point, and I'm asking, you know, questions that are, you know -- make me comfortable, make me real comfortable.
Q. So what we see in Exhibit Number 4 is an e-mail where everybody -- one set fee across the group of 289 per doc fee new and used. That's in February?
A. Right.
Q. Less than two weeks later, on March 9th, he's asking these folks to go out and find what other people charge, right?
A. Right.
Q. Now, does that, what other people charge,

Page 67

is that a factor? Is that something you considered when you came up with your 225? Please answer yes or no and then you can explain your answer.
A. Yes. Are you going to let me explain the answer?
Q. You've got a right to talk as long as you want.
A. Okay. Basically, again, we felt like we were coming up with expenses higher than what we ended up charging, and I was just continuing to ask for more feedback, make me feel more comfortable, and that's how the delay occurred, you know, in implementing.
(DEPO. EXH. 6, Document Titled Doc Fee, was marked for identification.)
BY MR. HARPOOTLIAN:
Q. We're referring to Exhibit Number 6, which says doc fee at the front -- at the top.
Who prepared this?
A. I don't know.
Q. Where did it come from?
A. Well, obviously discussions and some data somewhere.
Q. No, where --
A. The first time I saw this was a few days

Page 68

ago.
Q. You don't know where it came from in your -- whether it came from your dealership or not?
A. Oh, I would assume it came from information that people in our dealership were gathering back in probably '05. A lot of variability obviously.
Q. Well, is there a file this came out of about doc fees?
A. I don't know. I know that I basically told our people, you know, just give the information that they're asking for and provide it to our lawyer.
Q. I guess what -- I mean, this is on notebook paper. It's got holes punched in it. Is there a notebook somewhere?
A. Well, I was told there was not, okay, but then I would say there is probably a file with doc items in it.
Q. There is?
A. I would assume there would be some things, but, you know, this obviously is --
Q. Who got this? Who produced it? Do you know?

Page 69

A. I don't know.
Q. No, I mean, somebody went to your dealership and got this?
A. No, I think the dealership -- I may be wrong. Again, they would know more than me.
I think our dealership provided information they were asked, give us the information you have regarding doc fee, documentation fee.
Q. Well, sir, you've been designated as the person most knowledgeable on how these administrative fees were calculated or designed or whatever, and you're telling me you didn't see this document, Exhibit Number 6, until just a couple days ago?
A. That's my recollection, yes.
Q. And you don't know where it came from and what dealership?
A. I would assume Accounting gave it to them.
Q. You would assume.
Is there a file in Accounting labeled doc fees?
A. I don't know.
Q. Did you check before you came or in your dealership other than document --

Page 70

A. No.
Q. Did you sign off on documents or see them before they were furnished to your lawyer?
A. No.
Q. Who was in charge of that at your dealership?
A. Well, Gwen, my controller, furnished -- you know, got the information together, and --
Q. And what's her last name?
A. Patton.
Q. Spell that.
A. P-A-T-T-O-N.
Q. And she's here in Columbia?
A. She's in Greenville.
Q. But available to be deposed in Greenville. When I say available, she's still in the country, she's still in Greenville.
A. She is in Greenville.
Q. Now, have you talked to anybody about this document other than your lawyer?
A. No. I mean --
Q. Do you know who drew it up?
A. I do not.
Q. Do you know when it was drawn up?
A. As best I can figure, '05, but I don't

Page 71

know.
Q. Tell me how you figure that.
A. That's when we were trying to research what would be, you know, the fair price.
Q. But you have no idea where this came from in your dealership, whether it came from Greenville or Columbia, whether there's a file or no file?
A. Well, I think the towns are listed here. Some are, you know, North Carolina, some are --
Q. Asheville, Columbia, Savannah -- or not Savannah. Charleston, Hilton Head.
So can you tell me here today where this came from?
A. You saw an e-mail that was requesting something like that. I would assume that's where it came from.
Q. But you can't testify under oath where it came from?
A. No.
Q. You have no idea, you're just making assumptions based on that e-mail?
A. Right.
Q. Did you attend any Automobile Dealers Association meetings? Have you ever attended them?
A. Well, yes. I mean, you know, normal

Page 72

meetings. But as far as the ones relating to the lawsuit?
Q. No, let's not talk about the lawsuit. Let's talk about the doc fee, the closing fee. Did you ever attend meetings -- prior to charging that fee, did you ever attend a meeting where it was discussed?
A. No.
Q. Do you have any --
MR. HAMM: Dick, my client just indicated he'd like to use the rest room.
MR. HARPOOTLIAN: Let's take a break.
(A recess transpired.)
BY MR. HARPOOTLIAN:
Q. You had an opportunity to read Section 37-2307, which is the Notice of Closing Fees on Motor Vehicle Sales Contract, Registration Fees.
Have you read that before? That's the law that says this -- let me read it to you --
A. That's the statute, the original?
Q. Right.
Every motor vehicle dealer charging fees on a motor vehicle sales contract shall pay a one-time registration fee of $10 during each state

Page 73

fiscal year to the Department of Consumer Affairs. The closing fee must be included in the advertised price of the motor vehicle, disclosed on the sales contract and displayed in a conspicuous location in the motor vehicle dealership.

A. Right.

Q. Now, are you aware of any legislative efforts to change the statute? There have been no discussions -- now, you're going to have to say yes or no because she can't record a nod.

A. No.

MR. HAMM: Dick, are you going to -- he does not have a copy of the statute.

MR. HARPOOTLIAN: That was my question. I wanted to make sure he understood what the statute was before I asked him if it had been changed or if it was ever changed. That's all.

MR. HAMM: I thought you were going to continue and I was going to try to maybe get him a copy of it.

BY MR. HARPOOTLIAN:

Q. In terms of -- this is probably the last question I'm going to ask you on how you came up with this fee, but other than this consultant and the people in your organization, did you consult

Page 74

with any expert, other than that consultant we talked about, about what the appropriate amount was and how to calculate it?

A. No.

Q. Accountants? Other than people employed in your entity, any outside accountant?

A. No.

Q. Lawyers?

A. No.

Q. And we've seen that you didn't consult with any -- any other dealers, did you?

A. No.

Q. No conversations with -- do you know other dealers?

A. Oh, yeah, I know some other dealers.

Q. Do you see them socially?

A. I can't think of one I see socially. I see maybe at a meeting or something you might run into --

Q. Have you ever had any discussions with any of them about the closing fee?

A. No.

Q. After the lawsuit?

A. There may have been a couple of discussions. I'd certainly think at the one

Page 75

meeting we attended where the Automobile Dealers Association was going over things, we're all sitting around in a room, it would have been hard to not have a discussion or a chat or loose mention. But as far as any real discussions other than that, no.

(DEPO. EXH. 7, Retail Buyer's Order, was marked for identification.)

BY MR. HARPOOTLIAN:

Q. This would be Exhibit Number 7. Have you seen this document before, Number 7?

A. Yes.

Q. And what is this, please?

A. This is a retail buyer's order where the Plaintiff purchased a vehicle, a preowned vehicle, from our dealership in Columbia.

Q. And you see that the recording and processing fee is what it says, that's what's listed here, recording and processing fee is 225?

A. Yes.

Q. And that recording and processing fee is the same fee we've been talking about that these other factors went into, the 20 something that were listed on Exhibit B?

A. Yes, sir.

Page 76

Q. And recording, what do you have to record? What has to be recorded on this deal?

A. Well, this is just one piece of paper. There's a lot of different documents.

Q. Well, what has to be -- what's recorded and where is it recorded, I mean, on any deal?

A. Well, I think you have a deal jacket and you can see all the different forms that were included in that.

Q. Sir, this is called a recording and processing fee. I want to know, first of all, you're charging them -- apparently you're telling them you're charging them $225 to record something. What is recorded?

You're the person most knowledgeable about how that fee was designed. What's recorded and where?

A. Do you want me to generalize?

Q. I want you --

A. I mean, I can tell you some of the documents, but you've got the information.

Q. Documents that are recorded?

A. Yes.

Q. Where are they recorded?

A. Well, some are recorded with the bank, if

Page 77

there's financing. If there's not financing, they're -- with or without financing, the DMV, the Department of Motor Vehicles.

Certainly we have to keep, you know, items secure, and we have to have all the documents that are necessary for Fair Lending, all the Truth in Lending, all these different things we have to comply with. So we keep these documents. We have to keep them for, I believe, seven years.

And we have to keep them secure, so they are recorded. And then, you know, in the computer system, when you're doing a transaction, you have numerous documents just for the Department of Motor Vehicles.

Q. Well, we agree that when you take something to the Department of Motor Vehicles, they record it in a legal fashion, that is, they file it.

A. Sure.

Q. The other -- but other than that, the other documents are recorded in your office?

A. Well, the computer system, it's entered into the DCS system.

Q. What's the DCS system?

A. Dealer -- it's our Dealership Computer

Page 78

System, which there's basically two major companies that furnish it, and they're the ones that speak to the manufacturers, so we sort of have to deal with them. That's why it's so expensive.

But, you know, it's any -- so we can get a history on the car. If the person comes back in for service, we get a history of the car, and of course --

Q. Again, my question is: Other than the DMV, we're talking about recording by you in your system.

A. Well, recordkeeping, some of the recording, I guess, you know, for example, Car Fax or all of these other documents, we are by law supposed to, yes, record them and keep up with them and keep them in a secure place.

Q. So recording and keeping are the same thing to you?

A. Well, you have to do one before you do the other.

Q. Record? I mean, you say recording is --

A. I mean, is this not -- would you not consider this recording? This is one piece of paper, and there's numerous documents --

Q. Sir, what I think is -- and I'll ask the

Page 79

questions here, but what I think is irrelevant. I'm asking what you think.

A. I think that recording is obvious. The deal jacket's full of recording and documentation.

Q. Okay.

A. Things that require recording.

Q. And then there are things that require processing?

A. Certainly.

Q. You have to process -- record and process the title documentation to get them a title.

Other than going -- other than that document going outside the office -- and of course if there's a loan made, you record the lien. Do you record the lien?

A. Certainly.

Q. The rest of this recording and processing is internal. It's stuff that you do to keep records for your purposes in your computer?

A. Not necessarily in the computer. There's hard copies, as you've been furnished.

Q. Right, hard copies or in the computer, but they're recorded by you for you?

A. Well, they're provided for -- I mean, they're there. Just like your doctor records, yes,

Page 80

it's for you, but also it's so he can do a better job of taking care of you in the future.

It's documentation that we need and the customer would want us to keep and certainly keep secure.

Q. Does your doctor charge you a recording fee when you go in to see him?

A. Does your doctor --

Q. No, no, a specific line item recording and processing fee.

A. No, his is a prescription fee or any other call we make.

Q. Absolutely. Just like you can charge somebody a fee if you sell them -- you sell insurance sometimes, or warranties or other items, and those are legitimate charges, right?

A. If it's a legitimate, it's legitimate. You know, I mean, if there's --

Q. You had the analogy of your doctor, but this is a fee for recording and processing.

There's another -- there are fees on here for insurance. On this one it's not filled out. You could have charged for insurance, right?

A. Actually, we've never done that. And, frankly, I -- I mean, there is one insurance policy

Page 81

that is available that makes sense for some people, and that is that -- you know, I guess you call it insurance coverage in case your car depreciates faster, which we've seen a lot of lately with the economy.

Q. I guess what I'm saying is, the recording and processing fee, other than what you send to the DMV, do you register or record anything other than things at the DMV?

A. Well, yeah.

Q. What do you record or register other than the DMV? Where else do you register and record stuff?

A. Well, you know, first -- we're certainly recording receipts. You know, certainly if there's -- there's financing, you obviously have multiple pages in a financing contract.

Q. And where is that filed?

A. Well, a copy, I would imagine, would be in the deal jacket still, a copy would be with the customer, and a copy would be sent to the finance company, and they all have different requirements, but --

Q. And so what part of what you're charging for is that? Is that processed?

Page 82

A. Here we go again. I don't know what portion of that. I think I've made that clear.

Q. But you're charging for some portion of that?

A. I mean, I don't know what portion of the total fee that represents.

Q. But does it represent some part?

A. I'm sure.

Q. But you have no idea what part?

A. No.

Q. But it's some part?

A. Certainly. We mail paperwork. We process the license plates for the customers. We provide them to the --

Q. Now, you indicated that you had to enter this in or scan it in or whatever in a computer system. You had an acronym for it.

A. DCS.

Q. Yeah, what does that stand for?

A. Dealer Communications System. It's our -- it's a computer system that enables us to manage all aspects of the business and put things into accounting so that you can, you know, manage the business, keep up with it and have things documented, because of things like this, you know,

Page 83

just so that we can make sure --

Q. Well, give me some sense of what -- is it -- are these items scanned in or is there a program that you fill things in?

A. Right, there's a lot of key-punching that goes in initially.

Q. And what's key-punched in?

A. Well, anything that, you know, is unique to the customer, to the vehicle. Every vehicle's unique, so, you know, the VIN number and all the aspects to identify it.

If there's financing, you know, there's just almost endless things. Almost like legal documents. I guess they are legal documents.

Q. I mean, is there a -- it's called DVS?

A. DCS.

Q. And it has a series of screens that have to be filled in by somebody?

A. Right.

Q. Who does that?

A. Well, for, you know, like -- I think we discussed this earlier, it could be a lead salesperson, a sales guide that is working with a customer. If he's got the skills, it could be an office manager. It could be the centre manager.

Page 84

But basically that's -- in dealing with the retail customer, that's in dealing with that person.

Q. When they enter information on it, is this Retail Buyer's Agreement -- I mean, Retail Buyer's Order, is this a computer document?

A. Yes.

Q. So when he enters information on this, does it automatically go into that computer system?

A. Yes. No. Well, some things do, some cross over, some do not.

Q. And when he types a finance agreement -- I guess what I'm saying is this: Is this one of these -- and I think it is, because most systems are this way today. When you enter it once to generate a finance agreement or this buyer's order or some other document, it's captured in that system, pieces of it?

A. Pieces of it are. And each document, though, does require data being added --

Q. Right.

A. -- it seems to me.

Q. But nobody has to take the deal jacket and go and enter everything at one time. It's entered as the deal progresses?

A. My people would argue with that. They

Page 85

would say that this is quite a process and it takes a good while. But I would think, you know, that's -- what you're saying is somewhat true. Some of the items do cross over, certainly.

Q. And when you do this, you indicated the manufacturer requires you to use this system?

A. It's difficult -- let me put it this way: It's difficult to deal with an automobile franchise and not have one of these systems.

And it's difficult, if next to impossible, because, for example, if there's a change in the parts pricing -- I'm telling you things that aren't related to the question but I think helps you, hopefully. You can cut me off if it doesn't.

But if, for example, the pricing changed, we're getting parts from England, if you didn't have one of their systems, you would have to key-punch in thousands of parts. It's impossible, as you can imagine the time involved. So instead, they communicate with these people via an update.

And it just, you know -- and that's one of the reasons we pay so much money for one of the major vendors. There's only two that are major vendors.

Q. And you just -- is Land Rover the only car you sell, automobile?

Page 86

A. Here, yes.

Q. And around the state you sell Jaguar too?

A. No.

Q. What else do you sell?

A. Land Rover, as far as the car dealerships we have. The motorcycle dealership, we went over the different brands.

Q. Right. I guess what I'm trying to say is that system you have, is that a Land Rover-created system?

A. No. Ours is ADP, and it's -- they customize it for the manufacturers, okay.

Q. So if you were a Buick dealership, you'd have a GM --

A. You may, or you could have ADP or you could have what was formerly called Reynolds and Reynolds, and I forgot the name.

Q. Reynolds and Reynolds is another --

A. That was the other big computer vendor that automobiles --

Q. And does it let -- I mean, can the folks in England look into your computer and see what your volume is and how much you're selling?

A. No. The -- no. And the U.S. importer gets financial statements from you. Now, they do keep up with, you know, new car purchases and even sometimes preowned certified, which is kind of the next tier of it.

Page 87

Q. How do they keep up with it?

A. Primarily the financials. You have it broken out on the statement, as you see, the numbers. And as far as the other details, it's typically from the statement.

Q. But does the manufacturer or some representative, do they come by your dealership from time to time?

A. Periodically, yes.

Q. Do they have access to this computer system when they come by? Can they look in?

A. That would be unusual. They could if -- I mean, we have nothing to really --

Q. I guess what I'm saying is this: I'm not asking if they do, I'm asking can they?

A. Not without permission. You know, I mean, it's -- unless the employee just moved over and said here, you know.

But we're involving them in so many processes. You know, for example, a service customer that has a warranty issue or whatever, we may -- you know, we're generating paperwork or we're letting them look at these different items. So it's not transparent, but it's kind of a partnership.

Page 88

Q. Now, when -- is this recording and processing fee, is that -- if somebody finances the car, are they financing that or do they have to pay that outside the finance?

A. Well, it depends on the -- I would imagine it depends on the finance company. I think most finance companies, they get a copy of the buyer's order. When we send in their contract, you know, it's disclosed where they can see what it's for.

But most of them are interested in the total cash or the total amount they have to pay for it, and that's what they're basing what they'll finance on. And of course when they approve it, they only approve, you know, certain criteria.

Q. Do you do any zero APR deals?

A. Very rarely, and that would be a manufacturer subsidized thing. And like any other manufacturer, if there was, obviously, a need in the model year or something like that, typically it's not zero percent.

Q. I see those advertised on TV.

Page 89

A. Yeah.
Q. How do they do that?
A. The manufacturer is paying the finance company and the finance company's cutting their rate, and that's a subsidized payment.
Q. And the finance company is aware that the manufacturer -- the manufacturer's paying the financing for a period of time?
A. Yeah. And that's why that's typically -- I told you, for example, we go with -- oftentimes with a captive finance company, and this would be true of most brands.
One of the reasons is the manufacturers work with -- they can't work with everybody the same way, so they will typically work with their captive or the one they're -- they do most business with.
And it may be, for example, that the buy rate, if you will, would be, let's say 5 percent, and the manufacturer decides to offer 3.99 or 2.9 or whatever. In that situation, you know that, you know, what's going on is basically somewhere between the manufacturer and the finance company. They're getting together and saying, okay, I'll cut my rate a little bit if you'll throw in something

Page 90

to help with the cost so the consumer gets this advertised rate or a better rate. So it --
Q. But the consumer pays a payment based on that better rate or, if there's zero APR, they pay principal and no interest in effect?
A. Yeah.
Q. But that's typically done with a captive, that is, an -- and a captive would be like GMAC?
A. That's right, for the GM dealers.
Q. Has nothing to do with this lawsuit, just curious.
A. Well, you're going to be our next dealer, see, so you're getting --
Q. Not based on what I see on the TV or read in the newspapers.
A. You don't want me to look in the phone book and tell you what I see, do you?
Q. Now, that title and license fee on there, that $25, is that something you keep or does that go to the --
A. No, that is a straight-across cost. That's a -- that is, in this case, I believe, a transfer fee, and those fees have changed in the last few years.
I believe that's still a transfer, and I

Page 91

believe a new title would be -- or a new plate would be -- the title and plate would be 39, I believe.
Q. And why is the recording and processing fee put right below that title and license? Who decided the placement?
A. Well, we tried to make it conspicuously, you know, visible. And if -- this is a copy, but typically if -- it seems like that's the logical place for it based on what the Department of Consumer Affairs instructed us. You know, they said basically, you know, disclose it, have it disclosed on the buyer's order, and --
Q. But why recording and processing fees? You don't think that --
A. Well, basically the upper numbers --
Q. Excuse me, one second.
A. I'm sorry.
Q. Does that give the inference to you that somehow it's tied to that title and license, that that's what you're paying to get recorded and processed?
A. That certainly was not our intent.
Q. Could you see where somebody might think that?

Page 92

A. Well, it's kind of below the line, if you will. Everything above is referring to the automobile. If you get extra options that are, you know -- we hang a brush bar on the front of this Land Rover, that would be part of the options.
And so it's covered up by the sticker here, but you know what I'm saying, it's related to the automobile as you go down to here.
And then you go to their automobile, if there's a trade, and then you show them the difference. You add sales tax, if there's a balance owed on the trade. It's a very logical progression.
If they told us to do it another way, we'd be happy to do it. It's just this seemed to be in our mind the right way to do it.
Q. But would you agree sales tax is something that doesn't go to you?
A. Yes. I mean, you're right.
Q. And the balance owed, what does that mean?
A. If the customer has a balance due on their -- on the vehicle they decided to trade, you know, if they owe BB&T 4,000, that has to be calculated in the total buyer's order.
Q. So the balance owed wouldn't be going to

Page 93

the dealership, wouldn't be going to you?
A. Oh, no. We have a payoff.
Q. Right.
So the sales tax is going to the tax department, the balance owed is going to some bank, the title and license fee is not going to you?
A. No.
Q. And then there's 225 that is going to you?
A. Right.
Q. So you've got four items in a row after cash difference. And three of them, if the customer looked at it, they would know was not going to you, and then the fourth one before you get to the total is going to you?
A. Well --
Q. Just is that correct?
A. It's going to us.
Q. Is that correct?
A. It's been disclosed over and over. It's going to hit them when they walk in the showroom. It's going to hit them on the buyer's order. It's explained verbally the way it is in our application. Our people tell them that it's, you know --
Q. I mean, in '06 they were doing that, there

Page 94

was a sign up?
A. Yes.
Q. And it was disclosed where in writing other than the sign?
A. The signs. And then, for example, you've heard them talking in the previous depositions about worksheets. This is typically the worksheet, and they would manually, you know, write up on it.
So basically it's disclosed during the discussions with the sales guide, and then it's disclosed when they are -- you know, before they sign anything.
And it's -- you know, it's authorized, but it's not required, and we all know that and there's no pretension. I mean, you can hardly avoid the disclosure at least in our showroom.
Q. How do you account for the money, that is, is it a separate accounting on your balance sheet?
A. Not totally. It goes into other income, is where it goes on the financial statement.
Q. So you don't track it separately?
A. I don't believe so. I believe other items can enter other income, not often, but --
Q. What are the other items that go into other income?

Page 95

A. Oh, there could be an incentive earned by, you know, who knows, by selling a certain number of vehicles or -- I'm just trying to think of different things.
It's where accounting people typically dump things that pop up on the positive side, which of course isn't often enough, but --
Q. Right.
Do you charge off any expenses against that line item in your accounting system?
A. You know, I don't believe we've gotten into that. You could certainly rationalize that. There's a lot of detail and a lot of work that we just haven't done.
Q. So the answer would be no?
A. No, I don't believe so.
(DEPO. EXH. 8, Document, Bates Number 9345, was marked for identification.)
(DEPO. EXH. 9, Document, Bates Numbers 9398 and 9396, was marked for identification.)
(DEPO. EXH. 8A, Retail Installment Contract, was marked for identification.)
(DEPO. EXH. 8B, Deal Jacket, was marked for identification.)

Page 96

BY MR. HARPOOTLIAN:
Q. Eight is, as I said, 9345, and then we've introduced 8A, which, because the eight we had did not have the second page in, and this is a blowup of eight plus the rest of eight, first page, and then of course the second page of eight would be behind that.
Did that make sense?
In other words, the -- if you look at eight, the front of eight, it's part of 8A, and then you go to the rest of eight to the second page, 9348, to get --
MR. HAMM: I think you've got it right, Dick.
BY MR. HARPOOTLIAN:
Q. So let's go to the big one, which would be 8A.
MR. HAMM: I've confirmed he has that in front of him.
BY MR. HARPOOTLIAN:
Q. And this has been produced by you as -- what is this document called, a Retail Installment Contract?
A. Yes.
Q. And this was produced by you as a sample

Page 97

of a retail sales contract in 2006. Okay.
And just let me cut to the chase here. You would agree that nowhere on this retail sales contract is disclosed the administrative closing processing fee that we've talked about before?
A. No, not on this contract.
Q. And then if you go to the second page of eight, that would be the small one, Bates stamp 9348.
MR. HAMM: Wait a minute, Dick. I want to make sure he has the right one.
BY MR. HARPOOTLIAN:
Q. Bates stamp 9348. Do you see at the bottom?
MR. HAMM: That's not what he has.
BY MR. HARPOOTLIAN:
Q. Second page of the little one.
A. Okay.
MR. HAMM: So for the record, it's the second page of Exhibit 8, and the Bates number on the bottom is the 9348. So we're looking at the same thing, Dick?
MR. HARPOOTLIAN: Right.
BY MR. HARPOOTLIAN:
Q. And what is this document?

Page 98

A. Pretty small writing, huh?
Q. That's the way you gave it to us.
A. Let's see. Okay. Land Rover Capital Group was the -- that's the brand at the time under Ford Credit, so it's the financing contract.
Q. And this is where the --
A. Pretty much the same as the big thing, isn't it?
Q. I mean, you gave us both of these, so I assume they're two different documents.
MR. HAMM: For the record, what we gave you was making sure that you had the complete one because you were missing the second part of that, Dick.
MR. HARPOOTLIAN: Is this just a small version of the big one?
MR. HAMM: Yes, but it includes all of the verbiage.
MR. HARPOOTLIAN: Okay. I see what you've done with 8A is you incorporated everything in both pages.
MR. HAMM: Yes.
BY MR. HARPOOTLIAN:
Q. Go back to the big one for a second. That's the easiest thing to do.

Page 99

If you look at 8A, this is the Retail Installment Contract, correct?
A. Correct.
Q. On either page, page 1 or page 2 of this document, is the administrative fee, closing fee, processing fee, disclosed?
A. No, not on this.
Q. Now, let me ask you to go to -- well, let me ask you about one other document, which is eight -- what is the we owe, what is that, B?
A. That's just, again, trying to --
Q. Wait a second. What is it? 8B as in boy. It's called a we owe. What's a we owe?
A. If there is anything that during the transaction we have agreed to do and they've agreed we need to do -- for example, in this case, this example, clean the leather seats. There may have been a scuff or a mark on the seat that in this case the person needed -- the car needed a detail. It had not been done yet, apparently.
Q. There's no price input on this. Is that -- there's no accounting for the --
A. You know, depending on what it is, there could be.
Q. Like what?

Page 100

A. You know, for example, we owe them a -- you mentioned a satellite radio, we owe them -- you know, in other words, we're delivering the car but fully understand that we are going to do these other things. They'd like to have the car this weekend, for example, but it's just so there's no misunderstanding.
Q. And on the we owe do you ever put -- I mean, is there cash or money you give them, a rebate? Is that shown on the we owe?
A. So far I don't believe we've had customer rebates. That could happen with some dealerships, but I don't think we've had that situation.
Q. Would that show on the we owe if you did that or would that be on the financing agreement or on the other document?
A. I would think it would be more of a financial thing addressed on it.
Q. And not on the we owe?
A. Right.
Q. Now, let's go to Number 9, please.
MR. HAMM: For the record, when you're referring to Exhibit 9, are we talking about a document where the first page is 9398, Dick?
MR. HARPOOTLIAN: Correct. And the second

Page 101

page is 9396?
MR. HAMM: Yes.
BY MR. HARPOOTLIAN:
Q. And actually I'm more interested in the second page than I am in the first because I want to compare apples and apples, if you will.
So if you go to the second page, that is a retail sales -- what did we call the one before, a retail -- a Vehicle Retail Installment Contract?
A. It appears to be, yeah.
Q. And this one, if you look down on the left-hand side near the bottom, it's says, Land Rove Doc 225. Do you see that?
A. Yes.
Q. Now, this one is in 2007, October 18th of '07. The other one was -- the one we saw before in Number 8A was executed in 10/24/06, according to the top of the second page of it. So in a year, we now see that doc fee appearing on the -- this document.
Why is that? Was this after you got sued?
A. What was the date of the previous one?
Q. '06.
A. And what was the date?
Q. If you look at the top of the second page,

Page 102

you'll see on 8A a -- the payments start 10/24/06. So this would have been in '06.
A. Certainly we will do things as advised to, you know, do a more clear job. We try and do things in a straightforward manner. So I'm speculating.
The other thing is, you know, I don't know the finance source. Some of the finance sources do not have a column like that and some do.
If we found a better way to do it, that's something that had to be done on the computer system. I'd like to think these things happen instantly, but that's a big deal with these systems, ADP and all that.
So I'm assuming that's a refinement on what we were able to show. But again, it doesn't -- we don't feel that's necessary simply because they are also getting the buyer's order. So they know what they're financing.
Q. I understand that, but we go back to 8A, there's certainly space on the front page of that to write in that doc fee where it says two blank, four blank, right?
A. Yeah.
Q. So you could have put it on this one in

Page 103

'06?
A. Well, I don't really understand -- if the customer -- this is just generated paperwork. If they're concerned with the interest rate, they've already agreed to the buyer's order with the clear disclosure.
So, you know, some of the finance companies really don't care. They're interested in total dollar amount.
Q. I understand that. And prior to this, do they sign a contract?
A. Oh, yeah. This only comes up when the deal is done, when the customer has committed and the arrangements for payment have been made.
Q. But if they don't sign this, there's no deal?
A. If they don't sign it, there will be no financing, so obviously, yeah.
Q. There's no deal.
So this is the last document they've got to execute before the deal's done?
A. I can't promise you, because there's several others. There's the we owe document. There's the federal document, you know.
Q. But --

Page 104

A. But, yeah, that's -- at that point, they're buying a car at that point.
Q. Is this the sales contract?
A. No.
Q. This is not the sales contract?
A. No. No, that's the finance installment contract.
Q. It says, you, the buyer, and cobuyer, if any, may buy the vehicle described below for cash or on credit. Cash price --
A. This is the buyer's order.
Q. What?
A. This is the buyer's order. That is the installment contract. That's the contract with the finance company that we're simply representing.
Q. But you agree that you weren't disclosing it in '06 and apparently you do disclose it?
A. Apparently.
Q. Why? Why the change?
A. I don't know. But --
Q. And you're the person most knowledgeable about that?
A. I'm the person most knowledgeable.
Q. And you don't know? There's nobody else --

Page 105

A. I don't see a -- I don't see any problem either way, because, again, they don't get to that point until everything has been clearly disclosed.

Q. Well, why put it down there? Why change?

A. I can't tell you that we've done it as a result of our attorney's advice, but it could be something like that. We're trying to comply with the law. We always have.

Q. Well, then, this would be -- the second one would be complying with the law and the first one wouldn't?

A. I'm simply telling you we're trying to always do that. And if you tell -- not you, but if the Department of Consumer Affairs tells us to do something a better way -- which they never have. They've never told us we're doing anything wrong. We're simply trying to do as good a job as we can based on the rules that govern us. And we're certainly open to changes, and I'll continue to be if we can make things even more clear.

Q. But would you agree in 8A and 9, as you look at these documents, the person sees how much they're going to have to pay for license, title, registration, how much for taxes, the amount financed, and where is, on this document, when

Page 106

they're -- where is that 225 folded in?

A. Well, I mean, in this example, I believe it's -- I mean, do we have the -- is this the same buyer's order? No.

Q. No, I don't have the buyer's order. So where's it folded in? If I'm looking at this, where would I --

A. In my estimation, it would be under the cash price, what they're paying.

Q. Okay. So the 225 has been folded into the cash price?

A. In full view of both the finance company and the customer. And our customers are pretty smart. They understand when you show them over and over.

Q. Now, when they went out to -- he's verified these Interrogatory Answers. Is that correct?

You, in your Interrogatory Answer -- I want to make sure I understand this. As to Interrogatory Number 9, you said, at the time of the Plaintiff's purchase in February of '06, Defendant Land Rover's general policy was to charge a closing fee, recording, processing fee on all motor vehicle transactions. However, each

Page 107

transaction generally involved negotiations between the dealership and consumer on the total amount paid for the vehicle.

Is that correct?

A. Right.

Q. I just want to make sure. It was charged on all vehicles?

A. Yes.

Obviously, you know, each deal stands on its own. And, you know, there are people today that, as you know, will come in and they're interested in a -- they want it simple, real simple. I want out-the-door price of such and such, and of course out-the-door also includes sales tax and other things, which obviously cost us money. So it's --

(DEPO. EXH. 10, Manufacturer Designed Ad, LR-39, 6/30/06, was marked for identification.)

(DEPO. EXH. 11, Manufacturer Designed Ad, was marked for identification.)

(DEPO. EXH. 12, Classified Ads, was marked for identification.)

BY MR. HARPOOTLIAN:

Q. Let me ask you some general questions about advertising for just a second. We heard the

Page 108

other day when I was here something about co-op advertising. I have not heard that term before. Tell me what that is.

A. Well, there are times when a franchise dealership -- where the manufacturer offers to share advertising expenses with you.

Q. For promotion or something?

A. Well, just -- you'll notice many of our ads are simply the generic ads that the manufacturers' agency has designed.

One of the reasons for that is it gives a consistent message, but the other reason is it becomes, if there's a program, co-op eligible. So, you know, it's one of those things.

They have strict guidelines and we cannot waiver from certain --

Q. So if I look at Exhibits 10 and 11 -- and I'll ask you about 12 in just a minute -- those are, what did you say, manufacturer designed or --

A. Right.

Q. Tell me what that means.

A. In other words, we didn't design this -- the basics of this ad. You know, you can move things around a little bit. But basically it's got to have the elements. It's got to be one of their

Page 109

produced ads in most cases, unless they individually approve it, and that varies from manufacturer to manufacturer.

But a co-op ad is simply an ad where the manufacturer -- and this is BMW and everybody -- it's where they step in and say, okay, we're going to give you, for example, 50 percent co-op if you advertise this month, this message or whatever.

Q. For instance, they do TV ads by co-op?

A. Yes.

Q. And they do print ads by co-op?

A. Right.

Q. Radio ads?

A. Yeah.

Q. Just about any kind of advertising?

A. Right.

Well, sometimes they can apply pressure one way or the other and say, no, we're not interested in radio, you know, for example.

Q. But where it is a co-op ad, especially print ads, they provide -- of course -- provide an ad which saves you the trouble of having to hire somebody to design an ad?

A. Right. If it doesn't fit the magazine or the paper's size, you may have to pay to have it

Page 110

resized, so to speak.

But in general, you don't have to worry about, if there's a program like co-op, that you mentioned, that it's eligible if you follow the guidelines.

And the guidelines are, you know, you cannot vary things. You know, price, for example, you have to list the MSRP. If we vary from that, then you run the risk of being rejected, so to speak, as far as the funding.

Q. Let's look at ten and maybe we can apply that concept to these ads, okay?

A. Okay.

Q. Ten, the first page, which is Bates stamped LR-39, says -- you look up at the top, it says, LR-3 ad for LRC Columbia metropolitan color, some measurements, 6/30/06.

Is that -- did that come from -- when you say --

MR. HAMM: You're referring to the left side of the paper?

MR. HARPOOTLIAN: Right.

BY MR. HARPOOTLIAN:

Q. So when you get -- who do you get this ad from that's predone? Is it mailed to you or

Page 111

e-mailed to you or how does that get to you?

A. Well, they have a web site that you can access for the base of it. And then we've had a couple of different agencies over the years that basically, if there's a need to reconfigure for the magazine size, they may have to customize it, but then it has to be, again, accepted as approved if it is something that is co-opable.

Q. But you could run this -- this is the way it came from BMW's web site?

A. Not BMW, Land Rover.

Q. I mean Land Rover.

A. I mean, I can't tell you for sure. This is the way they've been known to do it at times.

But the shape of this ad -- typically theirs would be a little wider. So my guess is to fit the magazine space and the advertising requirements, best case -- I mean, the best information I have would tell me that we had this customized by our advertising agency and they went back and made sure it was approvable.

Q. Approvable by?

A. Land Rover.

Q. And how do they go back and make sure it's approvable?

Page 112

A. In other words, they -- well, they just have to submit it. So time framewise that can be kind of a push.

Q. When you say approved, who do they submit it to? You don't send it to England. Who do you send it to?

A. Land Rover North America is in the U.S., and, you know, they represent Land Rover products.

Q. And where are they located?

A. Well, they were in California, but they are in New Jersey where Operations has been.

Q. And so this is faxed to them or e-mailed to them and they say yeah or nay?

A. Right. And sometimes it may even be the factory representative, that they can approve ads and that sort of thing. But in general, that's co-op.

Q. And how do you keep a record of whether they've approved it or disapproved it? I mean, are there ads they disapprove?

A. Yeah. You either change them or --

Q. Why would they disapprove it?

A. It can be very -- what we consider somewhat silly, but sometimes not: Where the logo sits, how your tag looks on the bottom with your

Page 113

localized name, you know, your local dealer name. It could be anything.

Q. Let me ask you this -- and I'm not an advertising executive by any means, but I'm looking at this ad on LR-39, and there's about three inches of white space between the top and the bottom. What's that for? Is that aesthetics?

A. Frankly, this was part of an ad campaign, actually seat belts. This was part of a campaign, I believe, where there was a -- this is going to be funny, y'all are going to enjoy it -- a local karateist, a well-known businessman that took karate or something. I'm thinking maybe they had him in here, because, thus, the seven black belts.

And apparently -- and I'm just speculating because I don't see it here, and, you know, you look at the next one --

Q. And there isn't that white space.

But these are -- and let's cut to the chase here. These are ads that you get from Land Rover, you adapt them if you want -- although on number three I see a big white space again going past that third page, something was in there?

A. No, that is a separate ad below.

Q. Oh, is it?

Page 114

A. Yeah, that's for the bike dealership.

Q. Is that you too?

A. Yeah, that's the motorcycle dealership.

Q. So just the top one was the --

A. The Land Rover.

Q. And that would be either not changed or it was changed and you'd send it to somebody at Land Rover North America to sign off and say yes?

A. Right.

Typically -- they'd typically only be changed over the last couple years. We've just -- it's expensive and time consuming. Typically it would only be changed to fit the size, but, you know, there are examples occasionally where they approve certain things. One thing they don't approve is any pricing variability.

Q. And in terms of these ads, every ad you run like this, whether it's co-opable or not, you send it to them just in case you may be able to co-op it later on?

A. I don't believe so. There's -- co-op is not a big, big thing with us. And in this market, you know, and we are -- being a niche player, so to speak, you're not really getting a great amount of money to, you know -- from the factory, so we use

Page 115

it up every year, you know.

Q. Do you run advertising without their -- I mean, do they have to --

A. They don't --

Q. Under your dealership agreement, do they have the right to sign off on all advertising?

A. No.

And most of our -- one of the reasons we don't have a lot of ads is our location is typically our best advertising, that and the referrals from customers and repeat business.

Q. And these were co-op ads, is what --

A. I can't tell you that for sure. I can say that certainly LR-58 is a co-opable ad. I think -- I think LR-47 is because that was a -- that was a campaign Land Rover did. You may remember it, let's take mine, and they were showing people just in the extreme circumstances.

Q. And you look at 11, Exhibit Number 11, these are, again, the same sort of thing?

A. Yeah, that's a factory ad.

Q. And the process with how you got these and what you did with them are the same?

A. Exactly.

Q. Now, let's look at Number 13 -- Number 12,

Page 116

I'm sorry. And if you look at these three here, occasionally we'll see Friday, November 3rd. You go to page 9198.

A. Okay.

Q. You see one there -- you see Land Rover.

A. Uh-huh.

MR. HAMM: Repeat that page, Dick.

MR. HARPOOTLIAN: 9198.

MR. HAMM: Thank you.

BY MR. HARPOOTLIAN:

Q. You see Land Rover? These are classified ads?

A. Yes.

Q. And this is an ad y'all would have placed?

A. Yes.

Q. And would you have paid for this or would the manufacturer have paid for this?

A. Well, there have been times I recollect where they -- since this is their layout, although there is a typo on this particular one you pointed out that I'm seeing right away, and --

Q. Which one? What's the typo?

A. The typo's up near the top. It says 140-point inspection. It's hard to read. Six-year 175,000-mile limited warranty.

Page 117

We all have problems with vendors changing things. And let me look back.

Q. 175,000-mile?

A. Yeah, it's not the case. It's 75,000.

If you look back to the first page you have, 91, 92, you'll see the way it was supposed to be and the way it was, and this --

Q. Well, is this something provided to you by Land Rover of North America?

A. Yeah, the layout, the format, the box, the template, and then we basically have substituted units in there.

But I'm looking back at the back. I think -- yeah, they corrected it at some point, so that may be one of those -- we do catch advertising people, I mean, just screwing up, type-setting wrong. Somebody thought that was a -- instead of a slash one and they made it 175.

Q. So in terms of advertising, what percentage of your advertising dollars are spent on newspapers, do you reckon?

A. I would say an average of -- it has been probably 30 percent, and I would say now, you know, that's a shrinking number.

Q. And can you correlate that to cars sold?

Page 118

Do you track -- try to figure out where people get their information?

A. I think that's why it's shrinking. We're finding people -- again, they see us or somebody sent them in or they're in for another vehicle.

Q. What about television? Do you do television advertising?

A. The manufacturer, you know, does more of that. We do very little. There were times that we had done a little bit of it, but we haven't done that in a good while.

Q. Now, when the manufacturer does it, do they do it on a national program or do they buy local?

A. Sometimes they're buying national cable, which will hit us locally. But more often they're doing national purchases in major markets, and we don't have major markets.

Q. They don't come down in Columbia and buy WIS.

A. That would be unusual. There have been rare instances, but typically that would be something that would be co-oped with us.

Q. What about radio?

A. No, very rare. I don't know of a single

Page 119

example where they've done national radio.

Q. What about on the internet?

A. Well, they have a web site, and they will post, you know, some prices, things like that sometimes.

Q. But you don't have a web site, they do?

A. Yeah, we have a web site too.

Q. But do you advertise on the web site?

A. Yeah.

Q. And do you have any idea what percentage of sales comes from your internet site?

A. I would think that's growing, but my guess would be, you know, 20, 30 percent at most. It's hard to measure because the exposure could be from Land Rover, it could be from ours.

Q. Right.

What about do you do direct mail?

A. Sometimes.

Q. And does that --

A. Typically -- typically, and not often, but typically, we would do that, and it would be more of a service informational thing.

Occasionally a party, you know, we do quarterly events for our customers, an event, you know, we'll send our customers, but not a lot of

Page 120

advertising.

Q. In these ads, like if we look at the newspaper classified ads, looking at Land Rover, if you look at the one on the front page, '06 Range Rover, silver parchment, 27K, VIN number --

MR. HAMM: Dick, you're talking about 9129?

MR. HARPOOTLIAN: Yeah.

BY MR. HARPOOTLIAN:

Q. 27K, I guess that means 27,000 miles.

Do you see it?

A. Right.

Q. You've got a VIN number, and -- why do you put the VIN number in there?

A. Well, again, just trying to stay within the law and not create confusion with anybody. That's a specific vehicle that -- and that's not consistent. I won't say that all the advertising shows a VIN number. But in this case, if somebody comes in, we know that's an advertised car, that's got a price there, and --

Q. That 55,993 is the sales price?

A. Right.

Q. Somebody walks in and says I want to pay the 55,993 for that car?

Page 121

A. Yes.
Q. Is the 225 added to that or is that included in that?
A. Well, it's an advertised car, that's included, and this is an ad.
Q. So that's the tax, tag, and title?
A. No. I gave you the example of some people insisting on that, and, you know, that could happen. I won't say it wouldn't. But as far as documentation fee, that's in the advertised price on a car that's advertised.
Q. Well, when is it not included in the advertised price?
A. Obviously people will look at a car and they may come in thinking that car, but they may look and end up buying another car.
If they were to select another car and look at it and they're in negotiation, they get the price. I can't -- I can't tell you that they couldn't find a car on the lot that the documentation fee would be included, but it would be disclosed by the time they're on the showroom and, you know, discussing the deal.
Q. If they negotiate below that -- and I assume that 55,993 number's negotiable?

Page 122

A. Everybody wants a deal. Each deal would have to be looked at, I would think, and certainly in many cases that's -- you know, people don't offer more. They offer less. So I would say that figure was --
Q. Have you ever had anybody offer more?
A. I'm waiting for that person.
Q. And how is that advertised price determined?
A. It's a market price. We think of it as a market price.
Q. But, I mean, is there a calculation done, a work sheet?
A. Typically, again, telling you a little bit about what I understand the business is and best practice is, there's a value for cars, and that's determined by what dealers are paying for the cars as far as a wholesale value.
Many of these vehicles, you know, there's auctions all over the country. We subscribe to that. We used to rely on, you know, the books.
Q. The Blue Book, right?
A. Well, no.
Q. Or whatever book it was.
A. But there's a number of books.

Page 123

But typically, because there is a two-week lag or whatever on them, we basically subscribe where we can go on and get the latest auction results, you know, up to the minute.
So again, when we put a cash value on a customer's trade, we try and, you know, basically figure what is -- what is the market value for us to buy the car at a wholesale price. And typically it's not going to vary a whole lot, because, you know, it's just -- it's so easy to document as a dealer what it is.
From a retail price, we look at a number of market factors. Obviously several months ago we were selling cars at terrific losses because of the way the market went.
Q. So if somebody comes in -- so if you go back to Exhibit Number 9 --
MR. HAMM: We don't have that in front of us just yet, Dick.
THE WITNESS: I may have buried it here. There it is.
BY MR. HARPOOTLIAN:
Q. And somebody walks in and wants to buy that Range Rover at 55,993, and they fill out this Retail Buyer's Order, it says price up at the top,

Page 124

55,993, right, where it says price, that first line?
A. Where did my ad go?
Q. Number 9.
A. Yes.
Q. And we're taking that ad -- that silver parchment.
A. Okay.
Q. So they put in that 55,993 up there at the top where it says price.
A. Uh-huh.
Q. And then total would be 55,993. That's after the additional options, because assume they don't get the additional options, right, and then there might be some trade-in allowance?
A. That's probably a very well-equipped loaded car where they wouldn't be getting any options.
Q. Okay. You got your sales tax, you got your title and license, and would that be blank there because you've already included that 225 in in the --
A. No, that would not be blank. It's preprinted on the form. So what they would do is if the person paid all of it, they would deduct

Page 125

that amount, back that out of the sales price.
Q. Up at the top?
A. Right.
Q. So it wouldn't sell for 55,993, they'd back out the 225 and cut it down to 55,7 something?
A. 768 would be the figure if they had an agreed-upon price on that car.
In other words, they agreed to the price that was advertised and they didn't negotiate anything less than that?
Q. Right.
A. Yes.
Q. Would that be shown on the buyer's order anywhere?
A. Yes, that would be shown -- in other words, the price up here on this example you've got would change and become -- my understanding would be -- it would be, like you said, 55,768.
Q. But, I mean, would it be shown -- would that minus 225 be shown somewhere?
A. Not the minus, no. It would basically drop the price if that -- again, if they're paying the full price, drop the price, and then add it back.
Q. But if they didn't pay the full price --

Page 126

A. If it would be less than that, the 225 would still appear and be added back to it. So let's say we sold the car for, you know, 54,750.
Q. Then the 225 would be added back in?
A. Right.
Q. Now, in this ad, these ads that we've shown, especially this -- let's talk about this ad we were just talking about.
MR. HAMM: Which page?
MR. HARPOOTLIAN: Page -- Exhibit Number 12, page 9129, the one we keep talking about which is the '06 Range Rover.
BY MR. HARPOOTLIAN:
Q. Tell me where in this advertising it tells these folks that there is a $225 processing, recording fee.
A. Well, I've not -- there's nowhere in this ad. I mean, I've not instructed my people to do that on an advertised vehicle if it's included in it. We haven't done that. They're going to get disclosure when they arrive, when they discuss the car, you know, in numerous places like we talked about.
Q. Well, you would concede with me that, in this print advertising, nowhere is it disclosed

Page 127

there's a $225 recording and processing fee?
A. No. This example you're showing me right now, it certainly isn't, so --
Q. Are there any print ads you've ever done that in?
A. There may have been a mention in some print ads that, you know, includes blah, blah, blah, or whatever, but as far as --
Q. We've asked --
A. As far as my understanding, if they come in, they say, this is the car I'm interested in, and you look, this is an advertised car, I mean, it's included in it and there's really no discussion. But they -- they see it. They know they're paying it.
Q. Let's limit it to advertising. We've asked you for samples of advertising where it was disclosed in Motions to Produce, and we've gotten none. Would you assume then there are none?
A. Probably not. I just -- to me you can say it's a charge or you can say it's included, and we've tried to advertise the car with a price.
And today more -- I mean, I don't know that -- with all the consumer protection stuff, we've tried to be straightforward and not run into

Page 128

obstacles, and we don't get the complaints, and, you know, the Department of Consumer Affairs has never called us and said we're doing anything wrong. So we're open to suggestions, of course.
Q. But you would concede that -- well, you've never done it on television advertising either.
You've never -- and these ads come from the manufacturer that you use without that disclosed?
A. Right.
Q. Not on the internet, don't disclose it in the internet ads?
A. I don't believe so.
Q. Newspaper ads we've talked about.
Radio, any radio you've ever disclosed it on?
A. I don't believe so.
Q. Now, and direct mailings?
A. Like I say, we haven't done a lot of that with anything on cars, but if we did, I don't believe so. Okay. I believe it would be included.
MR. HAMM: Dick, for the record, the question you've tendered was you've asked for all these ads that advertise the price of the vehicle.
MR. HARPOOTLIAN: Right.

Page 129

MR. HAMM: I'm just wanting to make sure.
MR. HARPOOTLIAN: Okay.
BY MR. HARPOOTLIAN:
Q. Well, let me make -- do you know of any advertising in which you disclosed it -- you're the person most knowledgeable about this fee. Do you have -- do you have any independent knowledge of any ad you've run, print, TV, radio, direct mail, internet, in which you disclosed that there was a $225 administrative fee or closing fee or processing recording fee?
A. I don't know of an ad.
(DEPO. EXH. 13, Discovery Responses, was marked for identification.)
BY MR. HARPOOTLIAN:
Q. How about go to -- if you go past the preliminary documentation, I can't see the -- oh, it's LR-429, the Land Rover Columbia, the one that looks like this.
A. Oh, okay. Yeah, I know what that is.
Q. Tell me what that is, that is LR-429.
A. Well, that's the -- that's a product -- a software that we purchased that we go in, you know, fill in the information so that -- I guess the best way to describe it is an informational sheet.

Page 130

Q. What happens with it after you fill it out and print it out?
A. Well, typically it's laid, I guess, in the dash of the car, and -- but it's certainly something we encourage people after hours, you know, our -- people come in after hours and like to shop, as you know, and it gives them some background on the car.
So in theory, we've gone through and answered, you know, does this one have the third row seats and so on and so forth. This one has the optional running board.
So it's a used car with the information that, you know, people like to gather, and it's looked on as a --
Q. And then you have dealer selling price down here?
A. Right.
Q. And you put a price on there?
A. Right.
Q. Do you, on this, disclose the $225 fee and --
A. I don't believe on our -- on these stickers.
Q. What is it called? Sticker?

Page 131

A. Sticker, you know. It's not used that way, but it's certainly a -- it could be used that way, you know.
Q. But, I mean, it's left in the car?
A. It's left for them to see in, along with, you know, you've got -- sometimes you've got -- well, you have the federal thing that's applied, but --
Q. What's that thing called, a Monroney?
A. This is really, if you have a used car, Monroney. If you had one --
Q. This would be it?
A. This would be closer, except the Monroney is a factory, federally-controlled installed thing that you can't -- again, it's on there.
Q. But is this stuck to the window or is it left on the dash?
A. In our case, it's not, but it could be. I mean, I'm not going to say that it couldn't be used that way.
Q. And it advertises what kind of vehicle it is, what it's got?
A. The mileage and the options and so on.
Now, the selling price, you know, here, I just don't -- you know, we've not instructed them

Page 132

to start disclosing on the information at the dealership because there's so much disclosure there. It's --
Q. Right. But this is when somebody comes by after hours, this is what they see?
A. Right. And this is not all the cars, but yes, this is --
Q. Right. The used cars?
A. Again, I'll say we don't always catch this, but this is something that's an information thing that we like to have for the customer on used cars.
Q. It's an advertisement of what the car is and how much it is?
A. Well, it's not an advertisement. It's basically in-house information much like, you know --
Q. Why is it not an advertisement?
A. Because we're not out advertising the car with it. If you come to my house, I mean, am I advertising? I think it's just an information -- we've never looked at it as advertising.
Q. Well, if you've got a for sale sign in front of your house, are you advertising your house for sale?

Page 133

A. We've never looked at that.
Q. Will you answer that for me.
If you have a for sale sign out in front of your house with a price on it, are you advertising your house for sale?
A. We're on our lot, our dealership, obviously everything's for sale. I don't consider what you're saying to be apples and apples.
Q. Well, let me ask --
A. I'm not going to answer the question. I can't --
Q. You need to answer the question.
A. I don't have an answer for that.
Q. So you don't know whether that's advertising or not?
A. I don't think it's comparable in any way.
Q. You don't think putting a for sale sign in front of your house with a price on it is advertising?
A. I'm not saying that. I just don't think that's a relevant question.
Q. Well, I'm sorry, you don't get to decide what's relevant.
A. Okay.
Q. Answer the question and we can move on.

Page 134

A. I think it would be an advertising form for a house, yes.
Q. When you put this inside your vehicle, after hours and people wander through the lot looking at it, it's not advertising?
A. I've never looked at it that way. It's not my understanding.
Q. Could it be? Would you accept my definition for it?
A. I understand where you're coming from.
Q. Would you accept my definition?
A. No.
Q. Now, the second document in here, LR-430, what is that?
A. This is something that I heard mentioned earlier, but this is something we don't often use. We will sometimes use this on a -- the best example I know is a cycled-out service loaner. We offer our customers alternate transportation when they're in for service. So it may be called a loaner car, a demo. But when there's significant savings on a -- typically a current model year car, we might sometimes use this tag.
Q. Where is it put?
A. Typically this is what I heard referred to as the hang tag.

Page 135

Q. And where is it put?
A. On the windshield, sun visor, or what do you call it?
Q. The rearview mirror?
A. Right.
Q. And it has prices on it?
A. If this was used, yes.
Q. And does it disclose the $225 fee?
A. No, again, not on our --
Q. Do you consider this advertising?
A. Well, if I had it parked out in front of the Capitol building, yes, but no, not --
Q. Not on your lot?
A. Not in our house, no.
Q. Not on your lot.
A. Right.
Q. It's not in your house.
A. Not on our property.
Q. Now, the next one, 431, is a buyer's guide. And what is this?
A. Well, that's a federally-mandated document. There's a back side on the next page. The customer has to look at this and sign off, typically.

Page 136

And basically it's a disclosure form. If there is a warranty or if there's not, you have to have this posted and have it checked. So it's a good document.
Q. Where is it posted?
A. In the car where it's visible to the customer from outside. It's another one of those items that helps them.
Q. We've talked about them and you know what a Monroney is.
A. Right.
Q. And that's applied by the manufacturer?
A. Right.
Q. And it has --
A. Could be their -- could be their port. It could be whatever, but we certainly aren't --
Q. You don't do it?
A. Right.
Q. It's that way when you get it?
A. That's right.
Q. And it's got the manufacturer's price on it?
A. That's right.
Q. And it's got all the equipment -- I mean, it details what you're paying for?

Page 137

A. Right, and -- other than if you added other accessories and stuff.
Q. Does it show sales tax on it?
A. No.
Q. Does it show the administrative fee?
A. No.
Q. Do you sometimes apply additional stickers to -- around the Monroney or on the car, on the window, on new cars?
A. Oftentimes we will apply a Land Rover-recommended added value sticker that shows things like additional benefits you get when you purchase a Land Rover.
It may consist of things like a full tank of gas, a loaner car when needed, you know, car washes when you're in for service, just that type of thing. And those are included at no charge.
Q. Do you ever put a sticker on indicating that there's a $225 administrative fee on the car?
A. No, I don't believe so.
Q. Do you have a sign in your establishment disclosing this fee?
A. Yes. In fact, in the interest of overdisclosure, when you walk in, we've had a sign since, you know, its inception. We've got it near

Page 138

the sales guides' desk in addition. It's there.
Q. I'm sorry?
A. I mean, it's fully disclosed. It would be difficult to -- in fact, we even -- on the advice of our -- I guess our -- from the beginning I believe we did this, so this might have been, if I remember correctly, a result of, you know, just good advice.
But we, certainly lately, have gone with larger disclosures with big writing, and in lieu of, we haven't used the -- as far as I recollect, we haven't used the registration certificate that we get back. We've basically put it in larger recommended writing so that it's not missed.
MR. HARPOOTLIAN: Let's mark this as Number 14.
(DEPO. EXH. 14, Copy of Sign, was marked for identification.)
BY MR. HARPOOTLIAN:
Q. This has been furnished to us by you as a copy of your sign. Do you recognize it?
A. Yes.
Q. It says in here: This dealership charges a 225 closing fee as a means of reimbursing it for certain overhead costs such as document retrieval

Page 139

and document preparation. And then it goes on to say that it is a charge permitted by law.
Now, this tells the consumer they're paying a $225 fee for reimbursement for certain overhead costs such as document retrieval and document preparation. Is that correct?
A. Yes.
Q. And you would concede that in your bookkeeping/accounting procedures, you don't reflect this 225 as reimbursement for anything, do you? You record it as profit.
A. We record it as other income, I believe.
Q. But you don't, on an accounting basis, record it as being reimbursed for anything. Isn't that correct?
A. You know, I don't know if she could go backwards and pull it out that way, but it's clearly put in that area.
Q. Of profit?
A. Other income.
See, profit is something that I wish we had more of. It's income, but, you know --
Q. There's no --
A. There's gross profit and there's expense, and it's -- you know, it's --

Page 140

Q. But there's no accounting setoff in your system which would show that you're reimbursing for something, in your accounting system?
A. I think the feeling was what I said earlier. There's so many different factors in it that it would be a lot of work and a lot of unnecessary work.
We're very comfortable that it partially -- it partially recoups our cost, but we're not concerned about overcharging. We wish we were getting fully reimbursed, but I don't believe we are.
Q. So that answer would be no? Do you remember the original question?
A. No, I don't. I was rolling along there.
Q. That's why I always ask you to answer yes or no and then you can explain.
A. Okay.
Q. Do you, in your accounting system, record this as a reimbursement for anything? The answer would be no?
A. No.
Q. There we go.
Now -- and you've already explained the rest.

Page 141

Now, do you register? Do you register with Consumer Affairs?

A. Yes.

Q. Do you do it for each dealership separately?

A. We have tried, and, you know, I don't know what the latest is on that. I think last year, for whatever reason, they sent one of the checks back and we followed up to make sure that there was no misunderstanding, but yes, we do them individually.

Q. In 2006, as we saw earlier, or 2005, you registered on, and I believe in December, to charge the 350 -- I mean, it says 350. Was this supposed to be filed by July 1 of '05 to charge for the '05-'06 fiscal year or do you know?

A. I don't think so, but I don't know. I know that we've -- you know, our people have made us, you know, very sure that we did that in time, and we didn't -- as you know with some of the correspondence, we didn't do anything regarding the fee until we were completely compliant.

(DEPO. EXH. 15, Article 2, Marquis Trip Values Advertising Promotional Trademarks, LR-168, was marked for identification.)

MR. HAMM: On the record, I think I have

Page 142

an obligation to share it with Counsel, but Counsel have an obligation, and you have someone present with you, Mr. Studemeyer, and your -- the individual present with you is not Counsel, and you have an obligation to protect the confidentiality of this document.

MR. STUDEMEYER: Correct.

MR. HAMM: You agree?

MR. STUDEMEYER: Yes.

BY MR. HARPOOTLIAN:

Q. Let me ask you to look at this document, page 2.

MR. HAMM: This is Exhibit Number 15, Dick?

MR. HARPOOTLIAN: Right, 15, LR-168. Page 9329 on the bottom.

MR. HAMM: I got it. Okay.

BY MR. HARPOOTLIAN:

Q. This is called Article 2, Marquis Trip Values Advertising Promotional Trademarks.

What's a marquis value?

A. Mark, marquis, I mean, you know, it's basically brand value.

Q. Brand value, okay.

It says, Advertising 2.2: Advertising

Page 143

done consistently and regularly in compliance with company guidelines.

Are there guidelines issued by the company, written guidelines?

A. Yeah, I would think so. But basically what I shared with you earlier about any advertising not being damaging to the brand is what they're concerned with, and that's why they insist on the price being the MSRP.

Q. But are there written guidelines?

A. There may be. It's been so long since I've, you know, reviewed their guidelines, because we're always on the -- typically using their ads and so on, but I'm sure there are.

Q. Where would those be? Where would you find those?

A. I mean, right here would be the place I'd think they'd address it most, just simply by their expectation.

Q. There's not some document or workbook or handbook?

A. I don't know. I need to -- I mean, the brand has -- we changed owners not too long ago and then we changed owners back in 2000. You mentioned BMW, we used to be part of the BMW group. So I

Page 144

can't really tell you for sure.

Q. But if I asked for it, you'd look for it?

A. I'd look for it.

Q. Signs, it says: Dealer will provide company with sufficient information concerning local laws and ordinances to allow for proper design and placement of signs.

Have you ever submitted to Land Rover the statute or made them aware of the requirements about disclosure of this closing fee?

A. I don't believe so. They may have a copy of our buyer's order, you know, if there was a customer complaint that we contacted them on or the customer contacted them on on a new car, you know, one of those rare instances.

It could be we furnished them, you know, documentation that would include that disclosure on a buyer's order or something. But as far as discussing that with them, no, I don't think so.

Q. But they got copies of -- on a fairly regular basis of these buyer's orders. I mean, they'd see them from time to time?

A. Yeah.

Q. And it's -- on those buyer's orders, you see the 225, right?

A. Certainly.
Q. And have you had anybody from the corporate entity, the manufacturer, ask you what that 225 is for?
A. I don't recall that. I certainly haven't.
Q. And would they -- who would they talk to other than you if they had asked?
A. Well, I mean, they may talk to a manager of a dealership. But typically the factory type discussions of significance they'd talk to me only.
Q. On page LR-172, it says, System, 6.12, it says: Dealer will purchase and maintain an upgraded required data processing system together with related software and telecommunications as specified for Company by use exclusively with Land Rover products.
Is this the system you were talking about before?
A. Yeah.
Q. What was that called, C --
A. DCS.
Q. DCS. Dealer Communications System.
MR. HARPOOTLIAN: Okay. That's it.
(The deposition concluded at 1:23 p.m.)

SIGNATURE OF DEPONENT

I, the undersigned, JACK LESTER FRASHER, JR., do hereby certify that I have read the foregoing deposition and find it to be a true and accurate transcription of my testimony, with the following corrections, if any:

PAGE	LINE	CHANGE	REASON

JACK LESTER FRASHER, JR., Date

CERTIFICATE OF REPORTER

I, Gina M. Smith, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify:
That the foregoing deposition was taken before me on the date and at the time and location stated on page 1 of this transcript; that the deponent was duly sworn to testify to the truth, the whole truth and nothing but the truth; that the testimony of the deponent and all objections made at the time of the examination were recorded stenographically by me and were thereafter transcribed; that the foregoing deposition as typed is a true, accurate and complete record of the testimony of the deponent and of all objections made at the time of the examination to the best of my ability.
I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.
Witness my hand, I have hereunto affixed my official seal this 10th day of March, 2009, at Columbia, Richland County, South Carolina.

Gina M. Smith
RPR, CSR, Notary Public,
State of South Carolina
at Large.
My Commission expires
July 23, 2013.

I N D E X

	Page
Stipulation	4
EXAMINATION BY MR. HARPOOTLIAN	5
Certificate of Reporter	147

E X H I B I T S

Plaintiff's		
1	30(b)(6) Deposition Notice	13
2	South Caroling Department of Consumer Affairs Motor Vehicle Dealer Closing Fees Form, LR-01	20
3	Response to Interrogatory Number 11	25
4	E-Mail from Gary Palmer	53
5	E-Mail from Gary Palmer to Chuck	63
6	Document Titled Doc Fee	67
7	Retail Buyer's Order	75
8	Document, Bates Number 9345	95
9	Document, Bates Number 9398 and 9396	95
8A	Retail Installment Contract	95
8B	Deal Jacket	95
10	Manufacturer Designed Ad, LR-39, 6/30/06	107
11	Manufacturer Designed Add	107

(EXHIBITS CONTINUED.)

		Page
12	Classified Ads	107
13	Discovery Responses	129
14	Copy of Sign	138
15	Article 2, Marquis Trip Values Advertising Promotional Trademarks, LR-168	141

EXHIBIT M

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS

C.A. No. 2006-CP-02-1230

Heather Herron, et al.,

Plaintiff,

v.

Dick Dyer & Associates, Inc., et al.,

Defendants.

AFFIDAVIT OF SCOTT C. RHODES

I, the undersigned Scott C. Rhodes, being duly sworn, state under oath as follows:

1. I am the general manager of Galeana Chrysler Jeep, Inc. ("Galeana"), located at 180 Greystone Boulevard in Columbia, South Carolina. I have held the position of general manager at this dealership since 1988.

2. I have personal knowledge of the facts set forth in this affidavit to the extent specified and, if called as a witness, I could competently testify to these facts.

3. For purposes of this affidavit, the "relevant time period" is August 29, 2002, to November 30, 2008.

4. I have reviewed Plaintiff's motion for a declaratory judgment against Galeana, and I make this affidavit in opposition to Plaintiff's motion.

Charging of Closing Fees by Galeana

5. I am familiar with S.C. Code Ann. § 37-2-307 (2002) (the "Closing Fee Statute"), which allows motor vehicle dealers to charge closing fees.

6. Galeana began charging a closing fee in late 2000. Since that time, including during and at the time of the motor vehicle sale to Plaintiff Natalie Armstrong, Galeana's policy has been to charge a closing fee on all motor vehicle sales, except on multiple-vehicle fleet sales, used vehicles sold to wholesale buyers, and vehicles sold under specific factory-employee programs. From August 29, 2002, to January 2006, Galeana charged a closing fee of $99, and from January 2006 to the present, Galeana has charged a closing fee of $199.

7. As the dealership manager, I established the amount of the closing fee after discussing it with department managers. Although the Closing Fee Statute does not state or limit the purposes for which a closing fee may be charged, Galeana charges closing fees primarily as a means of reimbursing the costs of document preparation and document retrieval. I established the amount of the closing fee that Galeana charges based on my knowledge of Galeana's costs related to document preparation, storage, and maintenance, and what I believed customers would consider a reasonable fee to reimburse Galeana for such costs.

8. I have never discussed the amount of the closing fee with other automobile dealers with which Galeana competes in its market area, and I have never conspired with any automobile dealer to establish or increase the closing fee. I am generally aware of the amounts of the closing fees charged by other dealerships in Galeana's market area because that information is available from advertisements mentioning the fee and from customers, employees, and others involved in the retail vehicle business.

Galeana's Compliance with S.C. Code Ann. § 37-2-307

9. I am familiar with the four requirements of the Closing Fee Statute with which a dealer must comply in order to charge closing fees:

1. the dealer must annually register with the Department of Consumer Affairs;
2. the closing fee must be "disclosed on the sales contract";

3. the closing fees must be "displayed in a conspicuous location in the motor vehicle dealership"; and

4. "[t]the closing fee must be included in the advertised price of the motor vehicle."

10. Since it began charging closing fees, Galeana has made, and continues to make, every reasonable effort to comply with the Closing Fee Statute, and any violation of the statute that Galeana or any of its employees might have committed was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid the error. I am not aware of any such violations, however, and I believe that Galeana has fully complied in good faith with the Closing Fee Statute.

Registering with the Department of Consumer Affairs

11. With respect to the first requirement that each dealer must annually register with the Department of Consumer Affairs, during the entire relevant time period, Galeana has properly registered the closing fee each year with the S.C. Department of Consumer Affairs. Galeana has also posted copies of the Department Consumer Affairs registration forms in the dealership in plain view of customers. True copies of the registration forms for the relevant time period are attached hereto collectively as Exhibit A.

"Disclosed on the Sales Contract"

12. With respect to the second requirement of the Closing Fee Statute, requiring the closing fee to be "disclosed on the sales contract," Galeana has prominently disclosed the closing fee on a one-page buyer's order form ("Initial Buyer's Order") during the entire relevant time period. The Initial Buyer's Order, which has referred to the closing fee as an "admin fee" or "closing fee," is usually shown to a customer during early discussions about a particular vehicle, and salespersons complete the form by hand as negotiations progress. The closing fee is preprinted on the form, and salespersons are trained to show customers the fee and explain it to

them. After a final price for a vehicle is reached, with all additional equipment and accessories included, a sales manager reviews and signs the Initial Buyer's Order, affirming that the form accurately reflects the terms of the deal.

13. Galeana has also prominently disclosed the closing fee on a one-page final buyer's form ("Final Buyer's Order") during the entire relevant time period. After the sales manager approves the price of the vehicle on the Initial Buyer's Order, the customer meets with the Finance & Insurance manager, who offers additional finance and insurance products, such as credit insurance, gap waiver, and other service contracts. The Finance & Insurance manager reviews the Final Buyer's Order in detail with the customer, often comparing the Initial Buyer's Order and Final Buyer's Order side by side. Each manager is trained to explain each item of information as needed and to answer any questions the customer may have, including any questions about the fee. Both the Initial and Final Buyer's Orders disclose the closing fee, and both documents are signed by the customer. Sample Initial and Final Buyer's Orders used in a transaction unrelated to the sale to Natalie Armstrong are attached hereto as Exhibits B & C, respectively.

14. I do not believe that the Closing Fee Statute requires a separate closing fee disclosure form, but in an abundance of caution, since early 2007, Galeana has prominently disclosed the closing fee on a separate closing fee disclosure form signed by each customer. A sample closing fee disclosure form is attached hereto as Exhibit D.

"Displayed in a conspicuous location"

15. With respect to the third requirement of the Closing Fee Statute that notice of the closing fees be "displayed in a conspicuous location in the motor vehicle dealership," Galeana has,

during the entire relevant time period, posted numerous notices of closing fees throughout the dealership in various locations.

16. Each notice posted by Galeana has used the suggested language printed on the annual registration form submitted to and approved by the Department of Consumer Affairs. The form of notice currently in use at the dealership states:

NOTICE – CLOSING FEES

> Galeana Chrysler Jeep Kia charges a $199 closing fee as a means of reimbursing the costs of document retrieval and document preparation. It is a charge that is permitted but not required by law. The full cash price charged at any dealership depends on many factors, including all products and services bought with the vehicle.

17. Galeana's practice has always been to post notices throughout the dealership, but the location and number of notices has varied throughout the years. For example, an enlarged version of the notice containing the typewritten statement in paragraph 16 above has been posted in the dealership showroom. A true copy of the notice is attached as Exhibit E. Other notices containing the typewritten statement in paragraph 16 above have been displayed on the wall in the dealership showroom and in the Finance and Insurance offices in an 8½ x 11-inch glass frame or plastic cover. True copies of the type of notices that have been posted as described are attached hereto collectively as Exhibit F. The notices listed in this paragraph and attached to this affidavit are not, however, an exhaustive list of all notices that have been posted in the dealership during the relevant time period.

"Included in the Advertised Price"

18. With respect to the final requirement of the Closing Fee Statute providing that the closing fee must be "included in the advertised price of a motor vehicle," I do not interpret this requirement to mean that every advertisement must mention or describe the closing fee, the

amount of the closing fee, or affirmatively state that the closing fee was included in the advertised price.

19. Instead, I believe the statute means exactly what it says: "The closing fee must be *included in* the advertised price of the motor vehicle . . . ." Thus, when a particular vehicle is sold exactly as advertised (*i.e.*, nothing is added to or taken from the vehicle as advertised) and at the price advertised, if any, the closing fee is properly charged as long as the final sales price does not exceed the advertised price.

20. Not all vehicles sold by Galeana are advertised, and not all advertisements mention price. The only way to determine whether a vehicle has been sold at an advertised price is to review each sale file individually, review any available advertisements at the time to determine whether and how the particular vehicle was advertised and at what price and terms, and interview the sales staff and customer as needed. Moreover, most customers do not view or respond to any price advertisement before coming to Galeana, and they instead choose Galeana because of the brands it offers, its location, and its reputation. Additionally, when options and features are added to or taken from the vehicle (*e.g.*, accessories, warranties, and the like) during the negotiation of a sale, then the advertised price becomes moot because the dealership and the customer are negotiating the price of a vehicle different from the one originally advertised.

21. For example, assume that Galeana advertises a particular Chrysler 300 vehicle with all standard accessories for $24,500 and that a customer purchases that vehicle for $25,000 after negotiating the addition of special wheels and tires costing $2,000. The final sales price, which would include the closing fee, would exceed the original advertised price. However, there is no violation of the statute because the vehicle purchased (vehicle with special wheels and tires) is *not* the vehicle that was advertised (vehicle without special wheels and tires).

22. Similarly, if a vehicle is advertised for sale at $24,500 and the customer negotiates the price downward to $24,000, no violation of the Closing Fee Statute occurs if the customer then pays a closing fee of $199 in addition to the price of $24,000 because the customer has paid less than the advertised price, and the sum of the price paid, $24,000, plus the closing fee paid, $199, is less than the advertised price, $24,500. Moreover, as mentioned above, a customer is advised of the closing fee almost as soon as the customer enters the dealership through the notices posted in the dealership, and at an early stage of negotiations with the salesman through the pre-printed notice of the fee on the Initial Buyer's Order. As a result, most customers negotiate all terms of their purchase knowing that Galeana charges a closing fee.

23. In my experience, most, if not all, buyers negotiate freely over everything associated with the purchase of a vehicle, including but not limited to the price of the vehicle, additional products and services such as optional equipment, warranties, and insurance, the closing fee, and even tax, tag, and title fees. It would be extremely rare for a buyer to come to Galeana and simply offer to pay the asking price for a vehicle, whether advertised or not.

24. For example, some buyers are "bottom line" or "out-of-the-door" buyers and visit Galeana knowing exactly which type of vehicle they would like to purchase and exactly how much they would like to pay. The "bottom-line" buyer typically negotiates down the cost of certain services and fees because those fees must be lowered in order to make a deal at the price the "bottom line" buyer has offered (*i.e.*, I only have $10,000 to spend).

25. Other buyers may come to the dealership knowing how much per month they would like to pay to finance or lease a vehicle, offering, for example, to purchase a certain vehicle as long as their monthly loan or lease payment does not exceed $250.00. Other buyers are most concerned with the value of their trade-in vehicle.

26. No matter what factor is of most concern to any given buyer, almost all motor vehicle sales transactions involve several stages of negotiation over numerous items including the price of the vehicle, financing or lease terms, trade-in allowance, or the price for optional equipment, warranties, or insurance. Most deals occur over several days or even weeks. In fact, few, if any, buyers purchase a vehicle on their first visit to the dealership. Galeana's practice is to put a buyer's price quote in writing on an Initial Buyer's Order, and as a result, Initial Buyer's Orders are often shown to customers at the very beginning of negotiations.

27. As a result, almost all motor vehicle sales transactions involve negotiation over the price of one or more of these items *after* the buyer is first made aware of Galeana's practice of charging a closing fee. Some buyers even use the closing fee as a negotiating tool to lower the price of the vehicle or to request additional products or services with the vehicle. Such negotiations are standard for almost all vehicle purchases. Every price of every product or service ever offered or advertised by Galeana is negotiable and very often is negotiated. The ability of every buyer to negotiate every part of a deal makes every sale different.

28. As mentioned above, I do not understand the Closing Fee Statute to require a disclosure of the closing fee every time the price of a vehicle is displayed, whether in a paid advertisement or on the vehicle. Additionally, I do not consider every display of the price of a vehicle to be an advertisement.

29. Galeana has used a variety of methods to display information on some, but not all vehicles on its lot. During the relevant time period, Galeana may have displayed price information on certain vehicles using marker paint on windows, paper window stickers, or hang tags, depending on whether the vehicle was new or used. For many vehicles, it is possible that a price display would

change during the time that the vehicle was on the Galeana lot. In fact, it is very likely that many used vehicles would never have had a price displayed on the vehicles in any fashion.

30. For most of the relevant time period, Galeana did not mention the closing fee when it displayed the price of the vehicle using the various methods described above because I do not believe the Closing Fee Statute requires a disclosure of the closing fee every time the price of a vehicle is displayed. However, in an abundance of caution, in November 2006, Galeana began referencing closing fees in its hang tags, and in March 2007, Galeana began referencing the closing fee in some of its window sticker information provided on vehicles on its lot.

31. In addition to methods used by Galeana to display information regarding price on a vehicle, federal law also requires the use of several window stickers, including a Buyer's Guide and a Monroney sticker. A Monroney sticker is a paper window sticker prepared and affixed by the manufacturer. Dealers are prohibited from adding anything to, or deleting anything from, the Monroney sticker. Federal law requires that if Galeana adds accessories or equipment to a new vehicle, Galeana must disclose such additions on a supplemental sticker. The supplemental sticker is not intended to be a disclosure of all services, fees, and charges ultimately included in the final price of a vehicle. Instead, it is intended to provide the customer with information about equipment added to or removed from a vehicle. The vehicle that Natalie Armstrong purchased from Galeana did not have a Monroney sticker or other supplemental sticker because the vehicle was a used vehicle when Natalie Armstrong purchased it from Galeana.

32. Similarly, a Buyer's Guide is required for all used vehicles by the Federal Trade Commission's Used Car Rule. A Buyer's Guide does not state the vehicle's price or mention the closing fee, and it is not a method used by Galeana to advertise the price of a vehicle.

33. With respect to advertisements in newspaper and other print publications, during the relevant time period, Galeana's vehicle advertisements usually did not mention the charging of a closing fee because I do not believe that the Closing Fee Statute requires that the closing fee be disclosed with the advertised price. However, in an abundance of caution, since November 2006, Galeana's practice has been to include the phrase "includes $199.00 dealer admin fee" or "includes $199.00 dealer closing fee" in all advertisements in newspapers and other print publications.

34. With respect to Internet advertising only on Internet sites controlled by Galeana, during the relevant time period, Galeana usually did not mention the charging of the closing fee. Although I do not believe the Closing Fee Statute requires any disclosure of closing fees in advertisements, since November 2006, Galeana's practice has been to prominently disclose that the listed price of a vehicle "includes $199.00 dealer admin fee" or "includes $199.00 dealer closing fee." Despite all efforts by Galeana, it is impossible for Galeana to maintain control over all Internet sites that may advertise vehicles in its vehicle inventory. There are many Internet sites from which Galeana has not requested vehicle listing services that nevertheless list Galeana's vehicle inventory.

How Closing Fees are Explained to Customers

35. If questioned about the closing fee, the Galeana sales staff is instructed to tell the customer that the closing fee is charged on the sale of every vehicle as a way to reimburse the dealership for certain overhead costs such as document retrieval, preparation, and storage. The sales staff is informed and knows that the closing fee is not required by law, and they do not try to make customers believe it is required by law. Galeana does not have a written, scripted response which salespersons are instructed to use when asked by customers about the closing fee.

36. During the relevant time period, I held several meetings with salespersons and managers and always instructed them to say to customers that the fee is not required by law and to explain that Galeana's policy was to account for the fee in every transaction. I made every effort to insure that all salespersons and managers understood that the closing fee was in no way related to obtaining state title or tags, which are separately-charged, state-imposed fees.

37. After the fee is explained to customers by a salesperson or manager, most customers do not object to the fee or ask any other questions. However, some customers do object to the fee and have used the fee as a means to negotiate a lower price for the vehicle or for additional products and services.

38. If a customer does object to the closing fee, Galeana would not insist on charging the fee and losing the sale. As explained in greater detail above, some customers, *after* being informed of the closing fee, will restart or continue negotiations over the price of the vehicle, financing or lease terms, trade-in allowance, or the price for optional equipment, warranties, or insurance. Thus, for those customers who do object to the closing fee, Galeana often adjusts the price to which the customer had previously agreed, by such methods as lowering the price of the vehicle to be purchased, increasing the trade allowance for a trade-in vehicle, or providing additional products or services with the vehicle at no cost or a reduced cost to the customer.

39. Nevertheless, even though Galeana may ultimately renegotiate the price of the vehicle or additional products and services sold with the vehicle for those customers who do object to the closing fee, it is Galeana's practice to account for the payment of the closing fee in every retail transaction except on multiple-vehicle fleet sales, used vehicles sold to wholesale buyers, dealer trades, and vehicles sold under specific factory-employee programs.

The Sale of a Vehicle to Plaintiff Natalie Armstrong

40. From Galeana's records, I am aware that Natalie Armstrong purchased a 2002 Jeep Liberty Sport on August 11, 2006. I was not present at the time of the sale, but Galeana records show that Jarrah Jordan, a New Car Salesperson, and John Reitenga, a Used Car Manager, were the Galeana employees who assisted Ms. Armstrong with her purchase. Dale Wolan, a finance and insurance manager, assisted Ms. Armstrong with the financing and insurance for her vehicle purchase.

Dealership Overhead Costs Covered by the Closing Fee

41. It is my understanding and belief that the Closing Fee Statute does not prohibit a dealership from making a profit from the closing fee, if possible. In any event, as explained below, Galeana does not make a profit by charging the closing fee.

42. Although Galeana has not hired a consultant or performed a study to determine the specific costs of the daily administrative tasks performed by its employees or any "time-and-motion" studies on document preparation, retrieval, and storage, I am certain that Galeana's overhead costs associated with preparing, storing, and, when necessary, retrieving the documents relating to the sale of a vehicle greatly exceed the closing fee that Galeana charges. Competition from other dealers, however, limits the amount of the closing fee that Galeana can charge its customers to significantly less than the total overhead costs associated with preparing, storing, and, when necessary, retrieving the documents relating to the sale of a vehicle.

43. During my 21 years as general manager of Galeana, the documentation associated with the sale of a vehicle has increased dramatically. When I started in this business, a car sale basically involved a handshake and perhaps a half-dozen documents—an invoice form, an insurance form, a loan contract from a bank, and warranty-related paperwork from the manufacturer.

44. However, the many laws affecting this business and the level of documentation required have increased exponentially. For example, after the terrorist attacks of September 11, 2001, the federal government implemented several new laws with comprehensive requirements pertaining to document storage, document security, and secure maintenance of customer information. As a result of the increase in document management that the laws required, our staffing needs have greatly increased.

45. A partial list of documents which may currently be required in the sale of vehicles by Galeana include:

1. Shipping receipts of vehicle forms
2. Stock sticker forms
3. Key tag forms
4. Monroney sticker forms
5. Supplementary sticker forms
6. Gas record books
7. Service preparation and repair order forms
8. Internal expense memos forms
9. Dealer-trade forms where dealers exchange vehicles
10. Buyer Guide forms required by FTC Used Car Rule
11. AutoCheck or CarFax reports
12. Used Vehicle Inspection forms
13. New Vehicle Preparation forms
14. Used car bank book-out forms
15. Used vehicle detail purchase order forms
16. Receipt book forms for funds received
17. Deal Jacket folders
18. Buyer's order forms
19. Dealer's invoice forms
20. PTO forms
21. Affidavit of Title forms (Form 400) required by Department of Motor Vehicles
22. Copies of buyer's driver's license
23. Copies of buyer's insurance cards
24. Copies of trade-in tag registration
25. Retail installment and lender contract forms
26. Lease contract forms
27. Life and disability insurance forms
28. Various service contract forms
29. Military tax exempt forms

30. Out-of-state affidavit of sale forms
31. Name verification forms
32. Power of attorney forms
33. Co-signor forms
34. OFAC reports
35. Substitution of collateral forms
36. Credit union membership application forms
37. Credit application forms
38. Credit reports
39. Adverse action / denial of credit letters
40. Insurance verification forms
41. Loan payoff forms
42. Special rebate eligibility forms
43. Fax cover sheet forms
44. Delivery envelopes
45. Privacy Act notice forms
46. IRS Form 8300
47. Prior Damage Disclosure forms
48. Tele-Check check forms
49. Used vehicle appraisal forms
50. Used Vehicle Cleanup and Delivery forms
51. Chrysler New Vehicle Delivery forms
52. Kia New Vehicle Delivery forms
53. Various forms relate to vehicle service records
54. New Vehicle Delivery Report (online form)
55. Used Vehicle Delivery Report (online form)
56. Sales commission forms
57. Deal Recap forms
58. Promissory Note forms
59. Lender stipulation agreement forms
60. Master-Shield Warranty transmittal forms
61. Wynn's warranty transmittal forms
62. Chrysler service contract transmittal forms (online form)
63. Kia service contract transmittal forms
64. Chrysler Gap transmittal forms
65. Life & Disability Insurance transmittal forms
66. Copies of purchased vehicle registration forms
67. Copies of purchased vehicle title forms
68. Temporary tag forms
69. Out-of-state temporary tag & registration filing forms
70. Supplementary stickers

46. Not all of the documents listed above are required in every vehicle sale, although some are, such as buyers' orders, PTO's, insurance, OFAC, stock stickers, and title forms.

Additionally, some documents may be used multiple times on a single transaction (*e.g.*, PTO forms). Even if not all documents are used on every sale to every customer, in order to be competitive and competent as a dealership, Galeana and its employees must be trained to be able to prepare, retrieve, transmit, and store each form depending on the type of deal made with each customer.

47. When completed, most of the documents listed above must be stored in hardcopy or electronic format for a period of at least six (6) years.

48. The documents and forms that are part of a vehicle sale are not limited only to those provided to a customer in a deal, but also include documents related to the acquisition, maintenance, and inspection of vehicles. For example, Galeana prepares or inspects each vehicle prior to sale, and that inspection becomes part of the deal document and service history on the vehicle. Galeana is required to keep such inspection records for seven (7) years.

49. Itemized below are the amounts that Galeana has recently calculated that were directly or indirectly related to the costs of document purchase, electronic access to online forms, and processing and storage of documents in 2007:

1. Purchase of necessary forms and documents of all types—$122,300.71.
2. Cost of copiers, toner, fax machines, paper supplies, postage, etc.—$62,875.32.
3. Cost to operate and maintain computerized accounting and database systems used to prepare, process, retrieve and store various documents and forms—$341,168.90.
4. Building overhead expenses attributable to square footage of document storage areas (5300 square feet, or 6.23% of the entire space of the Galeana dealership)—$59,791.20.

50. Every person who works at Galeana, from the "runners" to the top managers, is involved in some way with the preparation, processing, retrieval, and storage of documents at some level. As a result, a portion of every employee's salary is attributable to the preparation,

processing, retrieval, and storage of documents. Below is a partial list of dealership personnel dedicated to document preparation and storage for the year 2007, based on the payroll amount for each category and the percentage of time each type of personnel dedicates to document preparation and storage. In 2007, the total estimated cost to Galeana in 2007 was $669,302, itemized as follows:

1. Approximately 20% of the time of the New Car Sales Staff is dedicated to document preparation and storage, resulting in $80,230 in document costs.
2. Approximately 20% of the time of the Used Car Sales Staff is dedicated to document preparation and storage, resulting in $79,331 in document costs.
3. Approximately 35% of the time of New Sales Managers is dedicated to document preparation and storage, resulting in $96,815 in document costs.
4. Approximately 35% of the time of Used Sales Managers is dedicated to document preparation and storage, resulting in $83,064 in document costs.
5. Approximately 75% of the time of Finance Managers is dedicated to document preparation and storage, resulting in $188,452 in document costs.
6. Approximately 25% of the time of personnel associated with vehicle receiving and stocking is dedicated to document preparation and storage, resulting in $13,288 in document costs.
7. Approximately 65% of the time of personnel in the accounting office is dedicated to document preparation and storage, resulting in $120,947 in document costs; and
8. Approximately 5% of my time as General Manager is dedicated to document preparation and storage, resulting in $7,175 in document costs.
9. The above list does not include Parts, Body, Warranty, and Service personnel, who also play a role in the document preparation process.

51. The estimated figures listed above indicate that Galeana's overhead expenses directly and indirectly related to the preparation, processing, retrieval, and storage of documents for the year 2007 was approximately $1,285,438.13.

52. During the relevant time period, Galeana collected the following amounts in closing fees:

1. August 29, 2002, to December 31, 2002: $73,359
2. 2003: $204,633

3. 2004: $213,147
4. 2005: $220,968
5. 2006: $409,933
6. 2007: $410,537
7. January 1, 2008, to November 30, 2008: $320,390.

53. Simple math shows that the amount collected each year in closing fees is significantly less than the overhead expenses that are directly and indirectly related to the preparation, processing, retrieval, and storage of documents. In 2007 alone, the difference between the amounts collected in closing fees, ($410,537.00) and the amount of the cost to Galeana for document preparation, storage, and retrieval ($1,285,438.13) was $874, 901.13.

54. Consequently, Plaintiff's assertion that Galeana's charging of a closing fee is not tied to the reimbursement of any overhead costs or results in an impermissible profit is absolutely wrong. Galeana does not separately account for the direct and indirect costs associated with document preparation, storage, and retrieval for each individual motor vehicle transaction because the cost of performing such cost accounting would be substantial, would prevent Galeana from remaining competitive, and would greatly exceed any value in doing so.

WITNESS my hand this 25 day of June, 2009, at Columbia, South Carolina.

Scott C. Rhodes
General Manager
Galeana Chrysler Jeep Kia

SWORN TO and subscribed before me
this 25 day of June, 2009.

Notary Public for the State of South Carolina
My commission expires: My Commission Expires October 25, 2011

CERTIFICATE OF SERVICE BY MAIL

I, the undersigned employee of Haynsworth Sinkler Boyd, P.A., attorneys for Galeana Chrysler Jeep, Inc. and Hendrick Automotive Group, Inc., hereby certify that I have served the attached document(s) on the Plaintiffs and the other Defendants by causing true copies thereof to be mailed by first-class mail, postage prepaid, to their respective attorneys of record, whose names and addresses are as follows:

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June 26, 2009

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS

C.A. No. 2006-CP-02-1230

Heather Herron, et al.,

Plaintiff,

v.

Dick Dyer & Associates, Inc., et al.,

Defendants.

AFFIDAVIT OF DON PENDLETON

I, the undersigned Don Pendleton, being duly sworn, state under oath as follows:

1. I am the dealer manager of Hendrick Honda of Easley, an automobile dealership owned by J.L.H. Investments, LP, which is part of the Hendrick Automotive Group. Hendrick Honda of Easley is located at 4609 Calhoun Memorial Highway in Easley, South Carolina. I have held the position of general manager at this dealership since 2000.

2. I have personal knowledge of the facts set forth in this affidavit to the extent specified and, if called as a witness, I could competently testify to these facts.

3. For purposes of this affidavit, the relevant time period is August 29, 2002, to November 30, 2008.

4. I have reviewed Plaintiff's motion for a declaratory judgment against Hendrick Honda of Easley, and I make this affidavit in opposition to Plaintiff's motion.

Charging of Closing Fees by Hendrick Honda of Easley

5. I am familiar with S.C. Code Ann. § 37-2-307 (2002) (the "Closing Fee Statute"), which allows motor vehicle dealers to charge closing fees.

6. Hendrick Honda of Easley has charged a closing fee since I came to work at the dealership in 2000. Since that time, including during and at the time of the motor vehicle sale to Plaintiff Julie Freeman, Hendrick Honda of Easley's policy has been to account for a closing fee on all motor vehicle sales, except on multiple-vehicle fleet sales, used vehicles sold to wholesale buyers, and vehicles sold under specific factory-employee programs. From August 29, 2002, to January 19, 2005, Hendrick Honda of Easley charged a closing fee of $249.00, and from January 20, 2005, to the present, Hendrick Honda of Easley has charged a closing fee of $299.00.

7. Hendrick Automotive Group has established a cap for closing fees of $399.00, as stated in the Hendrick Automotive Group Transaction Compliance Policy manual. As general manager of the dealership, it is my responsibility to choose whether to charge a closing fee and to choose the amount, as long as it does not exceed $399.00.

8. Although the Closing Fee Statute does not state the purposes for which a closing fee may be charged, Hendrick Honda of Easley charges closing fees primarily as a means of reimbursing the costs of document retrieval and preparation. I established the amount of the closing fee that Hendrick Honda of Easley charges based on my knowledge of Hendrick Honda of Easley's costs related to document preparation, storage, and maintenance, and what I believed customers would consider a reasonable fee to reimburse Hendrick Honda of Easley for such costs.

9. I have never discussed the amount of the closing fee with other automobile dealers with which Hendrick Honda of Easley competes in its market area, and I have never conspired with any automobile dealer to establish or increase the closing fee.

Hendrick Honda of Easley's Compliance with S.C. Code Ann. § 37-2-307

10. I am familiar with the following four requirements with which a dealer must comply in order to charge closing fees:

a. the dealer must annually register with the Department of Consumer Affairs;
b. the closing fee must be "disclosed on the sales contract";
c. the closing fees must be "displayed in a conspicuous location in the motor vehicle dealership"; and
d. the closing fee must be "included in the advertised price of a motor vehicle."

11. Since it began charging closing fees, Hendrick Honda of Easley has made, and continues to make, every reasonable effort to comply with the Closing Fee Statute, and any violation of the statute that Hendrick Honda of Easley or any of its employees might have committed was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid the error. I am not aware of any such violations, however, and I believe that Hendrick Honda of Easley has fully complied in good faith with the Closing Fee Statute.

Registering with the Department of Consumer Affairs

12. With respect to the first requirement that each dealer must annually register with the Department of Consumer affairs, during the entire relevant time period, Hendrick Honda of Easley has properly registered the closing fee each year with the S.C. Department of Consumer Affairs. Hendrick Honda of Easley has also posted copies of the S.C. Consumer Affairs registration forms in the dealership in plain view of customers.

True copies of the registration forms for the relevant time period are attached hereto collectively as Exhibit A.

13. Although Hendrick Honda of Easley's registration forms from 2006 to the present have stated that the closing fee would not exceed $399, Hendrick Honda of Easley has never charged a closing fee over $299.

"Disclosed on the Sales Contract"

14. With respect to the second requirement of the Closing Fee Statute, requiring the closing fee to be "disclosed on the sales contract," Hendrick Honda of Easley has prominently disclosed the closing fee in bold print on a one-page form referred to as the Sales Worksheet during the entire relevant time period. The Sales Worksheet, which refers to the closing fee as a "procurement fee" is usually shown to a customer during early discussions about a particular vehicle, and sales persons complete the form by hand as negotiations progress. However, the fee is preprinted on the Sales Worksheet, and salespersons are trained to show customers the fee and explain it to them. After a final price for a vehicle is reached, with all the additional equipment and accessories included, both the sales manager and the customer sign the Sales Worksheet, affirming that the form accurately reflects the terms of the deal up to that point. However, a complete Sales Worksheet may not be used in every deal (*e.g.*, if a customer has already negotiated a price over the internet or over the phone).

15. Hendrick Honda of Easley has also prominently disclosed the closing fee on a one-page buyer's order form ("Buyer's Order") during the entire relevant time period. After the sales manager approves the price of the vehicle on the Sales Worksheet, the customer meets with the Finance & Insurance manager, who offers additional

products, such as credit insurance, gap waiver insurance, and other service contracts. The Finance & Insurance manager reviews the Buyer's Order in detail with the customer, often comparing the Sales Worksheet and Buyer's Order side by side. Each manager is trained to explain each item of information as needed and to review any questions the customer may have, including any questions about the fee. Both the Sales Worksheet and the Buyer's Order disclose the fee, and both are signed by the customer. True copies of a sample Sales Worksheet and sample Buyer's Order are attached hereto as Exhibits B & C, respectively.

"Displayed in a conspicuous location"

16. With respect to the third requirement of the Closing Fee Statute that notice of the closing fees be "displayed in a conspicuous location in the motor vehicle dealership," Hendrick Honda of Easley has, during the entire relevant time period, posted numerous notices of closing fees throughout the dealership. Notices have been posted in the showroom and in each of the two Finance & Insurance offices, all in plain view of customers. The notices have been displayed on the wall in an 8 1/2 x 11-inch glass frame. True copies of the types of notices that have been displayed during the relevant time period are attached hereto collectively as Exhibit D.

17. Each notice posted by Hendrick Honda of Easley has used the suggested language printed on the annual registration form submitted to and approved by the Department of Consumer Affairs. The form of the notice currently in use at the dealership states:

NOTICE
CLOSING FEES
THIS DEALERSHIP CHARGES A **$299.00** CLOSING FEE AS A MEANS OF REIMBURSING IT FOR CERTAIN OVERHEAD COSTS

SUCH AS DOCUMENT RETRIEVAL AND DOCUMENT PREPARATION. IT IS A CHARGE THAT IS PERMITTED BUT NOT REQUIRED BY LAW. THE FULL CASH PRICE CHARGED AT ANY DEALERSHIP DEPENDS ON MANY FACTORS, INCLUDING ALL PRODUCTS AND SERVICES BOUGHT WITH THE VEHICLE.

"Included in the Advertised Price"

18. With respect to the final requirement of the Closing Fee Statute providing that the closing fee must be "included in the advertised price of a motor vehicle," I do not interpret this requirement to mean that every advertisement must mention or describe the closing fee, or affirmatively state that the closing fee was included in the advertised price.

19. Instead, I believe the statute means exactly what it says: "The closing fee must be *included in* the advertised price of the motor vehicle . . . ." Thus, when a particular vehicle is sold exactly as advertised (*i.e.*, nothing is added to or taken from the vehicle as advertised) and at the price advertised, if any, the closing fee is properly charged as long as the final sales price does not exceed the advertised price.

20. Not all vehicles sold by Hendrick Honda of Easley are advertised, and not all advertisements mention price. The only way to determine whether a vehicle has been sold at an advertised price is to review each sale file individually, review any available advertisements at the time to determine whether and how the particular vehicle was advertised, and at what price and terms. It may also be necessary to interview the sales staff and customer as needed. Moreover, many customers do not view or respond to any advertisement before coming to Hendrick Honda of Easley, and they instead choose Hendrick Honda of Easley because of the brands it offers, its location, and its reputation. Additionally, when options and features are added to or taken from the vehicle (*e.g.*, accessories, warranties, and the like) during the negotiation of a sale, then the advertised

price becomes moot because the dealership and the customer are negotiating the price of a vehicle different from the one originally advertised.

21. For example, assume that Hendrick Honda of Easley advertises a particular Honda vehicle with all standard accessories for $24,500, and a customer purchases that vehicle for $25,000 after negotiating the addition of a special wheels and tires costing $2,000. The final sales price, which would include the closing fee, would exceed the original advertised price. However, there is no violation of the statute because the vehicle purchased (a vehicle with special wheels and tires) is *not* the vehicle that was advertised (vehicle without special wheels and tires).

22. Similarly, if a vehicle is advertised for sale at $24,500 and the customer negotiates the price downward to $24,000, no violation of the Closing Fee Statute occurs if the customer then pays a closing fee of $299 in addition to the price of $24,000 because the customer has paid less than the advertised price and the sum of the price paid, $24,000, plus the closing fee paid, $299, is less than the advertised price, $24,500. Moreover, as mentioned above, a customer is advised of the closing fee almost as soon as the customer enters the dealership through the notices posted in the dealership, and at an early stage of negotiations with the salesman through the pre-printed notice of the fee on the Sales Worksheet. As a result, most, if not all, customers negotiate all terms of their purchase knowing that Hendrick Honda of Easley charges a closing fee.

23. In my experience, most, if not all, buyers, negotiate freely over every charge associated with the purchase of a vehicle, including but not limited to the price of the vehicle, additional products and services such as optional equipment, warranties, and insurance, tax, title, and tags, and the closing fee. It would be extremely rare for a buyer

to come to Hendrick Honda of Easley and simply offer to pay the asking price for a vehicle, whether advertised or not.

24. For example, some buyers are "bottom line" or "out-of-the-door" buyers and visit Hendrick Honda of Easley knowing exactly which type of vehicle they would like to purchase and exactly how much they would like to pay. The "bottom-line" buyer typically negotiates down the cost of certain services and fees because those fees must be lowered in order to make a deal at the price the "bottom line" buyer has offered (*i.e.*, I only have $10,000 to spend).

25. Other buyers may come to the dealership knowing how much per month they would like to pay to finance or lease a vehicle, offering, for example, to purchase or lease a certain vehicle as long as their monthly payment does not exceed $250.00. Other buyers are most concerned with the value of their trade-in vehicle.

26. No matter what factor is of most concern to any given buyer, almost all motor vehicle sales transactions involve several stages of negotiation over numerous items including the price of the vehicle, financing or lease terms, trade-in allowance, or the price for optional equipment, warranties, or insurance. Many deals occur over several days, or even weeks.

27. As a result, almost all motor vehicle sales transactions involve negotiation over the price of one or more of these items *after* the buyer is first made aware of Hendrick Honda of Easley's practice of charging a closing fee. Some buyers even use the closing fee as a negotiating tool to lower the price of the vehicle or to request additional products or services with the vehicle. Such negotiations are standard for almost all vehicle purchases. Almost every price of every product or service ever offered

or advertised by Hendrick Honda of Easley is negotiable and very often is negotiated. The ability of every buyer to negotiate every part of a deal makes every sale different.

28. As mentioned above, I do not understand the Closing Fee Statute to require a disclosure of Hendrick Honda of Easley's practice of charging a closing fee or the amount of the fee every time the price of a vehicle is displayed, whether in a paid advertisement or on the vehicle. Additionally, I do not consider every display of the price of a vehicle to be an advertisement.

29. Hendrick Honda of Easley has used a variety of methods to display information on some, but not all, vehicles on its lot. During the relevant time period, Hendrick Honda of Easley may have displayed price information on certain vehicles using paint on windows, paper window stickers, or hang tags, depending on whether the vehicle was new or used, whether the vehicle was on sale or not, and whether there were accessories or equipment added to the vehicle. For some vehicles, it is possible that a price display would change during the time that the vehicle was on the Hendrick Honda of Easley lot.

30. For most of the relevant time period, Hendrick Honda of Easley did not mention the closing fee when it displayed the price of the vehicle using the various methods described in paragraph 29 because I do not believe the Closing Fee Statute requires a disclosure of the closing fee every time the price of a vehicle is displayed.

31. In addition to methods used by Hendrick Honda of Easley to display information regarding price on a vehicle, federal law also requires the use of several window stickers, including a Buyer's Guide and a Monroney sticker. A Monroney sticker is a paper window sticker prepared and affixed by the manufacturer. Dealers are

prohibited from adding anything to, or deleting anything from, the Monroney sticker. If Hendrick Honda of Easley adds accessories or equipment to a new vehicle, Hendrick Honda of Easley must disclose such additions on a supplemental sticker. The supplemental sticker is not intended to be a disclosure of all services, fees, and charges ultimately included in the final price of a vehicle. Instead, it is intended to provide the customer with information about equipment added to or removed from a vehicle. Not all new vehicles have supplemental dealer stickers. If Hendrick Honda of Easley does not add any accessories to a vehicle, then it would not have a supplemental sticker affixed to its window.

32. The vehicle that Julie Freeman purchased from Hendrick Honda of Easley did not have a Monroney sticker or any other supplemental sticker because the vehicle was a used vehicle when Julie Freeman purchased it from Hendrick Honda of Easley.

33. Similarly, a Buyer's Guide is required for all used vehicles by the Federal Trade Commission's Used Car Rule. A Buyer's Guide does not state the vehicle's price or mention the closing fee, and it is not a method used by Hendrick Honda of Easley to advertise the price of a vehicle.

34. With respect to advertisements generally during the relevant time period, Hendrick Honda of Easley's advertisements usually did not mention the charging of a closing fee because I do not believe that the Closing Fee Statute requires that the closing fee be disclosed with the advertised price.

35. Hendrick Honda of Easley has not, at any time during the relevant time period, advertised vehicle price on television and has not mentioned the charging of a closing fee. In fact, Hendrick Honda of Easley only began advertising on television in

April 2008. Our new vehicle television advertisements typically directed customers to the dealership or its website. To my knowledge, our television advertisements have never mentioned price. Similarly, Hendrick Honda of Easley has not advertised vehicle prices on the radio and has not mentioned the charging of a closing fee in such advertisements. Hendrick Honda of Easley uses both television and radio advertisements primarily to enhance the dealership's image and inform potential customers of the existence and location of the dealership.

36. To my knowledge, Hendrick Honda of Easley has not advertised on billboards during the relevant time period and has not advertised vehicle prices on billboards.

37. With respect to newspaper advertisements and other print publications, Hendrick Honda of Easley has not usually included the price of new vehicles in such advertisements during the relevant time period, although it occasionally has done so. Instead, new vehicle advertisements typically described the vehicle or special offers on interest rate or leasing terms. Hendrick Honda of Easley has occasionally used display advertisements in the newspaper to describe used vehicles with prices listed, and these advertisements usually did not mention the closing fee.

38. Hendrick Honda of Easley has included short descriptions and prices of used vehicles in certain classified advertisements since August 2002, but has never listed or mentioned the closing fee in classified advertisements. To my knowledge, no South Carolina dealership has ever listed a closing fee in classified advertisements. It is not practical to do so, given the limited space and abbreviated nature of such advertisements.

39. With respect to Internet advertisements, Hendrick Honda of Easley has listed its inventory of new and used vehicles on its website, www.hendrickhondasc.com, since August 2002, but for most of the relevant time period, did not mention the charging of closing fees.

How Closing Fees are Explained to Customers

40. If questioned about the closing fee, the Hendrick Honda of Easley sales staff is instructed to tell the customer that the closing fee is charged on the sale of every vehicle as a way to reimburse the dealership for certain overhead costs such as document preparation, storage, and retrieval. The sales staff is informed and knows that the closing fee is not required by law, and they do not try to make customers believe it is required by law. Hendrick Honda of Easley does not have a written, scripted response which salespersons are instructed to use when asked by customers about the closing fee.

41. During the relevant time period, salespersons and managers received training on how to explain the closing fees. Salespersons and managers were always instructed to say to customers that the fee is not required by law and to explain that Hendrick Honda of Easley's policy was to account for the fee in every transaction. I made every effort to insure that all salespersons and managers understood that the closing fee was in no way related to obtaining state title or tags, which are separately-charged, state-imposed fees.

42. After the fee is explained to customers by a salesperson or manager, most customers do not object to the fee or ask any other questions. However, some customers do object to the fee and have used the fee as a means to negotiate a lower price for the vehicle or for additional products and services.

43. If a customer does object to the closing fee, Hendrick Honda of Easley would rarely, if ever, insist on charging the fee and losing the sale. As explained in

greater detail above, some customers, *after* being informed of the closing fee, will restart or continue negotiations over the price of the vehicle, financing or lease terms, trade-in allowance, or the price for optional equipment, warranties, or insurance. Thus, for those customers who do object to the closing fee, Hendrick Honda of Easley often adjusts the price to which the customer had previously agreed, by such methods as lowering the previously-agreed price of the vehicle to be purchased, increasing the previously agreed trade allowance for a trade-in vehicle, or providing additional products or services with the vehicle at no cost or a reduced cost to the customer.

44. Nevertheless, even though Hendrick Honda of Easley may ultimately renegotiate the price of the vehicle, a trade allowance, or additional products and services sold with the vehicle for those customers who do object to the closing fee, it is Hendrick Honda of Easley's practice to account for the payment of the closing fee in every retail transaction except on multiple-vehicle fleet sales, used vehicles sold to wholesale buyers, dealer trades, and vehicles sold under specific factory-employee programs.

The Sale of Plaintiff Julie Freeman's Vehicle

45. From Hendrick Honda of Easley's records, I am aware that Julie Freeman purchased a 2005 Honda Accord on July 12, 2006. I was not present at the time of the sale, but Hendrick Honda of Easley's records show that Randall Clemment was the Salesperson who assisted Ms. Freeman with her purchase. John Miller, a former Sales Manager, and Joseph Phillips, a former Finance & Insurance Manager also assisted Ms. Freeman with her vehicle purchase.

46. I have reviewed Hendrick Honda of Easley's advertising records and Hendrick Honda of Easley does not have any records showing that the used 2005 Honda Accord sold to Julie Freeman on July 12, 2006, was advertised.

Dealership Overhead Costs Covered by the Closing Fee

47. It is my understanding and belief that the Closing Fee Statute does not prohibit a dealership from making a profit from the closing fee, if possible. In any event, as explained below, Hendrick Honda of Easley does not make a profit by charging the closing fee.

48. Although Hendrick Honda of Easley has not hired a consultant or performed a study to determine the specific costs of the daily administrative tasks performed by its employees or any "time-and-motion" studies on document preparation, retrieval, and storage, I am certain that Hendrick Honda of Easley's overhead costs associated with preparing, storing, and, when necessary, retrieving the documents relating to the sale of a vehicle greatly exceed the closing fee that Hendrick Honda of Easley charges. Competition from other dealers, however, limits the amount of the closing fee that Hendrick Honda of Easley can charge its customers to significantly less than the total overhead costs associated with preparing, storing, and, when necessary, retrieving the documents relating to the sale of a vehicle.

49. During my nine years as general manager of Hendrick Honda of Easley, and my many years in the car business before that, the documentation associated with the sale of a vehicle has increased dramatically. When I started in this business, a car sale basically involved a handshake and perhaps a half-dozen documents—an invoice form,

an insurance form, a loan contract from a bank, and warranty-related paperwork from the manufacturer.

50. However, the many laws affecting this business and the level of documentation required have increased exponentially. For example, after the September 11, 2001, attacks, the federal government implemented several new laws with comprehensive requirements pertaining to document storage, document security, and secure maintenance of customer information. As a result of the increase in document management that the laws required, our staffing needs have greatly increased.

51. Documents which may currently be required in the sale of vehicles by Hendrick Honda of Easley include the following:

1. New Vehicle Delivery Report
2. Used Vehicle Delivery Report
3. Sales Commission Slips
4. Deal Recap Forms
5. Vehicle inventory journal verification
6. New vehicle sale journal verification
7. Tag deposit refund check to customer
8. Tribute Warranty Transmittal
9. Honda Warranty Transmittal
10. AutoGuard Warranty Transmittal
11. Wynn's Warranty Transmittal
12. Honda Service Contracts Transmittal
13. AutoGuard Service Contracts Transmittal
14. AutoGuard Gap Insurance Transmittal
15. Copy of purchased vehicle registration
16. Duplicate Title Form
17. Temporary Tag
18. Out of State Temporary Tag
19. Out of state temporary tag - registration filing
20. Contract EFT funding
21. Fax Cover Sheet
22. Pay Off Difference
23. Pay Off Checks
24. Out of State Sales Tax
25. Bank Fee Check
26. Accounts Payable Voucher

27. Deposit Slip
28. Return Deposit Notice Bank
29. Warranty Request Form (National Check Trust)
30. Solicitors Worthless Check Unit
31. FEDEX of Contracts
32. Copier Paper
33. Gas Record Books
34. Service contract refund HONDA
35. Service contract refund AUTOGUARD
36. GAP Refund AUTOGUARD
37. Check Requests
38. Direct of Refund on Warranty & GAP
39. Process Credit Card
40. Retail Installment Contract Security Agreement
41. Authorization Form for Loan Payment
42. Salesperson document checklist
43. Deal Jackets
44. Buyers orders
45. Dealer Invoices
46. PTO Form for sold vehicle
47. PTO Form for trade vehicle
48. Form 400
49. Copy of Drivers License
50. Copy of Insurance Card
51. Copy of trad tag registration
52. Bank Contracts
53. GAP Insurance Forms
54. Service Contract Forms - All companies
55. Out of State Affidavit of Sale
56. One in the same form
57. Power of Attorney
58. Co-Signor Form
59. OFAC check report
60. Substitution of Collateral Form
61. Credit Union Membership applications
62. Credit Applications
63. Credit Report
64. Adverse action letter
65. Insurance verification form
66. Payoff Form
67. Lender stipulation Agreements
68. F&I Deal document checklist
69. Special rebate eligibility form - CDI etc.
70. Fax Cover Sheet
71. Delivery Envelopes
72. We Owe Form

73. Privacy Act Notice
74. IRS Form 8300
75. Prior Damage Disclosure
76. National Check Trust Guarantee Form
77. Used Vehicle Appraisals
78. Trade In Wholesale Order
79. Vehicle Cleanup Order - Delivery
80. Receipt Books
81. Receipt Books - After Hours
82. Office Receipt
83. Credit Insurance Refund
84. Lease End Verification Form
85. Early Termination Report
86. Odometer Disclosure Statement
87. Honda Warranty Refund
88. AutoGuard GAP Refund
89. Wynn's Warranty Refund
90. Lease End Statement
91. Check Requests
92. Copier Paper
93. Sales Commission Forms
94. Secure documents log
95. repair Order forms
96. Internal expense memo

52. Not all of these forms listed above are required in every vehicle sale, although some are, such as the Buyer's Order, Sales Worksheet, OFAC, insurance, and title forms. Additionally, some documents may be used multiple times on a single transaction. Even if not all documents are used on every sale to every customer, in order to be competitive and competent as a dealership, Hendrick Honda of Easley and its employees must be trained and prepared to complete each form depending on the type of deal made with each customer.

53. When completed, most of the completed forms listed above must be stored in hardcopy or electronic format for a period of at least six years.

54. The documents and forms that are part of a vehicle sale are not limited only to those provided to a customer in a deal, but also include documents related to the

acquisition, maintenance, and inspection of vehicles. For example, Hendrick Honda of Easley prepares or inspects each vehicle prior to sale and that inspection becomes part of the deal document file and service history on that vehicle. Hendrick Honda of Easley is required to keep such inspection records for seven (7) years.

55. Itemized below are the amounts that Hendrick Honda of Easley has recently calculated that were directly or indirectly related to the costs of document purchase, electronic access to online forms, and processing of documents, in 2008.

a. Purchase of necessary forms and documents of all types—$8,416.00.

b. Cost of copiers, toner, fax machines, paper supplies, postage, etc.—$29,483.00.

c. Cost to operate and maintain computerized accounting and database systems used to prepare, process, retrieve and store various documents and forms—$72,461.00.

d. Auditor Fees—$35,400.00

e. Building overhead expenses attributable to square footage of document storage areas—$47,278.00.

56. Almost every person who works at Hendrick Honda of Easley, from the "runners" to the top managers, is involved in some way with the preparation, processing, retrieval and storage of documents at some level. As a result, a portion of every employee's salary is attributable to the preparation, processing, retrieval, and storage of documents. Below is a partial list of dealership personnel dedicated to document preparation and storage for the year 2008 based on the payroll amount for each category and the percentage of time each type of personnel dedicates to document preparation and storage. In 2008, the total cost to Hendrick Honda of Easley was $665,133.70, itemized as follows:

a. Approximately 45% of the time of the New and Used Car Sales staff is dedicated to document preparation and storage, resulting in $209,250.00 in document costs.

b. Approximately 65% of the time of personnel in the accounting office is dedicated to document preparation and storage, resulting in $99,495.50 in document costs.

c. Approximately 80% of the time of Finance Managers is dedicated to document preparation and storage, resulting in $120,451.20 in document costs.

d. Approximately 65% of the time of Dealer Trade Drivers is dedicated to document preparation and storage, resulting in $22,231.30 in document costs.

e. Approximately 65% of the time of Sales Managers in the accounting office is dedicated to document preparation and storage, resulting in $213,705.70 in document costs; and

57. The estimated figures listed above indicate that Hendrick Honda of Easley's overhead expenses directly and indirectly related to the preparation, processing, retrieval and storage of documents for the year 2008 was $858,171.70

58. During the relevant time period, Hendrick Honda of Easley collected the following amounts in closing fees:

a. August 29, 2002, to December 31, 2002: $127,239

b. 2003: $305,523

c. 2004: $304,029

d. 2005: $449,098

e. 2006: $433,849

f. 2007: $495,742

g. January 1, 2008, to November 30, 2008: $411,125

59. Simple math shows that the amount collected each year in closing fees is significantly less than the overhead expenses that are directly and indirectly related to the preparation, processing, retrieval, and storage of documents. For example, the difference between the amounts collected in closing fees in 2007 ($495,742.00) between the amount of costs to Hendrick Honda of Easley for document preparation, storage, and retrieval in

2008 ($858,171.70) was $362,429.70. It is unlikely that the actual costs for 2007 are significantly or materially lower than the costs for 2008.

60. Consequently, Plaintiff's assertion that Hendrick Honda of Easley's charging of a closing fee is not tied to the reimbursement of any overhead costs or results in an impermissible profit is absolutely wrong. Hendrick Honda of Easley does not separately account for the direct and indirect costs associated with document preparation, storage, and retrieval for each individual motor vehicle transaction because the cost of performing such cost accounting would be substantial, would prevent Hendrick Honda of Easley from remaining competitive, and would greatly exceed any value in doing so.

Further affiant sayeth not.

WITNESS my hand this 23rd day of October 2009, at Easley, South Carolina.

Don Pendleton

Don Pendleton

SWORN TO and subscribed before me
this 23rd day of October 2009.

Notary Public for the State of South Carolina
My commission expires 9-11-2017

DENA BAYNE
NOTARY PUBLIC
SOUTH CAROLINA
MY COMMISSION EXP. 09-11-2017

EXHIBIT N

STATE OF SOUTH CAROLINA
DEPARTMENT OF CONSUMER AFFAIRS

Initial Motor Vehicle Dealer Closing Fee Filing
S.C. Code Ann. § 37-2-307 et seq. (Supp. 2004)

Mailing Address
P.O. Box 5246
Columbia, SC 29250-5246

www.scconsumer.gov
803-734-4264/800-922-1594

Street Address
3600 Forest Drive
Columbia, SC 29204-4006

NOTE: THIS ORIGINAL FORM MUST ACCOMPANY A $10.00 FILING FEE

Company Name: _____
D/B/A (In S.C.) _____
Address _____
City, State Zip _____

Federal ID No. _____
SSN (Sole Proprietor Only) ___ - ___ - _____
Registration No. _____
Contact Person _____
Telephone No. ( ) ___ - _____

Disclosure of Closing Fees Notice

This dealership charges closing fees on a motor vehicle sales contract. It is a charge that is permitted but not required by law (Section 37-2-307). The full cash price charged at any dealership depends on many factors, including all products and services bought with the vehicle.

The closing fee charged by

Dealer Name _____
Physical Address _____
City, State Zip _____

Mailing Address _____
_____

Will not exceed $ _____

Prior to January 31, 2010

_____
Signature

_____
Name of Officer (Typed)

_____
Title

_____
Date

The South Carolina Freedom of Information Act may require the Department to release a copy of your filing as a public record. Personal identifying information will be released only if required by law.

FILE BY JANUARY 31 OF EACH YEAR
(Display in a conspicuous location of dealership)

For Department's Use

DEFENDANT'S EXHIBIT
Collins 7 SH 6/24/09
R.000944

EXHIBIT O

State of South Carolina
In the Court Of Common Pleas
County of Aiken

Heather Herron, Natalie Armstrong, Michael Ritz, Julie Freeman, Christine Watts, Michael Blease, Michael Watts, individually and for the Benefit of All Car Buyers Whom Paid "Administrative Fees" as Described below to Defendants,	)	
Plaintiffs,	)	
vs.	)	NO. 06-CP-02-1230
Century BMW a/K/a Sonic Automotive; Dick Dyer & Associates, Inc.; Galeana Chrysler Plymouth, Inc.; a/k/a Galeana Chrysler Jeep, Inc.; J.L.H. Investments, LP a/k/a Hendricks Honda; Overland, Inc.; d/b/a Land Rover Columbia; Taylor Toyota a/k/a Toyota Investments; Toyota of Greenville, Inc.,	)	
Defendants.	)	

D E P O S I T I O N

COPY

WITNESS: Herbert Walker

DATE: June 15, 2009

TIME: 10:00 a.m. - 4:10 p.m.

LOCATION: Lewis & Babcock
Columbia, South Carolina

TAKEN BY: Attorneys for the Plaintiffs

REPORTED BY: KATHRYN J. LINDLER

COMPUSCRIPTS, INC.
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Q. Have you ever read that before?

A. Yes.

Q. How long have you been with the Department of Consumer Affairs?

A. Since 1991.

Q. In 1991 who was the director of the Department of Consumer Affairs?

A. Steven Hamm.

Q. How many years did you work with Mr. Hamm there?

A. About three or four years.

Q. When did Mr. Hamm leave if you know?

A. 1994/95.

Q. What was your official capacity at the time Mr. Hamm was there?

A. Same capacity I'm in right now.

Q. When Mr. Hamm was there, you were at that time as you are now the Deputy for Administrative and Regulatory Services?

A. Yes.

Q. Were you at that time in any way involved in dealer cost regulation?

A. No.

MR. WALKER: Object to the form.

Q. Did that come later?

MR. WALKER: Object to the form.

EXHIBIT P

The State of South Carolina
Department of Consumer Affairs

3600 FOREST DRIVE
P.O. BOX 5757
COLUMBIA, S.C. 29250-5757

Brandolyn Thomas Pinkston
Administrator

Commissioners
Lonnie Randolph, Jr.
Chairman
Columbia
Mark Hammond
Secretary of State
Columbia
Barbara B. League
Greenville
Louis Mayrant, Jr.
Pineville
Tony Macomson
Cowpens
Wayne K. Sims
Columbia
C. Wayne Powell
Gaffney
David Campbell
Columbia
Carole C. Wells
Woodruff

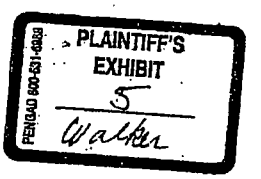
Celebrating Over 30 Years of Public Service

Note to file: May 13, 2009

The Department decided to change the disclosure language used on the Motor Vehicle Dealer Fee filing form. The language used on the form was suggested to be changed by the industry. After reviewing their request, the language on the form was changed by removal of the language "as a means of reimbursing it for certain overhead costs such as documents retrieval and document preparation". The change was made in June of 2008 as a part of the new renewal period.

Prepared and signed by Herbert Walker.

Herbert Walker
DEPUTY FOR ADMINISTRATIVE
AND REGULATORY SERVICES



TELEPHONE (AREA CODE 803)
ADMINISTRATOR
734-4197
ACCOUNTING
734-4264

PUBLIC INFORMATION
734-4191
E-mail: SCDCA@DCA.STATE.SC.US
www.scconsumer.gov

CONSUMER ADVOCACY
734-4200
(1) FAX: 734-4287
(2) FAX: 734-4286

INVESTIGATORS
734-4236
ENFORCEMENT
734-4236

CONSUMER COMPLAINTS
734-4200
WATS 1-800-922-1594
VOICE/TT - 1-800-735-2905

TELETIPS (803) 734-4215 OR 1 (888) 734-4215 (TOLL FREE IN S.C.)

10635

EXHIBIT Q

Brandolyn Thomas Pinkston
Administrator

The State of South Carolina
Department of Consumer Affairs

3600 FOREST DRIVE
P.O. BOX 5757
COLUMBIA, S.C. 29250-5757

Commissioners
Lonnie Randolph, Jr.
Chairman
Columbia
Mark Hammond
Secretary of State
Columbia
Barbara B. League
Greenville
Louis Mayrant, Jr.
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Celebrating Over 30 Years of Public Service

September 26, 2008

General Manager
Big O Dodge-Chrysler-Jeep, Inc
P.O. Box 5575
Greenville, SC 29606-5575

RE: Automobile Advertising Standards and Guidelines

Dear General Manager:

As you are aware, the South Carolina Department of Consumer Affaires has worked with South Carolina auto dealers to obtain voluntary compliance with reasonable and lawful standards in automobile advertising.

Section 37-2-307 of the Consumer Protection Code allows closing fees, (ADMIN. FEES), only if the dealership has registered with the Department of its intention to charge a closing fee and the amount of the fee. The fee charged may not exceed the fee that has been registered. Further, § 37 -2 307 requires that the closing fee be included in the advertised price.

The advertised price shall be the delivered cash price that the consumer will have to pay, except for taxes, title and tags, as required by the Government. The enclosed ads by your dealership, which appeared in The AutoMart Magazine on September 12 - September 19, 2008, on pages A16, A17 and A18, discloses in the fine print, "Prices Plus TTL and $299 Dealer Closing Fee". Add-ons (CLOSING FEES) of this nature must be included in the cash price.

The purchase price of a vehicle enables the consumer to know how much money it will cost to purchase the vehicle. Using add-ons such as fees disguises the actual coast, making the advertised price misleading.

TELEPHONE (AREA CODE 803)
ADMINISTRATOR
734-4197
ACCOUNTING
734-4264

PUBLIC INFORMATION
734-4191
E-mail: SCDCA@DCA.STATE.SC.US
www.scconsumer.gov

CONSUMER ADVOCACY
734-4200
(1) FAX: 734-4287
(2) FAX: 734-4286

INVESTIGATORS
734-4236
ENFORCEMENT
734-4236

CONSUMER COMPLAINTS
734-4200
WATS 1-800-922-1594
VOICE/TT - 1-800-735-2905

TELETIPS (803) 734-4215 OR 1 (888) 734-4215 (TOLL FREE IN S.C.)

I would appreciate your written acknowledgment within ten (10) days of the date of this letter indicating your understanding of and voluntary compliance with the law as set forth in this letter. If you have any questions about this letter or wish to discuss the advertising requirements of the Truth-in-Lending Act, please feel free to call me at 1-800-922-1594.

Sincerely

Danny R. Collins

Danny R. Collins
Deputy for Regulatory Enforcement

DRC/crh

Enclosure

cc: File

CREDIT CONCERNS • NO CREDIT • BANKRUPTCY • REPOS

OVERSTOCKED CREDIT SALE!

BIG 'O' DODGE CHRYSLER Jeep

BIG 'O' DODGE HAS AN OVERSTOCKED LOT AND IS LOOKING FOR GOOD PEOPLE WITH LESS THAN PERFECT CREDIT!

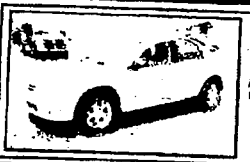
IF YOU HAVE [illegible] PROBLEMS ... AND CAN GIVE THESE ANSWERS

- BANKRUPTCY
- SLOW PAYMENTS
- CHARGE OFFS
- REPO (1 YEAR)
- NO CREDIT
- BAD CREDIT
- 1 YEAR JOB TIME
- $2,000/MO INCOME
- POWER BILL
- PAYCHECK STUB
- 6 REFERENCES
- 10% DOWN

[illegible] DR. [illegible] & DRIVE HOME TODAY!

GREENVILLE'S LARGEST PRE-OWNED SELECTION!


1999 GMC YUKON
$5,950


2002 DODGE NEON SXT SEDAN 4D
Automatic, alloys, cd, sunroof, Stk.# B0302A GA6535411


2008 CHRYSLER TOWN & COUNTRY LIMITED
$7,500


2001 DODGE 1500 PICKUP QUAD CAB SHORT BED V8 5.2 Liter, 4WD, leather, SLT, Stk.# C0035B GA6221007
$8,950


1995 CADILLAC DEVILLE SEDAN 4D
$4,995


2006 DODGE CARAVAN SXT MINIVAN 4D
$7,995

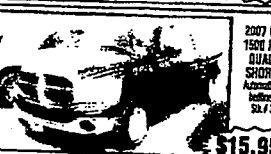

2007 TOYOTA TACOMA ACCESS CAB
Automatic, 4WD, cd, power wheels, Stk.# 257X3A GA6279422


2003 DODGE DURANGO SLT
Automatic, 4, 75,107 miles Stk.# 2562B3A GA6516474
$10,700


2008 CHRYSLER ASPEN LIMITED SPORT UTILITY 4D
4WD, alloys, MP3 (Single CD), 6th pass
$21,950


2007 CHEVROLET COBALT LS SEDAN 4D
Automatic, ac, cd, power tilt and sl, Stk.# 3576Z GA6235579
$12,750


2005 DODGE CARAVAN SE
Automatic, 6, 32,077 miles Stk.# B0471A GA6410255
$12,950


2007 DODGE 1500 PICKUP QUAD CAB SHORT BED
Automatic, alloys, leather, SLT, Stk.# 3560Z
$15,950


2005 CHEVROLET COBALT LS SEDAN 4D
Automatic, alloys, cd, pdl, pw, Stk.# B0551A GA6530260


2007 DODGE 1500 PICKUP QUAD CAB SHORT BED
Automatic, leather, ac, cd SLT, Stk.# 3580S
$15,950


2005 CHRYSLER TOWN & COUNTRY TOURING
Automatic, Power Sliding Doors, rear air, 6hr, DVD, Stk.# C0072A
$13,500

2645 Laurens Rd.
GREENVILLE, SC 29607
TOLL FREE
1-877-616-2576

BIG 'O' DODGE CHRYSLER Jeep

VISIT US ON THE WEB @
www.bigododge.com
SALES HOURS: Mon-Sat 9:00am-8:00pm
SERVICE HOURS: Mon-Fri 7:30am-6:30pm
CLOSED SUNDAYS

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www.automart.com/big"o"dodge

Budget Buys Starting at $1,995

of Greenville

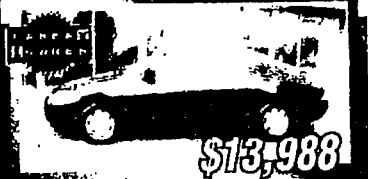
BUDGET CARS

2660 Laurens Rd. 1-800-927-1799



$11,900

2005 FORD CROWN VICTORIA SEDAN 4D
V8 4.6 Liter, tilw, pdl, pw, pwr seat, Stk.# 026550A GAM155529



$13,988

2004 HONDA ACCORD LX COUPE 2D
Automatic, cd, pdl, pw, Stk.# 21601P GAM010492



$4,900

1999 CHEVROLET TAHOE SPORT UTILITY 4D
V8 5.7 Liter, cd, tilhr, LT, Stk.# 21565A



$15,988

2006 FORD MUSTANG COUPE 2D
V6 4.0 Liter, cd, tilhr, Stk.# 028236A GAM106473



$4,900

2003 CHEVROLET MALIBU LS SEDAN 4D
V6 3.1 Liter, alloys, cd,



$5,900

2000 NISSAN FRONTIER XE KING CAB
5 Speed Manual, bedliner, am/fm, Stk.# 024533A GAM428485



$4,900

2002 FORD TAURUS SE SEDAN 4D
Automatic, V8 3.0 Liter, alloys, cc, cd, pdl, pw, Stk.# 028004A GAM112461



$3,900

1994 SUBARU LEGACY L WAGON 4D
alloys, mroof, 56,000 miles Stk.# 028536H GAM946347



$3,900

1999 NISSAN ALTIMA SE SEDAN 4D
ac, alloys, cd, Stk.# 025735B GAM197054



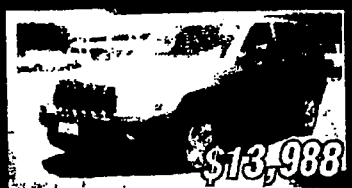
$9,900

2001 HONDA ODYSSEY EX MINIVAN 4D
V6 3.5 Liter VTEC, alloys, cd, rear air, Stk.# 028188A



$5,900

2003 KIA SEDONA LX MINIVAN
Automatic, cd, rear air, Stk.# 21513PB GAM432505



$13,988

2005 JEEP GRAND CHEROKEE LAREDO SPORT UTILITY 4D
V6 3.7 Liter, alloys, cd, Stk.# 026366A

NAME _____

ADDRESS _____

CITY _____ STATE _____ ZIP CODE _____

HOME PHONE _____ WORK PHONE _____

EMPLOYER _____ GROSS INCOME _____

LENGTH ON JOB _____

SS # _____ SIGNATURE _____

1878149_GAM200837C1

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For Quick Approval

motor mile

www.automart.com/toyotagreenville

CREDIT CONCERNS • NO CREDIT • BANKRUPTCY • REPOS

BIG O DODGE CHRYSLER Jeep

OVERSTOCKED CREDIT SALE!

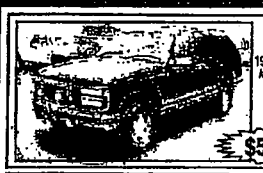
BIG 'O' DODGE HAS AN OVERSTOCKED LOT AND IS LOOKING FOR GOOD PEOPLE WITH LESS THAN PERFECT CREDIT!

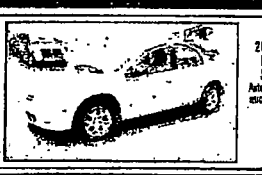
IF YOU HAVE THESE PROBLEMS
✗ BANKRUPTCY ✗ SLOW PAYMENTS ✗ CHARGE OFFS
✗ REPO (1 YEAR) ✗ NO CREDIT ✗ BAD CREDIT

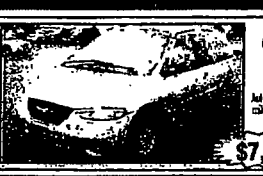
AND YOU HAVE THESE ANSWERS
1 YEAR JOB TIME $2,000/MO INCOME POWER BILL
PAYCHECK STUB 6 REFERENCES 10% DOWN

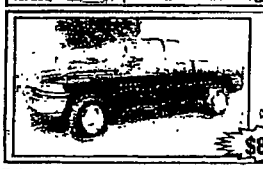
THEN COME SEE DR. MARCO & DRIVE HOME TODAY!

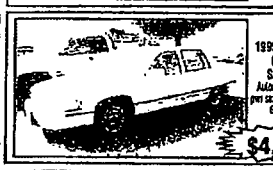
GREENVILLE'S LARGEST PRE-OWNED SELECTION!

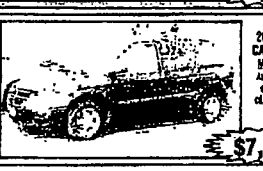

1999 GMC YUKON
$5,950


2002 DODGE NEON SXT SEDAN 4D


2000 CHRYSLER TOWN & COUNTRY LIMITED
$7,500

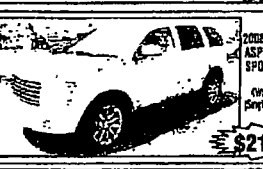

2001 DODGE 1500 PICKUP QUAD CAB SHORT BED
$8,950

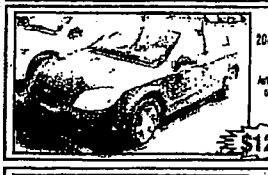

1995 CADILLAC DEVILLE SEDAN 4D
$4,995


2006 DODGE CARAVAN SXT MINIVAN 4D
$7,995


2007 TOYOTA TACOMA ACCESS CAB


2003 DODGE DURANGO SLT
$10,700


2008 CHRYSLER ASPEN LIMITED SPORT UTILITY 4D
$21,950


2007 CHEVROLET COBALT LS SEDAN 4D
$12,750


2005 DODGE CARAVAN SE
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2007 DODGE 1500 PICKUP QUAD CAB SHORT BED
$15,950


2005 CHEVROLET COBALT LS SEDAN 4D


2007 DODGE 1500 PICKUP QUAD CAB SHORT BED
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2005 CHRYSLER TOWN & COUNTRY TOURING
$13,500

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BIG O DODGE CHRYSLER Jeep

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www.automart.com/big"o"dodge

R.000955

CREDIT CONCERNS • NO CREDIT • BANKRUPTCY • REPOS

BIG O DODGE CHRYSLER Jeep

OVERSTOCKED CREDIT SALE!

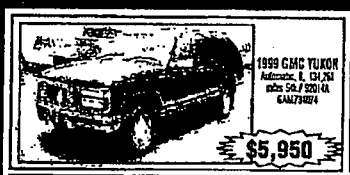
BIG 'O' DODGE HAS AN OVERSTOCKED LOT AND IS LOOKING FOR GOOD PEOPLE WITH LESS THAN PERFECT CREDIT!

IF YOU HAVE THESE PROBLEMS
✕ BANKRUPTCY ✕ SLOW PAYMENTS ✕ CHARGE OFFS
✕ REPO (1 YEAR) ✕ NO CREDIT ✕ BAD CREDIT

AND YOU HAVE THESE ANSWERS
1 YEAR JOB TIME $2,000/MO INCOME POWER BILL
PAYCHECK STUB 6 REFERENCES 10% DOWN

THEN COME SEE DR. MARCO & DRIVE HOME TODAY!

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$5,950

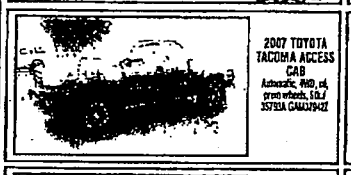

2002 DODGE NEON SXT SEDAN 4D
Automatic, 4cyls, cd, xtrack, SXJ #623023A GA685641T


2000 CHRYSLER TOWN & COUNTRY LIMITED
$7,500


2001 DODGE 1500 PICKUP QUAD CAB SHORT RED
$8,950

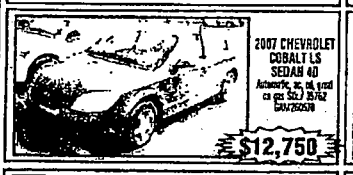

1995 CADILLAC DEVILLE SEDAN 4D
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2005 DODGE CARAVAN SXT MINIVAN 4D
$7,995

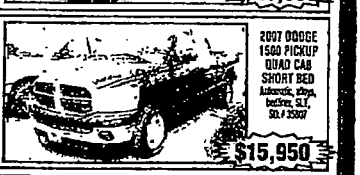

2007 TOYOTA TACOMA ACCESS CAB
Automatic, 4WD, cd, power wheels, SXJ 35793A GA643942Z

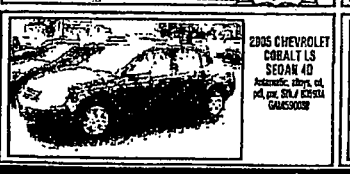

2003 DODGE DURANGO SLT
$10,700


2008 CHRYSLER ASPEN LIMITED SPORT UTILITY 4D
$21,950


2007 CHEVROLET COBALT LS SEDAN 4D
$12,750


2005 DODGE CARAVAN SE
$12,950


2007 DODGE 1500 PICKUP QUAD CAB SHORT BED
$15,950


2005 CHEVROLET COBALT LS SEDAN 4D


2007 DODGE 1500 PICKUP QUAD CAB SHORT BED
$15,950


2005 CHRYSLER TOWN & COUNTRY TOURING
$13,500

2645 Laurens Rd.
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BIG O DODGE CHRYSLER Jeep

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SERVICE HOURS: Mon-Fri 7:30am-6:30pm
CLOSED SUNDAYS

"Under the Big American Flag on the Motor Mile"

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BIG O DODGE CHRYSLER Jeep

OVERSTOCKED CREDIT SALE!

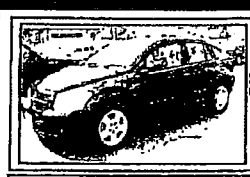
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PAYCHECK STUB 6 REFERENCES 10% DOWN

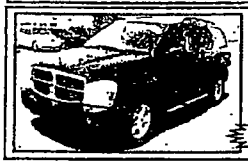
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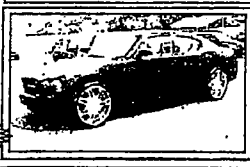
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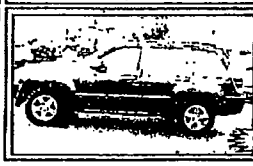

2007 DODGE CALIBER SXT SPORT WAGON 4D
CVT Automatic, alloys, cd, pdl, pw, GA4505949


2006 CHRYSLER PT CRUISER TOURING CONVERTIBLE
Automatic 4-Cyl 2.4L Turbo, alloys, cd, pdl, pw, 12,000 miles Stk.# 88492A GA4351567G
$13,950


2005 DODGE GRAND CARAVAN SXT MINIVAN
V6 3.3 Liter, alloys, quad seats, pwr seat, 7 Passenger, Stk.# 35765 GA4823912
$14,950


2004 DODGE DURANGO SLT
Automatic 8 58,482 miles Stk.# 2D3HS58 GA4721501
$14,950


2008 DODGE CHARGER SEDAN 4D
V6 2.7 Liter, alloys, wheels 18", cd GA4113135


2007 JEEP GRAND CHEROKEE LAREDO SPORT UTILITY 4D
V6 3.7 Liter, alloys, cd, Disc Stk.# 35810
$16,950

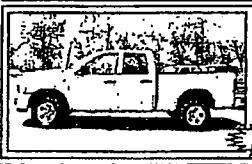

2008 DODGE CALIBER SXT SPORT WAGON 4D
SELECT TO CHOOSE FROM! PICK YOUR COLOR
Starting at $14,995

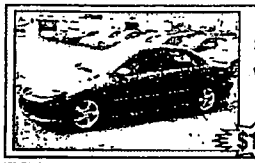

2000 DODGE DAKOTA QUAD CAB
Automatic 4x4Disc SLT Stk.# C00368
$6,750


2004 FORD EXPLORER SPORT UTILITY 4D
rear air, disc, Limited, 3rd seat, 49,000 miles Stk.# C00046S
$10,950


2007 CHRYSLER TOWN & COUNTRY TOURING
V6 3.8 Liter, alloys, quad seats, rear air Touring Control Stk.# 35898 GA4241345
$15,950


1997 NISSAN MAXIMA GXE SEDAN 4D
sunrf, pdl, pw, Stk.# C00003A
$5,950


2004 DODGE 1500 PICKUP QUAD CAB SHORT BED
4WD, alloys, SLT, Stk.# 10488A
$15,500


2003 MAZDA 6 S SEDAN 4D
V6 3.0 Liter, alloys, disc, pwr seat Stk.# 20515A
$12,500


2007 CHRYSLER SEBRING LIMITED SEDAN 4D
Automatic, alloys, cd, Disc Stk.# 35909
$16,950


2008 NISSAN ALTIMA 2.5 S SEDAN 4D
Automatic, cc, cd, pdl, pw, Stk.# 35403
$16,950

2645 Laurens Rd.
GREENVILLE, SC 29607
TOLL FREE
1-877-616-2576

BIG O DODGE CHRYSLER Jeep

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1743412_GAM200837A2

www.automart.com/big"o"dodge

CREDIT CONCERNS • NO CREDIT • BANKRUPTCY • REPOS

OVERSTOCKED CREDIT SALE!

BIG 'O' DODGE CHRYSLER Jeep

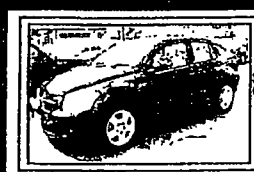
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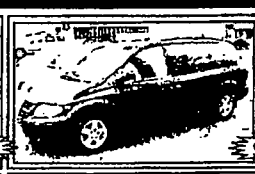
AND YOU HAVE THESE ANSWERS
1 YEAR JOB TIME $2,000/MO INCOME POWER BILL
PAYCHECK STUB 6 REFERENCES 10% DOWN

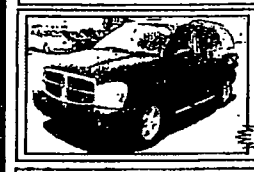
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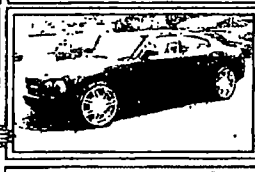
GREENVILLE'S LARGEST PRE-OWNED SELECTION!

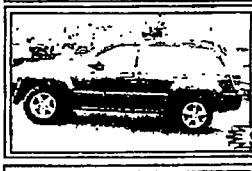

2007 DODGE CALIBER SXT SPORT WAGON 4D
Call Automatic, abs, cd, pdl, pw, GA152072A3


2006 CHRYSLER PT CRUISER TOURING CONVERTIBLE
Automatic, 4-Cyl Turbo, alloys, cd, pdl, pw, 13,000 miles, Stk # 8241BA GA6215A2S
$13,950


2006 DODGE GRAND CARAVAN SXT MINIVAN
V6 3.8 Liter, alloys, quad seats, pwr seat, 7 Passenger, Stk # 25755 GA6723912
$14,950

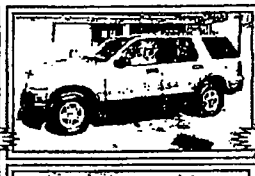

2004 DODGE DURANGO SLT
Automatic, 8 cyl, 56,482 miles, Stk # 8Z0639 GA6727152T
$14,950


2008 DODGE CHARGER SEDAN 4D
V6 2.7 Liter, power wheels 18", cd GA6113125


2007 JEEP GRAND CHEROKEE LAREDO SPORT UTILITY 4D
V6 3.7 Liter, alloys, cd, tilt, Stk # 25618
$16,950

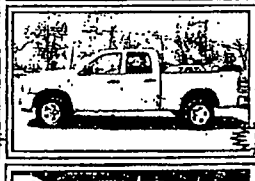

2008 DODGE CALIBER SXT SPORT WAGON 4D
$0.00 TO CHOOSE FROM PICK YOUR COLOR
Starting at $14,995


2009 DODGE DAKOTA QUAD CAB
Automatic, 4x4, cd, SLT Stk # 8Z0396
$6,750


2004 FORD EXPLORER SPORT UTILITY 4D
rear air, tilt, Limited, 3rd seat, 4WD, 49,000 miles Stk # 8Z0246S
$10,950


2007 CHRYSLER TOWN & COUNTRY TOURING
V6 3.8 Liter, alloys, quad seats, cruise control Stk # 25699 GA6747316
$15,950


1997 NISSAN MAXIMA GXE SEDAN 4D
quad, pdl, pw, Stk # C8X332A
$5,950


2004 DODGE 1500 PICKUP QUAD CAB SHORT BED
4WD, alloys, SLT, Stk # 8Z1419A
$15,500


2003 MAZDA 6 S SEDAN 4D
V6 3.0 Liter, alloys, tilt, pwr seat Stk # 8Z0113A
$12,500


2007 CHRYSLER SEBRING LIMITED SEDAN 4D
Automatic, alloys, cd, tilt, Stk # 25650
$16,950


2006 NISSAN ALTIMA 2.5 S SEDAN 4D
Automatic, cd, cd, pdl, pw, Stk # 25555
$16,950

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- ✗ REPO (1 YEAR) ✗ NO CREDIT ✗ BAD CREDIT

AND YOU HAVE THESE ANSWERS
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$13,950

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2006 DODGE GRAND CARAVAN SXT MINIVAN
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2004 DODGE DURANGO SLT
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2008 DODGE CHARGER SEDAN 4D

2007 JEEP GRAND CHEROKEE LAREDO SPORT UTILITY 4D
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2008 DODGE CALIBER SXT SPORT WAGON 4D
Starting at $14,995

2000 DODGE DAKOTA QUAD CAB
$6,750

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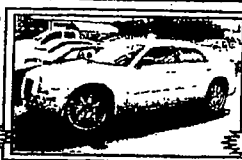
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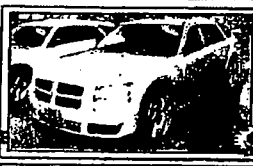
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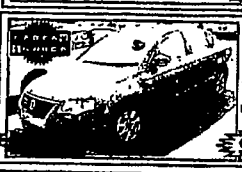
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2006 CHRYSLER 300 TOURING SEDAN 4D
$17,500


2007 CHRYSLER 300 SEDAN 4D
$17,950


2008 DODGE MAGNUM SPORT WAGON 4D
$17,950


2006 DODGE 1500 QUAD CAB SHORT BED
$17,950


2006 VOLKSWAGEN PASSAT 2.0T SEDAN 4D
$17,950

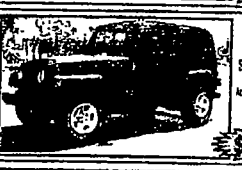

2005 DODGE CHARGER R/T SEDAN 4D
VB 5.7 Liter HEMI, pwr wheels, tilt, cruise, pwr seat, GAM47137

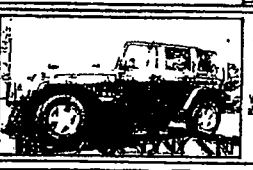

2004 PONTIAC GRAND PRIX GT SEDAN 4D
$5,950


2005 CHRYSLER TOWN & COUNTRY TOURING
$12,950

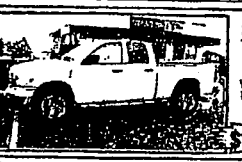

2006 FORD ESCAPE XLT UTILITY 4D
$14,950

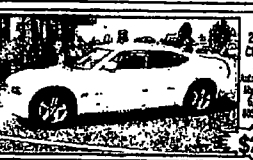

2007 MAZDA 3 S SPORT SEDAN 4D
$18,950


2005 JEEP WRANGLER X SPORT UTILITY 2D
$19,500


2008 JEEP WRANGLER UNLIMITED X SPORT UTILITY 4D


2008 DODGE 1500 PICKUP QUAD CAB SHORT BED
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2007 DODGE 1500 PICKUP QUAD CAB SHORT BED
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2003 DODGE CHARGER R/T SEDAN 4D
$26,950

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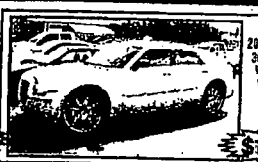
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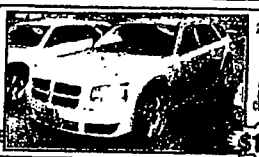
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■ PAYCHECK STUB ■ 8 REFERENCES ■ 10% DOWN

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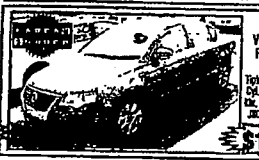
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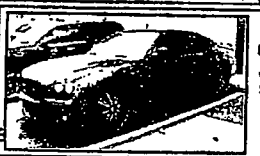

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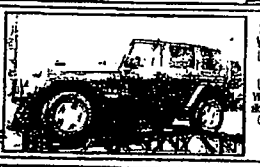

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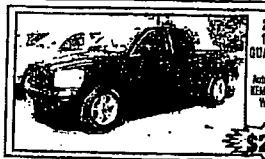

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EXHIBIT R

In The Matter Of:

Heather Herron, et al v

Dick Dyer & Associates, Inc., et al

Julie Freeman Hair

June 26, 2009

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STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

COURT OF COMMON PLEAS

HEATHER HERRON, et. al.,

Plaintiffs,

vs. CASE NO. 2006-CP-02-1230

DICK DYER & ASSOCIATES, INC., et al.,

Defendants.

DEPOSITION OF: JULIE FREEMAN HAIR

DATE: June 26, 2009

TIME: 10:11 a.m.

LOCATION: Law Offices of
Haynsworth Sinkler Boyd
1201 Main Street
Greenville, South Carolina

TAKEN BY: Counsel for the Defendant,
Hendrick Honda of Easley

REPORTED BY: Carolyn M. Beam
Court Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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mcaskey@hsblawfirm.com

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Columbia, SC 29204
(803) 454-0955
rreibold@walkerreibold.net

ALSO PRESENT:

Melanie Blease, Paralegal,
Lewis & Babcock

(INDEX AT REAR OF TRANSCRIPT)

JULIE FREEMAN HAIR

being first duly sworn, testified as follows:

EXAMINATION

BY MR. BECKER:

Q. Hi, Ms. Freeman. As you know, I'm James Becker. And I represent Hendrick Honda of Easley in this -- in this lawsuit. Before we get started, I need to just go over with you a few ground rules for the deposition. Have you ever had your deposition taken before?

A. Huh-uh.

Q. Is that a no?

A. No.

Q. Okay. The first instruction I need to give you is that you please answer audibly --

A. Okay.

Q. -- to my questions, rather than with a nod or shake of the head --

A. Okay.

Q. -- so that our Court Reporter knows exactly what your verbal response is.

A. Okay.

Q. Do you understand that?

A. Yes.

Q. Okay. Second request I'll make of you

is please try to let me finish my question before you begin your answer.

A. Okay.

Q. And likewise, I'll try to finish my -- I'll try to let you finish your answer before I begin my next question. That will also make life easier for our Court Reporter.

A. Okay.

Q. You understand that?

A. Yes.

Q. All right. Do you understand that you're under oath today?

A. Yes.

Q. And do you understand she's taking down every question I ask and every answer you give?

A. Yes.

Q. And that we'll create a written record of our discussion here today?

A. Yes.

Q. Our Rules of Civil Procedure also require that I give you this instruction: If, for any reason, a question that I ask you is unclear to you, and you need any clarifications or explanations of my question, of any kind, that you please ask me for that clarification or

explanation, rather than your attorney, Mr. Brady Thomas?

A. Yes.

Q. Do you understand that?

A. I do.

Q. Do you also understand that, since this deposition has now begun, until it's over, you are not to have any conversations with your attorney or anyone else about the substance of your testimony in this lawsuit? Do you understand that?

A. Yes.

Q. Can we have an understanding, then, that if I ask a question and you don't ask me for any clarification, that you believe you have understood the question and can answer it to the best of your ability?

A. Yes.

Q. Are you under the influence of any alcohol, medications, drugs or anything else that might affect, in any way, your ability to hear and understand my questions and to respond to them to the best of your ability?

A. No.

Q. If at any time you need to take a break, for any reason, will you please tell me, so

that we can recess and take the break?

A. Yes.

Q. Thank you. Would you please state your full name?

A. July Freeman Hair.

Q. And are you married?

A. Yes.

Q. When were you married?

A. July 29th, 2006.

Q. And who is your husband?

A. Brandon Hair.

Q. And you bought a car from Hendrick Honda of Easley in July of 2006. Tell me again when you got married?

A. The 29th of July.

Q. Okay. So you bought this car right before you got married?

A. Yes.

Q. Where do you currently reside?

A. I live at 1016 Summit Drive in Greenville.

Q. And how long have you lived there?

A. A little over two years.

Q. And what is your date of birth?

A. 6/6/83.

Q. And what is your Social Security number?
A. 250-65-3998.
Q. Tell me the names of your parents, please?
A. William Thomas and Valiska Freeman.
Q. And was Mr. -- was your father with you when you purchased the car from Hendrick Honda of Easley?
A. Yes, he was.
Q. Where does he currently reside?
A. He lives in Chapin, South Carolina.
Q. Okay. And you and your husband live here?
A. Yes.
Q. Okay. Does -- to your knowledge, was anyone who was involved in the sale of the Honda, which you purchased from the Hendrick Honda of Easley in July of 2006, is any one of those persons a resident of Aiken County?
A. No.
Q. You and your husband live together here in Greenville --
A. Yes.
Q. -- I take it?

A. We do.
Q. Do you have any children?
A. No.
Q. Okay. Tell me -- I'd like to just get a little bit of your educational background. Where did you attend high school?
A. I went to Chapin High School.
Q. Okay. And when did you graduate?
A. In 2001.
Q. Did you go on to college from there?
A. I did. I went to the College of Charleston.
Q. And when did you graduate?
A. In 2005.
Q. And what was your major?
A. Early childhood education.
Q. All right. Did you get a BS or an AB degree -- BA?
A. BS.
Q. Have you had any formal education beyond college?
A. I am currently in a masters program.
Q. Okay. And where is that?
A. At Furman University.
Q. And what subject or degree?

A. I'm getting a masters in literacy.
Q. In literacy?
A. Uh-huh.
Q. Okay. Is that involved in teaching reading?
A. It is, yes.
Q. And so you're pursuing a masters degree now at Furman?
A. Yes.
Q. How far along are you?
A. I have been in the program for a year. And I have another two years to go.
Q. Okay. Where do you currently work?
A. I work at Duncan Chapel Elementary.
Q. And you're a teacher?
A. Yes.
Q. What grade?
A. Kindergarten.
Q. Oh, great. How long have you been there?
A. I have taught there for three years.
Q. Where did you work prior to that?
A. I was a teacher in Newberry County at Newberry Elementary School.
Q. And what grade did you teach there?

A. I taught second grade.
Q. What were the dates of your employment in Newberry?
A. In Newberry, I worked from August of 2005 until June of 2006.
Q. Okay. Prior to becoming a party in this current lawsuit for which we are here today, have you ever been a Plaintiff or a Defendant in any lawsuit before?
A. No.
Q. Okay. Have you ever made a claim for Workers' Compensation benefits of any kind?
A. No.
Q. Have you ever made a claim for unemployment benefits of any kind?
A. No.
Q. Have you ever been in an automobile accident?
A. Yes.
Q. Okay. Did litigation ensue as a result of that accident, or was it resolved through the insurance companies?
A. It was resolved through insurance companies.
Q. How many automobile accidents have you

been involved in?
A. Only one.
Q. Only one. Have you ever been arrested for anything?
A. No.
Q. So I take it, then, you have never been convicted of any crime?
A. No.
Q. I don't want to ask you the substance of any conversations about -- that you have had about this lawsuit with your attorney. But I would like to ask you what did you do to prepare for the deposition today?
A. Just discuss it with my attorney.
Q. When did you meet?
A. Today.
Q. Okay. What time?
A. Eight o'clock.
Q. Okay. How long did the meeting last?
A. About an hour.
Q. Did you review -- was anyone else present at the meeting?
A. Just Melanie Blease.
Q. Ms. Blease, okay. And who is Ms. Blease?

A. She's a paralegal for my attorney.
Q. Okay. Did you review any documents while you were there?
A. Yes.
Q. Do you recall, specifically, what those documents were?
A. I believe just the complaint, a copy of the complaint.
Q. Okay. That's the only thing you reviewed?
A. Yes.
Q. You didn't review any other documents, other than a copy of the complaint?
A. No.
Q. Had you ever reviewed the complaint before this morning?
A. Yes.
Q. Okay. When was that?
A. Just within the last month or two.
Q. Okay. And what was the occasion for you to review the complaint within the last month or two?
A. Just to discuss with my attorney.
Q. Okay. Did you request a copy of the complaint or did they send it to you?

A. They sent it to me.
Q. You say within the last month or two. Was it within the last week or so?
A. No.
Q. Within the last month?
A. Yes.
Q. Okay. Had you ever seen the complaint prior to that time?
A. No.
Q. Okay. So your first time to see the complaint was in the last month, sometime within the last month. And then the second time you reviewed it was this morning prior to this deposition?
A. Yes.
Q. And other than the complaint, you didn't review any other documents this morning?
A. No.
Q. Is there anything else you have done to prepare for the deposition?
A. No.
Q. Did you contact your father and discuss anything with him about the transaction and -- with Hendrick Honda of Easley?
A. No.

Q. Have you, since you bought the car, have you had any discussions with your father about what happened in the purchase of the vehicle?
A. No.
Q. Does he know that you're a Plaintiff in this lawsuit?
A. No.
Q. Okay.
MR. HAMM: What was the answer?
MR. STUDEMEYER: She said no.
BY MR. BECKER:
Q. Did you keep any documents that you may have received when you bought the car in July of 2006 from Hendrick Honda of Easley?
A. Yes.
Q. Okay. Have you turned those over to your attorneys?
A. Yes.
Q. Okay. Do you recall how many -- how many documents there were, approximately how many pieces of paper?
A. I don't remember.
Q. Okay. Do you remember what the documents were?
A. I believe just a copy of our price

negotiation for the car.
Q. Uh-huh.
A. And a copy of the sales report.
Q. Okay. A copy of the price negotiation and the sales report?
A. Yes.
Q. Okay. All right. Well, we'll be going through some of the documents that were in the Hendrick Honda of Easley file. And I'll ask you, when we get to those, if you remember being able to provide a copy of that from your own records to your attorneys.
A. Okay.
Q. Did you keep any -- did you make any notes of your own during the time that you were working with Hendrick Honda of Easley to purchase the 2005 Honda that's the subject of the litigation?
A. No.
Q. Do you know if Mr. Hair kept any such notes or anything of that nature?
A. No.
Q. Does that mean -- does no mean neither one of you kept any notes or anything, or you just don't remember?

A. No, we did not keep any notes.
Q. Okay. Do you -- prior to buying the car from Hendrick Honda of Easley, had you ever bought a car from anyone else?
A. No.
Q. So that was your first transaction --
A. Yes.
Q. -- purchasing a vehicle?
A. Yes.
Q. Prior to July of 2006, when you bought the car from Hendrick Honda of Easley, had you ever bought a home?
A. No.
Q. A boat?
A. No.
Q. Had you ever signed an employment contract with any of your employers?
A. Yes.
Q. Okay. Tell me about that.
A. I signed a contract with Newberry County to teach for one school year.
Q. Okay. And that was a written agreement?
A. Yes.
Q. All right. I understand that your

father and Mr. Hair were with you, at one time or another, while you were working with the personnel at Hendrick Honda of Easley to buy the car. Why did you have them with you? What was the purpose of having them involved?
A. My husband was there just to come along with me to look at the cars. My father came with me to actually bring me the car that I was trading in when I bought the new one.
Q. Okay. Is there any other reason that you wanted your father there?
A. No.
Q. Is there any -- were you and Mr. Hair engaged at the time?
A. We were.
Q. Okay. How long were y'all engaged?
A. For about seven months.
Q. And you got married just shortly after you bought the car?
A. Yes.
Q. So you had been engaged for approximately six months before that. Tell me about Mr. Hair. What does he do?
A. He is an administrator of a retirement community.

Q. What age is he?
A. He's 30.
Q. What about his education? Where did he attend high school?
A. He went to high school in Midland Valley in Aiken County.
Q. All right. What year did he graduate, do you recall?
A. Yes, he graduated in 1997.
Q. All right. Did he attend college?
A. Yes.
Q. Where did he go to college?
A. He went to the College of Charleston.
Q. And did he graduate?
A. He did.
Q. What year did he graduate?
A. 2002.
Q. And what is his degree in?
A. His degree is in business.
Q. All right. Has he had any formal education beyond college?
A. Yes. He has a masters from the Medical University of South Carolina.
Q. Okay. And what is that degree in?
A. It's a masters of health

administration.
Q. So it's an advanced business degree for the health -- healthcare industry?
A. Correct.
Q. Had he finished all of that education by the time you bought the car?
A. Yes.
Q. Was he with you at every time you came to Hendrick Honda of Easley?
A. Yes.
Q. So he was there for all of the discussions that you would have had with any employee of Hendrick Honda of Easley relating to the purchase of that car?
A. For the most part, yes.
Q. All right. Well, let's move on into -- tell me -- let's just sort of start at the beginning, and what made you want a new car?
A. Well, I needed a new car. My previous car was just getting old and needed some work. So I needed a new car.
Q. Was that car a 1999 Mazda 626?
A. Yes.
Q. And that was titled in your father's name?

A. Yes, it was.
Q. When did you first get that car?
A. Maybe when I went to college.
Q. Okay. So your plan was to trade that car in and get a new one?
A. Yes.
Q. How did you get interested in -- or, well, tell me what you did. How did you go about figuring out what car do I -- am I going to buy?
A. Well, I knew that I liked Honda Accords. So that's specifically what I was looking for. That's what I wanted to buy.
Q. Did you go test drive one anywhere else before you got to Hendrick Honda of Easley?
A. Yes, I did.
Q. Where was that?
A. I test drove a car from a Columbia Honda dealership. And then the one from Hendrick Honda.
Q. So, in July of 2006 you lived in Greenville?
A. No.
Q. Where did you live?
A. I lived in Chapin.
Q. In Chapin, okay.

A. Yes.
Q. Did your husband live in Greenville?
A. Yes.
Q. Mr. Hair lived in Greenville?
A. Yes.
Q. All right. So, you test drove a Honda at a dealership in the Columbia area; is that right?
A. Yes.
Q. What kind of car was that?
A. It was also an Accord.
Q. Do you remember the name of the dealership where you went?
A. No, I don't remember.
Q. Do you remember what kind of Honda Accord it was? What year model or...
A. I don't remember.
Q. But it was an Accord?
A. Yes.
Q. What color was it?
A. Black.
Q. Okay. Remember the interior color?
A. No.
Q. All right. Did you like it?
A. Yes, but it wasn't exactly what I was

looking for.
Q. What exactly were you looking for?
A. I wanted a four-door Accord, white. That was pretty much it.
Q. I'm a fan of white cars, too. I like white.
Did the interior need to be any particular color?
A. No.
Q. So you wanted a white four-door Honda Accord?
A. Uh-huh.
Q. Were you looking for a new car, a used car? Any particular requirements in that regard?
A. Well, I didn't want it to be more than a year or two old.
Q. Okay.
A. So it didn't have to be brand new, but it didn't need to be over a year old.
Q. So how soon before you came to Hendrick Honda of Easley had you narrowed your search down to that kind of car, a Honda Accord, white, no more than a couple of years old?
A. A few months before.
Q. A few months before?

A. A month.
Q. Okay. What -- how then did you -- what happened next in your search for a car?
A. Well, I knew that I needed a new car, because my previous car was needing work. So I started to look at Accords.
Q. And how did you go about looking at Accords?
A. I first went to the dealership in Columbia and test drove that car, that's when I looked here, at Hendrick Honda.
Q. Okay. So the next place you came in your search was Hendrick Honda. How did you choose Hendrick Honda?
A. Well, since my husband lived here already, and I knew that we were going to be moving here, I just looked in the Greenville area.
Q. I see. Okay. Did you look at any other Honda dealerships in the Greenville area?
A. No.
Q. Is there any particular -- you know there is at least one other Honda dealer in the Greenville area?
A. Yes.
Q. Were you aware of that?

A. Yes.
Q. Do you know the name of that business?
A. No, I can't remember.
Q. Do you know where it's located?
A. On Woodruff Road, yes, I've seen it.
Q. Does the word Breakaway Honda ring a bell?
A. Yes.
Q. So you had seen -- you were aware of that other Honda dealership at the time you went to Hendrick Honda of Easley?
A. At the time, no. But since I have lived in the area now, I know where it is.
Q. So your awareness of Breakaway Honda came more after you bought the car from Hendrick Honda of Easley?
A. Yes.
Q. You were not aware of Breakaway Honda before you went to Hendrick Honda of Easley; is that right?
A. No. That's correct.
Q. Well, then what -- how did you pick Hendrick Honda of Easley? Was it near where your husband lived or something like that?
A. My husband works in Easley, so I just

knew that one was in Easley.
Q. I see. Okay. Tell me again where he works.
A. He's the administrator at Countryside Village Retirement Home.
Q. And where is it located?
A. It's in Easley on Pelzer Highway.
Q. So Mr. Hair was familiar with the Hendrick Honda of Easley location?
A. Yes.
Q. Do you know if Mr. Hair had been to Hendrick Honda of Easley before you first went there?
A. No, he had not been there.
Q. Okay. Well, tell me about that day that you first went to Hendrick Honda of Easley. Do you remember what day of the week it was or what prompted you to go there?
A. I don't remember the day of the week. But the first time we went, I test drove the car and then talked about price negotiations.
Q. So the first day you went, he was with you and you test drove the car?
A. Yes.
Q. I guess you found a car on the lot that

met your criteria?
A. Yes.
Q. Let's back up then a minute. Had you done anything else to look for a car at Hendrick Honda of Easley before arriving at the dealership?
A. No.
Q. Had you looked at any newspaper ads?
A. No.
Q. Had you seen any TV advertisements?
A. No.
Q. Had you seen -- heard any radio ads?
A. No.
Q. Had you received anything in the mail --
A. No.
Q. -- that made you want to come to Hendrick Honda of Easley?
A. No.
Q. Had you looked on the internet at any cars offered by Hendrick Honda of Easley?
A. No.
Q. So the only thing that really brought you to the Hendrick Honda of Easley dealership was seeing that it was a Honda dealership, and they had Hondas. And you were looking for a Honda Accord,

so you decided you'd go there and look at the cars on the lot?

A. Yes.

Q. Okay. Describe for me -- because I hate to admit this, but I have never been to Hendrick Honda of Easley. Describe for me what it looks like and where it is and, you know.

A. I know it's on the main highway that runs through Easley on Highway 123. And there's a -- it's on a steep slope hill with a lot of cars parked out front. And there's a small office building kind of right in the middle of the parking lot.

Q. Okay. So it's sort of got a steep slope to its --

A. Uh-huh.

Q. -- its car lot?

A. Yes. Like, when you pull in, you have to drive sort of up a hill.

Q. All right. About how big is it?

A. The lot in general?

Q. Yeah.

A. I mean, like a regular car dealership. There is a lot of car choices, I would say.

Q. Okay. All right. So what time of the

morning was it -- or the day was it, when you first got there?

A. I don't remember.

Q. Okay. Do you remember what day it was?

A. No.

Q. Okay. How many days before you actually bought the car was it?

A. The first time I went, when I test drove the car and talked about price negotiations, then I went back the next day.

Q. And bought the car?

A. Yes.

Q. So it all occurred over a two-day period?

A. Yes.

Q. From the time you first set foot on their lot to the time you drove away with the car you picked?

A. Yes.

Q. So, when you got there on the first day -- well, let's see. You bought the car on July -- July 11th. That's -- excuse me, let's make absolutely sure of that date. I believe the date you actually bought the car was the 12th?

A. Yes.

Q. And do you believe the first time you would have gone there, then, was on the 11th --

A. Yes.

Q. -- of 2006? Does that sound right?

A. That's right.

Q. Do you recall what day of the week the 11th was?

A. I don't remember.

MR. BECKER: Look on Outlook and see what day of the week.

MR. HAMM: I can give you that. July 11th was Tuesday.

MS. WESSINGER HILL: July 11th was a Tuesday and the 12th was Wednesday.

MR. HAMM: Correct.

BY MR. BECKER:

Q. Does that sound about right?

A. Yes.

Q. A Tuesday?

A. Right.

Q. It wasn't a weekend?

A. No, it was during the week.

Q. Where were you working at that time?

A. Well, it was in the summertime, so I wasn't in school.

Q. Right. And your husband lives -- works nearby?

A. Yes.

Q. So, were you getting ready for the wedding --

A. Yes.

Q. -- that month, I guess?

A. Yes.

Q. Yeah. Where were you living at the time? Were you already living up here in Greenville?

A. No, I was living in Chapin with my parents.

Q. All right. Okay. So on Tuesday the 11th you made your first trip to Hendrick Honda of Easley. And you hadn't done any research in any advertisements or anything like that, in other media, before you got there?

A. No.

Q. Okay. Tell me, you drove -- you and your husband drove up on the lot. What happened next?

A. We looked around at a few cars and then were approached by a sales representative; then found the car that I liked; and then test drove it.

And then after I test drove, we came back to the dealership and went inside the office to talk about price.

Q. Okay. How -- do you remember the salesman's name?

A. Yes, Randall Clement.

Q. Okay. Have you ever seen him again since you bought the car?

A. No.

Q. Okay. So you met with him on the 11th and 12th of July, 2006, and have never seen or talked with him since then?

A. Correct.

Q. Okay. So you got on the lot and you started looking around?

A. Uh-huh.

Q. About how long between the time you first got on the lot did it take before you were approached by Mr. Clement?

A. I don't remember exactly. Not very long.

Q. Okay. What did you say to Mr. Clement when he approached you? Or what did he say to you? Do you recall?

A. I don't remember.

Q. Probably something like, can I help you?

A. Yeah, probably offered help.

Q. And what do you think you would have told him?

A. I don't remember. Probably what I was looking for.

Q. Okay. White --

A. Yeah.

Q. -- Honda Accord, four-door --

A. Uh-huh.

Q. -- not more than a couple years old?

A. Right.

Q. All right. Did he direct you to a place where you might find that car? Had you found the car you wanted before he approached you, or did you find it after he first approached you?

A. I think I had already found the car.

Q. Okay. But you had never been to the lot before?

A. Correct. That was my first time.

Q. So you had had enough time to kind of look around a little bit and --

A. Yes.

Q. -- spot the one you liked?

A. Yes.

Q. Were there a lot of white cars on the lot?

A. Not a lot.

Q. Okay. So your eyes were pretty quickly drawn to the kind of car you wanted, because you had narrowed it down pretty closely; right?

A. Yes. Since I knew I wanted an Accord, I just looked at -- went straight to the Accord.

Q. Did you go straight to -- could you tell where the used cars were versus where the new cars were?

A. No, I did not know at the time.

Q. Were they all mixed up together or were new on one side used on the other?

A. I don't remember.

Q. Okay. When you first saw the car, what -- did anything strike you about it?

A. Well, I was glad to find something that I was looking for. That's all.

Q. Did it have any signs on it or stickers or anything of that nature?

A. There was a tag on the window.

Q. Okay. How many tags?

A. I think it was just one window. So one

tag, I guess.

Q. Just one tag? Okay. Do you remember anything about what it said?

A. I know it said that the car was a certified used -- certified used Honda and explained what that meant. And then just the price of the car.

Q. Okay. Did you get a copy of that sticker?

A. I don't remember.

Q. Okay. But you remember there was only one, one sticker on the car?

A. Yes.

Q. Okay. And it talked about Honda certified and had the price?

A. Yes.

Q. Okay. What was the price?

A. 18,995.

Q. Okay. And do you remember that from --

A. Yes.

Q. -- then? Okay. What was your price range?

A. I didn't want to spend more than $18,000.

Q. So this was pretty close?

A. Yeah.
Q. Did you expect to negotiate over price when you got there?
A. Yes.
Q. Okay. Once you found the car you liked, did you look at any others?
A. No, I don't think so.
Q. Okay. Did you test drive more than one?
A. That was the only one I had driven.
Q. So tell me about what happened next, as best you remember. Did you and Mr. Clement agree that you would test drive the car?
A. Yes, we did.
Q. What took place in order to be able to do that? Did he have to get your driver's license number and something like that?
A. Yes, he had a copy of my driver's license. But I think that's all.
Q. Did he go with you on the test drive?
A. Yes.
Q. Did Mr. Hair accompany you on the test drive?
A. Yes.
Q. Who sat where?

A. I drove; the sales representative sat in the passenger seat; and my husband was in the back.
Q. Okay. How long did the test drive take?
A. Maybe 15 minutes.
Q. Where did you go?
A. At the time, I was not that familiar with Easley, so I don't know roads exactly. But I know we just drove -- it was near the dealership; it was not far.
Q. Yeah. Is there anything else about the car, or anything else about it you remember from that, before you went -- first went inside the Honda building?
A. No.
Q. Okay. What color interior did it have?
A. It has a tan interior.
Q. Have you still got that car?
A. Yes.
Q. Okay. Have you ever had it serviced at Hendrick Honda of Easley?
A. Yes.
Q. Do you continue to go back there to have it serviced?

A. Not constantly.
Q. When was the last time you think you had it serviced there?
A. Probably about six months ago, just for an oil change, routine maintenance.
(DEF. EXH. 3, Two-page Buyers Guide, Bates Stamp Hendrick Honda Easley 000017 and 000018, marked for identification.)
BY MR. BECKER:
Q. Sure. Okay. Let me start by showing you what's been marked as Exhibit 3. Does this look like the sticker that was on the car that you recall?
A. Both pages?
Q. Yes.
A. This looks familiar.
Q. The front page?
A. The top page.
Q. Okay. The first page. Does the second page look familiar?
A. I don't remember.
Q. But otherwise, does this look like the sticker that was on the car?
A. Yes.
Q. It mentions Honda certified there in

the middle?
A. Uh-huh.
Q. Is that what you recall?
A. Yes.
Q. Okay. So then you test drove the car and you came back to the dealership. And what happened next?
A. We negotiated the price so that it was in my monthly price range.
Q. Okay. We'll kind of end up going through that in mind-numbing detail, that negotiations process. But before we get to that, you said y'all went inside?
A. Uh-huh.
Q. Tell me about that. Because I have never been in the building. I'm just kind of wondering -- describe it for me, so I kind of have a sense of where y'all went, what it looks like inside.
A. Okay. As soon as you walk in, there is a large lobby. And there's a few desks set up, just in the front area there. And we went to one of the desks right in the front, near the door.
Q. Was that Mr. Clement's desk?
A. I don't know.

Q. Okay. But he sat behind -- on one side of the desk --
A. Yes.
Q. -- and you and Mr. Hair sat on the other?
A. Yes.
Q. Had you had any negotiations over price or anything before you sat down at the desk?
A. No.
Q. Okay. How far into the dealership did you go?
A. Just in that front lobby part. It's just one large room that has different desks.
Q. Did you notice any -- did you observe any notices or signs or anything that were posted in the dealership?
A. No.
Q. Were you looking for that kind of thing when you went inside the dealership?
A. No.
Q. So you weren't really making it your business to be aware of anything posted in the dealership, any signs or anything at that time?
A. No.
(DEF. EXH. 1, Single-page document

entitled Disclosure of Closing Fees Notice, marked for identification.)
(DEF. EXH. 2, Single-page document entitled Notice, Closing Fees, marked for identification.)
BY MR. BECKER:
Q. Let me show you two things that have been marked as Exhibits 1, 2. And I understand you have told me you weren't really looking for this kind of thing, which I completely understand. But I just need to ask you: Did you notice either what's been marked as Exhibit 1 or 2?
Exhibit 2 is marked notice, closing fees. Exhibit 1 is a registration form with the South Carolina Department of Consumer Affairs. Did you notice either one of those posted inside the dealership when you went in?
A. No.
Q. That's all I have on that.
MR. HAMM: Mr. Becker, these -- what you've handed out are not marked. I just want to make sure I'm writing the right exhibit number on the right one. The notice of closing fees is which exhibit?
MR. BECKER: Two.

MS. CASKEY: This is one.
MR. BECKER: And the registration form is Exhibit 1.
BY MR. BECKER:
Q. So since you weren't looking for this kind of thing, it's possible that those things could have been posted on the wall, but you just didn't notice it; is that right?
A. Yes.
Q. All right. So you sat down at the desk with Mr. Clement. By the way, what does he look like?
A. I don't remember details exactly. But he was older than me, but not much older, I would guess. Thin guy, maybe brownish hair.
Q. Okay. Did you notice or remember anything else about him?
A. No.
Q. Okay. What happened next? You sat down at the desk. And tell me about what happened after that.
A. Well, I told him my monthly payment that I wanted to be in, the range. And then he negotiated price, lowered the price down a little, so that I was in my price range.

Q. Were you -- so was your primary concern getting that monthly payment to a point where you felt comfortable with it?
A. Yes.
Q. So were you interested, not just in price, but also, perhaps, in the, you know, maybe the interest rate and the term of the loan and that kind of thing?
A. Yes.
Q. Now, I know you ultimately financed the purchase with South Carolina Telco Credit Union?
A. That's correct.
Q. Had you done any banking business with that credit union before this time?
A. No, that was the first time.
Q. All right. So Mr. Clement found that lender for you?
A. No.
Q. Or someone at Hendrick Honda of Easley found that lender for you?
A. No, I did that personally.
Q. Oh, you did? Tell me a little bit -- let's digress here briefly. How did you find that?
A. My father suggested that.
Q. Oh, he did?

A. Yes.
Q. Is he a member at that credit union?
A. Yes.
Q. He is? So you would have talked to -- and we'll get to this. But you must have talked to your father later that night or later that day?
A. Yes.
Q. Okay. Had you had any thought that you might finance it through South Carolina Telco Credit Union before you got there?
A. No.
Q. So that all -- and when I say got there, I mean, made your first visit to Hendrick Honda of Easley?
A. Correct. I didn't think about it before then.
Q. So you had not had any dealings with South Carolina Telco Credit Union before you first went to Hendrick Honda of Easley on July 11th, 2006?
A. Correct.
Q. All right. Well, so, you were motivated to get the price -- get your monthly payment into a range where you felt comfortable with. And you were interested in price and

financing terms?
A. Yes.
Q. By the time you sat down with Mr. Clement to start those discussions, had you decided that you wanted to buy that car?
A. Before I sat down with him?
Q. Yes, ma'am.
A. I had not completely decided, no.
Q. So it would depend on whether you got the right deal or not?
A. Yes.
Q. And unless you -- unless you got the right deal from Hendrick Honda of Easley, were you prepared not to buy the car?
A. Yes.
Q. So you were prepared to walk away if they didn't give you the deal you wanted?
A. Correct.
Q. Okay. All right. You started talking to Mr. Clement about those things. Did you exchange any paperwork? How did that negotiation, about where you started talking about price, how did it -- how did it move forward?
A. I remember he did some calculations just to figure out what kind of monthly payment I

could get. So he brought the price down a little bit at the time to see what kind of monthly payment I would have.
Q. Did he show you the paper he was doing those calculations on?
A. I don't remember.
Q. But you do remember him doing some calculations?
A. Yes.
(DEF. EXH. 4, Two-page Sales Worksheet, Bates Stamp Hendrick Honda Easley 000014 and 000022, marked for identification.)
BY MR. BECKER:
Q. Okay. Let me show you what's been marked as Exhibit 4. Exhibit 4 is entitled Hendrick Honda sales worksheet. I'm handing that to you now.
MR. HAMM: Can you hold on just a second?
(Off-the-record conference.)
BY MR. BECKER:
Q. All right. Look at the -- look at the second page of Exhibit 4. Does this look familiar to you?
A. Yes.

Q. Is this where he sort of wrote down the different payment options and discussed them with you?
A. Yes.
Q. So do you recall him showing this to you when you started the negotiations?
A. Yes.
Q. I'll represent to you, Ms. Freeman, that the second -- that these two pages are actually -- the form that they used is actually a one-page piece of paper, front and back. Let's look at the first page now. Was there a point where Mr. Freeman (sic) asked you for some personal information about yourself, like your address and phone numbers and that kind of thing?
A. Mr. Clement, yes.
Q. And did that occur when you sort of sat down and started talking?
A. Yes.
Q. And was he filling out a piece of paper as he asked you for that information?
A. Yes.
Q. The address there -- or let's start up there at the top, where it says buyer's name, Julie Freeman. Is that your handwriting?

A. No.
Q. The address under there, 1011 West Butler Road, Apartment 419. Let me ask you: Is any of the handwriting, except for your signature down at the bottom, is any of the handwriting on here yours?
A. No.
Q. Do you believe that's all Mr. Clement's handwriting, or do you know?
A. Yes. He was the only one I talked to. So that's probably just his.
Q. And that address that's listed there, 1011 West Butler Road in Greenville, Apartment 419, is that address familiar to you?
A. Yes.
Q. Whose address is that?
A. That is where my husband lived before we got married. And then we lived at that same address after we got married.
Q. After you got married, okay. There is a cell phone listed there. Does that cell phone number look familiar to you?
A. Yes, that's my previous cell phone.
Q. And that business phone, (864) 355-2700, is that number familiar to you?

A. Yes.
Q. What number is that?
A. That's my current work phone.
Q. So, do you believe that's the information that, when you first sat down with Mr. Clement, he was asking you and you gave him?
A. Yes.
MR. THOMAS: Jimmy, we've been going about an hour. Can we take a break?
MR. BECKER: Yeah.
(A recess transpired.)
BY MR. BECKER:
Q. We're back on the record. Ms. Freeman, when we took the break, we were talking about the -- what's been marked as Exhibit Number 4. And I think we had just gotten through the personal information you provided Mr. Clement that's listed there on the top. You see there he talks about the Honda Accord that you were negotiating over. And see where the vehicle being purchased information is filled in?
A. Yes.
Q. That's the car you ultimately bought; is that right?
A. Yes.

Q. Now, look down below. I know you were planning to trade in the car you were currently driving, which was the 1999 Mazda 626. There is a payoff verification, and South Carolina Telco Credit Union is listed. Did you have a loan on the Mazda at that time, and was it with South Carolina Telco Federal Credit Union?
A. That car, my father bought. So he could have had the loan from there.
Q. All right. So, do you believe that you would have given that information to Mr. -- would he have asked you -- do you recall him asking you if there was a loan on the car you were trading in?
A. I don't remember.
Q. Did he ask you about insurance on the car and who that was with?
A. I don't remember.
Q. Okay. Well, at least at some point he got that information from you; would you agree?
A. Yes.
Q. Maybe not that first time you were there, but at some point before it was all over?
A. Yes.
Q. You gave him the payoff information and the -- where you had the insurance on your Mazda?

A. Yes.
Q. Now, if you look over there on the right-hand side, it starts out with MSRP. And there is 18,995 listed. Earlier you mentioned that you had seen that price on a sticker on the window; is that right?
A. Yes, that's correct.
Q. But there was just one sticker on the window; is that right?
A. Yes.
Q. So did -- when the subject of price first came up in your discussions with Mr. Clement, how did it come up and who said what?
A. I don't remember exactly. But I told him the monthly price that I was willing to pay or that I wanted to get the price down to.
Q. So you told him a payment amount that you needed and would be most comfortable with?
A. Yes.
Q. Did you tell him -- when you first mentioned the subject of price or terms, did you say, I want to pay less than that for the car or did you tell him the payment amount you were driving for?
A. I don't remember.

Q. Okay. But you do recall telling him the payment amount that was -- would be comfortable for you?
A. Yes.
Q. All right. Well, let's look -- let's look, then, at paragraph two. I mean, excuse me, page two of Exhibit 4. And I believe you said he showed you this?
A. Yes.
Q. Right? Do you recall anything about the explanation he may have given you about the numbers that are on page 2 of Exhibit 4?
A. No.
Q. Okay. I believe you said when you first started negotiating about price, he offered to take a little off the price of the car for you?
A. Yes.
Q. And do you see there that -- in that upper left-hand box that's entitled selling price, the first number there, that's since been marked out, is 18,295?
A. Yes.
Q. Does that ring a bell? Did he offer, kind of first, to take $700 off the price, or how did that...

A. I don't remember. I don't know why that's there.
Q. All right. Look back for a minute at page 1. Did he -- did he show you this when he filled out page 1, to make sure he had the right information for your phone numbers or anything of that nature?
A. I don't remember.
Q. Okay. He could have done that, you just don't recall?
MR. THOMAS: Object to the form. You can answer.
THE WITNESS: Shown it to me?
BY MR. BECKER:
Q. Yeah.
A. When?
Q. Well, you say he showed you the back side of it?
A. Yes.
Q. Did you also look at the front side?
A. I don't remember.
Q. But you know you saw the back side?
A. Yes.
Q. And at some point, you signed it, there, under buyer?

A. Yes.
Q. Do you recall when that would have occurred --
A. No.
Q. -- in the negotiation?
A. I don't remember.
Q. Okay. So, looking at page 2 of Exhibit 4, you just -- you don't recall any of the details about the negotiations that are represented here or the writings that are set forth on this?
A. No.
Q. Okay. There is a notation there that says 7/11/06, good for two weeks if this car available. Do you recall there being any discussion about a quote being good for two weeks?
A. Yes. The day that I went to first talk about this, I knew I wasn't going to buy the car that day, mainly because I didn't have my previous car to trade in with me.
Q. Okay.
A. So that's why it was there.
Q. And I see there -- do you see there where it says, payoff E-S-T 400?
A. Yes.
Q. Do you recall discussing what the

payoff on your trade-in car might have been on that day?
A. I don't remember discussing that. And since I didn't pay for that car, I didn't know.
Q. All right. And on that day, was -- you say you didn't have your trade-in vehicle with you. So, it's written down there, not seen. Does that sound about right? Mr. Clement hadn't seen it, right, at that point?
A. Correct, I did not have it that day.
Q. Okay. Well, there is, if you look in the two boxes below, in the middle there, under cash down and payment, the middle one of $315 per month is circled, 60 times 315.02. Was that the payment amount or was that within the range of the payment amount where you would have felt comfortable?
A. Yes, that's within the range that I was looking for.
Q. Do you think that might be why it's circled?
A. I don't know.
Q. Do you know what the initials WAC might stand for that are right there by the word payment for that box, middle box?

A. No, I don't know.
Q. There is a phone number in writing over there on the far left side 866-513-9355. Do you know what the phone number is?
A. I do not.
Q. Is Betty -- does that name ring a bell for any reason?
A. No.
Q. And how about the number 628037
A. No.
Q. Were you discussing -- did you discuss with Mr. Clement a down payment of any kind?
A. No. Just the trade-in of my car.
Q. Okay. Is that where you were looking to get the money for a down payment, was through the trade-in?
A. Just the trade-in, yes.
Q. You were hoping not to have to come up with any more cash out of your pocket, just trade-in the car and then sign a note for a loan for the balance that might be owed?
A. Yes.
Q. Okay. All right. Did Mr. Clement give you a copy of this worksheet with the quote on it that was good for two weeks?

A. I don't remember. I'm not sure.
Q. Is it possible that that could have happened and you just don't recall for sure?
A. It's possible, but I'm not sure.
Q. Did you -- did you leave -- okay. So you were there meeting with him beginning negotiations on the 11th. How long did that meeting go on where you were sitting at the desk in the dealership?
A. I don't remember exactly. Maybe 30 minutes, an hour. We weren't there terribly long.
Q. And Mr. Hair was there with you the whole time?
A. Yes, he was.
Q. Okay. Is there anything else about that meeting with Mr. Hair (sic) in the office on the 11th that you recall, sitting here today?
MR. THOMAS: Mr. Clement?
BY MR. BECKER:
Q. With Mr. Clement, I'm sorry.
A. No.
Q. Did you -- there came a time when you got up and left, I take it?
A. Yes.

Q. How did you leave it with Mr. Clement?
A. Well, I was not sure that I was going to buy the car. But we told him that we would come back if we were really interested. We wanted to think about it.
Q. All right. And so you and Mr. Hair left?
A. Yes.
Q. Where did you go after that?
A. I do not remember. I don't know.
Q. Okay. Well, did you speak with -- talk with Mr. Hair after you left about whether or not you'd buy the car or anything like that, do you remember?
A. Yes, we talked about it.
Q. Do you remember what those conversations were?
A. I mean, that was basically what I was looking for, so we decided that we would probably go back and buy the car.
Q. Okay. All right. Well, what -- what plans did you make next? What did you plan to do next or what did you do next, in terms of moving forward to buy the car?
A. Well, if I was going to buy the car, I

had to get my previous car up to Hendrick Honda, which is the reason that my dad brought it to me the next day.
Q. Okay.
A. So, I don't remember details.
Q. Okay. You don't remember details, but you must have called your dad to say, dad, bring me the car?
A. Yes.
Q. Why did you not have it with you?
A. I was just riding with Brandon.
Q. Okay. And did he -- what did he say, do you recall, when you called him?
A. No. I don't remember.
Q. You just don't remember the discussions with your dad?
A. No.
Q. Okay. What happened next?
A. My dad agreed to bring the car up to us. So we set a time for the next day to do that, and met at the dealership, at the car dealership.
Q. Okay. So you met your dad the following day at the dealership?
A. Yes.
Q. Do you remember what time of day that

was?
A. I don't remember.
Q. And that would have been on the 12th?
A. On the 12th, yes.
Q. Which was a Wednesday?
A. (Indicating)
Q. Did your dad come up the night before or early the next morning?
A. Just that day, the 12th.
Q. Okay. On a Wednesday?
A. Yes.
Q. Was he able to get off work no problem?
A. I don't know.
Q. You don't recall?
A. No.
Q. What does your dad do?
A. He works for AT&T.
Q. What does he do for them?
A. He's a DSL internet computer installer.
Q. Is that what he was doing back in July of 2006?
A. Yes.
Q. So, in between the time you left on the 11th, left Hendrick Honda of Easley on the 11th, and the time that you met your dad back there on

the 12th of July, did you speak with Mr. Clement?
A. No.
Q. Did you speak with anyone else from Hendrick Honda of Easley, in between the time you left on the 11th and the time you went back to Hendrick Honda of Easley on the 12th?
A. No.
Q. So you just arranged that you would meet your dad at the dealership at a certain time, but Randall Clement didn't know you were coming?
A. No, we hadn't set up any kind of arrangements.
Q. All right. So then tell me about what happened when you came back the second time?
A. I did ask for Mr. Clement specifically, since I had talked with him before. And then I drove the car again. Then after that, we went inside the office building to discuss our negotiations from the day before.
Q. Was your father present when you went back inside the building --
A. Yes.
Q. -- to have those negotiations?
A. Yes.
MR. THOMAS: Object to the form.

BY MR. BECKER:
Q. Did he, did your father test drive the car with you the second time?
A. I don't remember if he did or not.
Q. Was Mr. Hair with you when you test drove it on the 12th?
A. I don't remember.
Q. Okay. Was Mr. Clement in the car with you --
A. Yes.
Q. -- on the 12th?
A. Yes, I believe he was. He test drove with me both times, yeah.
Q. Okay. Sat down again. Did you go back inside the dealership?
A. Yes.
Q. Did you sit at the same desk?
A. Yes, we did.
Q. Okay. Had you had any discussions about price or payments before -- on the 12th, but before you sat back down at the desk again with Mr. Clement? Had you had any further discussions with Mr. Clement about price or payment, in between the time you left on the 11th and the time that you sat back down at his desk again on the 12th?

A. No.
Q. So tell me about the back and forth that would have occurred when you sat down with him on the 12th?
MR. THOMAS: Object to the form. Go ahead and answer.
THE WITNESS: I think that, since I already had this price that he had told me the day before, that I knew that that's what I wanted. So I don't remember if there were any further negotiations about the price.
BY MR. BECKER:
Q. You don't? Okay. All right. Did he show you any papers again?
A. I don't remember.
Q. Okay. Okay. Is the next thing that you remember that you had then agreed to buy the car on certain terms, and you set about going ahead and signing everything up?
A. Yes.
Q. So you just don't recall -- you don't have a memory of what the negotiations were on the day you were there, on the 12th; is that right?
MR. THOMAS: Object to the form. Go ahead and answer.

THE WITNESS: You're correct, yeah.
BY MR. BECKER:
Q. All right. Then look back at what -- let me ask you this: Did you sign anything before you were there on the 12th?
A. I don't remember signing anything.
Q. You don't remember signing anything before you were there on the 12th, or you don't remember if you did or not?
A. I don't remember if I did or not.
Q. Okay. Well, look at Exhibit 4 again, first page. Is that your signature down at the bottom?
A. Yes.
Q. And the sales manager -- do you remember Mr. Clement needing to talk with his sales manager at any point during the discussions with you?
A. I don't remember.
Q. Okay. Let's look next at Defendant's Exhibit 5.
MS. CASKEY: That's the third sheet.
MR. BECKER: That's the third sheet, Brady, of your Exhibit 4. That's the last page.
(DEF. EXH. 5, Single-page document,

Bates Stamp Hendrick Honda Easley 000023, marked for identification.)
MS. CASKEY: Are there extra copies down there?
MR. THOMAS: I don't mind sharing.
BY MR. BECKER:
Q. Do you recognize this handwriting?
A. That's my handwriting.
Q. Oh, it is? Okay. Let me -- that is your handwriting on Exhibit 5?
A. Yes.
Q. Okay. Do you know what -- what it is? How, why you wrote it or what you wrote it on?
A. I don't know. I don't remember writing this at all, no.
Q. But you do recognize it as your handwriting?
A. Yes. But that's not my current monthly payment; and the car is not a 2004. So I'm not sure why I would have written that.
Q. Right. In between the time that you left Hendrick Honda on the 11th, and the time that you came back on the 12th, did you do any research on other cars at other dealerships?
A. No, I don't remember.

Q. Okay. Did you look at any newspaper adds or...
A. No.
Q. See anything on TV or hear anything on the radio?
A. No.
Q. Okay. Okay. So this is your handwriting, but you just don't remember where it came from?
A. No.
Q. Okay.
MR. STODEMEYER: I'm going to step out for a second. Y'all go ahead.
MR. BECKER: Okay.
BY MR. BECKER:
Q. Ms. Freeman, I'm going to hand you, out of the original deal file on your transaction, I'm going to hand you the original of this document, which is in blue ink. It looks like the original writing. This, that Exhibit 5, is a copy of what I'm showing you right now. Is that -- is that your handwriting there?
A. Yes.
Q. And it's on the back of what is currently marked as the second page of Exhibit 4.

A. Yes.
Q. Okay.
MR. THOMAS: Can we take a break? I would like to get a copy of that, the two-sided version.
MR. BECKER: Sure.
MR. THOMAS: Or we can do it on a break.
MR. BECKER: Can we do it on the next break?
MR. THOMAS: But I would like a copy of that.
MR. BECKER: Absolutely. That might be the easiest thing. Thank you.
(DEF. EXH. 6, Hendrick Honda document, Bates Stamp Hendrick Honda Easley 000015, marked for identification.)
BY MR. BECKER:
Q. All right. I want to show you next what has been marked as Exhibit 6. This is a copy of a document that's just got Hendrick Honda up at the top. It's an -- I'll represent to you it's a purchase agreement. Is that your signature down at the bottom?
A. Yes.

Q. And this is dated July 12th, 2006. Take a minute and look at all the information on it. It's got all the information that you had given about yourself, that you had given Mr. Clement the day before, up at the top; is that correct?

A. Yes.

Q. And then it shows a -- it's got the information on the car you purchased, right, the 2005 white Honda Accord?

A. Correct.

Q. And it's got the information on the vehicle you were trading, the 1999 Mazda 626?

A. Yes.

Q. Okay. And it's got an MSRP for the car of 17,975; is that right?

A. Yes.

Q. And you signed it on the 12th --

A. Yes.

Q. -- is that right? Before you signed it did you review it?

A. I don't remember.

Q. Okay. Did you have an opportunity to review it?

A. I don't remember.

Q. You knew you were entering into a contract about a car?

A. Yes.

Q. Did you -- and you understood that if you really didn't want to buy the car, you could leave the dealership; right?

A. Yes.

Q. You didn't have to go through with this purchase if you didn't want to?

A. Right.

Q. And I think, previously, you had testified that you would not have gone through with the purchase if you weren't satisfied with the terms and the price that they offered you; is that right?

A. Correct.

Q. Look there on the numbers on the left-hand column, it starts, of course, with the price. And then 900 for the trade-in allowance. Was that, the value of your trade-in, ever the subject of negotiation with you and Mr. Clement?

A. Well, the first time that I was there, they didn't have my car to look at to decide on what it was worth.

Q. Well, that's something we failed to

talk about. When you brought your car, did they go take a look at it and have someone check it out?

A. Yes.

Q. And did they come back and tell you what the results of that inspection were?

A. Yes.

Q. What did they say?

A. They just told me what it was worth.

Q. Who was it that told you that?

A. I don't remember.

Q. Was it Mr. Clement?

A. I don't remember.

Q. Okay. But someone came back and told you that --

A. Yes.

Q. -- what your trade-in was worth? Tell me this: Approximately how many different people did you deal with at Hendrick Honda of Easley?

A. I don't know exactly. At least two.

Q. Okay. At least two?

A. Yes.

Q. All right. Do you remember -- Mr. Clement was one of those?

A. Yes.

Q. Who was the other one?

A. I don't know his name. But it was a finance manager.

Q. Okay.

A. But I don't remember what his name was.

Q. Okay. So you started talking with the other person when you started talking about financing for the car?

A. Yes.

Q. Okay. All right. Getting back to when they told you what your trade-in was worth. And you don't recall who that was, but was there any further discussion about the value of your trade-in after they came back and told you what it was, what it was worth?

A. I don't remember discussing that any more.

Q. Okay. All right. Then the purchase agreement that you signed shows a trade-in allowance of $900. Does that sound about right? Does that refresh your recollection, maybe, about what they told you it was worth?

A. Yes, I remember that was what they told us.

Q. And then it shows a difference. And then there is something called procurement fee,

$299 and it's bolder, it's in the bolder point-type than everything else. Do you see that?

A. I see that.

Q. Was there any discussion that day about the procurement fee that's listed on Exhibit 6?

A. No, I don't remember discussing that at all.

Q. Okay. You just don't remember any discussion about it at all?

A. No.

Q. Now, I believe you said Mr. Hair was with you and Mr. -- your father, Mr. Freeman, was with you?

A. Yes.

Q. Were they there with you when you signed the documents?

A. I don't remember.

(DEF. EXH. 7, Single-page document entitled Addendum Regarding Additional Terms and Conditions, Bates Stamp Hendrick Honda Easley 000020, marked for identification.)

BY MR. BECKER:

Q. Okay. Take a look at Exhibit 7. Ms. Freeman, I have given you what's been marked as Exhibit 7, which is called an addendum regarding

additional terms and conditions. Is that your signature there on the bottom?

A. Yes.

(DEF. EXH. 8, Single-page document entitled Affidavit & Notification of Sale of Motor Vehicle, Bates Stamp Hendrick Honda Easley 000025, marked for identification.)

BY MR. BECKER:

Q. Okay. Let's look next at Exhibit 8. Exhibit 8 is entitled affidavit and notification of sale of motor vehicle. And let me ask you: Is that your signature which appears there in two places down at the bottom?

A. Yes.

Q. Do you recall signing this and the previous document, Exhibit 7, on the 12th?

A. Yes, I signed a lot of things.

Q. So you signed a lot of documents that day. And I'm not going to show you every document you signed. But do you have any particular recollection of signing one versus another on that day?

A. No.

Q. But that is your signature on -- you do recognize your signature on what's been marked as

Exhibit 8?

A. Yes.

(DEF. EXH. 9, Single-page document entitled Affidavit of Notification of Sale of Motor Vehicle, Bates Stamp Hendrick Honda Easley 000016, marked for identification.)

BY MR. BECKER:

Q. All right. Look next at Exhibit 9. There is an affidavit and notification of sale of motor vehicle. And it appears to be signed by your father, William Thomas Freeman. Look at the signature right above where his name is printed at the bottom there. Does that look like his signature to you?

A. Yes.

Q. So, he was there to bring your trade-in and -- I guess, your trade, the '99 Mazda, was titled in his name?

A. Yes, it was.

Q. But you were driving it?

A. Correct.

Q. So he had to be there to, at least, sell -- sign over, convey, the 1999 Mazda to Hendrick Honda of Easley as your trade-in vehicle; right?

A. Yes, because it was in his name.

(DEF. EXH. 10, Single-page receipt entitled Hendrick Honda Easley 000011, marked for identification.)

BY MR. BECKER:

Q. Let's look at Exhibit 10. We'll go quickly through these. This is a copy of a receipt where you provided a check through South Carolina Telco Credit Union to Hendrick Honda of Easley?

A. Yes.

Q. Does that look familiar or does it not?

A. I don't remember seeing it.

(DEF. EXH. 11, Single-page copy of South Carolina Driver's License of William Thomas Freeman, Bates Stamp Hendrick Honda Easley 000012, marked for identification.)

BY MR. BECKER:

Q. Okay. Look here at Exhibit 11. This is a copy of your -- of a driver's license of your father, it appears to be?

A. Yes.

(DEF. EXH. 12, Single-page copy of South Carolina Driver's License of Julie Valiska Freeman, Bates Stamp Hendrick Honda Easley 000013, marked for identification.)

BY MR. BECKER:

Q. And Exhibit 12 is a copy of your driver's license; is that right?

A. Yes.

Q. Okay. Tell me, when did -- you say that you went and spoke with a finance manager; is that right?

A. I don't know if that's his correct title. But yes, I spoke with someone else.

Q. About a loan for the car?

A. Yes.

Q. Do you recall anything about those discussions with him?

A. No.

Q. You don't?

A. No.

Q. Okay. But you do know that you must have signed a loan with South Carolina Telco Credit Union?

A. Yes.

Q. And used that as the way to pay the balance on the car you were buying?

A. Yes.

Q. But you just don't remember any of the details of that -- the discussion with that person?

A. No.

Q. Did he show you some paperwork during the discussions you had with him?

A. I don't remember exactly what they were. But he -- he did show me some papers.

Q. Okay. And obviously, you had to sign some papers to get the loan?

A. Yes.

Q. But you just don't recall what those were?

A. No.

Q. Okay. Other than Mr. Clement and the man who spoke with you about financing, is there any other person who was an employee of Hendrick Honda of Easley, that you spoke with at anytime, in the purchase of the car in July of 2006?

A. I don't remember talking to anybody else.

Q. So it was just those two people?

A. Yes.

Q. I mean, obviously, I understand you may have said hello to somebody who might have also been to the showroom or on the lot. But what I'm asking for is: Did you have any -- have substantive discussions about your purchase or

financing of the 2005 Honda Accord that you purchased from Hendrick Honda of Easley on July 12th, 2006, other than those two people, Mr. Clement and the man whose name you don't know, but with whom you spoke about financing?

A. They were the only two.

Q. Okay. Do you know somebody named John Miller?

A. No.

Q. You don't know who that is?

A. No.

Q. Okay. And the reason I ask this is because in your -- let me just hand you what's been marked as -- well, I don't need to make this an exhibit. Do you -- do you know what answers to interrogatories are?

A. Yes.

Q. You made some answers to interrogatories through your attorneys. And there is a man named John Miller listed as someone who might be a witness concerning the facts of this case. This may be just a typo, because there are a lot of people involved, a lot of different parties. But do you know a person named John Miller?

A. Not that I remember.

Q. To your knowledge, did someone named John Miller play any role in the purchase of your vehicle from Hendrick Honda of Easley?

A. I don't remember.

Q. Okay. Did there come a time when your attorneys asked you to provide them with copies of any documents that you had in your possession regarding the purchase of your vehicle from Hendrick Honda of Easley?

A. Yes.

(Off-the-record conference.)

BY MR. BECKER:

Q. How long ago did that occur, do you recall? Do you know?

A. I don't remember.

Q. Okay. Did you get a call from someone at Mr. Thomas' office asking you to round up your documents and send them to them?

A. I don't remember.

Q. Is it possible your husband could have gotten that call or that request, however it came? It may have been a call, a letter, an email; I don't know.

A. I don't know.

Q. Did there come a time, though, when you

or your husband gathered together your documents regarding the purchase of the Honda from Hendrick Honda of Easley and sent them to your attorneys?

A. Yes.

Q. Did I ask you this: Do you recall when that was?

A. I don't know when that was.

Q. Did you or your husband do that? Did you round up documents and send them to your attorneys?

A. Yes.

Q. Do you remember how many documents you pulled together?

A. I do not remember.

Q. What did you do to gather those documents?

A. I don't know. I think I had them all together in a folder.

Q. Okay. Where do you keep that folder?

A. At home.

Q. Was it like in a desk drawer or in the file cabinet?

A. Uh-huh. Like in our home office.

Q. Okay. Do you still have that folder?

A. I don't know.

(DEP. EXH. 13, Single-page Hendrick Honda document, Bates Stamp P 000034, marked for identification.)

BY MR. BECKER:

Q. All right. Let's do another one. This document I'm going to give you has been marked as Exhibit 13. This is a copy of the -- or a duplicate of what's previously been marked as Exhibit Number 6. And it appears that it was faxed from -- you see up at the top, on 8/31/2006, 2008 Countryside Park. Does that -- do you know what Countryside Park is?

A. That's where my husband works.

Q. Okay. So do you think that he would have faxed some documents to your attorneys?

A. Yes.

Q. Ms. Freeman, your interrogatory responses that have been provided to us by your attorney say this: Plaintiff, Freeman-Hair and Brandon Hair went to Defendant, JLH Investments, d/b/a Hendrick Honda of Easley's dealership and spoke with the salesman, Randall Clement, two to three days prior to purchasing the Mazda. And I think that was a typo, it should have been the Honda.

Thinking back, do you -- do you believe that you went there just on those two days, and it was the 11th and the 12th, or do you think there may have been other days that you were there?

A. No, I only went there the 11th and 12th.

Q. Okay. All right. So you drove away and you still own the car today?

A. Yes.

Q. And is that the car you drive now?

A. Yes.

Q. Are you happy with the car?

A. Yes.

Q. Were you generally happy with the way you were treated by the people at Hendrick Honda of Easley when you bought the car?

A. Yes, I was very satisfied.

Q. Were there any questions that you asked of them that they would not answer?

A. Not that I remember.

Q. So, you were able to ask questions, if you had one, and they would answer it for you?

A. Yes.

Q. Okay. Was there anything preventing you from asking questions of them that you had and

getting an answer that you thought was satisfactory?

A. No.

Q. Were they -- how did they treat you? Were they polite and courteous or what?

A. Yes, they were very polite.

Q. Have you ever recommended Hendrick Honda of Easley to anyone to buy a car there?

A. No. But I haven't really had the opportunity.

Q. Okay. I think you said you've had your car serviced at Hendrick Honda of Easley?

A. Yes.

Q. About how many times, would you say?

A. Two or three maybe.

Q. Okay. On those occasions, were the people at Hendrick Honda of Easley polite and courteous to you?

A. Yes, very nice.

Q. Did they service your car appropriately?

A. Yes.

Q. Have you had any problems with the service they provided on your car?

A. No.

Q. Have you had any problems with the car?
A. No. When I was in the wreck, it was in that car. But I haven't had any problems with it after it was fixed.
Q. Where did you have it repaired?
A. At a collision repair place, because it was -- it needed bodywork.
Q. Okay. And when was the last time you had your car serviced at Hendrick Honda of Easley?
A. I don't remember.
MR. BECKER: This is probably a good time to take a break.
MR. THOMAS: Okay.
MR. BECKER: And since food's here -- I don't have a lot more to go, probably 30 to 45 minutes.
THE WITNESS: Okay.
MR. BECKER: So I don't know how many questions, if any, the other people here are going to have. I don't think those are going to be long. But I would suspect that we don't have more than about an hour to an hour-and-a-half to go. So I'm willing to make this lunch break 20 minutes. Does that work for y'all, we just get lunch and then pick right back up. Is that okay?

THE WITNESS: Sounds good.
(A luncheon recess transpired.)
BY MR. BECKER:
Q. Okay. We're back on the record. Ms. Freeman, before we left off, we were just talking about, generally, your experience with the people at Hendrick Honda of Easley. In general, were you satisfied with the price that you ultimately arrived at for the vehicle that you bought?
A. Yes.
Q. Because I think you testified previously that if you didn't get the deal you wanted, you wouldn't buy the car; right?
A. Right.
Q. And you did buy the car, so you were satisfied with the deal you got?
A. Yes.
Q. Tell me then, when did you -- when did it first -- well, before I ask you that then:
The second day you were there, I believe you said that you don't recall what role, if any, your father may have played in the continuing discussions that you had with Mr. Clement; is that right?

MR. THOMAS: Objection to the form.
THE WITNESS: Yes.
BY MR. BECKER:
Q. You just don't remember?
A. Correct. I don't remember.
Q. Do you remember what role your husband played, Mr. Hair, in your continuing discussions with Mr. Clement on the 12th?
MR. THOMAS: Object to the form.
THE WITNESS: No.
BY MR. BECKER:
Q. You don't?
A. No.
Q. Tell me, then, when -- how did it first come to your attention that there might be something about the transaction that you would want to bring a lawsuit for?
A. After discussing with my attorney.
Q. When did that occur?
A. Well, Brady is my friend and lawyer. And when I ask him advice, I consider him to be my lawyer.
Q. Well, I understand that. But I didn't ask you what you said. I'm asking you when did that first conversation occur?

A. I don't remember.
Q. Okay. Tell me about how -- you say Mr. Thomas is your friend. Tell me about that, please. How do you know him?
A. Brady first knew my husband for a long time. So I met him once I met my husband.
Q. You say they have known each other for a long time. Give me a little more details. How have they known each other for a long time?
A. Over ten years. They were -- they met through friends in college.
Q. Okay. What college did your husband attend?
A. College of Charleston.
Q. And did Mr. Thomas attend College of Charleston?
A. No.
Q. He didn't? Okay. Do you know where he attended college?
A. Yes.
Q. Where?
A. Florida State.
Q. So how did they first meet?
A. My husband went to school first in Augusta; he went to Augusta State. And Brady is

from Augusta, so they knew mutual people.
Q. Oh, I see. Do you know who their mutual friends are?
A. Yes.
Q. Who are they?
A. There is a lot of them.
Q. Well, just name the top three or four?
MR. THOMAS: I'm a popular guy.
THE WITNESS: Probably Jeff Bachelder is the one that introduced them.
BY MR. BECKER:
Q. Okay. Any others?
A. Maybe Rusty, Rusty Smith, who Brady knows from growing up, and then who my husband knew from school. So that's how they met.
Q. Any other mutual friends that you and your husband and Brady Thomas have?
A. We --
Q. Close mutual friends, the top five.
A. Top five. I would say Jeff and his wife, Tiffany, and Rusty and his wife, Stacy.
Q. What is Rusty's last name?
A. Smith.
Q. Where do those people live?
A. They live in Augusta.

Q. And Mr. Bachelder, Jeff Bachelder? Is that spelled B-A-T-C-H-E-L-D-E-R?
A. No T.
Q. No T? Okay. B-A-C-H-E-L-D-E-R?
A. Yes.
Q. Where does he live?
A. He lives in North Augusta.
Q. Are all three of them married?
A. Yes.
Q. Mr. Bachelder, Mr. Smith, and who was the third one you mentioned?
A. Well, their -- their wives I think I said.
Q. Well, and so your husband knows them?
A. Uh-huh.
Q. So you think your husband and Mr. Thomas first met about ten years ago?
A. Probably longer than that.
Q. Okay. How often do you and your husband see Mr. Thomas and his wife?
A. Every few months.
Q. Okay. Generally, where would those --- would that be, those -- I mean, like, do they come up here and visit you, from time to time, Mr. Thomas and his wife?

A. We see him at events with our other friends, usually.
Q. Have you ever been a guest in Mr. Thomas's home?
A. Yes.
Q. About how many times?
A. A few.
Q. Okay. Have you ever spent the night at his home?
A. No.
Q. Has he ever been a guest in your home?
A. Yes.
Q. About how many times?
A. Once.
Q. Okay. Has he ever stayed overnight at your home?
A. No.
Q. And you have seen him at various -- you have seen him at various social events in the Augusta area; is that right?
A. Yes.
Q. Over the last ten years, approximately -- have you -- how long have you known Mr. Thomas?
A. For a while, probably seven, eight years.

Q. Okay. Approximately how many times do you think you have seen him socially during that time? Just your best guess.
A. I don't know. A few times a year.
Q. Okay. So a few times a year for the last seven years or so?
A. Yes.
Q. So, getting back to the issue of when did you first realize that there might be a reason to bring a lawsuit against Hendrick Honda of Easley. Did that occur in a conversation that you had with Mr. Thomas?
A. Yes.
Q. Okay. Where were you? I'm not asking you what was discussed, I'm just simply asking where you were when the idea first came up?
A. I don't remember.
Q. Do you know when that was?
A. No, I don't.
Q. Was it after or before you purchased the car at Hendrick Honda of Easley?
A. After.
Q. Do you believe that it was in -- at a social gathering that the idea first -- that you first had that discussion with Mr. Thomas?

A. No, I don't think so.
Q. Well, was the discussion over the phone or in person?
A. I don't remember. It was a while back.
Q. Was anyone else present when you had that discussion with him?
A. Yes, my husband.
Q. Okay. So do you think it was in -- does that help you? Was it in person or was it over the phone?
A. I don't remember.
Q. Okay. Did Mr. Thomas contact you or did you contact him?
A. I don't know. I think it was just discussed in conversation.
Q. Okay. When did you agree to become a Plaintiff in the lawsuit that -- for which we are here today?
A. Just during conversations with Brady.
Q. Okay. Was that in the first conversation you had with him or did you -- did that occur in a subsequent conversation?
A. I don't remember.
Q. Okay. Approximately how many times do you think you may have discussed the idea of

bringing a lawsuit with Mr. Thomas before you agreed to become a Plaintiff?
A. I don't know how many times.
Q. Okay. Did you discuss it with your husband before you agreed, or anyone else other than Mr. Thomas?
A. Yes, my husband.
Q. Okay. Was he on the phone call or in the conversation with you and Mr. Thomas when you did agree to become a Plaintiff?
A. Yes.
Q. Do you have an agreement with Mr. Thomas to represent you?
A. Yes.
Q. Have you signed a written agreement with him?
A. Yes.
Q. When did you sign that agreement?
A. I don't remember.
Q. Okay. What does that agreement say?
A. That's just a discussion with my lawyer.
Q. Well, what are the terms of the engagement? How is Mr. Thomas going to be compensated for acting as your attorney in this

lawsuit?
MR. THOMAS: I'm going to instruct the witness not to answer, assert the attorney-client privilege.
MR. BECKER: I don't -- I think, Brady, I'm entitled to know whether she knows what the terms of the engagement are.
MR. THOMAS: You can ask her that.
MR. BECKER: Well, that's what I did. I mean, I --
MR. THOMAS: You can ask her if she knows that. I'm going to assert it for the actual -- what the actual engagement is. Do you want to ask her if she knows it?
BY MR. BECKER:
Q. Do you know the terms of your engagement with Mr. Thomas?
A. No.
Q. Do you know how he is to be compensated according to the agreement?
A. No.
Q. Do you know what -- do you know when you signed the agreement?
A. No.
Q. Do you know who the parties to the

agreement are?
A. No.
Q. Do you know how many pages the agreement is?
A. No.
Q. Do you know who may have signed the agreement, other than yourself?
A. I don't know.
Q. Okay. Who are the attorneys that are representing the Plaintiffs in this action?
A. It -- defending the other car dealerships?
Q. No. Who are representing the Plaintiffs.
A. Brady is the only one I know.
Q. Do you know if there are any other attorneys representing the Plaintiffs?
A. Yes.
Q. Do you know who they are?
A. No.
Q. Can you name any of their names?
A. No.
MR. THOMAS: Can we take a quick break?
(Off-the-record conference.)
MR. THOMAS: Mr. Becker and I just had

an off-the-record conversation regarding the instruction that I had given Ms. Freeman earlier. And we agreed that a motion wasn't necessary, that we clarify what the actual question was. And there wasn't an assertion not to answer any questions.

MR. BECKER: Right. Yeah, you did not instruct her not to answer any questions. So I don't think there is a --

MR. THOMAS: Yeah, I didn't want -- just to be clear. Those are tricky rules.

MR. BECKER: I don't think there is a basis for you to file a motion for a protective -- to protect any attorney/client privilege.

MR. THOMAS: Based on the questions you had.

MR. BECKER: Based on the questions I had. Because you didn't instruct her not to answer any questions.

MR. THOMAS: Okay. That's fine.

MR. BECKER: And I have asked the questions I wanted --

MR. THOMAS: I thought that I might have, but --

MR. BECKER: No.

MS. WESSINGER HILL: James, can

Ms. Freeman talk just a little bit louder? We can hear you great. Ms. Freeman's just a little hard to hear.

THE WITNESS: I'm sorry.

BY MR. BECKER:

Q. You don't know who any of the other attorneys are?

A. No.

Q. Do you know any of the other Plaintiffs who were in this lawsuit with you?

A. I don't think so.

Q. Do you know their names?

A. I do know -- I think I know one. I'm not sure if he is considered a plaintiff. I don't know. Mike Ritz.

Q. Okay. Do you know Mike Ritz?

A. Yes.

Q. Do you know if he's a Plaintiff in this lawsuit?

A. I'm not sure. I don't know the legal term.

Q. Well, do you know if he has brought a lawsuit against a car dealer?

A. Yes.

Q. But you don't know if he -- what -- if

he's in the same suit you are or not?

A. I believe he's in the same suit.

Q. Okay. Do you know any of the other -- are there any other Plaintiffs, beside Mr. Ritz?

A. I don't know.

Q. Do you know when the complaint was filed?

A. No.

Q. Have you communicated -- have you kept in touch with Mr. Thomas about the lawsuit since the complaint was filed, or since you first agreed to become a Plaintiff?

A. Yes.

Q. How have you kept in touch with him?

A. Well, since he's my friend, I talk to him through that, because he's my friend.

Q. Other than those occasions when you have been with him in a social setting, have you communicated with him about this lawsuit?

A. Yes.

Q. When have those -- tell me, just sort of -- I don't want you to tell me what you've said, but just maybe how often you have communicated with him about the lawsuit and how you have communicated with each other. Has he called you, emailed you,

written you? Have you called him? How's it gone?

A. Through email and telephone.

Q. Okay. Other than the email and telephone communications, have you received any other written documents or anything from Mr. Thomas, from time to time, since you agreed to become a Plaintiff?

A. No.

Q. Have you received documents as attachments to emails from Mr. Thomas?

A. I don't know.

Q. Okay. Would you just explain to me, in your own words, what you believe are the claims that you've asserted against Hendrick Honda?

A. Yes. I understand that they have charged an illegal fee that was not in the original advertised sticker price on the car.

Q. Is there anything else about your understanding, about the nature of your claims against Hendrick Honda of Easley?

A. No.

Q. Do you understand how the fee might be illegal? Why do you contend that the fee that was charged is illegal?

A. Because it wasn't in the original

advertised price.
Q. And what is the fee?
A. The fee that was charged to me?
Q. Uh-huh.
A. $299.
Q. Do you know what it was called?
A. An administrative fee.
Q. Other than the fact that it wasn't disclosed on an advertised price, is that what you said?
MR. THOMAS: Objection to the form.
THE WITNESS: Yes.
BY MR. BECKER:
Q. Is there anything else about it that you contend is illegal?
A. To the best of my knowledge, it wasn't discussed during price negotiations. But other than that, no.
Q. As a result of what you claim Hendrick Honda of Easley did wrong, how have you been harmed?
A. Well, I was charged the fee without it being in the original advertised price. And I believe other customers were as well.
Q. Okay. Is there any other way that you

contend you have been harmed by what you contend Hendrick Honda did wrong?
A. No.
MR. BECKER: I may be through. Why don't we take a five-minute break and let me see if I'm through.
A. Okay.
Q. Oh, I do. Are you, do you have any knowledge of any kind, any personal knowledge, that Hendrick Honda employees may have acted in concert with employees of other dealerships to either decide to charge closing fees at their dealership or to increase the fees that they already charge?
A. Personal knowledge, no.
Q. Do you have any personal knowledge of any activity that may have been undertaken by any employee of Hendrick Honda of Easley to act in concert with other dealers in the state of South Carolina to mislead or deceive the public?
A. No.
Q. Do you have any personal knowledge of any activity or conduct that may have been engaged in by employees of Hendrick Honda of Easley in concert or combination with other dealerships in the state to violate the closing fee statute?

A. No, that's something I leave to Brady.
Q. Are you aware that there is a statute in the Code of South Carolina, the Code of Laws in South Carolina that allows automobile dealers to charge a closing fee?
A. No.
Q. Do you have any knowledge of what the requirements of that statute are?
A. No.
Q. Do you have any knowledge of what dealers must do in order to comply with that statute?
A. I don't know.
MR. BECKER: I don't have any other questions right now. Some of the other attorneys may, so let me let them go ahead.
EXAMINATION
BY MR. STUDEMEYER:
Q. Ms. Freeman, my name is Greg Studemeyer. I represent Dick Dyer & Associates, Inc. Are you familiar with Dick Dyer & Associates?
A. Yes.
Q. What do you know about Dick Dyer & Associates?
A. I just know it's a car dealership.

Q. Have you ever been to the Dick Dyer's place of business?
A. No.
Q. Have you ever bought a car from Dick Dyer?
A. No.
Q. Have you ever conducted any business with Dick Dyer?
A. No.
Q. Do you contend that Dick Dyer has harmed you in any way?
A. Well, I understand that they have charged the administrative fee, as Hendrick Honda has.
Q. But you've never conducted any business there?
A. No.
Q. So you don't contend that they have harmed you?
MR. THOMAS: Object to the form.
THE WITNESS: No.
BY MR. STUDEMEYER:
Q. Do you know what your duties and responsibilities are as a named Plaintiff in this case?

A. Yes.
Q. What are they?
A. Well, I'm representing customers that were also charged this fee.
Q. So what are your duties and responsibilities?
A. I don't know.
Q. Okay. What decisions, if any, have you been asked to make as a named Plaintiff in this case?
A. I don't know.
MR. STUDEMEYER: That's all the questions I have. Thank you.

EXAMINATION

BY MS. TEER:

Q. Ms. Freeman, I represent Toyota of Greenville. Have you ever done any business with Toyota of Greenville?
A. No.
Q. Have you ever been to Toyota of Greenville?
A. No.
Q. Have you or your husband ever bought a car from Toyota of Greenville?
A. No.

Q. Do you know of anything, personally, that Toyota of Greenville has done wrong, related to this case, of your own personal knowledge?
A. Yes. I understand that they have also charged this administrative fee without it being on the advertised price.
Q. And you have personal knowledge of that?
A. Just from observing the complaint.
Q. Do you have any personal knowledge that Toyota of Greenville acted in concert with any other dealership regarding the charging of these fees or anything related to the charging of these fees?
A. No.
Q. Do you have any knowledge of the practices and policies that Toyota of Greenville employs relating to the charging of any of these fees?
A. No.
MS. TEER: That's all I have.

EXAMINATION

BY MR. REIBOLD:

Q. My name is Rob Reibold. I represent Taylor Toyota in Aiken. Have you had any contact

whatsoever, of any kind, with any employee or agents of Taylor Toyota?
A. No.
Q. Has your husband?
A. No.
Q. Are you aware of any actions or evidence that would indicate Taylor Toyota has combined or cooperated with other dealers in the state of South Carolina in order to increase or charge closing or document fees?
MR. THOMAS: Object to the form. Go ahead.
THE WITNESS: No.

BY MR. REIBOLD:

Q. Now, you stated you're personal friends with Mr. Thomas?
A. Yes.
Q. And he's also close personal friends with your husband?
A. Yes.
Q. Because of your friendship and your relationship with Mr. Thomas, would you be more likely to do what he says than you would any other attorney in this case?
A. He is my personal attorney. I'm not

sure I understand what you're asking.
Q. Do you understand Mr. Thomas has other partners in his firm that are working on the case as well?
A. Yes.
Q. Because of your friendship with Mr. Thomas, would you be more likely to follow his personal advice than you would another attorney at his firm that's also working on the case?
MR. THOMAS: I'll object to the form. But I'll let you go ahead and answer it.
THE WITNESS: He's the only one I have spoken with about the case.

BY MR. REIBOLD:

Q. Does your friendship with Mr. Thomas make a difference on whether or not you will rely on his advice?
A. No.
MR. REIBOLD: No further questions.

EXAMINATION

BY MR. HAMM:

Q. Ms. Freeman, my name is Steve Hamm. And I represent Land Rover of Columbia in this matter. Are you aware that you were listed, originally, as a Plaintiff against Land Rover of

Columbia?
A. Yes.
Q. You are aware of that?
A. Yes.
Q. You are aware of that?
A. Against Land Rover?
Q. Yes.
A. As combined in the complaint?
Q. I just want to understand what you understand.
A. Yes.
Q. Have you ever -- do you know where Land Rover of Columbia is?
A. Yes.
Q. Where is it?
A. I believe off of -- you can see it from I-26, on Frontage Road. I'm not sure where that's called. Near the Irmo area.
Q. Have you ever done business with Land Rover of Columbia?
A. No.
Q. Have you ever actually gone on to the lot of Land Rover of Columbia?
A. No.
Q. Does that mean your only exposure to

Land Rover of Columbia is that you can visually see it as you're going down the interstate?
A. Yes.
Q. What are you aware of regarding the business practices of Land Rover of Columbia, if they charge a closing fee?
MR. THOMAS: Object to the form of the question.
THE WITNESS: From my understanding, they were also charging this administrative fee without it being advertised on the original price.
BY MR. HAMM:
Q. And help me understand how you have that understanding?
A. Just from seeing the complaint.
Q. So you agreed to be a Plaintiff in the lawsuit that included Land Rover of Columbia based on the fact that you knew where they were off of I-26?
MR. THOMAS: Object to the form.
THE WITNESS: Yes.
BY MR. HAMM:
Q. Yes? Do you, of your own personal knowledge, know of any fact that would allow you to testify in a trial that Land Rover of Columbia has

engaged in some illegal act?
MR. THOMAS: Object to the form. Go ahead and answer that.
THE WITNESS: I don't understand what you're asking.
BY MR. HAMM:
Q. I'll be happy to -- what fact will you testify to at a trial regarding any acts or practices of Land Rover of Columbia?
A. I believe that they were also charging the administrative fee.
Q. So the only fact that you know about Land Rover of Columbia is what you read in the pleadings?
A. Yes.
Q. Were you consulted in the drafting of those pleadings?
A. No.
Q. Are you aware that certain pleadings contain allegations that automobile dealers were engaged in a conspiracy?
A. Yes.
Q. What conspiracy were they engaging in?
A. I don't know.
Q. What do you know about the actions of

Land Rover regarding this claimed conspiracy?
A. I don't know.
Q. You don't know? Is there any other information, that you know, of your own personal knowledge, regarding the activities of Land Rover of Columbia?
A. No.
Q. I asked if you had ever been on the dealership lot and you indicated no.
A. Correct.
Q. What about your husband?
A. No, not to my knowledge.
Q. Okay. Anybody in your family ever purchased a vehicle from Land Rover of Columbia?
A. No.
MR. HAMM: I don't have anything further.
MR. BECKER: Brady, can I just do two -- a couple follow-ups before you --
MR. THOMAS: Yeah, that doesn't bother me at all.

EXAMINATION

BY MR. BECKER:
Q. Ms. Freeman, if there were going to be a trial of this case where you would have to appear

with other witnesses and give testimony in court, in front of a judge and a jury, would it be more convenient for you if that trial occurred in Greenville County or Aiken County?

A. Greenville County.

Q. If your husband were going to be a witness at that same trial, would it be more convenient for him if the trial occurred in Greenville county or Aiken County?

A. Greenville.

Q. If your father were going to be a witness at that trial, would it be more convenient for him if the trial were held in Greenville County or Aiken County?

A. Greenville.

Q. Do you -- if you were to win this lawsuit, what is your understanding of what you would get?

A. I would just like my $299 back, as well as the other customers.

Q. Okay. Is there anything else that you would expect to receive if you won this lawsuit?

A. No.

Q. Is there any additional payment that you might receive, as opposed to everybody else who

bought a car from Hendrick Honda of Easley if this lawsuit -- if you won this lawsuit?

A. I don't know.

Q. You don't know that, one way or the other?

A. Could you say it again?

Q. Yeah. If you won this lawsuit, would you get anything more or less than the other people who bought cars from Hendrick Honda of Easley?

A. No.

Q. You would expect to receive the same thing they got?

A. Yes.

Q. Okay. Would you expect to be compensated in any way for acting as the named Plaintiff to represent their interests?

A. No.

Q. Does Mr. Thomas represent you in any other matters besides this lawsuit?

A. No.

Q. Has he ever represented you in any other matters, besides this lawsuit?

A. No.

Q. Do you have another attorney?

A. No.

Q. Does your husband have another attorney?

A. No.

Q. Have you ever needed an attorney?

A. No.

Q. Do you and your husband have wills?

A. No.

Q. You don't have children?

A. Correct. We don't have children.

MR. BECKER: Thank you. That's all I have.

MR. THOMAS: Jim, I want to take a quick break.

MR. BECKER: Okay.

(A recess transpired.)

(DEF. EXH. 14, Double-sided document, Bates Stamp Hendrick Honda Easley 000022 and 000023 marked for identification.)

EXAMINATION

BY MR. THOMAS:

Q. Ms. Freeman, I'm going to ask you just a couple of quick questions. I'm going to -- we got some copies of this document Mr. Becker showed you earlier. I think that it had some writing that you had identified as some original handwriting on

it. Can you look at Exhibit 14. Is that the document that you were looking at earlier?

A. Yes.

Q. And what's that on the front side of that document?

A. On the front is where we were negotiating the price of the car.

Q. And where is the -- where, if any place, is the procurement fee or administrative fee shown on the front of that?

A. Not included in the price of the car.

Q. And what's on the back of the document?

A. Obviously my handwriting of something. I don't know what it was about.

Q. And the copy you saw earlier had your original handwriting on it; is that correct?

A. Yes.

(DEF. EXH. 15, Copy of photographs, Bates Stamp Hendrick Honda Easley 000889, marked for identification.)

BY MR. THOMAS:

Q. Let me show you one more document here. I'm going to hand you what we've marked as Exhibit 15. It's a document that says at the bottom, Honda certified used car window sticker

with pricing showing disclosure. What, if anything, does this -- have you ever seen anything like this before?

A. Yes.

Q. And when did you see something similar to this?

A. I think this is similar to what was on the car that I bought.

Q. And Mr. Becker asked you some questions. I think you testified that whatever was on your car was on one window; is that correct?

A. Yes, I just remember it being on one window.

MR. THOMAS: And I have got no further questions.

MR. BECKER: Okay. I don't have any further questions.

(The witness, after having been advised of her right to read and sign this transcript, waives that right.)

(The deposition was concluded at 1:30 p.m.)

CERTIFICATE OF REPORTER

I, Carolyn M. Beam Court Reporter, and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 10th day of July, 2009, at Lexington, Lexington County, South Carolina.

Carolyn M. Beam
Court Reporter
My Commission expires
October 24, 2016

I N D E X

WITNESS/EXAMINATION	Page
JULIE FREEMAN HAIR	4
EXAMINATION	4
BY MR. BECKER	
EXAMINATION	102
BY MR. STUDEMEYER	
EXAMINATION	104
BY MS. TEER	
EXAMINATION	105
BY MR. REIBOLD	
EXAMINATION	107
BY MR. HAMM	
EXAMINATION	111
BY MR. BECKER	
EXAMINATION	114
BY MR. THOMAS	
CERTIFICATE OF REPORTER	117

REQUESTED INFORMATION INDEX

(No Information Requested)

E X H I B I T S

	Page/Line
DEF. EXH. 1, Single-page document entitled Disclosure of Closing Fees Notice	40 25

DEF. EXH. 2, Single-page document entitled Notice, Closing Fees	41	3
DEF. EXH. 3, Two-page Buyers Guide, Bates Stamp Hendrick Honda Easley 000017 and 000018	38	6
DEF. EXH. 4, Two-page Sales Worksheet, Bates Stamp Hendrick Honda Easley 000014 and 000022	46	10
DEF. EXH. 5, Single-page document, Bates Stamp Hendrick Honda Easley 000023	64	25
DEF. EXH. 6, Hendrick Honda document, Bates Stamp Hendrick Honda Easley 000015	67	15
DEF. EXH. 7, Single-page document entitled Addendum Regarding Additional Terms and Conditions, Bates Stamp Hendrick Honda Easley 000020	72	18
DEF. EXH. 8, Single-page document entitled Affidavit & Notification of Sale of Motor Vehicle, Bates Stamp Hendrick Honda Easley 000025	73	4
DEF. EXH. 9, Single-page document entitled Affidavit of Notification of Sale of Motor Vehicle, Bates Stamp Hendrick Honda Easley 000016	74	3
DEF. EXH. 10, Single-page receipt entitled Hendrick Honda Easley 000011	75	2
DEF. EXH. 11, Single-page copy of South Carolina Driver's License of William Thomas Freeman, Bates Stamp Hendrick Honda Easley 000012	75	13
DEF. EXH. 12, Single-page copy of South Carolina Driver's License of Julie Valiska Freeman, Bates Stamp Hendrick Honda Easley 000013	75	22
DEF. EXH. 13, Single-page Hendrick Honda document, Bates Stamp P 000034	81	1

DEF. EXH. 14, Double-sided document, Bates Stamp Hendrick Honda Easley 000022 and 000023		114	16
DEF. EXH. 15, Copy of photographs, Bates Stamp Hendrick Honda Easley 000889		115	18

EXHIBIT S

MSRP	$ 18,995
EQUIPMENT	
TOTAL COST $	

SELLING PRICE	TRADE
$ ~~18,995~~ 17,975.00	$ 1200 NOT SEEN. PAYOFF EST 400.00
7/11/06 Good for 2 weeks if this car Available.	
CASH DOWN	PAYMENT W/ C
A) _____	A) 60 X 350.20
1500 Down	B) 60 X 315.02
500 Down	60 X 334.35
CASH ON DELIVERY	MONTHLY LEASE PAYMENT
$ 0 Down	$ 60 X 344.02

Providing all terms are agreeable, I will purchase this vehicle now.

866-513-9339
Betty
62802

R.000997

DEFENDANT'S EXHIBIT 4

White
2004 Accord LX
26,000 miles

17,975
344/mo

EXHIBIT T

BRAND SPANKIN' USED!

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FACTORY-BACKED LIMITED POWERTRAIN WARRANTY
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2001 SUZUKI GRAND VITARA LOADED, LEATHER, MOONROOF, STK#6308GA $7,995	1999 CHEV TAHOE LOADED, LOCAL TRADE, CLEAN, STK#4K4029A $8,488	2004 KIA SPECTRA 4DR ONLY 28K MILES, FACTORY WARRANTY, STK#6532P $8,995	2004 CHEV AVEO 4DR AUTO, AC, ONLY 15K MILES, LIKE NEW, STK#6380A $8,995	2004 CHEVY CAVALIER 4DR LOCAL TRADE, AUTO, AC, 26K MILES, STK#6537P $9,395
2001 ISUZU RODEO LS 4X4 EX CLEAN W/MOONROOF, LOW MILES, STK#6514A $10,995	2002 FORD EXPLORER 4DR ONE OWNER, EX CLEAN, STK#6158TA $10,995	2002 KIA SEDONA EX LOADED, LOCAL TRADE, FACTORY WARRANTY, STK#4K9019A $10,995	2004 SCION XA LOADED, AUTO, MUST SEE, STK#6510P $11,988	2005 DODGE NEON SXT AUTO, LOADED, ONLY 19K MILES, STK#6458P $11,995
2004 CHRYSLER CONCORDE LOW MILES, FACTORY WARRANTY, STK#6501P $11,995	2002 CHRYSLER TOWN & COUNTRY FULLY LOADED, EX MODEL, 47K MILES, STK#6481P $12,988	2003 CHRYSLER PT CRUISER LTD LEATHER, MOONROOF, CLEAN, STK#6540GP $12,995	2004 JEEP GRAND CHEROKEE SPECIAL EDITION, MOONROOF, STK#6711GA $14,388	2003 JEEP WRANGLER SPORT ONLY 35K MILES, LIKE NEW, STK#6713IA $14,988

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