



The South Carolina Court of Appeals

KENNETH A. RICHSTAD
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DEPUTY CLERK

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October 10, 2008

Steven W. Hamm, Esquire
C. Jo Anne Wessinger-Hill, Esquire
David A. Anderson, Esquire
Jocelyn T. Newman, Esquire
Richardson, Plowden
& Robinson, PA
P O Drawer 7788
Columbia, SC 29202

A. Camden Lewis, Esquire
Brady R. Thomas, Esquire
Lewis & Babcock, LLP
P.O. Box 11208
Columbia, SC 29211

Re: Herron, Heather v. Century BMW
Case Tracking #: 200884146

Dear Counsel:

This will acknowledge receipt of the Record on Appeal and all final briefs in the above mentioned matter; however, corrections will need to be made to the final briefs in order for them to be accepted as filed.

Counsel for the Appellant is requested to provide, within seven (7) days of the date of this letter:

1. An original Certificate of Counsel for the Appellant's Final Brief
2. An original Proof of Service for item #1
3. An original Certificate of Counsel for the Appellant's Final Reply Brief
4. An original Proof of Service for item

Counsel for the Respondent is requested to provide, within seven (7) days of the date of this letter, fifteen (15) appropriately sized, self-adhesive labels to add counsel's identifying

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
OCT 06 2008
SC Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable Doyet A. Early, III, Circuit Court Judge

Circuit Court Case No. 2006-CP-02-1230

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 who paid "administrative fees" as described below to Defendants, ... **Respondents,**

v.

Century BMW d/b/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., ... **Defendants,**

of whom Century BMW d/b/a Sonic Automotive is the **Appellant.**

APPELLANT'S MOTION AND MEMORANDUM FOR EXPEDITED REVIEW

On March 12, 2008, the Appellant Century BMW d/b/a Sonic Automotive, whose true name is Sonic Automotive 2752 Laurens Rd., Greenville, Inc. d/b/a Century BMW ("Century BMW") timely appealed the Order of the Honorable Doyet A. Early dated March 10, 2008, in which the circuit court denied Century BMW's Motion to Compel Arbitration of Plaintiff Christine Watts's claims and to dismiss those claims. Both the Appellant and the Respondent have filed their final briefs. Due to the statewide importance of the issues presented in this appeal, the importance of those issues to

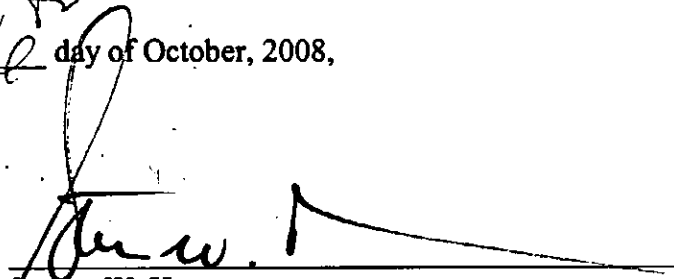
Century BMW, and Respondents' attempt to seek discovery and depositions from other co-defendant dealerships in this litigation, Century BMW respectfully requests expedited review of this appeal.

This Court's August 4, 2008 Order stayed "all aspects of the litigation except matters not affected by the appeal." Despite this clear directive, Respondents have moved before the circuit court to compel discovery from other co-defendants and to strike defendants' pleadings. Given Respondents' civil conspiracy claim, their attempt to strike the pleadings, and that they will seek to use any discovery against Century BMW, directly and/or indirectly, by seeking precedential rulings from the circuit court, Respondents' actions could impact Century BMW and this appeal, in direct violation of the Court's Order.

In an attempt to protect its rights and to prevent any prejudice from Respondents' actions, Century BMW filed a Motion to Stay discovery, motions and related matters before the Honorable Doyet A. Early, III, in accordance with this Court's August 4, 2008 Order and SCAR 225. The hearing on the Motion is scheduled for October 15, 2008. Nevertheless, Respondents' attempt to circumvent this Court's Order and this appeal, have created an urgent need to expedite review of this appeal and preclude any present or future prejudice to Century BMW.

WHEREFORE, Appellant moves the Court for an Order granting Appellant's request for an expedited review of its appeal and for the scheduling of oral argument in this appeal as soon as practical by the Court.

Respectfully submitted this 12 day of October, 2008,


Steven W. Hamm
C. Jo Anne Wessinger Hill
David A. Anderson
Jocelyn T. Newman
RICHARDSON PLOWDEN & ROBINSON, P.A.
P.O. Drawer 7788
Columbia, South Carolina 29202
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(803)779-0016 facsimile

Dennis M. Black (*pro hac vice admitted*)
Ryan L. VanGrack (*pro hac vice admitted*)
WILLIAMS & CONNOLLY LLP
725 Twelfth St., N.W.
Washington, DC 20005
(202) 434-5000
(202) 434-5029 (facsimile)

ATTORNEYS FOR APPELLANT CENTURY BMW, THE
TRUE NAME OF WHICH IS SONIC AUTOMOTIVE 2752
LAURENS RD., GREENVILLE, INC. D/B/A CENTURY
BMW


October 12, 2008
Columbia, South Carolina

Denied.


Jasper R. Curren, A.J.

November 10, 2008

FILED

11/16/08 

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable Doyet A. Early, III, Circuit Court Judge

Circuit Court Case No. 2006-CP-02-1230

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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 who paid "administrative fees" as described below to Defendants, ... **Respondents,**

v.

Century BMW d/b/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., ... **Defendants,**

of whom Century BMW d/b/a Sonic Automotive is the **Appellant.**

PROOF OF SERVICE

The undersigned employee of RICHARDSON PLOWDEN & ROBINSON, P.A., attorneys for Appellant, does hereby certify that service of the foregoing **APPELLANT'S MOTION AND MEMORANDUM FOR EXPEDITED REVIEW** in the above-captioned matter was made upon all counsel of record this 6th day of October 2008, by depositing a copy of same in the U.S. Mail, postage prepaid, addressed as follows:

VIA HAND DELIVERY

A. Camden Lewis, Esq.
Brady R. Thomas, Esq.
LEWIS & BABCOCK, LLP
P.O. Box 11208
Columbia, SC 29211

VIA U.S. MAIL

Richard A. Harpootlian, Esq.
RICHARD A. HARPOOTLIAN, P.A.
P.O. Box 1090
Columbia, SC 29202

VIA U.S. MAIL

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S. Brooke Chapman, Esquire
LEATHERWOOD WALKER TODD & MANN, P.C.
P.O. Box 87
Greenville, SC 29602-0087

VIA U.S. MAIL

Michael E. Spears, Esq.
MICHAEL E. SPEARS, P.A.
PO Box 5806
Spartanburg, SC 29304

VIA U.S. MAIL

Gedney M. Howe, III, Esq.
GEDNEY M. HOWE, III, PA
P.O. Box 1034
Charleston, SC 29402

VIA U.S. MAIL

J. Gregory Studemeyer, Esquire
1804 Bull Street
P.O. Box 12201
Columbia, SC 29211-2201

VIA U.S. MAIL

H. Clayton Walker, Jr., Esquire
Robert L. Reibold, Esquire
WALKER & REIBOLD, LLC
P.O. Box 61140
Columbia, SC 29260


Kathy J. Templeton

October 6, 2008
Columbia, South Carolina

Reply to: Columbia
jncuman@RichardsonPlowden.com
Direct: 803-253-8716

October 6, 2008

VIA HAND DELIVERY

The Hon. Kenneth A. Richstad,
Clerk – South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29211

Re: Herron et al Respondents v. Dick Dyer Et al,
of which Sonic Automotive, d/b/a Century BMW is Appellant
Appeal of Order in Circuit Court Case No. 2006-CP-01-1230
Our File No. 6665-001

Dear Mr. Richstad:

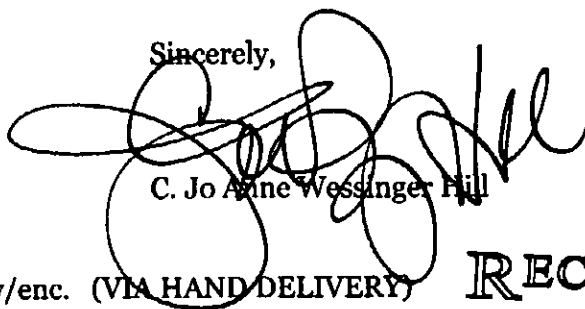
Enclosed please find the original and seven copies of Appellant's Motion and Memorandum for Expedited Review. Please file the original and six copies and return a clocked copy of the Motion to my courier.

By a copy hereof I am serving the same upon Respondents' counsel of record as indicated below.

If you should have any questions or concerns, please do not hesitate to contact this office.

With kindest regards, I am

Sincerely,



C. Jo Anne Wessinger Hill

JWH/kjt
Enclosures

Cc: A. Camden Lewis, Esq., w/enc. (VIA HAND DELIVERY)
Brady R. Thomas, Esq.
H. Clayton Walker, Jr., Esq., w/enc. (via mail)
James Y. Becker, Esq., w/enc. (via mail)
R. David Proffitt, Esq.
J. Gregory Studemeyer, Esq., w/enc. (via mail)
Gedney M. Howe, III, Esq.
Richard A. Harpootlian, Esq.
Michael Spears, Esq.
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S. Brooke Chapman Esq.

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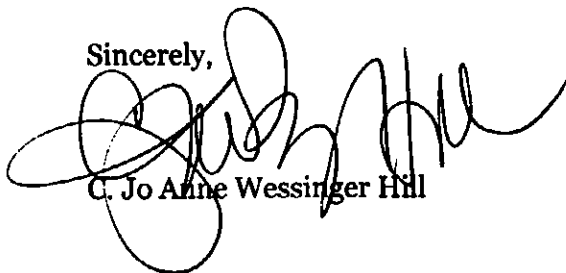
Enclosed please find the original unbound Appellant's Final Reply Brief, together with fourteen bound copies in this matter. Please file the original and return a clocked copy of this letter to my courier.

By a copy hereof I am serving the same upon Respondents' counsel of record as indicated below.

If you should have any questions or concerns, please do not hesitate to contact this office.

With kindest regards, I am

Sincerely,



C. Jo Anne Wessinger Hill

JWH/kjt
Enclosures

Cc: A. Camden Lewis, Esq., w/enc. (three copies) (VIA HAND DELIVERY)
Brady R. Thomas, Esq.
H. Clayton Walker, Jr., Esq., w/enc. (via mail)
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Direct: 803-253-8716

October 6, 2008

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SC Court of Appeals

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Clerk – South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29211

Re: Herron et al Respondents v. Dick Dyer Et al,
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Appeal of Order in Circuit Court Case No. 2006-CP-01-1230
Our File No. 6665-001

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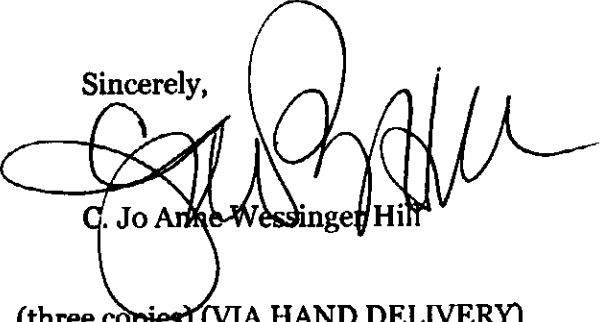
Enclosed please find the original unbound Final Brief of Appellant, together with fourteen bound copies in this matter. Please file the original and return a clocked copy of this letter to my courier.

By a copy hereof I am serving the same upon Respondents' counsel of record as indicated below.

If you should have any questions or concerns, please do not hesitate to contact this office.

With kindest regards, I am

Sincerely,



C. Jo Anne Wessinger Hill

JWH/kjt
Enclosures

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James T. Hewitt, Esq.
S. Brooke Chapman Esq.

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**A. CAMDEN LEWIS
KEITH M. BABCOCK
MARY G. LEWIS
ARIAIL E. KING
PETER D. PROTOPAPAS
BRADY R. THOMAS
W. JONATHAN HARLING**

**STREET ADDRESS:
1513 HAMPTON STREET
COLUMBIA, SOUTH CAROLINA 29201**

September 30, 2008

VIA HAND DELIVERY

The Honorable Kenneth A. Richstad
Clerk of Court
South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

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SEP 30 2008

SC Court of Appeals

RE: *Heather Herron, et al. v. Century BMW d/b/a Sonic Automotive, et al.*
C/A No.: 2006-CP-02-1230
Our file Number: 06-551

Dear Mr. Richstad:

Enclosed for filing is an original and fifteen copies of Respondents' Final Brief in the above-referenced matter, along with Certificate of Counsel and Proof of Service. An additional copy of each is enclosed to be clocked and returned to our office via our courier.

By copy of this letter, I am serving opposing counsel with copies of same.

With best regards, I remain

Sincerely,

LEWIS & BABCOCK, LLP



Brady R. Thomas

BRT:mas

Enclosures

cc: Michael E. Spears, Esquire
Richard A. Harpootlian, Esquire
Gedney M. Howe, III, Esquire
Steve Hamm, Esquire
C. Jo Anne Wessinger Hill, Esquire
James Y. Becker, Esquire
R. David Profitt, Esquire
Harvey G. Sanders, Jr., Esquire
H. Clayton Walker, Jr., Esquire
J. Gregory Studemeyer, Esquire

Reply to: Columbia
jneuman@RichardsonPlowden.com
Direct: 803-253-8716

September 15, 2008

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SC Court of Appeals

VIA HAND DELIVERY

The Hon. Kenneth A. Richstad,
Clerk – South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29211

Re: Herron et al Respondents v. Dick Dyer Et al,
of which Sonic Automotive, d/b/a Century BMW is Appellant
Appeal of Order in Circuit Court Case No. 2006-CP-01-1230
Our File No. 6665-001

Dear Mr. Richstad:

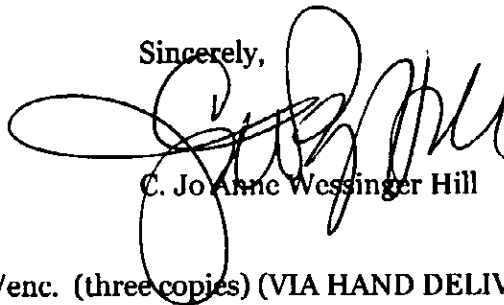
Enclosed please find the original unbound Record on Appeal, together with fourteen bound copies in this matter. Please file the original and return a clocked copy of this letter to my courier.

By a copy hereof I am serving the same upon Respondents head counsel of record as indicated below.

If you should have any questions or concerns, please do not hesitate to contact this office.

With kindest regards, I am

Sincerely,



C. Jo Anne Wessinger Hill

JWH/kjt
Enclosures

Cc: A. Camden Lewis, Esq., w/enc. (three copies) (VIA HAND DELIVERY)
Brady R. Thomas, Esq.
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S. Brooke Chapman Esq.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SEP 04 2008

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

SC Court of Appeals
ORIGINAL

The Honorable Doyet A. Early, III, Circuit Court Judge

Circuit Court Case No. 2006-CP-02-1230
Court of Appeals Docket No. 03-27371

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 who paid "administrative fees" as described below to Defendants, ... **Respondents,**

v.

Century BMW d/b/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., ... **Defendants,**

of whom Century BMW d/b/a Sonic Automotive is the **Appellant.**

CERTIFICATE OF SERVICE

The undersigned attorney of RICHARDSON PLOWDEN & ROBINSON, P.A., attorneys for Appellant, does hereby certify that service of the foregoing **APPELLANTS' INITIAL REPLY BRIEF** in the above-captioned matter was made upon all counsel of record this 15th day of August 2008, by depositing a copy of same in the U.S. Mail, postage prepaid, addressed as follows:

A. Camden Lewis, Esq.
Brady R. Thomas, Esq.
LEWIS & BABCOCK, LLP
P.O. Box 11208
Columbia, SC 29211

Michael E. Spears, Esq.
MICHAEL E. SPEARS, P.A.
PO Box 5806
Spartanburg, SC 29304

Richard A. Harpootlian, Esq.
RICHARD A. HARPOOTLIAN, P.A.
P.O. Box 1090
Columbia, SC 29202

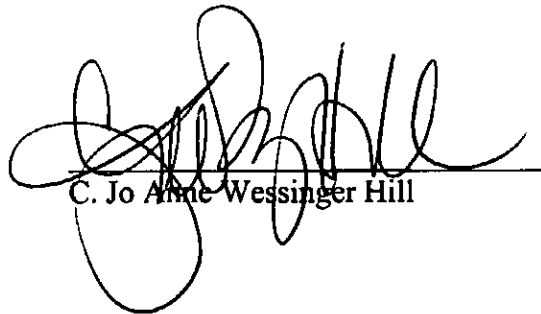
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S. Brooke Chapman, Esquire
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Columbia, SC 29211-2201

H. Clayton Walker, Jr., Esquire
Robert L. Reibold, Esquire
WALKER & REIBOLD, LLC
P.O. Box 61140
Columbia, SC 29260



C. Jo Anne Wessinger Hill

August 15, 2008

Reply to: Columbia
jnewman@RichardsonPlowden.com
Direct: 803-253-8716

September 4, 2008

VIA HAND DELIVERY

The Hon. Kenneth A. Richstad,
Clerk – South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29211

Re: Herron et al Respondents v. Dick Dyer Et al,
of which Sonic Automotive, d/b/a Century BMW is Appellant
Appeal of Order in Circuit Court Case No. 2006-CP-01-1230
Our File No. 6665-001

Dear Mr. Richstad:

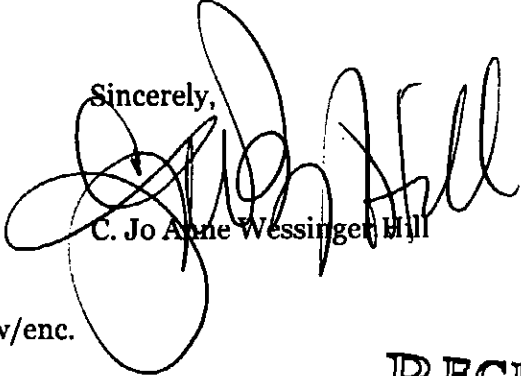
Enclosed please find the original and two copies of a replacement original Certificate of Service for the Appellants' Initial Reply Brief that was filed in this matter on August 15, 2008. Please file the original and return the clocked copies to my courier.

By a copy hereof I am serving the same upon all counsel of record as indicated below.

If you should have any questions or concerns, please do not hesitate to contact this office.

With kindest regards, I am

Sincerely,


C. Jo Anne Wessinger Hill

JWH/kjt
Enclosures

Cc: H. Clayton Walker, Jr., Esq., w/enc.
James Y. Becker, Esq., w/enc.
R. David Proffitt, Esq., w/enc.
J. Gregory Studemeyer, Esq., w/enc.
Godney M. Howe, III, w/enc.
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Michael E. Spears, Esq., w/enc.
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S. Brooke Chapman Esq., w/enc.

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SC Court of Appeals



The South Carolina Court of Appeals

KENNETH A. RICHSTAD
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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August 27, 2008

Steven W. Hamm, Esquire
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David A. Anderson, Esquire
Jocelyn T. Newman, Esquire
Richardson, Plowden
& Robinson, PA
P O Drawer 7788
Columbia, SC 29202

Re: Herron, Heather v. Century BMW

Dear Counsel:

We are in receipt of the Appellant's Initial Reply Brief in reference to the above appeal.

Please provide, within seven (7) days of the date of this letter, an original proof of service for the reply brief or the reply brief cannot be considered by this Court.

All parties are advised that we scan the originals of all records on appeal and final briefs filed with this court. Therefore, **DO NOT** staple, spiral bind, velobind, or otherwise permanently bind the **ORIGINALS** of these documents. The original brief(s) and record on appeal should still have front and back covers in compliance with Rule 238(e) of the South Carolina Appellate Court Rules, but should not be bound. You may secure the originals with paper clips, binder clips, rubber bands, by placing them in large envelopes, or by any other similar means that will keep the pages together without binding or hole-punching. All **COPIES** of the record on appeal and final briefs should be bound as specified in the South Carolina Appellate Court Rules.

Be further advised that your original final brief or record on appeal will not be accepted if it is bound or if the front and back covers are missing.

If you have any questions, please do not hesitate to contact this office.

Very truly yours,

V. Claire Allen, Deputy
CLERK

KAR/ec

cc: Dennis M. Black, Esquire
Ryan L. VanGrack
A. Camden Lewis, Esquire
Brady R. Thomas, Esquire
Gedney M. Howe, III, Esquire
Michael Eugene Spears, Esquire
Richard A. Harpootlian, Esquire

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable Doyet A. Early, III, Circuit Court Judge

Circuit Court Case No. 2006-CP-02-1230
Court of Appeals Docket No. 03-27371

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AUG 18 2008
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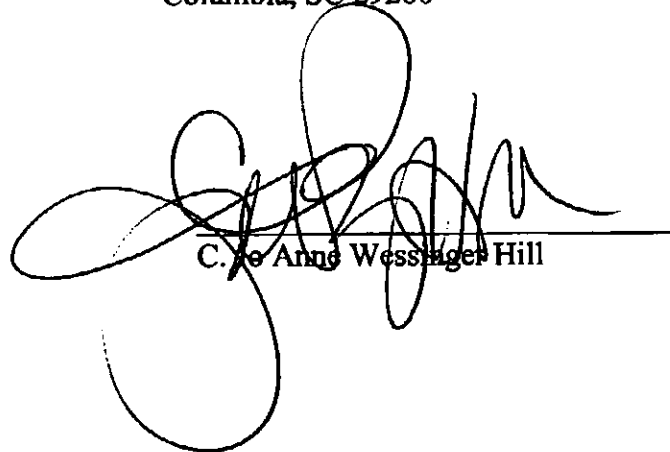
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WALKER & REIBOLD, LLC
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Columbia, SC 29260



C. Anne Wessinger Hill

August 15, 2008

August 15, 2008

VIA HAND DELIVERY

Clerk, South Carolina Court of Appeals
ATTN: Ms. Elizabeth Carter
1015 Sumter Street
P.O. Box 11629
Columbia, South Carolina 29201

RE: Herron et al Respondents v. Century BMW d/b/a Sonic Automotive Et al,
of whom Sonic Automotive, d/b/a Century BMW is Appellant (Herron v. Century
BMW)
Appeal of Order in Circuit Court Case No. 2006-CP-01-1230
Our File No. 6665-001

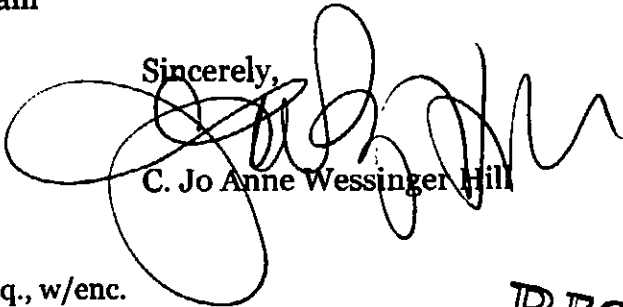
Dear Ms. Carter:

Please find enclosed the original and two copies of Appellant's Initial Reply Brief
in the above-referenced matter. Please file the original and return the two clocked
copies to my courier.

By copy of this letter I am serving the same on all attorneys of record.

With kindest regards, I am

Sincerely,


C. Jo Anne Wessinger Hill

JWH/kjt
Enclosure

Cc: H. Clayton Walker, Jr., Esq., w/enc.
James Y. Becker, Esq., w/enc.
R. David Proffitt, Esq., w/enc.
J. Gregory Studemeyer, Esq., w/enc.
Gedney M. Howe, III, w/enc.
Richard A. Harpootlian, Esq., w/enc.
Michael E. Spears, Esq., w/enc.
A. Camden Lewis, Esq., w/enc.
Brady R. Thomas, Esq., w/enc.
Harvey G. Sanders, Jr, Esq., w/enc.
James T. Hewitt, Esq., w/enc.
S. Brooke Chapman Esq., w/enc.

RECEIVED
AUG 15 2008
SC Court of Appeals



The South Carolina Court of Appeals

KENNETH A. RICHSTAD
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V. CLAIRE ALLEN
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1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE (803) 734-1890
FAX (803) 734-1839
www.sccourts.org

August 5, 2008

Dennis M. Black, Esquire
Ryan L. VanGrack
Williams & Connolly LLP
725 Twelfth Street, NW
Washington, DC 20005

Steven W. Hamm, Esquire
C. Jo Anne Wessinger-Hill, Esquire
David A. Anderson, Esquire
Jocelyn T. Newman, Esquire
Richardson, Plowden
& Robinson, PA
P O Drawer 7788
Columbia, SC 29202

Re: Herron, Heather v. Century BMW

Dear Counsel:

Enclosed is a copy of an Order of the Court regarding your Motions in the above case.

Please be advised that the Appellant's Initial Reply Brief must be served and filed no more than ten (10) days from the date of this letter.

Very truly yours,


CLERK

KAR/ec

cc: A. Camden Lewis, Esquire
Brady R. Thomas, Esquire
Gedney M. Howe, III, Esquire
Michael Eugene Spears, Esquire
Richard A. Harpootlian, Esquire

The South Carolina Court of Appeals

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

Respondents

v.

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

of whom Century BMW a/k/a Sonic
Automotive is the

Appellant

The Honorable Doyet A. Early, III
Aiken County
Trial Court Case No. 2006-CP-02-01230

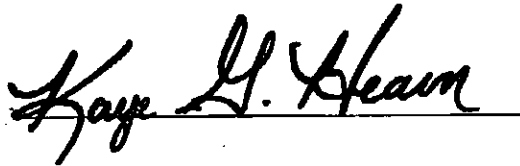
ORDER

Appellant Century BMW filed a motion to consolidate the above-captioned appeal with a joint appeal filed March 10, 2008. In the above-captioned appeal, Century BMW appeals from an order refusing to compel arbitration. In the March 10, 2008 appeal, Century BMW and several other car dealerships appeal from an order denying the dealerships' motion to dismiss. If

the court chooses not to consolidate the jointly filed appeal with the above-captioned appeal, Century BMW alternatively moves for this court to sever its appeal from the joint appeal, and consolidate that with the above-captioned appeal. Additionally, Century BMW requests the court entertain oral arguments on its motions.

After careful consideration, the motion for oral arguments and alternative motions to consolidate are denied. We note Century BMW's appeal from the order refusing to compel arbitration automatically stays all aspects of the litigation except "matters not affected by the appeal." See Rule 225, SCACR.

AND IT IS SO ORDERED.



Columbia, South Carolina

August 4, 2008

cc: Dennis M. Black, Esquire
Ryan L. VanGrack
Steven W. Hamm, Esquire
C. Jo Anne Wessinger-Hill, Esquire
David A. Anderson, Esquire
Jocelyn T. Newman, Esquire
A. Camden Lewis, Esquire
Brady R. Thomas, Esquire
Gedney M. Howe, III, Esquire
Michael Eugene Spears, Esquire
Richard A. Harpootlian, Esquire

FILED

8/5/08 dlp



The South Carolina Court of Appeals

KENNETH A. RICHISTAD
CLERK

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DEPUTY CLERK

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July 11, 2008

Steven W. Hamm, Esquire
C. Jo Anne Wessinger-Hill, Esquire
David A. Anderson, Esquire
Jocelyn T. Newman, Esquire
Richardson, Plowden
& Robinson, PA
P O Drawer 7788
Columbia, SC 29202

Re: Herron, Heather v. Century BMW

Dear Counsel:

This will acknowledge receipt of your "Notice of Motion and Motion for an Extension of Time to File and Serve Appellant's Reply Brief" in the above referenced matter.

We are herewith returning your original motion as the timelines for perfecting this appeal are currently held in abeyance.

Please find enclosed a copy of our letter to Thomas Timberlake, Office of Finance and Personnel, requesting that your filing fee [check no 23103 in the amount of twenty-five (\$25) dollars] be refunded to you at the address shown above.

Very truly yours,

A handwritten signature in black ink, appearing to read "Kenneth A. Richistad".
CLERK

KAR/ec

cc: Dennis M. Black, Esquire
Ryan L. VanGrack
A. Camden Lewis, Esquire
Brady R. Thomas, Esquire
Gedney M. Howe, III, Esquire
Michael Eugene Spears, Esquire
Richard A. Harpootlian, Esquire



The South Carolina Court of Appeals

KENNETH A. RICHSTAD
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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COLUMBIA, SOUTH CAROLINA 29201
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FAX: (803) 734-1839
www.sccourts.org

July 11, 2008

Thomas B. Timberlake
Div. of Finance and Personnel
1015 Sumter St., Suite 101
Columbia, S.C. 29201

Re: Herron, Heather v. Century BMW

We received Notice of Motion and Motion for an Extension of Time to File and Serve Appellant's Reply Brief in the above entitle appeal. Counsel for the appellant, Century BMW d/b/a Sonic Automotive, provided this office with a twenty-five dollar (\$25.00) filing fee in the form of a check (no. 23103), which was deposited on June 25, 2008. This motion is being returned to the appellant.

Please refund the \$25.00 filing fee to Richardson, Plowden & Robinson, P.A. at their mailing address furnished below.

**Richardson, Plowden
& Robinson, PA
P O Drawer 7788
Columbia, SC 29202**

Thank you for your assistance in this matter.

Very truly yours,


CLERK

KAR/ec

cc: Steven W. Hamm, Esquire
C. Jo Anne Wessinger-Hill, Esquire
David A. Anderson, Esquire
Jocelyn T. Newman, Esquire
Dennis M. Black, Esquire
Ryan L. VanGrack
A. Camden Lewis, Esquire
Brady R. Thomas, Esquire
Gedney M. Howe, III, Esquire
Michael Eugene Spears, Esquire
Richard A. Harpootlian, Esquire

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable Doyet A. Early, III, Circuit Court Judge

Circuit Court Case No. 2006-CP-02-1230

RECEIVED
JUL 10 2008
SC Court of Appeals

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 who paid "administrative fees" as described below to Defendants, ... **Respondents,**

v.

Century BMW d/b/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., ... **Defendants,**

of whom Century BMW d/b/a Sonic Automotive is the **Appellant.**

APPELLANTS' MOTION AND MEMORANDUM FOR ORAL ARGUMENT

On March 12, 2008, the Appellant (Century BMW) timely appealed the Order of the Honorable Doyet A. Early dated March 10, 2008, in which the circuit court ruled on Century BMW's Motion to Compel Arbitration of Plaintiff Christine Watts' claims and to dismiss those claims. Two days prior on March 10th, Century BMW jointly filed a Notice of Appeal with the other named defendants from the Orders of the Honorable Doyet A. Early, III filed on filed August 1, 2007, and February 5, 2008 (Joint Appeal). As stated in its notice for this appeal, Century BMW intended to move to consolidate these two appeals.

On May 12, 2008, Century BMW filed its Motion to Consolidate the two Herron Appeals or, in the alternative, to sever Century BMW's appeal from the Joint Appeal filed on March 10, 2008, and consolidate that with the instant appeal filed on March 12, 2008, from the Order of the Honorable Doyet A. Early, III, dated March 10, 2008, denying Appellant's Motion to Compel Arbitration of Plaintiff Christine Watts' claims and to dismiss those claims. The Respondent Christine Watts filed a Return on May 22, 2008 and Century BMW timely filed its Reply on June 9, 2008 in support of its motion and in accordance with the Order of the Court.

Due to the statewide importance of the issues presented and because of their importance to Century BMW and thousands of South Carolinians, whose procedural rights may be at risk¹, Century BMW respectfully requests oral argument to address its Motion to Consolidate Appeals or, in the alternative, to Sever Century BMW and Consolidate.² Rule 224(h) SCACR. *Kennedy v. S.C. Retirement Sys.*, 349 S.C. 531, 564 S.E.2d 322 (2001) (demonstrating that appellate court has discretion to hear oral argument on motions and petitions due to significance or complexity of particular issue); *Watts v. Metro Security Agency*, 346 S.C. 235, 237 n.1, 550 S.E.2d 869 n.1 (Ct. App. 2001) and *Blejski v. Blejski*, 325 S.C. 491, 493 n.1, 480 S.E.2d 462, 463 n.1 (Ct. App. 1997) (two of the many cases in which Court of Appeals has stated it has the discretion to hear

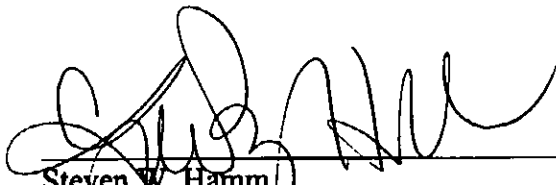
¹ See Brown v. Board of Education, 344 U.S. 141, 73 S.Ct. 124 (U.S. 1952). (...because of the national importance of the issues presented and because of its importance to the state of Kansas, the court requested that the state present its views at oral argument).

² See Appellant's supporting Memorandum filed on May 12, 2008 for this Motion, which is titled Memorandum in Support of Appellant's Motion to Join or Otherwise Include In pari Materia Issues Within the Appeal Filed on March 12, 2008 That are Related to Lower Court's Denial of the Appellant's Motion To Compel Arbitration, and also the Appellant's Reply in Support of Motion to Consolidate Appeals or, in the Alternative, to Sever Century BMW and Consolidate dated June 9, 2008 for further argument and discussion of the importance of issues and procedural rights at risk.

oral argument when it would aid the Court in resolving an issue on appeal); Rule 215, SCACR (granting discretion to appellate court to hear oral argument when necessary).

WHEREFORE, the Appellants move the Court for an Order granting the Appellants request for oral argument of Century BMW's Motion to Consolidate Appeals or, in the alternative, to Sever Century BMW and Consolidate.

Respectfully submitted this 8th day of July, 2008,



Steven W. Hamm
C. Jo Anne Wessinger Hill
David A. Anderson
Jocelyn T. Newman
RICHARDSON PLOWDEN & ROBINSON, P.A.
P.O. Drawer 7788
Columbia, South Carolina 29202
(803)771-4400

Dennis M. Black (*pro hac vice* admitted)
Ryan L. VanGrack (*pro hac vice* admitted)
WILLIAMS & CONNOLLY LLP
725 Twelfth St., N.W.
Washington, DC 20005
(202) 434-5000
(202) 434-5029 (facsimile)

ATTORNEYS FOR APPELLANT CENTURY BMW, THE TRUE
NAME OF WHICH IS SONIC AUTOMOTIVE 2752 LAURENS RD.,
GREENVILLE, INC. D/B/A CENTURY BMW

July 8, 2008
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable Doyet A. Early, III, Circuit Court Judge

Circuit Court Case No. 2006-CP-02-1230
Court of Appeals Docket No. 03-27371

RECEIVED
JUL 10 2008
SC Court of Appeals

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 who paid "administrative fees" as described below to Defendants, ... **Respondents,**

v.

Century BMW d/b/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., ... **Defendants,**

of whom Century BMW d/b/a Sonic Automotive is the **Appellant.**

CERTIFICATE OF SERVICE

The undersigned attorney of RICHARDSON PLOWDEN & ROBINSON, P.A., attorneys for Appellant, does hereby certify that service of the foregoing **APPELLANTS' MOTION AND MEMORANDUM FOR ORAL ARGUMENT** in the above-captioned matter was made upon all counsel of record this 8th day of Julyne 2008, by depositing a copy of same in the U.S. Mail, postage prepaid, addressed as follows:

A. Camden Lewis, Esq.
Brady R. Thomas, Esq.
LEWIS & BABCOCK, LLP
P.O. Box 11208
Columbia, SC 29211

Michael E. Spears, Esq.
MICHAEL E. SPEARS, P.A.
PO Box 5806
Spartanburg, SC 29304

Richard A. Harpootlian, Esq.
RICHARD A. HARPOOTLIAN, P.A.
P.O. Box 1090
Columbia, SC 29202

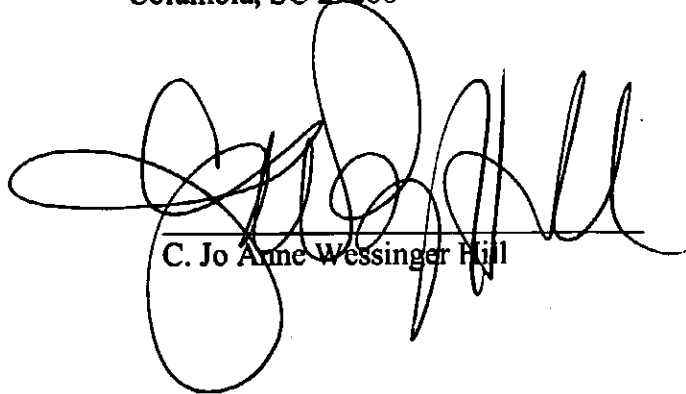
Gedney M. Howe, III, Esq.
GEDNEY M. HOWE, III, PA
P.O. Box 1034
Charleston, SC 29402

James Y. Becker, Esquire
R. David Proffitt, Esquire
HAYNESWORTH SINKLER BOYD, PA
1201 Main Street, 22nd Floor (29201-3226)
P.O. Box 11889
Columbia, S.C. 29211-1889

J. Gregory Studemeyer, Esquire
1804 Bull Street
P.O. Box 12201
Columbia, SC 29211-2201

Harvey G. Sanders, Jr., Esquire
James T. Hewitt, Esquire
S. Brooke Chapman, Esquire
LEATHERWOOD WALKER TODD & MANN, P.C.
P.O. Box 87
Greenville, SC 29602-0087

H. Clayton Walker, Jr., Esquire
Robert L. Reibold, Esquire
WALKER & REIBOLD, LLC
P.O. Box 61140
Columbia, SC 29260



C. Jo Anne Wessinger Hill

July 8, 2008

Reply to: Columbia
jhill@RichardsonPlowden.com
Direct: 803-576-3714

July 8, 2008

The Honorable Kenneth A. Richstad
Clerk
South Carolina Court of Appeals
Attention: Elizabeth Carter, Office of the Clerk
P.O. Box 11629
Columbia, SC 29211

Re: Herron et al Respondents v. Century BMW
of which Sonic Automotive, d/b/a Century BMW is Appellant
Appeal of Order in Circuit Court Case No. 2006-CP-01-1230
Our File No. 6665-001

Dear Ms. Carter:

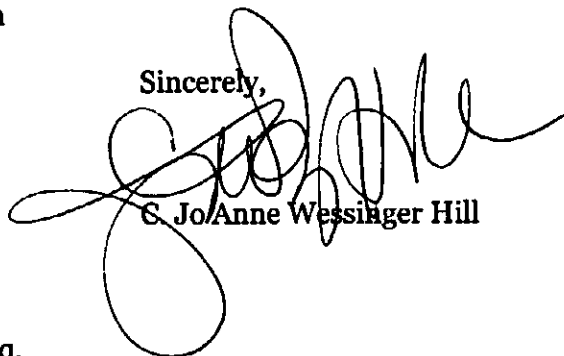
Please find enclosed the original and seven (7) copies of **Appellants' Motion and Memorandum for Oral Argument** in the above-referenced matter. Also enclosed is our company check in the amount of \$25.00 for the Motion fee. Please return a clocked copy in the envelope provided.

A copy is being served on the parties listed below.

If you should have any questions or concerns, please do not hesitate to contact this office.

With kindest regards, I am

Sincerely,



S. JoAnne Wessinger Hill

RECEIVED

JUL 10 2008

SC Court of Appeals

CJWH/kjt
Enclosures

Cc: H. Clayton Walker, Jr., Esq.
James Y. Becker, Esq.
R. David Proffitt, Esq.
J. Gregory Studemeyer, Esq.
Gedney M. Howe, III, Esq.
Richard A. Harpootlian, Esq.
Michael E. Spears, Esq.
A. Camden Lewis, Esq.
Brady R. Thomas, Esq.
Harvey G. Sanders, Jr, Esq.
James T. Hewitt, Esq.
S. Brooke Chapman Esq.



June 19, 2008

VIA HAND DELIVERY

South Carolina Court of Appeals
Attention: Elizabeth Carter, Office of the Clerk
1015 Sumter Street
Columbia, SC 29211

RECEIVED

JUN 19 2008

SC Court of Appeals
OK 23103 \$25

Re: Herron et al Respondents v. Century BMW
of which Sonic Automotive, d/b/a Century BMW is Appellant
Appeal of Order in Circuit Court Case No. 2006-CP-01-1230
Our File No. 6665-001

Dear Ms. Carter:

Please find enclosed the original and seven (7) copies of a **Notice of Motion and Motion for an Extension of Time to File and Serve Appellant's Reply Brief** in the above-referenced matter. Also enclosed is our company check in the amount of \$25.00 for the Motion fee.

A copy is being served on the parties listed below.

If you should have any questions or concerns, please do not hesitate to contact this office.

With kindest regards, I am

Sincerely,



Jocelyn T. Newman

JTN/kjt
Enclosures

Cc: H. Clayton Walker, Jr., Esq.
James Y. Becker, Esq.
R. David Proffitt, Esq.
J. Gregory Studemeyer, Esq.
Gedney M. Howe, III, Esq.
Richard A. Harpootlian, Esq.
Michael E. Spears, Esq.
A. Camden Lewis, Esq.
Brady R. Thomas, Esq.
Harvey G. Sanders, Jr, Esq.
James T. Hewitt, Esq.
S. Brooke Chapman Esq.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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JUN 19 2008

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

SC Court of Appeals

The Honorable Doyet A. Early, III, Circuit Court Judge

Circuit Court Case No. 2006-CP-02-1230

COPY

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 who paid "administrative fees" as described below to Defendants, ... Respondents,

v.

Century BMW d/b/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., ... Defendants

of whom Century BMW d/b/a Sonic Automotive is the Appellant.

**NOTICE OF MOTION AND MOTION FOR EXTENSION OF TIME FOR THE
APPELLANT TO FILE AND SERVE APPELLANT'S INITIAL REPLY BRIEF
AND APPELLANT'S REPLY DESIGNATION OF MATTER TO BE INCLUDED
IN THE RECORD ON APPEAL**

Pursuant to Rule 234(b), SCACR, the Appellant, Sonic Automotive d/b/a Century BMW, whose true name is Sonic Automotive 2752 Laurens Rd., Greenville, Inc. d/b/a Century BMW ("Century BMW"), by and through their counsel, moves before this Honorable Court for an Order extending the time and deadlines prescribed by Rules 208(a)(3) and 209, SCACR and computed by Rule 234, SCACR for the Appellant to file and serve its Initial Reply Brief which is currently due on Monday, June 23, 2008.

The Appellant timely appealed the Order of the Honorable Doyet A. Early dated March 10, 2008 in which the circuit court ruled on the Appellant's Motion to Compel Arbitration.

On May 12, 2008, the Appellant simultaneously filed the Initial Brief of Appellant and Designation of Matter to be Included in the Record on Appeal, together with the Motions to Consolidate Appeals or, in the Alternative, to sever Century BMW and Consolidate and related brief/memorandum and addendum to the Designation of Matter to be Included in the Record on Appeal.

On June 11, 2008, the Respondents filed its Initial Respondent's Brief Return and its Designation of Matter to be Included in the Record on Appeal.

The Appellant respectfully moves this Court to grant a 20-day extension of time, or until Monday, July 14, 2008, to serve and file the Appellant's Initial Reply Brief and any Reply Designation of Matter to be Included in the Record on Appeal.

Counsel for the Appellant makes this request due to a heavy workload which has included preparing various documents in other cases or matters, other hearings and court proceedings, and responding to various discovery requests in other complex cases. Counsel's Motion is not filed for the purpose of undue delay but in the interest of promoting justice and presenting meaningful arguments to the Court.

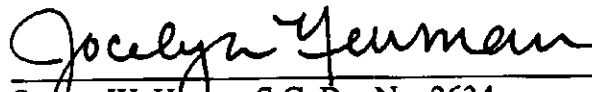
Prior to the filing of this motion, Counsel for the Respondents was contacted regarding this request; however, no response has been received from the Respondents. Counsel for the Appellants cannot currently anticipate any basis for an objection from Counsel for the Respondents to this request.

Accordingly, the Appellant respectfully requests a 20-day extension of time in which to file and serve the Appellant's Initial Reply Brief and any Reply Designation of Matter to be Included in the Record on Appeal by the Appellant. It is further requested that the Clerk hold in abeyance the time upon which the Appellant is to file and serve any and all documents and matters required by or pursuant to Rules 208(a)(3) and 209, SCACR, until five (5) days following a ruling on this request for extension of time if such request is denied.

WHEREFORE, Counsel for the Appellants pray that this Court issue an Order extending the time limits set forth in Rules 208(a)(3), 209 and 234, SCACR, as set forth above.

Respectfully submitted,

June 19, 2008



Steven W. Hamm, S.C. Bar No. 2634
C. Jo Anne Wessinger Hill, S.C. Bar No. 15025
David A. Anderson, S.C. Bar No. 11550
Jocelyn T. Newman, S.C. Bar No. 73119
RICHARDSON PLOWDEN & ROBINSON, P.A.
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Email: shamm@richardsonplowden.com
jhill@richardsonplowden.com
danderson@richardsonplowden.com
jnewman@richardsonplowden.com

ATTORNEYS FOR APPELLANT CENTURY BMW D/B/A
SONIC AUTOMOTIVE, WHOSE TRUE NAME IS SONIC
AUTOMOTIVE 2752 LAURENS RD., GREENVILLE, INC.
D/B/A CENTURY BMW

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

JUN 19 2008

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

SC Court of Appeals

The Honorable Doyet A. Early, III, Circuit Court Judge

Circuit Court Case No. 2006-CP-02-1230
Court of Appeals Docket No. 03-27371

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 who paid "administrative fees" as described below to Defendants, ... **Respondents,**

v.

Century BMW d/b/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., ... **Defendants,**

of whom Century BMW d/b/a Sonic Automotive is the **Appellant.**

CERTIFICATE OF SERVICE

The undersigned employee of RICHARDSON PLOWDEN & ROBINSON, P.A., attorneys for Appellant, does hereby certify that service of the **Notice of Motion and Motion for Extension of Time for the Appellant to file and Serve Appellant's Initial Reply Brief and Appellant's Reply Designation of Matter to be Included in the Record on Appeal** in the above-captioned matter was made upon all counsel of record this 19th day of June 2008, by depositing a copy of same in the U.S. Mail, postage prepaid, addressed as follows:

A. Camden Lewis, Esq.
Brady R. Thomas, Esq.
LEWIS & BABCOCK, LLP

Michael E. Spears, Esq.
MICHAEL E. SPEARS, P.A.
PO Box 5806

P.O. Box 11208
Columbia, SC 29211

Richard A. Harpootlian, Esq.
RICHARD A. HARPOOTLIAN, P.A.
P.O. Box 1090
Columbia, SC 29202

James Y. Becker, Esquire
R. David Proffitt, Esquire
HAYNESWORTH SINKLER BOYD, PA
1201 Main Street, 22nd Floor (29201-3226)
P.O. Box 11889
Columbia, S.C. 29211-1889

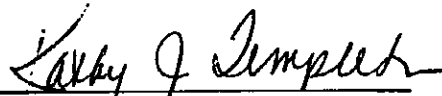
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James T. Hewitt, Esquire
S. Brooke Chapman, Esquire
LEATHERWOOD WALKER TODD & MANN, P.C.
P.O. Box 87
Greenville, SC 29602-0087

Spartanburg, SC 29304

Gedney M. Howe, III, Esq.
GEDNEY M. HOWE, III, PA
P.O. Box 1034
Charleston, SC 29402

J. Gregory Studemeyer, Esquire
1804 Bull Street
P.O. Box 12201
Columbia, SC 29211-2201

H. Clayton Walker, Jr., Esquire
Robert L. Reibold, Esquire
WALKER & REIBOLD, LLC
P.O. Box 61140
Columbia, SC 29260


Kathy J. Templeton



The South Carolina Court of Appeals

KENNETH A. RICHSTAD
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
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1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE (803) 734-1890
FAX (803) 734-1839
www.sccourts.org

June 19, 2008

A. Camden Lewis, Esquire
Brady R. Thomas, Esquire
Lewis & Babcock, LLP
P.O. Box 11208
Columbia, SC 29211

Re: Herron, Heather v. Century BMW

Dear Counsel:

This will acknowledge receipt of the Respondent's Initial Brief and Designation of Matter in the above mentioned matter.

All parties are advised that the timelines for perfecting this appeal are held in abeyance pending the Court's decision on a Motion to Consolidate that was received in this Court on May 16, 2008.

No other filings will be necessary until notified, in writing, by this Court.

Very truly yours,

V. Claire Allen /dhp
DEPUTY CLERK

VCA/ec

cc: Dennis M. Black, Esquire
Ryan L. VanGrack
Steven W. Hamm, Esquire
C. Jo Anne Wessinger-Hill, Esquire
David A. Anderson, Esquire
Jocelyn T. Newman, Esquire
Gedney M. Howe, III, Esquire
Michael Eugene Spears, Esquire
Richard A. Harpootlian, Esquire

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

JUN 11 2008

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

SC Court of Appeals

The Honorable Doyet A. Early, Circuit Court Judge

Circuit Court Case No.: 2006-CP-02-1230

Court of Appeals Docket No.: 03-27371

Heather Herron, Natalie Armstrong, Michael Ritz, Julie Freeman, Christine Watts, Michael Blease and Michael Watts, individually and for the benefit of all car buyers whom paid "administrative fees" as described below to Defendants, ... Respondents,

v.

Century BMW d/b/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, Inc.; and Toyota of Greenville, Inc., ... Defendants,

of whom Century BMW d/b/a Sonic Automotive is the Appellant.

**RESPONDENTS' DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Respondents propose the following to be included in the Record on Appeal:

1. Complaint.
2. First Amended Complaint.
3. Status Conference Presentation Handout.
4. Order on Plaintiffs' Rule 41(a) Motion to Voluntarily Dismiss Certain Defendants and Defendants' Rule 59(e) Motion to Reconsider the Denial of their Motions to Dismiss on

Certain Grounds.

5. Notice of Motion and Motion of Defendant Century BMW, whose true name is Sonic Automotive 2752 Laurens Rd., Greenville, Inc. d/b/a Century BMW to dismiss the amended complaint and this action, for change of venue to sever, to strike, to compel arbitration, for a protective order, and for costs and fees, dated December 29, 2006.
6. Plaintiff's Memorandum in Opposition to Motions to Dismiss, dated March 9, 2007.
7. Reply Memorandum in Support of Defendant Century BMW's Motion to Compel Arbitration, dated March 26, 2007.
8. Plaintiff Christine Watts's Supplemental Memorandum in Opposition to Century BMW's Motion to Compel Arbitration (with exhibits), dated November 28, 2007.
9. Supplemental Memorandum in Support of Defendant Century BMW's Motion to Compel Arbitration, dated November 27, 2007.
10. Plaintiff Christine Watts's Second Supplemental Memorandum in Opposition to Century BMW's Motion to Compel Arbitration (with exhibits), dated February 18, 2008.
11. Second Supplemental Memorandum in Support of Defendant Century BMW's Motion to Compel Arbitration, dated February 18, 2008.
12. Plaintiff Christine Watts's Reply to Second Supplemental Memorandum in Support of Defendant Century BMW's Motion to Compel Arbitration (with exhibits), dated February 22, 2008.
13. Second Reply Memorandum in Support of Defendant Century BMW's Motion to Compel Arbitration, dated February 22, 2008.
14. Order Denying Motion to Compel Arbitration, dated March 10, 2008.
15. Deposition Transcript of Michael Watts Deposition, dated January 29, 2008.
16. Deposition Transcript of Christine Watts Deposition, dated January 29, 2008.
17. Deposition Transcript of John Robert Bishop, dated January 30, 2008.
18. Affidavit of Christine Watts, dated April 3, 2007.

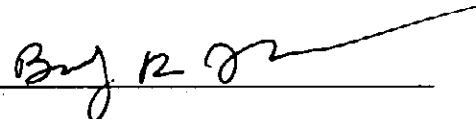
I certify that this designation contains no matter which is irrelevant to this appeal.

MICHAEL SPEARS, PA
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By: 

Attorneys for the Respondents

Columbia, South Carolina

June 11, 2008

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PETER D. PROTOPAPAS
BRADY R. THOMAS
W. JONATHAN HARLING

STREET ADDRESS:
1513 HAMPTON STREET
COLUMBIA, SOUTH CAROLINA 29201

June 11, 2008

VIA HAND DELIVERY

The Honorable Kenneth A. Richstad
Clerk of Court
South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

RECEIVED

JUN 11 2008

SC Court of Appeals

RE: *Heather Herron, et al. v. Century BMW, et al.*
C/A No.: 2006-CP-02-1230
Our file Number: 06-551

Dear Mr. Richstad:

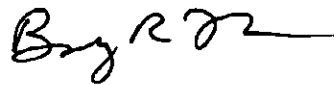
Enclosed for filing please the original and two (2) copies each of Respondents' Initial Brief, Respondents' Designation of Matter to be Included in the Record on Appeal, and Proof of Service. Please file the originals and return the additional clocked-copies via our courier.

By copy of this letter, I am serving opposing counsel with copies of same.

If there are questions or concerns, please do not hesitate to contact me.

Sincerely,

LEWIS & BABCOCK, LLP



Brady R. Thomas

BRT:mas

Enclosures

cc: Michael E. Spears, Esquire
Richard A. Harpootlian, Esquire
Gedney M. Howe, III, Esquire
Steve Hamm, Esquire
C. Jo Anne Wessinger Hill, Esquire
James Y. Becker, Esquire
R. David Profitt, Esquire
Harvey G. Sanders, Jr., Esquire

H. Clayton Walker, Jr., Esquire
J. Gregory Studemeyer, Esquire

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable Doyet A. Early, Circuit Court Judge

Circuit Court Case No.: 2006-CP-02-1230

Court of Appeals Docket No.: 03-27371

Heather Herron, Natalie Armstrong, Michael Ritz, Julie Freeman, Christine Watts, Michael Blease and Michael Watts, individually and for the benefit of all car buyers whom paid "administrative fees" as described below to Defendants, ... Respondents,

v.

Century BMW d/b/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, Inc.; and Toyota of Greenville, Inc., ... Defendants,

of whom Century BMW d/b/a Sonic Automotive is the Appellant.

CERTIFICATE OF COUNSEL

The undersigned certified that this Designation of Matter To Be Included In The Record On Appeal complies with Rule 209 (b) SCACR.

June 11, 2008

RECEIVED

JUN 11 2008

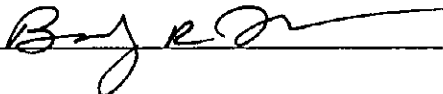
SC Court of Appeals

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By: 

Attorneys for the Respondents

Columbia, South Carolina

June 11, 2008

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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JUN 11 2008

SC Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable Doyet A. Early, Circuit Court Judge

Circuit Court Case No.: 2006-CP-02-1230

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of whom Century BMW d/b/a Sonic Automotive is the Appellant.

CERTIFICATE OF SERVICE

I, Margarita Sosa, secretary to the law firm of Lewis & Babcock, L.L.P., attorneys for the Respondents, do hereby certify that I have served counsel specified below in this action with copies of the pleading specified below by mailing a copy thereof by United States Mail, postage prepaid, on June 11, 2008 to the following addresses:

Pleadings:

1. Respondents' Initial Brief
2. Respondents' Designation of Matter to Be Included in Record on Appeal
3. Certificate of Counsel

Counsel Served:

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Columbia, South Carolina

June 11, 2008

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Steve W. Hamm
C. Jo Anne Wessinger Hill
Richardson, Plowden & Robinson, P.A.
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Margarita Sosa

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

JUN 09 2008

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

SC Court of Appeals

The Honorable Doyet A. Early, III, Circuit Court Judge

Circuit Court Case No. 2006-CP-02-1230

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 who paid "administrative fees" as described below to Defendants, ... **Respondents,**

v.

Century BMW d/b/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., ... **Defendants,**

of whom Century BMW d/b/a Sonic Automotive is the **Appellant.**

**REPLY IN SUPPORT OF MOTION TO CONSOLIDATE APPEALS OR, IN THE
ALTERNATIVE, TO SEVER CENTURY BMW AND CONSOLIDATE**

Century BMW's Motion to Consolidate seeks to combine the appeals of two pre-trial motions, argued the same day, in the same matter. By combining and ruling on the appeals, the Court will avoid the unnecessary litigation that would otherwise result from the trial court's unprecedented decision that would eviscerate the requirements of Rule 23, SCRCP. Therefore, consistent with South Carolina precedent, the Court should grant Century BMW's motion.

I. Century BMW's Motion Combines Two Related Appeals.

The appeals, which seek review of two pre-trial orders in the same case, should be heard together. The two relevant motions (to reconsider and to compel arbitration) were argued on the same day and are related. A central tenet of the trial court's denial of the Motion to Compel Arbitration was that the ability to bring a collective action under section 56-15-110(2) was a substantive and significant right that would not be vindicated in arbitration. *See Or. Denying Mot. to Compel Arb.* at 9-10. The joint appeal of the order regarding the Motions to Reconsider ("Joint Appeal") seeks review, *inter alia*, of whether section 56-15-110(2) is a substantial and substantive right, separate and apart from Rule 23, SCRPC. Thus, a ruling on the Joint Appeal will significantly influence Century BMW's appeal of the order denying its Motion to Compel Arbitration ("Arbitration Appeal").¹

The two appeals were filed separately because of the discrepancy in the filing dates of the two orders. Although the trial court heard argument on both motions on the same day, it permitted additional discovery on the Motion to Compel Arbitration, which delayed the court's ruling on that motion. The court filed its order regarding the Motions to Reconsider on February 5, 2008. In it, the court addressed the then-pending Motion to Compel Arbitration, noting that

¹ The Joint Appeal from the Motion to Reconsider is immediately appealable due to the extraordinary and unusual circumstances in this matter, as the trial court's order affects substantial rights and involves the merits of the case. South Carolina Code §14-3-330(1) & (2); *see* Appellants' Response to Respondents' Motion to Dismiss (forthcoming June 2008). Specifically, the circuit court's ruling regarding Rule 23, SCRPC, which enables Respondents to evade well-established procedural rules, affects the mode of trial and finally determines a substantial matter. *See Salmonsens v. CGD, Inc.*, --- S.E.2d ---, 2007 WL 5130443, No. 26475 (S.C. Apr. 28, 2008); *Hagood v. Sommerville*, 362 S.C. 191, 607 S.E.2d 707 (2005) (The Court held that there are circumstances when a right is so important and crucial that it constitutes a "substantial right" under § 14-3-330(2), that it is immediately appealable and, in fact, must be immediately appealed). Even if deemed interlocutory, however, the Joint Appeal is reviewable because an appealable issue—the Motion to Compel Arbitration—is already before the Court. *See* Section II.

the trial court had “allowed [the] parties more time to conduct additional discovery” on arbitration and that “no ruling ha[d] been issued on the arbitration motion.” Or. Denying Mot. to Reconsider at 14, 15. It then filed its order denying the Motion to Compel Arbitration on March 10, 2008: the same day as the deadline for the Notice of Appeal on the Motion to Reconsider. Accordingly, Defendants filed their Joint Appeal on the same day the trial court filed its order denying arbitration. Century BMW filed the Arbitration Appeal two days later, explaining that it intended to move to consolidate the two appeals.

II. The Court Will Avoid Unnecessary Litigation By Consolidating the Two Appeals.

Respondents concede that an appealable order is before the Court (the Arbitration Appeal) and do not dispute that the Joint Appeal is related to, and could impact the Arbitration Appeal. Respondents, however, oppose consolidation based on their contention that the Joint Appeal will not “avoid unnecessary litigation” because it could lead to multiple cases. *See* Resps.’ Return to Motion to Consolidate at 5-6.

This Court may review an interlocutory order when an appealable order is already before it and a ruling on the interlocutory order will avoid unnecessary litigation. *See, e.g., Ferguson v. Charleston Lincoln Mercury*, 344 S.C. 502, 544 S.E.2d 285 (Ct. App. 2001) (“we may review an interlocutory order when, as now, it contains other appealable issues”); *Cox v. Woodmen of the World Insur. Co.*, 347 S.C. 460, 556 S.E.2d 397 (Ct. App. 2001) (“an order that is not directly appealable will be considered if there is an appealable issue before the court”); *Hite v. Thomas & Howard Co. of Florence, Inc.*, 305 S.C. 358, 409 S.E.2d 340 (1991). Respondents’ opposition to consolidation is based on a flawed interpretation of this precedent. Respondents erroneously equate “unnecessary litigation” with more litigation, arguing that if the motions to dismiss for improper venue and joinder are granted, Respondents could re-file cases in various counties across the state. Thus, Respondents in effect are arguing that this Court should turn a blind eye

to improper venue and joinder if proceeding in violation of the law would somehow be more “efficient” in the short term. This Court has never countenanced such an unjust result.

The *Ferguson* Rule is clearly directed at avoiding *unnecessary* litigation. Otherwise, any appeal of an interlocutory order that could expand the number of lawsuits (e.g., motions to sever, motions to dismiss improperly joined parties, or motions opposing class certification) could never be reviewed even when accompanying an appealable order. Respondents provide no case law or other support justifying such a strained interpretation. Here, it would be improvident to hear the Arbitration Appeal without resolving the issues in the Joint Appeal because the resolution of the latter could affect the resolution of the former.

Even under Respondents’ incorrect interpretation of the law, the Court should consolidate the two appeals. The Joint Appeal seeks review of an order denying Defendants’ motions to dismiss, including a Rule 12(b)(6) dismissal of Respondents’ primary causes of action: the section 56-15-110(2) claim and the civil conspiracy claim. Eliminating these principal causes of action, which include all of Respondents’ claims for damages, would assuredly *avoid* the lion’s share of litigation in this matter.

Moreover, consolidating the appeals is consistent with South Carolina precedent. This Court has previously reviewed interlocutory appeals of orders denying motions to dismiss that were ancillary to appealable issues because ruling on the motions avoided unnecessary litigation with all of its attendant costs. In *Hite*, the South Carolina Supreme Court reviewed the denial of a motion to dismiss pursuant to Rule 12(b)(6) (including a motion to dismiss a civil conspiracy claim), in part, because there was an appealable issue before the Court and a ruling on the motion to dismiss avoided unnecessary litigation. 305 S.C. at 361, 409 S.E.2d at 341. Similarly, in *Cox*, this Court reviewed the denial of a motion to dismiss pursuant to Rule 12(b)(8). 347 S.C. at 469;

556 S.E.2d at 402; *cf. Ferguson*, 344 S.C. at 510, 544 S.E.2d at 289 (hearing the appeal of class certification order because other appealable issues were before the Court).

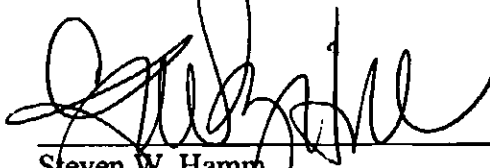
III. The Trial Court's Unprecedented Ruling that Respondents Do Not Need to Satisfy the Requirements of Rule 23 To Pursue a Representative Action Presents a Litany of Novel Legal Questions that Require Immediate Resolution to Avoid Unnecessary Litigation.

If the trial court was wrong in concluding that Rule 23 does not apply to representative actions brought under section 56-15-110(2), addressing the issue now will avoid the enormous waste of resources that would result from a reversal *after* trial. Respondents themselves highlight the multitude of critical issues that, if left unresolved, will inevitably return to this Court. Respondents assert that to bring a representative action they only need establish that *either* the action is of common interest to many people *or* the parties are numerous and it is impractical to bring them all before the court. *See Resps.' Return to Motion to Consolidate* at 21. Under this rationale, the requisites for maintaining a class action—with their attendant due process protections—would be rendered a nullity. There is nothing in section 56-15-110(2) to indicate that in passing the statute, the legislature intended to jettison critical class action safeguards, including consideration of whether Respondents are adequate representatives for unnamed class members, whether the named plaintiffs have interests that conflict with unnamed class members, whether the claims of the named plaintiffs are typical, whether innumerable mini-trials would result, whether notice must be given along with the opportunity to opt out, and whether a decision on the claims of named plaintiffs will bind the “class.” This case cries out for immediate appellate guidance, particularly since no appellate court has ever addressed these questions in the context of section 56-15-110(2).

CONCLUSION

For the foregoing reasons, Century BMW respectfully asks the Court to grant its Motion to Consolidate.

Respectfully submitted,



June 9, 2008

Steven W. Hamm
C. Jo Anne Wessinger Hill
David A. Anderson
Jocelyn T. Newman
RICHARDSON PLOWDEN & ROBINSON, P.A.
P.O. Drawer 7788
Columbia, South Carolina 29202
(803)771-4400

Dennis M. Black (*pro hac vice application pending*)
Ryan L. VanGrack (*pro hac vice application pending*)
WILLIAMS & CONNOLLY LLP
725 Twelfth St., N.W.
Washington, DC 20005
(202) 434-5000
(202) 434-5029 (facsimile)

ATTORNEYS FOR APPELLANT CENTURY BMW, THE TRUE
NAME OF WHICH IS SONIC AUTOMOTIVE 2752 LAURENS RD.,
GREENVILLE, INC. D/B/A CENTURY BMW

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable Doyet A. Early, III, Circuit Court Judge

Circuit Court Case No. 2006-CP-02-1230
Court of Appeals Docket No. 03-27371

RECEIVED
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SC Court of Appeals

Heather Herron, Natalie Armstrong, Michael Ritz, Julie Freeman, Christine Watts, Alison Dannert, Michael Bleasc, Michael Watts, individually and for the benefit of all car buyers who paid "administrative fees" as described below to Defendants, ... **Respondents,**

v.

Century BMW d/b/a Sonic Automotive; Dick Dyer & Associates, Inc.; Galeana Chrysler Plymouth, Inc., a/k/a Galeana Chrysler Jcep, 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., ... **Defendants,**

of whom Century BMW d/b/a Sonic Automotive is the **Appellant.**

CERTIFICATE OF SERVICE

The undersigned attorney of RICHARDSON PLOWDEN & ROBINSON, P.A., attorneys for Appellant, does hereby certify that service of the **Reply in Support of Motion to Consolidate Appeals or, in the Alternative, to Sever Century BMW and consolidate** in the above-captioned matter was made upon all counsel of record this 9th day of June 2008, by depositing a copy of same in the U.S. Mail, postage prepaid, addressed as follows:

A. Camden Lewis, Esq.
Brady R. Thomas, Esq.
LEWIS & BABCOCK, LLP
P.O. Box 11208
Columbia, SC 29211

Michael E. Spears, Esq.
MICHAEL E. SPEARS, P.A.
PO Box 5806
Spartanburg, SC 29304

Richard A. Harpootlian, Esq.
RICHARD A. HARPOOTLIAN, P.A.
P.O. Box 1090
Columbia, SC 29202

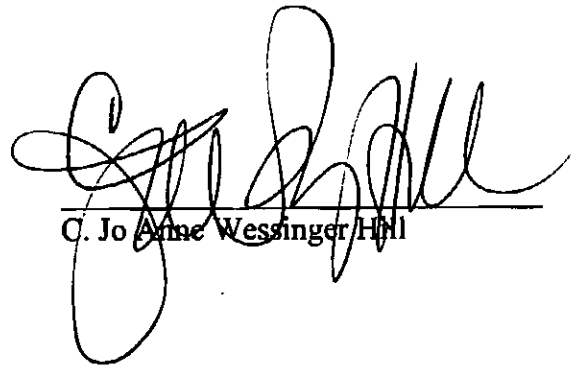
James Y. Becker, Esquire
R. David Proffitt, Esquire
HAYNESWORTH SINKLER BOYD, PA
1201 Main Street, 22nd Floor (29201-3226)
P.O. Box 11889
Columbia, S.C. 29211-1889

Harvey G. Sanders, Jr., Esquire
James T. Hewitt, Esquire
S. Brooke Chapman, Esquire
LEATHERWOOD WALKER TODD & MANN, P.C.
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Greenville, SC 29602-0087

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GEDNEY M. HOWE, III, PA
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Columbia, SC 29211-2201

H. Clayton Walker, Jr., Esquire
Robert L. Reibold, Esquire
WALKER & REIBOLD, LLC
P.O. Box 61140
Columbia, SC 29260



C. Jo Anne Wessinger Hill

June 9, 2008

Reply to: Columbia
jhill@RichardsonPlowden.com
Direct: 803-576-3714

June 9, 2008

VIA HAND DELIVERY

South Carolina Court of Appeals
Attention: Elizabeth Carter, Office of the Clerk
1015 Sumter Street
Columbia, SC 29211

RECEIVED

JUN 09 2008

SC Court of Appeals

Re: Herron et al Respondents v. Century BMW
of which Sonic Automotive, d/b/a Century BMW is Appellant
Appeal of Order in Circuit Court Case No. 2006-CP-01-1230
Our File No. 6665-001

Dear Ms. Carter:

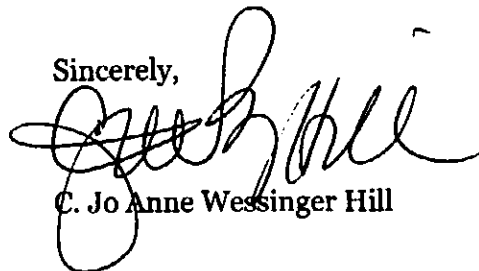
Please find enclosed the original and eight (8) copies of a Appellant Sonic Automotive d/b/a Century BMW Plaintiff/Respondent's **Reply to Motion to Consolidate Appeals or, in the Alternative, to Sever Century BMW and Consolidate** in the above-referenced matter. Please return two clocked copies to my runner.

A copy of this letter is being served on the parties listed below.

If you should have any questions or concerns, please do not hesitate to contact this office.

With kindest regards, I am

Sincerely,



C. Jo Anne Wessinger Hill

JWH/kjt
Enclosures

Cc: H. Clayton Walker, Jr., Esq.
James Y. Becker, Esq.
R. David Proffitt, Esq.
J. Gregory Studemeyer, Esq.
Gedney M. Howe, III, Esq.
Richard A. Harpootlian, Esq.
Michael E. Spears, Esq.
A. Camden Lewis, Esq.
Brady R. Thomas, Esq.
Harvey G. Sanders, Jr, Esq.
James T. Hewitt, Esq.
S. Brooke Chapman Esq.

June 3, 2008

VIA HAND DELIVERY

Clerk, South Carolina Court of Appeals
ATTN: Ms. Elizabeth Carter
1015 Sumter Street
P.O. Box 11629
Columbia, South Carolina 29201

RE: Herron et al Respondents v. Century BMW d/b/a Sonic Automotive Et al,
of whom Sonic Automotive, d/b/a Century BMW is Appellant (Herron v. Century BMW)
Appeal of Order in Circuit Court Case No. 2006-CP-01-1230
Our File No. 6665-001

Dear Ms. Carter:

In accordance with our conversation earlier today, please find enclosed our company check in the amount of \$50.00 in payment of the motion fees for the proposed Pro Hac Vice Admissions of Messrs. Van Grack and Black.

With kindest regards, I am

Sincerely,


Kathy Templeton, Legal Assistant to
C. Jo Anne Wessinger Hill

JWH/kjt
Enclosure

RECEIVED

JUN 03 2008

SC Court of Appeals
ck# 22865 \$50



The South Carolina Court of Appeals

KENNETH A. RICHSTAD
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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June 6, 2008

Steven W. Hamm, Esquire
C. Jo Anne Wessinger-Hill, Esquire
David A. Anderson, Esquire
Jocelyn T. Newman, Esquire
Richardson, Plowden
& Robinson, PA
P O Drawer 7788
Columbia, SC 29202

Re: Herron, Heather v. Century BMW

Dear Counsel:

The following Order has been endorsed on your Motion for Pro Hac Vice Admission of Dennis M. Black and Ryan L. Vangrack in the above entitled case on appeal.

"Granted.

Kaye G. Hearn C.J.
For the Court

By s/ Kenneth A. Richstad
Clerk

June 06, 2008."

The following Order has been endorsed on your Notice of Motion and Motion for Extension of Time to file and Serve Appellant's Reply to Motion to Consolidate Appeals or, in the alternative, to Sever Century BMW and Consolidate in the above entitled case on appeal.

"Granted.

Kaye G. Hearn C.J.
For the Court

By s/ Kenneth A. Richstad
Clerk

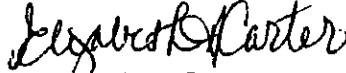
June 06, 2008."

Counsel is advised that a Reply to the Return to the Motion to Consolidate must be served and filed no more than ten (10) days from the date of this letter.

Please be advised that our records have been amended to show Dennis M. Black, Esquire, and Ryan L. VanGrack, Esquire, will be serving as co-counsel for the Appellant and should be copied on all correspondence in regards to this case at the following address:

Williams & Connolly, LLP
725 Twelfth Street, NW
Washington DC 20005

Very truly yours,



Elizabeth A. Carter
Docketing Specialist


/ec

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Ryan L. VanGrack
A. Camden Lewis, Esquire
Brady R. Thomas, Esquire
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Michael Eugene Spears, Esquire
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June 4, 2008

RECEIVED

JUN 04 2008

SC Court of Appeals

VIA HAND DELIVERY

The Honorable Kenneth A. Richstad
Clerk of Court
South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

RE: *Heather Herron, et al. v. Century BMW, et al.*
C/A No.: 2006-CP-02-1230
Our file Number: 06-551

Janet L. West-Cox, et al. v. Cale Yarborough Honda, et al.
C/A No.: 2007-CP-02-1154
Our file Number: 07-515

Howard Adams, et al. v. Action Ford Mercury, Inc., et al.
C/A No.: 2007-CP-02-1232
Our file Number: 07-540

Dear Mr. Richstad:

We are in receipt of David Proffitt's letter of May 23, 2008. In that regard, we wish to clarify a couple of the issues raised by Mr. Proffitt.

There are currently four appeals in three separate cases pending before the Court. Each case has been designated complex and is before Judge Early for pre-trial purposes only. It is suggested that three of the appeals, the appeals of Orders denying motions to dismiss, are for delay.

The first appeal is an appeal of an Order denying a motion to compel arbitration by Century BMW, one of the co-defendants in the Herron case. This appeal only involves one co-defendant, Century BMW, and one plaintiff, Respondent Christine Watts. The Order denying the motion to compel arbitration is immediately appealable as to these parties only.

The second appeal is of an Order denying motions to dismiss in the Herron. This appeal is by all co-defendants. This appeal involves all of the parties and is an interlocutory appeal. The issues in this interlocutory appeal are completely different than those in the arbitration appeal by one co-defendant, Century BMW. This appeal should be dismissed and sent back to the trial court for further proceedings, since it is interlocutory.

The third appeal is in the West-Cox case. While Mr. Proffitt tries to relate these appeals, this is a separate case and involves different parties. This appeal is of an interlocutory order denying motions to dismiss. This appeal is unrelated to the appeal by Century BMW of the Order denying the motion to compel arbitration.

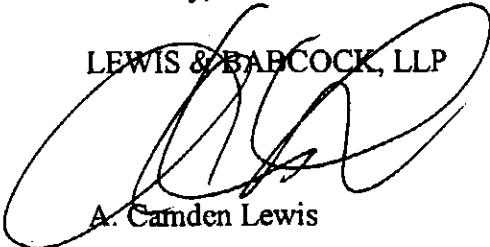
The fourth appeal is in the Adams case. While Mr. Proffitt also tries to relate this appeal, this is a separate case and involves different parties. This appeal is also of an interlocutory order denying motions to dismiss. This appeal is unrelated to the appeal by Century BMW of the Order denying the motion to compel arbitration.

The Appellants in these three separate cases are attempting to bind the non-appealable interlocutory Orders onto an unrelated, separate Order denying Century BMW's motion to compel arbitration. The unrelated orders denying the motions to dismiss in Adams, West-Cox and Herron have nothing to do with the arbitration agreement at issue in Century BMW's appeal and should be dismissed and remanded to the trial court for further proceedings.

With highest regards, I remain

Sincerely,

LEWIS & BABCOCK, LLP



A. Camden Lewis

ACL:mas

cc: Michael E. Spears, Esquire
Richard A. Harpootlian, Esquire
Gedney M. Howe, III, Esquire
Steve Hamm, Esquire
C. Jo Anne Wessinger Hill, Esquire
James Y. Becker, Esquire
R. David Proffitt, Esquire
Harvey G. Sanders, Jr., Esquire
H. Clayton Walker, Jr., Esquire
J. Gregory Studemeyer, Esquire
Dennis Black, Esquire

Reply to: Columbia
jhill@RichardsonPlowden.com
Direct: 803-576-3714

May 30, 2008

VIA HAND DELIVERY

South Carolina Court of Appeals
Attention: Elizabeth Carter, Office of the Clerk
1015 Sumter Street
Columbia, SC 29211

Re: Herron et al Respondents v. Century BMW
of which Sonic Automotive, d/b/a Century BMW is Appellant
Appeal of Order in Circuit Court Case No. 2006-CP-01-1230
Our File No. 6665-001

Dear Ms. Carter:

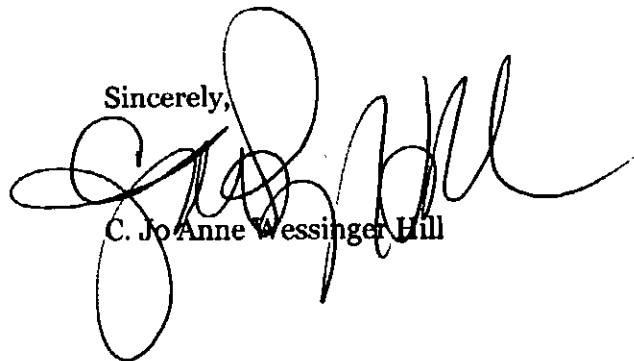
Please be advised that late yesterday afternoon, following the filing of the Motion for a Thirty-Day Extension of Time for the Appellant Sonic Automotive d/b/a Century BMW Plaintiff/Respondent to file its **Reply to Motion to Consolidate Appeals or, in the Alternative, to Sever Century BMW and Consolidate**, I spoke with counsel for the Respondent, Brady Thomas, who advised me that Respondents consent to our request for an additional ten days for Appellant to file its Reply to Motion.

A copy of this letter is being served on the parties listed below.

If you should have any questions or concerns, please do not hesitate to contact this office.

With kindest regards, I am

Sincerely,



C. Jo Anne Wessinger Hill

JWH/kjt

Cc: H. Clayton Walker, Jr., Esq.
James Y. Becker, Esq.
R. David Proffitt, Esq.
J. Gregory Studemeyer, Esq.
Gedney M. Howe, III, Esq.
Richard A. Harpootlian, Esq.
Michael E. Spears, Esq.
A. Camden Lewis, Esq.
Brady R. Thomas, Esq.
Harvey G. Sanders, Jr, Esq.
James T. Hewitt, Esq.
S. Brooke Chapman Esq.

RECEIVED

MAY 30 2008

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable Doyet A. Early, III, Circuit Court Judge

Circuit Court Case No. 2006-CP-02-1230

RECEIVED
MAY 29 2008
SC Court of Appeals

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 who paid "administrative fees" as described below to Defendants, ... **Respondents,**

v.

Century BMW d/b/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., ... **Defendants**

of whom Century BMW d/b/a Sonic Automotive is the **Appellant.**

**NOTICE OF MOTION AND MOTION FOR EXTENSION OF TIME TO FILE
AND SERVE APPELLANT'S REPLY TO MOTION TO CONSOLIDATE
APPEALS OR, IN THE ALTERNATIVE, TO SEVER CENTURY BMW AND
CONSOLIDATE**

Pursuant to Rule 234(b), SCACR, the Appellant, Sonic Automotive d/b/a Century BMW, whose true name is Sonic Automotive 2752 Laurens Rd., Greenville, Inc. d/b/a Century BMW ("Century BMW"), by and through their counsel, moves before this Honorable Court for an Order extending the time and deadlines prescribed by Rule 224, SCACR and computed by Rule 234, SCACR for the Appellant to file and serve its Reply which is currently due on Friday, May 30, 2008.

The Appellant timely appealed the Order of the Honorable Doyet A. Early dated March 10, 2008 in which the circuit court ruled on the Appellant's Motion to Compel Arbitration.

On May 12, 2008, the Appellant simultaneously filed the Initial Brief of Appellant and Designation of Matter to be Included in the Record on Appeal, together with the Motions to Consolidate Appeals or, in the Alternative, to sever Century BMW and Consolidate and related brief/memorandum and addendum to the Designation of Matter to be Included in the Record on Appeal.

On May 22, 2008, the Respondents filed their Return to the Motion to Consolidate Appeals or, in the Alternative, to sever Century BMW and Consolidate.

The Appellant respectfully moves this Court to grant a 10-day extension of time, or until Monday, June 9, 2008, to serve and file the Appellant's Reply Brief to the Motions to Consolidate Appeals or, in the Alternative, to sever Century BMW and Consolidate.

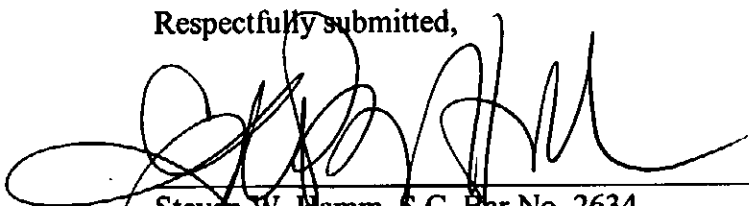
Counsel for the Appellant makes this request due to a heavy workload which has included preparing various documents in other cases or matters, other hearings and court proceedings, and responding to various discovery requests in other complex cases. Counsel's Motion is not filed for the purpose of undue delay but in the interest of promoting justice and presenting meaningful arguments to the Court.

Prior to the filing of this motion, Counsel for the Respondents was contacted regarding this request; however, no response has been received from the Respondents. Counsel for the Appellants cannot currently anticipate any basis for an objection from Counsel for the Respondents to this request.

Accordingly, the Appellant respectfully requests a 10-day extension of time in which to file and serve the Appellant's Reply Brief to the Motions to Consolidate Appeals or, in the Alternative, to sever Century BMW and Consolidate in the above-captioned case. It is further requested that the Clerk hold in abeyance the time upon which the Appellant is to file and serve any and all documents and matters required by or pursuant to Rule 224(f), SCACR, until five (5) days following a ruling on this request for extension of time if such request is denied.

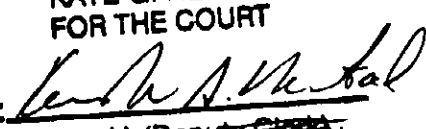
WHEREFORE, Counsel for the Appellants pray that this Court issue an Order extending the time limits set forth in Rules 224 and 234, SCACR, as set forth above.

Respectfully submitted,



Steven W. Hamm, S.C. Bar No. 2634
C. Jo Anne Wessinger Hill, S.C. Bar No. 15025
David A. Anderson, S.C. Bar No. 11550
Jocelyn T. Newman, S.C. Bar No. 73119
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jhill@richardsonplowden.com
danderson@richardsonplowden.com
jncwman@richardsonplowden.com

GRANTED
KAYE G. HEARN, C.J.
FOR THE COURT

By: 
(Clerk) (Deputy Clerk)

June 6, 2008

ATTORNEYS FOR APPELLANT CENTURY BMW D/B/A
SONIC AUTOMOTIVE, WHOSE TRUE NAME IS SONIC
AUTOMOTIVE 2752 LAURENS RD., GREENVILLE, INC.
D/B/A CENTURY BMW

FILED

6/6/08 dlp

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

RECEIVED

MAY 29 2008

The Honorable Doyet A. Early, III, Circuit Court Judge SC Court of Appeals

Circuit Court Case No. 2006-CP-02-1230

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 who paid "administrative fees" as described below to Defendants, ... Respondents,

v.

Century BMW d/b/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., ... Defendants

of whom Century BMW d/b/a Sonic Automotive is the Appellant.

CERTIFICATE OF SERVICE

The undersigned employee of RICHARDSON PLOWDEN & ROBINSON, P.A., attorneys for Appellant, does hereby certify that service of the **NOTICE OF MOTION AND MOTION FOR EXTENSION OF TIME TO SERVE DESIGNATIONS AND FILE AND SERVE APPELLANT'S REPLY TO MOTIONS TO CONSOLIDATE APPEALS OR, IN THE ALTERNATIVE, TO SEVER CENTURY BMW AND CONSOLIDATE** in the above-captioned matter was made upon all counsel of record this 29th day of May 2008, by depositing a copy of same in the U.S. Mail, postage prepaid, addressed as follows:

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Brady R. Thomas, Esq.
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brt@lewisbabcock.com
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INC. AND J.L.H. INVESTMENTS, LP, D/B/A
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ATTORNEY FOR DICK DYER & ASSOCIATES,
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Michael E. Spears, Esq.
MICHAEL E. SPEARS, P.A.
P.O. Box 5806
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James T. Hewitt, Esquire (SC Bar No. 66422)
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D/B/A LAND ROVER OF COLUMBIA AND TOYOTA OF
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rreibold@walkerreibold.net
ATTORNEYS FOR DEFENDANT TAYLOR
INVESTMENTS, INC., D/B/A TAYLOR TOYOTA

May 29, 2008


Kathy J. Templeton

Reply to: Columbia
jhill@RichardsonPlowden.com
Direct: 803-576-3714

May 29, 2008

VIA HAND DELIVERY

South Carolina Court of Appeals
Attention: Elizabeth Carter, Office of the Clerk
1015 Sumter Street
Columbia, SC 29211

Re: Herron et al Respondents v. Century BMW
of which Sonic Automotive, d/b/a Century BMW is Appellant
Appeal of Order in Circuit Court Case No. 2006-CP-01-1230
Our File No. 6665-001

Dear Ms. Carter:

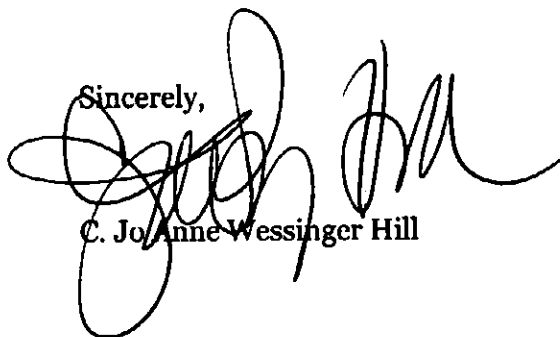
Please find enclosed the original and seven (7) copies of a Motion for a Thirty-Day Extension of Time for the Appellant Sonic Automotive d/b/a Century BMW Plaintiff/Respondent to file its **Reply to Motion to Consolidate Appeals or, in the Alternative, to Sever Century BMW and Consolidate** in the above-referenced matter. Also enclosed is our company check in the amount of \$25.00 for the Motion fee.

A copy of this letter is being served on the parties listed below.

If you should have any questions or concerns, please do not hesitate to contact this office.

With kindest regards, I am

Sincerely,



C. Jo Anne Wessinger Hill

JWH/kjt
Enclosures

Cc: H. Clayton Walker, Jr., Esq.
James Y. Becker, Esq.
R. David Proffitt, Esq.
J. Gregory Studemeyer, Esq.
Gedney M. Howe, III, Esq.
Richard A. Harpootlian, Esq.
Michael E. Spears, Esq.
A. Camden Lewis, Esq.
Brady R. Thomas, Esq.
Harvey G. Sanders, Jr, Esq.
James T. Hewitt, Esq.
S. Brooke Chapman Esq.

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MAY 29 2008

SC Court of Appeals
CK 12755 \$25

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R. DAVID PROFFITT
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May 23, 2008

The Honorable Kenneth A. Richstad
Clerk, South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201
Attn: Elizabeth Carter

RE: Motor Vehicle Closing Fee Litigation

Heather Herron, et al. v. Dick Dyer & Associates, Inc. et al.
Case No. 2006-CP-02-1230
HSB File No. 01970.0038

Janet L. West-Cox, et al. v. Cale Yarborough Honda, et al.
Case No. 2007-CP-02-1154
HSB File No. 01970.0038

Howard Adams, et al. v. Action Ford Mercury, Inc. et al.
Case No. 2007-CP-02-1232
HSB File No. 01970.0038

Dear Mr. Richstad :

I am writing this letter on behalf of all Appellants in the above Herron, Adams, and West-Cox cases.

Respondents have moved to dismiss these appeals. Appellants on May 22, 2008, filed motions for a thirty-day extension of time to June 25, 2008, to file their Returns to Respondents' motions.

In a related fourth appeal, Sonic Automotive, Inc., d/b/a Century BMW on May 12, 2008, filed a motion to consolidate its appeal of an arbitration order with its appeal in the Herron case, asking this Court to consider all issues raised in both appeals.

Appellants plan to file a joint Return to Respondents' motions to dismiss the appeals, and some Appellants also may file an individual Return. In those Returns, Appellants intend to speak in support of Sonic Automotive's motion to consolidate the arbitration appeal and Herron appeal to facilitate the review of all issues in both appeals.

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MAY 27 2008

SC Court of Appeals

Mr. Richstand
May 23, 2008
Page 2 of 2

Appellants request that the Court of Appeals simultaneously consider the motions and returns in these four related appeals, and not review or decide the motions by Sonic Automotive in its arbitration appeal until Appellants have filed their Returns in the Herron, Adams, and West-Cox cases.

With kindest personal regards, I remain

Sincerely yours,

A handwritten signature in cursive script, appearing to read "R. David Proffitt".

R. David Proffitt

cc: All counsel of record

May 23, 2008

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MAY 27 2008

SC Court of Appeals

The Honorable Kenneth A. Richstad
Clerk, South Carolina Court of Appeals
1015 Sumter Street
P.O. Box 11629
Columbia, South Carolina 29201
ATTN: Ms. Elizabeth Carter

RE: Herron et al Respondents v. Century BMW d/b/a Sonic Automotive Et al,
of whom Sonic Automotive, d/b/a Century BMW is Appellant (Herron v. Century BMW)
Appeal of Order in Circuit Court Case No. 2006-CP-01-1230
Our File No. 6665-001

Dear Mr. Richstad:

I am writing this letter on behalf of the Appellant Sonic Automotive d/b/a Century BMW, whose true name is Sonic Automotive 2752 Laurens Rd., Greenville, Inc. d/b/a Century BMW ("Century BMW"), in the above case to confirm telephone conferences with the Ms. Elizabeth Carter of your office following filing of the Century BMW's Motion on May 12, 2008 to consolidate its appeal of the arbitration order dated March 10, 2008 with its related appeal in the Herron et al. v. Dick Dyer & Associates, Inc. et al. Case No. 2006-CP-02-1230 (Herron), and to request that the Court consider all issues raised in both appeals. It is our intent and also our understanding per telephone conference with Ms. Carter that Century BMW's Motion to Consolidate, together with the related documentation, applies to and relates to both appeals.

There are two additional related appeals, Janet L. West-Cox, et al. v. Cale Yarborough Honda, et al., Case No. 2007-CP-02-1154 (West-Cox), and Howard Adams, et al. v. Action Ford Mercury, Inc. et al., Case No. 2007-CP-02-1232 (Adams), pending before the Court. As you are aware, Respondents filed Motions to Dismiss in the Herron, West-Cox and Adams cases and that joint motions for extension to June 25, 2008 for the purpose of the Appellants to file a return have been filed in these three related appeals. Appellant Century BMW requests that the Court of Appeals simultaneously consider the motions and returns in these four related appeals, and that it not review or decide the motions by Century BMW to consolidate appeals until the Appellants in the related cases -- Herron, Adams, and West-Cox -- have filed their respective Returns.

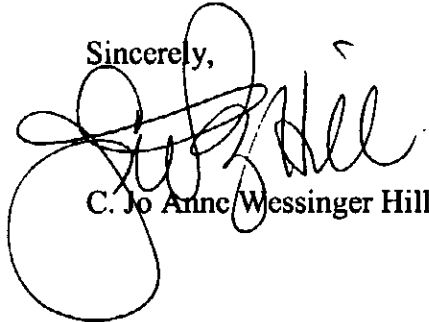
Today, we received a copy of the Respondents' Return to this Motion that was mailed on May 22, 2008. A Reply would be due on Friday, May 30th in accordance with Rules 224(f) and 234(a). It is our intent to file a Reply.

By a copy hereof I am serving the same upon all counsel of record as indicated below.

If you should have any questions, comments or concerns, please do not hesitate to contact me or my office.

With kindest regards, I am

Sincerely,

A handwritten signature in black ink, appearing to read "C. Jo Anne Wessinger Hill". The signature is fluid and cursive, with a large loop at the end.

C. Jo Anne Wessinger Hill

JWH/kjt

Cc: H. Clayton Walker, Jr., Esq.
Robert L. Reibold, Esq.
James Y. Becker, Esq.
R. David Proffitt, Esq.
J. Gregory Studemeyer, Esq.
Harvey G. Sanders, Jr, Esq.
James T. Hewitt, Esq.
S. Brooke Chapman Esq.
Gedney M. Howe, III, Esq.
Richard A. Harpootlian, Esq.
Michael E. Spears, Esq.
A. Camden Lewis, Esq.
Brady R. Thomas, Esq.

All counsel of Record in West-Cox and Adams

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable Doyet A. Early, Circuit Court Judge

Circuit Court Case No.: 2006-CP-02-1230

Court of Appeals Docket No.: 03-27371

Heather Herron, Natalie Armstrong, Michael Ritz, Julie Freeman, Christine Watts, Michael
Blease and Michael Watts, individually and for the benefit of all car buyers whom paid
"administrative fees" as described below to Defendants, ... Respondents,

v.

Century BMW d/b/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, Inc.; and
Toyota of Greenville, Inc., ... Defendants,

of whom Century BMW d/b/a Sonic Automotive is the Appellant.

**RETURN TO MOTION TO CONSOLIDATE APPEALS OR, IN THE ALTERNATIVE,
TO SEVER CENTURY BMW AND CONSOLIDATE**

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MAY 22 2008

SC Court of Appeals

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COUNTER STATEMENT OF ISSUES ON APPEAL

- I. Should the Court follow the South Carolina Supreme Court by denying Century BMW's motion to consolidate appeals and dismissing the interlocutory appeal of the Order denying the motions to dismiss?
- II. Can the Defendants appeal the deferral of the motions related to joinder and venue when no Defendants objected to this case being designated as complex and being assigned to Judge Early for pretrial purposes only? (Defendants' Issue II)
- III. Was the Circuit Court correct in rejecting Defendants' disfavored argument that S.C. Code Ann. § 56-15-110(2) was repealed by implication and in finding that Rule 23, SCRPC and § 56-15-110(2) are alternatives? (Defendants' Issue I)
- IV. Was the Circuit Court correct in finding that a cause of action for civil conspiracy may be asserted in the alternative? (Defendants' Issue III)

COUNTER STATEMENT OF THE CASE

This is the second attempt by the Defendant Car Dealers to have an appellate court review an undisputed interlocutory appeal, the Defendant Car Dealers' appeal dated March 10, 2008 of the Circuit Court's denial of motions to dismiss. The first attempt was rejected by the South Carolina Supreme Court. This Court should do the same.

On March 10, 2008, the Defendant Car Dealers filed a nearly identical memorandum in the South Carolina Supreme Court asking the Supreme Court to review the Circuit Court's denial of motions to dismiss either via a petition for writ of certiorari to the Circuit Court or, in the alternative, by granting a motion to certify the appeal. On May 7, 2008, the South Carolina Supreme Court denied both requests. This Court should follow the South Carolina Supreme Court and deny this second attempt to have an interlocutory appeal of the Order denying the motions to dismiss.

On March 25, 2008, Respondents filed a motion to dismiss the appeal of the order denying the motions to dismiss because the appeal is interlocutory. Defendant Car Dealers apparently concede that the appeal is interlocutory. Thus, Respondents' motion to dismiss the appeal should be granted. The Court should also deny Century BMW's Motion to Consolidate Appeals or, in the Alternative, to Sever Century BMW and Consolidate for the following reasons.¹

These cases arise from the Defendant Car Dealers' charging illegal procurement fees

¹On May 12, 2008, Appellant Sonic Automotive d/b/a Century BMW filed: (1) a Notice of Motions and Motion to Consolidate Appeals or, in the Alternative, to Sever Century BMW and Consolidate; and (2) a Memorandum in Support of Appellant's Motion to Join or Otherwise Include In Pari Materia Issues Within the Appeal Filed March 12, 2008 that are the [sic] Related to Lower Court's Denial of the Appellant's Motion to Compel Arbitration. The caption and name of the motion and memorandum do not match. However, out of an abundance of caution, Respondents address all issues raised by the motion and the memorandum in this Return.

(often referred to as an "administrative fee," "recording and processing fee," "closing fee," or "dealer documentation and closing fees" (collectively "administrative fees.")). An examples of how a car dealer charges such illegal fees is included below. Defendant Toyota of Greenville's invoice provides in part:

Selling Price	24702	00
Trade In		
Trade Difference		
Procurement Fee	\$189	00
Sub Total		
State Sales Tax	300	00
Amort. Mortgaged & Assumed		
Title, License & Reg.	59	00
Luxury Tax		
Warranty		
Total Amount	25250	00
Deposit		
Cash on Delivery		
REBATE	750	00
Balance Due	24500	00

The pre-printed and typed-in "Procurement Fee" (\$189) above is an illegal administrative fee.

Exhibit 1, Toyota of Greenville invoice.²

Defendant Car Dealers set and advertise a sticker price for cars and upon closing illegally add and collect administrative fees. This practice is a deceptive way to secretly and artificially raise the sticker price and trick customers.

The Respondents brought these cases in their representative capacity under S.C. Code

²It should be noted that this typed in fee is after "selling price" and included in with "State Sales Tax" and "Title, License & Reg."

Ann. §56-15-110(2), which the lower court ruled proper. S.C. Code Ann. §56-15-110(2)

provides:

- (2) When such action is on of common or general interest to many persons or when the parties are numerous and it is impracticable to bring them all before the court, one or more may sue for benefit of the whole, including actions for injunctive relief.

The present posture is that 7 Plaintiffs' claims against 7 Defendants are consolidated for pretrial purposes only before one judge.³ See Exhibit 2, Complex Case Designation Order. This was done without objection.

Appellant Century BMW also wants this Court to consolidate its appeal of an Order denying a motion to compel arbitration with an appeal by all Defendant Car Dealers of a separate Order denying motions to dismiss and deferring ruling on the motions to dismiss for improper venue and improper joinder. The Defendant Car Dealers want this Court to review the interlocutory Order denying motions to dismiss and to then dismiss the case for improper joinder⁴ and improper venue,⁵ for Respondents' asserting that S.C. Code Ann. §56-15-110(2) is different

³There are two other cases involving the same activities which are stayed: Howard Adams, et al. v. Action Ford Mercury, et al., Civil Action No.: 07-CP-02-1232, which includes 320 plaintiffs and 214 defendants; and Janet L. West-Cox, Henry McKnight, and Roy Gene Wilson v. Cale Yarborough Honda, Inc., a/k/a Cale Yarborough Motors of SC; Dick Smith Motors of Aiken, Inc.; Hoover Motors, Inc., Civil Action No.: 2007-CP-1154, which includes 3 plaintiffs and 3 defendants.

⁴Joinder is not a proper ground for dismissal. Rule 21, SCRCP ("Misjoinder of parties is not ground for dismissal of an action."). Moreover, this motion has not been ruled upon.

⁵Venue is not a proper ground for dismissal. Rule 82(b), SCRCP ("When an action is brought in the wrong county or in the wrong court, the court shall not dismiss the action but shall transfer it to any proper county or court in which it could have been brought."). This motion has not been ruled upon.

than Rule 23, SCRCP, and for pleading civil conspiracy.⁶ After these cases are dismissed the Defendant Car Dealers contend these cases should be re-filed in counties all across the State.⁷

Defendant Car Dealers, in their memorandum to the Supreme Court, stated that after severance, the cases should be put back together again.⁸ The result suggested by the Defendant Car Dealers is illogical because it would force the parties to go through unnecessary time and expense with an ending in the same place. Similarly, if the case is severed into multiple cases, this would invite the specter of this Court being confronted with appeals from multiple courts on identical issues with potentially conflicting rulings. These impractical results are wholly unnecessary because the lower court, without objection from the Defendant Car Dealers, designated the cases as complex and assigned all cases to himself as judge; for pretrial purposes only.⁹

The current consolidation of the cases before Judge Early is the most efficient and inexpensive way to have the issues in this action determined. Rule 1, SCRCP states that the

⁶Respondents have properly pled civil conspiracy as an alternative cause of action. "A party may also state as many separate causes of action or defenses as he has regardless of consistency and whether based on legal or an equitable grounds or on both." Rule 8 (e)(2), SCRCP.

⁷The Herron case has been pending since August 2006. The Defendant Car Dealers request that the cases be dismissed and then re-filed is clearly an attempt avoid a year and a half's worth of claims by asserting the statute of limitations defense.

⁸Defendant Car Dealers' Joint Petition for Writ of Certiorari to the Circuit Court states: "It may also be proper for all such suits to be designated as complex, consolidated for purposes of pretrial rulings and summary judgment motions, and assigned to a single Circuit Court Judge to avoid disparate and potentially conflicting ruling from the various circuits." Joint Petition for Writ of Certiorari to the Circuit Court, p. 38.

⁹The Defendant Car Dealers themselves asked that this be done. Exhibit 3, Examples of Defendant Car Dealers' Motions Requesting Complex Case Designation.

Rules Civil Procedure “shall be construed to secure the just, speedy, and inexpensive determination of every action.” Upon this Rule and the following discussion, Century BMW’s motion to consolidate appeals should be denied.

FACTUAL BACKGROUND

Defendant Car Dealers engaged in a common practice of presenting/advertising car prices in an illegal manner.¹⁰ The illegal administrative fees are deliberately placed as separate line items on Defendant Car Dealers’ invoices. These illegal administrative fees are often placed along with mandatory fees, such as taxes, tags, and title. *See Eg.* Exhibit 1. This implies that the illegal administrative fees, like the payment of taxes, fees for tags, and fees for obtaining title, are separate set fees and that there is no option but to pay the administrative fee with every car purchase. Consequently, car buyers purchase cars based on the total sticker price and are misled into believing that any discount received is off of the sticker price and that additional illegal administrative fees are special mandatory fees.

Defendant Car Dealers’ conduct is not unlike that found to be an unfair trade practice by an Ohio Court in Motzer Dodge Jeep Eagle, Inc. v. Ohio Attorney General, 642 N.E.2d 20 (Oh Ct. App. 1994). In 1996, the South Carolina Supreme Court also suggested that charging administrative fees is an unfair trade practice. “[W]e do not imply that such [C]losing fees may not be attacked on other grounds, such as claims for fraud, misrepresentation or unfair trade practices.” Fanning v. Fritz’s Pontiac-Cadillac Buick, 322 S.C. 399, n. 8, 472 S.E.2d 242, n. 8

¹⁰The Defendant Car Dealers’ charging of illegal administrative fees can only be carried out against the public if it is an industry-wide scheme. Any individual car dealer’s attempt to charge such a fee is dependent upon the other car dealers committing the same offenses so that all may “hide in a pack” and take on the appearance of legitimacy.

(1996).

As pointed out by Defendant Car Dealers' Coordinating Counsel for these motions, Steve Hamm, in his Affidavit of March 12, 1992 filed in Fanning v. Fritz's Pontiac-Cadillac-Buick, Inc., 322 S.C. 399, 472 S.E.2d 242 (1996), the charging of administrative fees to consumers is a violation of the law. Mr. Hamm's affidavit provides in part:

In September, 1987, the Department [South Carolina Department of Consumer Affairs] 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 here to 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 could be considered as a violation of the law.**

Exhibit 4, Affidavit of Steve Hamm, ¶7 (emphasis added)).

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.**

Exhibit 4, Affidavit of Steve Hamm, ¶12 (emphasis added)).

Consistently, since July, 1989, the Department has taken the position that **additional closing fees are a violation of the law.**

Exhibit 4, Affidavit of Steve Hamm, ¶15 (emphasis added)). Respondents agree with Mr. Hamm that administrative fees are illegal.

In 2000, the General Assembly enacted a very narrow exception for charging administrative fees. S.C. Code Ann. § 37-2-307 is a consumer protection statute that allows a dealership to do what would otherwise be illegal, charge administrative fees, only if the dealership follows strict rules. S.C. Code Ann. § 37-2-307 in its entirety 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.

This statute is designed to protect the public and sets forth strict rules that the Defendant Car Dealers have not followed.

Additionally, the Department of Consumer Affairs promulgates a form which may also be used as a sign posted in the dealerships. This sign provides in part: "This dealership charges closing fees as a means of reimbursing it for certain overhead costs such as documents retrieval and document preparation." Many car dealers use this form as a sign to disclose the reasons for charging of administrative fees. As clearly stated on the form/sign, administrative fees are only for "reimbursing" overhead costs.

Defendant Car Dealers have not availed themselves of the limited exceptions in S.C. Code Ann. § 37-2-307. Every Defendant Car Dealer did one or more of the following illegal acts:

- a. failed to annually register with the Department of Consumer Affairs;
- b. failed to individually register with the Department of Consumer Affairs;
- c. charged illegal "administrative fees" in excess of the amount for which it registered;
- d. failed to disclose the illegal "administrative fees" on sales contracts;
- e. charged illegal "administrative fees" in excess of their costs;
- f. failed to display the charging of illegal "administrative fees" in a conspicuous location in the dealership;
- g. advertised deceptively and illegally by failing to include the "administrative fees" in the advertised price; and

- h. created a closing procedure to illegally add "administrative fees."

Respondents are South Carolina consumers whom paid illegal administrative fees to Defendant Car Dealers. Respondents have filed an Amended Complaint which alleges three causes of action:

1. Violation of S.C. Code Ann. § 56-15-110 *et. seq.* ("Dealers Act")¹¹;
2. Civil Conspiracy; and
3. Declaratory Judgement to determine rights and legal relations under S.C. Code Ann. § 56-15-110 and/or S.C. Code Ann. § 37-2-307 ("Consumer Protection Code").

Respondents are bringing this action both individually and pursuant to S.C. Code Ann. § 56-5-110 for the benefit of all others who paid "administrative fees" to Defendant Car Dealers. The South Carolina General Assembly has expressly provided that Respondents can bring this action on behalf of all persons who paid an administrative fee. S.C. Code Ann. § 56-15-110 provides:

- (1) In addition to temporary or permanent injunctive relief as provided in § 56-15-40(3)(c), any person who shall be injured in his business or property by reason of anything by reason of anything forbidden in this chapter may sue therefor in the court of common pleas and shall recover double the actual damage by him sustained, and the cost of suit, including a reasonable attorney's fee.

¹¹ Respondents have alleged that Defendant Car Dealers violated S.C. Code Ann. § 56-15-40(1) which provides: "It shall be deemed a violation of paragraph (a) of § 56-15-30 for any manufacturer, factory branch, factory representative, distributor, or wholesaler, distributor branch, distributor representative or motor vehicle dealer to engage in any action which is arbitrary, in bad faith, or unconscionable and which causes damage to any of the parties or to the public."

Respondents also allege that Defendant Car Dealers have violated S.C. Code Ann. § 56-15-40(4)(c) which provides: "It shall be deemed a violation of paragraph (a) of § 56-15-30 for a motor vehicle dealer: (c) to resort to or use any false or misleading advertisement in connection with his business as such motor vehicle dealer."

- (2) **When such action is on of common or general interest to many persons or when the parties are numerous and it is impracticable to bring them all before the court, one or more may sue for benefit of the whole, including actions for injunctive relief.**
- (3) In an action for money damages, if the jury finds that the Defendant acted maliciously, the jury may award punitive damages not to exceed three times the actual damages.
- (4) A final judgment, order or decree rendered against a person in any civil, criminal or administrative proceeding under the United States antitrust laws, under the Federal Trade Commission Act, or under this chapter shall constitute prima facie evidence against such person subject to the conditions of the United States Antitrust Law (15 U.S.C.16).

S.C. Code Ann. §56-15-110 (emphasis added).

PROCEDURAL POSTURE

This case was initiated on August 29, 2006. The initial Complaint included four Plaintiffs and multiple car dealers. Respondents' counsel's investigation at that time had revealed that the charging of the illegal administrative fees was an industry-wide cheating technique. Because the charging of illegal administrative fees was industry-wide and the action was of "common or general interest to many persons" it was therefore appropriate under S.C. Code Ann. §56-15-110(2) for Respondents to bring the action against multiple parties.

As Respondents' counsel investigated further, it became apparent that more and more car dealers were cheating consumers by engaging in this illegal practice. Accordingly, on October 31, 2006, prior to any Defendant Car Dealers' Answer, Respondents filed a First Amended Complaint which included eight Plaintiffs and three hundred and twenty-four Defendants. In response to the Amended Complaint, most of the Defendants filed motions to dismiss and Appellant Century BMW filed a Motion to Compel Arbitration.

On January 12, 2007, a first status conference was held before Judge Early, the Chief Administrative Judge for Aiken County. Prior to the status conference, many of the car dealers moved to have the case designated complex and assigned to a single judge. *See Eg. Exhibit 3, Examples of Defendant Car Dealer Motions.* At the status conference, the parties discussed the manageability of the case and the fact that there were Defendants in multiple counties across the State. Judge Early then polled the Defendants and asked if there was any objections to his designating the case as complex and assigning it to himself for pre-trial purposes only. The parties after discovery could then seek to have the case transferred out to the various counties across the State. Significantly, none of the Defendant Car Dealers objected to Judge Early's designating the case as complex for pretrial purposes only, nor the assignment of the case to him. A copy of the Order is included as Exhibit 2.

On April 4, 2007, Judge Early issued an Order preliminarily approving a settlement between one of the Respondents, Allison Dannert, and the car dealership with whom she did business, CarMax Auto Superstores, Inc. Defendant CarMax collected over \$2.6 million in administrative fees from class members. Under that settlement, the customers of CarMax could receive over \$4 million worth of cash and benefits.¹² This settlement was approved in October

¹²There are over 25,000 class members in the CarMax settlement class, all of whom paid administrative fees to CarMax over a four-year period. CarMax charged some class members a \$99.00 administrative fee and other class members a \$149.00 administrative fee. Under the settlement, Class members who paid a \$99.00 administrative fee to CarMax during the class period under the settlement could recover a \$50.00 payment and a \$99.00 stackable settlement certificate useable on a 30,000 or 60,000 mile service from CarMax or on the purchase of a vehicle. Under the settlement, Class members who paid \$149.00 to CarMax during the class period can recover a \$75.00 payment and a \$149.00 stackable settlement certificate useable on 30,000 and 60,000 mile service or on the purchase of a vehicle.

2007.

On April 4, 2007, a motion hearing was held on Defendant Car Dealers' motions to dismiss. In the motions to dismiss, the Defendant Car Dealers asserted, among other things, that the case be dismissed for improper venue, improper joinder, failing to plead Rule 23, SCRCF, failing to plead all of the elements of civil conspiracy, and standing.

On June 1, 2007, Respondents filed a Motion to Amend the First Amended Complaint to add new Plaintiffs. This motion was filed in part to address Judge Early's stated concerns regarding standing. A hearing was held on Respondents' motion to amend to add new Plaintiffs on July 31, 2007. Judge Early described the relation of the motion to amend to his concerns on the standing as follows: "I showed some concern that if it all might be beyond the 12(b)(6) motions and you tried to rectify that or remedy by adding all these defendants." On August 21, 2007, Judge Early signed an Order denying Respondents' motion to amend to add new Plaintiffs.

On August 1, 2007, Judge Early issued an Order denying Defendant Car Dealers' motions to dismiss. This Order specifically states "After the facts are developed in discovery, the defendants are free to reassert at a later date any or all of the issues addressed in this Order." In the Order, Judge Early stated that he would rule on the motions related to venue and joinder at a later time.

On October 11, 2007, Respondents filed a motion to dismiss without prejudice for all of the Defendants in the Herron case, whom did not directly transact business with a named Plaintiff. This motion was filed to address Judge Early's stated concerns on whether the named Plaintiffs had standing to sue Defendants with whom they had not transacted business. This

motion was granted by Order dated February 5, 2008. The effect of the this Order was to make this case a seven Plaintiff and seven Defendant action.

On November 30, 2007, a hearing was held on Defendant Car Dealers' motions to reconsider Judge Early's denial of the motions to dismiss. On February 5, 2008, Judge Early issued an Order granting in part Defendant Car Dealers' motions to reconsider.

On November 30, 2007, a hearing was held on Appellant Century BMW's Motion to Compel Arbitration. On March 10, 2008, Judge Early issued an Order denying Century BMW's Motion to Compel Arbitration.

On March 10, 2008, Appellant Century BMW filed an appeal of the Order denying the motion to compel arbitration. On this same day, Defendant Car Dealers filed an appeal of the Order denying the motions to dismiss.

Also, on March 10, 2008, the Defendant Car Dealers filed a Joint Motion to Certify the Appeal of the Order denying the motions to dismiss for Review by the Supreme Court, and a Joint Petition for a Writ of Certiorari to the Circuit Court in the South Carolina Supreme Court. On May 7, 2008, the Supreme Court summarily denied Defendant Car Dealers' Motion to Certify the Appeal for Review by the Supreme Court and Defendant Car Dealers' Joint Petition for Writ of Certiorari to the Circuit Court. This Court should follow the South Carolina Supreme Court and dismiss these interlocutory appeals.

After the Court's February 5, 2008 Orders, this case is a seven plaintiff and seven defendant case. After some limited discovery, the Respondents in this action will move pursuant to Rule 57, SCRPC for a quick ruling on the declaratory judgment cause of action so that the core issues/merits (whether Defendants' actions violate the law) may be determined. After that ruling,

it is expected that there will be a substantive appeal on the merits similar to the appeal of the ruling on the interpretation of the statute in In re Hospital Pricing Litigation; King v. AnMed Health (SC 2008). That appeal would be more appropriate for an appellate court to address instead of the potential series of piecemeal appeals that may result from interlocutory orders, like the order denying the motions to dismiss.

ARGUMENT

I. This Court Should Follow the South Carolina Supreme Court by Denying Century BMW's Motion to Consolidate Appeals and Dismissing the Interlocutory Appeal of the Order Denying the Motions to Dismiss

Century BMW's motion to go forward with consolidated appeals should be denied. "An order not immediately appealable will nonetheless be considered if there is an appealable issue before the appellate court **and a ruling on the appeal will avoid unnecessary litigation.**" Jean Hoefer Toal et al, *Appellate Practice in South Carolina*, p. 95 (2002)(emphasis added)(citing Pruitt v. Bowers, 330 S.C. 483, 499 S.E.2d 250 (Ct.App.1998)); see also Hite v. Thomas & Howard Co. of Florence, 305 S.C. 358, 360, 409 S.E.2d 340, 341 (1991)("[A]n order that is not directly appealable will nonetheless be considered if there is an appealable issue before the Court **and a ruling on appeal will avoid unnecessary litigation.**")(emphasis added). As set forth in Respondents' March 25, 2008 Motion to Dismiss Appeal, Defendant Car Dealers' appeal of the Order denying the motions to dismiss is interlocutory and not immediately appealable.¹³ As discussed below, a ruling by this Court on the appeal of the Order denying the motions to dismiss will not avoid unnecessary litigation. Thus, the motion to consolidate appeals should be denied.

¹³See also footnotes 13 and 17 for a discussion of why the Order denying the motions to dismiss is not immediately appealable.

Century BMW first wants this Court to rule upon the denial of the motions to dismiss. Century BMW also seeks to have this Court consolidate the appeals.

The Appellant wants a review of the Circuit Court's deferral of the motions to dismiss for improper venue and improper joinder as well as the Circuit Court's denial of the motions to dismiss relating to Rule 23, SCRCP and civil conspiracy. The Defendant Car Dealers then would have this Court grant the motions to dismiss and require the cases be re-filed in various counties across the State. This result does not avoid unnecessary litigation. In fact, the relief sought has the opposite effect because it creates unnecessary litigation. This case is consolidated for pretrial purposes only before Judge Early. If the Defendant Car Dealers are successful in their motions, instead of one consolidated case, there will be multiple cases. This creates unnecessary litigation.

Additionally, the issues raised by the motions to dismiss are also applicable to two related cases, Howard Adams, et al. v. Action Ford Mercury, et al., Civil Action No.: 07-CP-02-1232; and Janet L. West-Cox, Henry McKnight, and Roy Gene Wilson v. Cale Yarborough Honda, Inc., a/k/a Cale Yarborough Motors of SC; Dick Smith Motors of Aiken, Inc.; Hoover Motors, Inc., Civil Action No.: 2007-CP-1154. There are over two hundred plaintiffs involved in these other cases. If the motions to dismiss are granted and the ruling is applied to those cases, this will create over two hundred other cases, involving the exact same issues, spread throughout the State. Thus, the ruling sought by the Defendant Car Dealers on the Order denying the motions to dismiss will not avoid unnecessary litigation, but instead will create unnecessary litigation.

Under the standard set forth in Hite, Century BMW's motion to consolidate should be denied. *See Hite*, 305 S.C. at 360, 409 S.E.2d at 341 ("[A]n order that is not directly appealable will nonetheless be considered if there is an appealable issue before the Court and a ruling on

appeal will avoid unnecessary litigation:”)(emphasis added). As discussed above, a ruling on the Order denying the motions to dismiss on this case will not avoid unnecessary litigation. Accordingly, the motion to consolidate appeals should be denied.

II. The Circuit Court’s Deferral of the Joinder and Venue Questions Was Proper.

The Circuit Court’s deferral of the motions to dismiss for improper joinder and venue is not immediately appealable.¹⁴ The deferral of the motions to dismiss for improper venue and improper joinder demonstrates why the appeal is interlocutory. The Circuit Court’s delay in ruling on these issues is not appealable. Furthermore, as discussed in Section I above, a decision by this Court on the appeal will not avoid unnecessary litigation. Therefore, this Court should follow the South Carolina Supreme Court and deny the motion to consolidate appeals and dismiss the appeal of the Order denying the motions to dismiss.

In any event, Judge Early’s deferral of the motions to dismiss for improper venue and joinder was proper. Significantly, Judge Early at the January 12, 2007 status conference specifically polled the Defendant Car Dealers and there was no objection to the assignment of the case to him or the designation of this case as complex for “pre-trial purposes only.”¹⁵ In fact, many of the Defendant Car Dealers filed motions asking for this relief. See Exhibit 3, Example

¹⁴“An order granting or refusing a change of venue is not immediately appealable. *Godley v. Uniroyal, Inc.*, 278 S.C. 571, 300 S.E.2d 78 (1983); *Lewis v. Atkinson Implement Co.*, 280 S.C. 87, 311 S.E.2d 80 (Ct. App. 1983) (order denying defendant change of venue was not immediately appealable, irrespective of whether second defendant was a “sham” defendant for venue purposes). . . . The Supreme Court has rejected the argument because it affects a substantial right, even where the refusal to transfer venue effectively struck a portion of defendant’s answer. *Breland v. Love Chevrolet Olds, Inc.*, 339 S.C. 89, 529 S.E.2d 11 (2000). . . .” Jean Hoefer Toal et al, *Appellate Practice in South Carolina*, pp. 89-90 (2002).

¹⁵The Defendant Car Dealers have not appealed the January 12, 2007 Order designating the case as complex and assigning it to Judge Early.

Motions by Defendants.

The effect of the January 12, 2007 Order and its relation to the Circuit Court's deferral of the motions related to joinder and venue were discussed at oral argument before the Circuit Court.

Mr. Spears: Your Honor, that's the first point I wanted to address before I got to his issues. The question of manageability is better served in this forum in this manner than it would be in 271 individual class actions scattered throughout the state or in various and divergent rulings from different judges in different jurisdictions. I have a little problem with the fact that you inquired and we all agreed that this was a complex case. You inquired and we all agreed that you would have this case and not give that horrible Christmas present to your fellow members of the bench at that time.

The Court: Well, it may mean that I'll have 270 different separate cases.

Mr. Spears: Well, the problem is that when we all agreed that this is consolidated for discovery and for motions and all that...

...

The Court: Well, I'm like you. We all decided that it was going to be complex and all decided we were going to consolidate for discovery and improper joinder is not – I certainly can't dismiss it and you certainly would be subject to motions for severance at the proper time.

Mr. Spears: Yes, sir, as well as venue.

Exhibit 5, Excerpt from Transcript of Hearing on Motions to Dismiss, April 4, 2007 (emphasis added)).

The Defendant Car Dealers' suggestion – that the cases be dismissed, then re-filed as over three hundred separate actions – is violative of Rule 1, SCRCP. This suggestion defeats judicial economy and results in unnecessary expensive litigation. The most efficient way to prosecute this litigation is as the parties have already agreed – that the case be designated as complex and assigned to Judge Early for pretrial purposes only. On January 12, 2007, Judge Early did as the parties requested, and designated the case as complex and assigned it to himself for pretrial

purposes only. Judge Early's deferral of the joinder and venue questions is consistent with his January 12, 2007 complex case order and is the most efficient way to prosecute this litigation.

Regardless joinder and venue are proper. Venue is proper in Aiken County. "If...there is more than one defendant, the action may be tried in any county where one or more defendants reside." Ellis by Ellis v. Oliver, 307 S.C. 365, 367, 415 S.E.2d 400, 401 (1992). Defendant Taylor Investments d/b/a Taylor Toyota is located in Aiken County. Accordingly, this action is properly brought in Aiken County.¹⁶

Joinder is also proper. Rule 20(a), SCRPC which governs joinder provides:

All persons may join in one action as Plaintiff if they assert any right to relief jointly, severally, or in the alternative respect of or arising out of the same transaction, occurrence, or series of transaction or occurrences and if any question of law or fact common to all these persons will arise in the action. All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transaction or occurrences and if any questions of law or fact common to all defendants will arise in the action.

The claims at issue all arise from the same "transaction, occurrence, or series of transaction or occurrences." The series of transactions and occurrences is Defendants common practice and conspiracy to charge illegal administrative fees. There are common questions of law and fact at issue as to whether Defendants are charging administrative fees in a manner that violates the law or statutes. Accordingly, joinder is proper.¹⁷

¹⁶Even if venue were improper, which it is not, a dismissal of this action would not be warranted. Rule 82(b), SCRPC ("When an action is brought in the wrong county or in the wrong court, the court shall not dismiss the action but shall transfer it to any proper county or court in which it could have been brought.").

¹⁷Even if joinder were not proper in this case, which it is not, the proper remedy is not dismissal of the case but severance. A motion to dismiss for improper joinder is not permitted under the South Carolina Rules of Civil Procedure: "Misjoinder of parties is not ground for

III. Rule 23, SCRPC and S.C. Code Ann. § 56-15-110(2) Are Alternatives and S.C. Code Ann. § 56-15-110(2) Was Not Repealed By Implication.

The Circuit Court's Order denying the motions to dismiss related to Rule 23, SCRPC and S.C. Code Ann. § 56-15-110(2) is interlocutory and not immediately appealable.¹⁸ Judge Early's July 31, 2007 Order provides in part:

I find that the 1985 Act [act enacting the rules of civil procedure] neither repealed S.C. Code Ann. §56-15-110(2) nor required that a complaint asserting rights under S.C. Code Ann. §56-15-110(2) include a requirement that the plaintiff plead and prove the class certification requirements of S.C.R.C.P. Rule 23.

As discussed in Section I above, consolidation of the appeal of the Order denying the motion to compel arbitration and the appeal of the Order denying the motions to dismiss will not avoid unnecessary litigation. Therefore, this Court should follow the South Carolina Supreme Court and deny the motion to consolidate the appeals.

Regardless, this action has been properly brought on behalf of a group of affected consumers under S.C. Code Ann. § 56-15-110(2). The South Carolina General Assembly specifically provided that Respondents can bring these claims on behalf of a group in S.C. Ann. § 56-15-110. This statute provides:

dismissal of an action." Rule 21, SCRPC.

¹⁸"The Court does not allow immediate appellate review of the denial of Rule 12(b), SCRPC, motions. *Breland v. Love Chevrolet Olds, Inc.*, 339 S.C. 89, 529 S.E.2d 11 (2000); see *Woodard v. Westvaco Corp.*, 319 S.C. 240, 460 S.E.2d 392 (1995) (Rule 12(b)(1)); *Mid-State Distrib., Inc. v. Century Importers, Inc.*, 310 S.C. 330, 426 S.E.2d 777 (1993) (Rule 12(b)(2)); *Breland*, 339 S.C. 89, 529 S.E.2d 11 (Rule 12(b)(3)); *Moyd v. Johnson*, 289 S.C. 482, 347 S.E.2d 97 (1986) (Rule 12(b)(6)). Like the denial of a motion for summary judgment, the denial of a motion to dismiss does not establish the law of the case, and the issue raised by the motion can be raised again at a later stage in the proceedings. *McLendon v. South Carolina Dep't of Highways & Pub. Transp.*, 313 S.C. 525, 443 S.E.2d 539 (1994)." Jean Hoefer Toal et al, *Appellate Practice in South Carolina*, p. 92 (2002).

- (1) In addition to temporary or permanent injunctive relief as provided in § 56-15-40(3)(c), any person who shall be injured in his business or property by reason of anything by reason of anything forbidden in this chapter may sue therefor in the court of common pleas and shall recover double the actual damage by him sustained, and the cost of suit, including a reasonable attorney's fee.
- (2) **When such action is on of common or general interest to many persons or when the parties are numerous and it is impracticable to bring them all before the court, one or more may sue for benefit of the whole, including actions for injunctive relief.**
- (3) In an action for money damages, if the jury finds that the Defendant acted maliciously, the jury may award punitive damages not to exceed three times the actual damages.
- (4) A final judgment, order or decree rendered against a person in any civil, criminal or administrative proceeding under the United States antitrust laws, under the Federal Trade Commission Act, or under this chapter shall constitute prima facie evidence against such person subject to the conditions of the United States Antitrust Law (15 U.S.C.16).

S.C. Code Ann. §56-15-110 (emphasis added). This statute creates substantive rights in favor of those affected by violations of the Dealers Act. This interpretation is consistent with the "strong public policy reasons" behind the enactment of the Dealers Act and the Dealers Act's purpose of "punishing acts that adversely affect the public's interest." Simpson v. MSA of Myrtle Beach, Inc., 373 S.C. 14, 30, 644 S.E.2d 663, 671 (S.C.,2007).

Furthermore, this statute is a remedial statute that should be construed liberally. "This action is based not on a common law tort or on contract but is a creature of statute. The legislature obviously enacted the Dealers Act because consumers' remedies at common law were deemed inadequate. Remedial statutes are to be construed liberally in order to effectuate their purpose." Kucharski v. Rick Hendrick Chevrolet, LP, 2002 WL 313860990 (SC Ct. App. 2002).

The plain language of this statute provides that Respondents can bring this lawsuit in the manner in which they have done. "Where the terms of the relevant statute are clear, there is no

room for construction.” Parsons v. Georgetown Steel, 318 S.C. 63, 456 S.E.2d 366 (1995).

Under this statute, one may bring an action for a violation of the dealers act for the benefit of the whole in two scenarios:

1. If the “action is one of common or general interest to many persons”; or
2. The “parties are numerous and it is impracticable to bring them all before the court.”

S.C. Code Ann. § 56-15-110(2). This lawsuit is proper under either scenario. First, the lawsuit is of common or general interest to many persons because of the widespread charging of illegal administrative fees to consumers across the State. Second, the parties are numerous and it would be impractical to bring before every single South Carolina consumer who paid an illegally charged administrative fee to the Defendant Car Dealers in the past four years before this Court. As such, this lawsuit is expressly authorized by the General Assembly and proper under either scenario.

The Dealers Act provides a statutory right to a specific group of consumers different than the procedural avenue provided in Rule 23, SCRPC. Under the Dealers Act, a plaintiff needs to only show one of two things in order to be able to bring the suit on behalf of a group.¹⁹ S.C. Code Ann. § 56-15-110(2) provides:

When such action is one of common or general interest to many persons or when the parties are numerous and it is impracticable to bring them all before the court, one or more may sue for benefit of the whole, including actions for injunctive relief.

Under the statute, Respondents may bring an “action” for violation of the act on behalf of a group

¹⁹It is undisputed that Respondents could have used Rule 23, SCRPC had they chosen to do so. The allegations at issue are proper for group relief under either Rule 23, SCRPC or S.C. Code Ann. §56-15-110(2).

if: (1) the suit is of common or general interest of many persons; or (2) the parties are numerous and it is impractical to bring them before the Court.

The Dealers Act gives a statutory right to a specific cause of action as compared to a court rule which may apply to any case. This is consistent with the purposes behind the Dealers Act. Kucharski v. Rick Hendrick Chevrolet, LP, 2002 WL 313860990 (SC Ct. App. 2002) (“The legislature obviously enacted the Dealers Act because consumers’ remedies at common law were deemed inadequate. Remedial statutes are to be construed liberally in order to effectuate their purpose.”). Simpson v. MSA of Myrtle Beach, Inc., 373 S.C. 14, 30, 644 S.E.2d 663 at 671 (S.C., 2007) (the purpose of the Dealers Act is to “punish [] acts that adversely affect the public’s interest.”)

The Defendant Car Dealers argument that §56-15-110(2) only allows the bringing of Rule 23, SCRCP class actions should be rejected. “Such an interpretation violates the rule that we should seek a construction that gives effect to every word of a statute rather than adopting an interpretation that renders a portion meaningless.” Hinton v. South Carolina Dept. of Probation, Parole and Pardon Services, 357 S.C. 327, 342, 592 S.E.2d 335, 343 (Ct.App. 2004). A violation of the Dealers Act just like any other cause of action is always susceptible to being brought as a class action if under court rule. However, the Dealers Act eliminates the necessity of a court rule to bring a group action and instead provides such by a statutory right without the bonds of court rules. Defendant Car Dealers’ proffered interpretation that §56-15-110(2) only allows a Rule 23, SCRCP class action would render this section meaningless. §56-15-110 (2) must allow a group lawsuit if the plain language of this section is to be given meaning.

Similarly, Defendant Car Dealers argument that S.C. Code Ann. § 56-15-110(2) was impliedly repealed by the enactment of the Rules of Civil Procedure should be rejected.

Defendant Car Dealers rely on section three of 1985 Act 100, which provides:

In the event of conflict between any provision of the South Carolina Rules of Civil Procedure and any other statutory provisions as to practice and procedure not repealed in this act, the provision of the rules shall control. However, neither the promulgation of the rules nor this act may be construed to affect the substantive legal rights of any party to any civil litigation in the courts of this State but shall affect only matters of practice and procedure.

The 1985 Act states that it does not apply to statutes that create substantive rights. 1985 Act 100 (“neither the promulgation of the rules nor this act may be construed to affect the substantive legal rights of any party to any civil litigation in the courts of this State but shall affect only matters of practice and procedure.”)(emphasis added). S. C. Code Ann. § 56-15-110 provides substantive rights. S.C. Code Ann. § 56-15-110 in subsection (1) creates a cause of action in favor of people harmed by violations of the Dealers Act and provides in subsection (2) that a specific action may be brought on behalf of a group. This is a substantive right that gives teeth to a cause of action for violation of the dealers act and helps insure that the public is protected.

Moreover, the 1985 Act did not impliedly repeal S.C. Code Ann. § 56-15-110. The test for determining whether the 1985 Act impliedly repealed a statute was addressed in Blyth v. Marcus, 322 S.C. 150, 153, 470 S.E.2d 389, 391 (Ct.App. 1996).²⁰ In addressing this issue, the Blyth court stated:

Under Section 3 of the of the 1985 Act, the Legislature provided that in the event of conflict, the Rules replace existing procedural statutes. However, repeal by implication is disfavored and requires a showing of conflict between the two competing statutes, incapable of reasonable reconciliation. Moreover, the repugnancy must be plain, and if the two provisions can be construed so that both can stand, a court shall so construe them.

²⁰The Defendant Car Dealers never address the Blyth test. This test is controlling and on point. Application of the Blyth test shows that Judge Early’s ruling was correct.

Blyth v. Marcus, 322 S.C. 150, 153, 470 S.E.2d 389, 391 (Ct.App. 1996)(emphasis added).

Application of the Blyth test here shows that S.C. Code Ann. § 56-15-110(2) was not repealed by implication. Rule 23, SCRCP is not clearly in conflict with S. C. Code Ann. § 56-15-110(2). Rule 23, SCRCP and S. C. Code Ann. § 56-15-110(2) are reasonably reconcilable. Rule 23, SCRCP is a general procedural statute that can apply to a wide variety of cases– any case satisfying the elements of Rule 23, SCRCP. S.C. Code Ann. § 56-15-110(2) is a substantive right and only applies to specific lawsuits (a violation of the Dealers Act.) S.C. Code Ann. § 56-15-110(2) is a statutory mechanism that is an alternative way to bring an action on behalf of a group. S.C. Code Ann. § 56-15-110(2) is not clearly in conflict with Rule 23, SCRCP. Rule 23, SCRCP and the Dealers Act can be construed so that both provisions may stand. Accordingly, Defendant Car Dealers’ argument that S.C. Code Ann. § 56-15-110(2) was impliedly repealed should be rejected.

Defendant Car Dealers also argue that because S.C. Code Ann. § 56-15-110(2) contains similar language to that contained in an old statute, S. C. Code Ann. §15-5-50 (repealed 1985), that the occurrence of similar language means that S.C. Code Ann. § 56-15-110(2) was also repealed. To the contrary, the fact that S. C. Code Ann. §56-15-110 was not specifically repealed supports a finding that the General Assembly intended to provide those harmed by violations of the dealers act a broader protection than that protection provided at the common law. By comparison, The 1985 Act specifically repealed S. C. Code Ann. § 15-5-50 because it only dealt with a procedural issue that applied to all cases. The General Assembly could have chosen to specifically repeal S.C. Code Ann. § 56-15-110(2) but chose not to do so. This supports a finding that § 56-15-110(2) is an alternative to Rule 23, SCRCP. “It was is presumed that the Legislature [is] familiar with prior legislation, and that if it intend[s] to repeal existing laws it

would...expressly [do] so; hence, if by any fair or liberal construction two acts may be made to harmonize, no [c]ourt is justified in deciding that the last repealed the first.” Justice v. Pantry, 330 S.C. 37, 43-44, 496 S.E.2d 871, 874 (Ct.App. 1999); State v. Hood, et al., 181 S.C. 488, 491, 188 S.E. 134, 136 (1936).

Additionally, Defendant Car Dealers argue that because CarMax settled under Rule 23, SCRCP that somehow Rule 23, SCRCP has to be used as to all Defendant Car Dealers. CarMax wanted to settle using Rule 23, SCRCP and Respondents agreed. Defendant Car Dealers’ arguments regarding AmChem Products Inc. v. Windsor, 521 U.S. 591 (1997) and nonmutal collateral estoppel arising by the CarMax settlement miss the point. Respondents do not dispute that Respondents could have used Rule 23, SCRCP, as the procedural rule for bringing these claims on behalf of a group or that the allegations here also satisfy Rule 23, SCRCP. Respondents have chosen to bring these claims on behalf of a group pursuant to the alternative statutory right provided by the General Assembly in S.C. Code Ann. § 56-15-110(2). Because Rule 23, SCRCP, and S.C. Code Ann. § 56-15-110(2) are alternatives for bringing an action on behalf of a group, the car dealers’ arguments that the case should be dismissed because of AmChem should be rejected.

IV. The Circuit Court Was Correct in Finding That a Cause of Action for Civil Conspiracy May be Asserted in the Alternative.

The Circuit Court’s denial of the motion to dismiss the civil conspiracy cause of action is an interlocutory order.²¹ As discussed in section I above, the Court should follow the South Carolina Supreme Court and dismiss the interlocutory appeal of the Order denying the motions to dismiss. Thus, the motion to consolidate the appeals should be denied.

²¹See Footnote 17.

In any event, the Defendant Car Dealers' arguments regarding the sufficiency of Respondents' civil conspiracy cause of action should be rejected. Defendant Car Dealers argue that Respondents are prohibited from bringing a cause of action for civil conspiracy because the pleadings are based on the same fact as allegations plead in other causes of action. This is not a sufficient ground for a Rule 12(b)(6), SCRCF motion to dismiss.

Respondents have properly pled civil conspiracy as an alternative cause of action. "A party may also state as many separate causes of action or defenses as he has regardless of consistency and whether based on legal or an equitable grounds or on both." Rule 8 (e)(2), SCRCF.

When the facts entitle a party to alternative remedies, those remedies are not considered inconsistency, and he may plead and prove his entitlement to both... This rule rests on the principle that the plaintiff should have a full opportunity to prove his claim to some form of relief, but he should not receive a double recovery.

Harper v. Etherridge, 290 S.C. 112348 S.C.2d 374 (Ct.App.1986)(internal citations omitted).

This is a motion to dismiss which addresses the sufficiency of the pleadings. In this case, Respondents assert that they have a viable stand alone cause of action for civil conspiracy and/or viable stand alone causes of action for violation of the Dealers Act and one for declaratory judgment. The fact that Respondents may at later stages in this case be forced to elect between causes of action does not mean that Respondents are not entitled to plead alternative causes at the beginning stages of the case. Island Car Wash, Inc. v. Norris, 292 S.C. 595, 358 S.E.2d 150 (Ct.App.1987) ("And finally, where a plaintiff seeking recovery in an action for conspiracy fails to prove a conspiracy or concerted design, he may still recover damages against a defendant proven to be guilty of a tort alleged to be the object of the conspiracy; the allegations of the conspiracy are considered as mere surplusage."). As clearly shown by Island Car Wash,

Respondents are allowed to plead and attempt to prove a cause of action for civil conspiracy as an alternative cause. The Rules of Civil Procedure simply do not require that the Respondents elect between alternative theories of recovery at the pleadings stage of the case. Accordingly, the motions to dismiss based on this ground should be denied.

For these same reasons, Defendant Car Dealers arguments with regard to special damages also fail. Defendant car dealers rely on civil conspiracy cases that hold that special damages in the context of a civil conspiracy claim are damages that are separate and distinct and those damages sought in the other causes of action. Vaught v. Waites, 300 S.C. 201, 208, 387 S.E.2d 91, 95 (Ct.App. 1989). These cases stem from the simple proposition that a Plaintiff can not recover for the same damages twice. However, as discussed above, nothing prohibits a Plaintiff from pleading causes of action in the alternative. In fact, Respondents are specifically allowed to do so under Rule 8, SCRCP. The only limitation is that Respondents can not recover twice for the same harm. Plaintiff recognize this limitation and will duly elect between remedies at the appropriate stage.

The Defendant Car Dealers reliance on Todd v. S.C. Farm Bureau Mut. Ins. Co., 276 S.C. 284, 278 S.E.2d 607 (1981) for the proposition that a civil conspiracy cause of action that involves the same facts as other causes of action is subject dismissal under Rule 12(b)(6), SCRCP is misplaced. Todd v. S.C. Farm Bureau was prior to the enactment of the Rules of Civil Procedure and involved a demurrer.

Significantly, under code pleading, if a party pled in the alternative the pleading was demurrable. *Lightsey, M. Harry, South Carolina Code Pleading*, 1976, pp. 70-71 discussing Daniels, et. al. v. Berry, et. al., 148 S.C. 446, 146 S.E. 420 (1927) (“The *Daniels* case has been cited as authority for the proposition that where alternatives are pleaded, each must be legally

sufficient or the pleading is demurrable....By comparison, the Federal Rules clearly provide for alternative pleading and avoid, by express terms, the harsh results found in *Daniels*.”). Unlike code pleading, the Rules of Civil Procedure allow parties the opportunity to plead and prove alternative causes of action. Rule 8 (c)(2), SCRPC; Harper v. Etherridge, 290 S.C. 112348 S.C.2d 374 (Ct.App.1986)(“When the facts entitle a party to alternative remedies, those remedies are not considered inconsistency, and he may plead and prove his entitlement to both...”). Thus, to the extent that Defendant Car Dealers rely on Todd v. S.C. Farm Bureau for the proposition that Respondents cannot plead a cause of action for civil conspiracy in the alternative the Defendant Car Dealers’ argument should be rejected.

More importantly, Respondents have alleged damages as a direct result of the civil conspiracy. This pleading is sufficient to allege a civil conspiracy.

In a conspiracy action, what is required is proof of the fact of damages, not certainty of amount...**The elements which go to make up such damages must depend on the nature of the act and the injury...**Appellants’ own literature, which claims to have damages respondent by causing a dramatic drop in the number of abortions performed at the clinic, is itself evidence of damages.

Gynecology Clinic, Inc. v. Cloer 334 S.C. 555, 556-557, 514 S.E.2d 592, 592-593 (1999) (emphasis added). Allen v. Columbia Financial Management, Ltd., 297 S.C. 481, 489, 377 S.E.2d 352, 357 (Ct.App.,1988)(holding loss of investment in case involving abusive tax shelter are recoverable civil conspiracy damages): LaMotte v. Punch Line of Columbia, Inc. 296 S.C. 66, 70, 370 S.E.2d 711, 713(1988)(holding sufficient civil conspiracy damages where “Appellants allege that respondents combined forces to injure them by preventing the opening of their restaurant, and thereby caused appellants to suffer special damages.”); Charles v. Texas Co., 199 S.C. 156, 18 S.E.2d 719 (1942)(holding sufficient civil conspiracy damages where plaintiff was forced out of partnership and lost half of the expected profits from partnership contract). The

damages alleged in this case are no different in kind from those found to be sufficient in the above listed cases. Accordingly, Respondents alleged sufficient damages to survive a motion to dismiss.²²

The Circuit Court was correct in finding that a cause of action for civil conspiracy may be asserted in the alternative. To hold otherwise, would contradict Rule 8, SCRPC and would mean that you can never assert a cause of action for civil conspiracy in the alternative.

CONCLUSION

This Court should follow the South Carolina Supreme Court and dismiss the appeal of the Order denying the motions to dismiss and remand the case to the Circuit Court for further proceedings.

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²²If Defendant Car Dealers' argument is that Respondents should plead with more specificity, the appropriate remedy is an order directing the Respondents to plead with more particularity, not an order to dismiss.

LEWIS & BABCOCK, L.L.P.

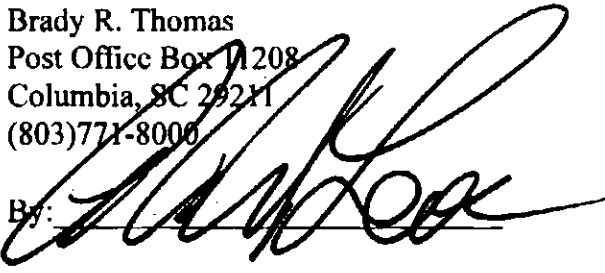
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By: 

Attorneys for the Respondents

EXHIBIT 1

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TOYOTA OF GREENVILLE

PAGE 01



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2660 Laurens Road - Greenville, SC 29607 (US4) 208-3534



County Greenville
Phone No. 270-7396
Work No. 864-270-7396
Date 1/3/05
Email henrydaddy@charley.net

Purchaser Name Mike Watts (Wife / M.) Purchaser Social # _____ Birthdate _____
Co-Purchaser Name Phyllis C Watts Co-Purchaser Social # _____ Birthdate _____
Address 210 Providence Square City Greenville State SC Zip 29615
Year / Used New yr. 2005 Make Toyota Model 6916 Color Gold
Serial No. JTEGP21A750058834 Miles _____ Stock No. D12846
E-mail Address (Customer) _____ SSN 248-69-8276 Salesperson Miller

Details of Accessories				Price		
4 SP	☐	Sec. Sys.	☒	Leather	☐	Caroline Coll. Feb 4
8 SP	☒	AM FM	☒	Anti-Lock	☒	
Auto	☒	Cassette	☒	8-Cyl.	☒	Ed
A.C.	☒	CD	☒	8-Cyl.	☐	(803) 227-5603
Cruise	☒	Power Pack	☐	Hitch	☐	A H N.
2 WH	☒	Sport Wheel	☒	Bed Liner	☐	
4 WH	☐	Reg. Cap.	☐	2-Tons	☐	S. J. 5-11
Sun Roof	☐	X Cab.	☐	Spoiler	☐	

Trade Information:		H-5-11111	
Year	Make	Model	Miles
Serial No.			
Blk.		Trans.	
		Selling Price	24702 00
		Trade In	
		Trade Difference	
Pay-Off \$		Procurement Fee	5129 00
To Whom:		Sub Total	
Given By:		State Sales Tax	309 00
Good Used:		Arm. Mortgage & Assumed	
		Tire, License & Reg.	59 00
		Luxury Tax	
		Warranty	
		Total Amount	25250 00
		Deposit	
		Cash on Delivery	

DEALER SHALL NOT BE OBLIGATED TO SELL UNTIL APPROVAL OF THE TERMS HEREOF IS GIVEN BY A BANK OR FINANCE COMPANY WILLING TO PURCHASE A RETAIL INSTALLMENT CONTRACT BETWEEN THE PARTIES HERETO BASED ON SUCH TERMS. I UNDERSTAND THAT I AM RESPONSIBLE FOR THE DIFFERENCE, (IF ANY) ON THE PROOF ON MY TRADE IN.

Lien Information:		Balance Due		24500.00	
Lender:		I have read and understand that this car is sold with no warranties written or implied other than those in effect from the manufacturer. I understand that I am responsible for the transferring or obtaining of all insurance. The above comprises the entire agreement pertaining to this purchase and no other agreement of any kind, verbal understanding or promise whatsoever will be recognized. Customer Acknowledges that any trade in's involved in this transaction have no salvage history and all claims have been disclosed. Buyer's Signature: <u>[Signature]</u> Address: <u>260 Providence Sq</u> City: <u>Providence</u> State: <u>RI</u> Zip: <u>02901</u> Accepted: <u>[Signature]</u> By: <u>[Signature]</u>			
Address:					
Amount \$					
Liability Insurance:					
Agent:					
Address:					
Phone No.:					
Company:					
Policy No.:					
ER Dates:					
Amount of Deductible:					
Verified By:					

(ALL DEPOSITS ON ORDER VEHICLES OR ON APPROVED CREDIT IS NON-REFUNDABLE.)
THIS IS NOT AN ORDER UNTIL ACCEPTED BY AN OFFICIAL OF THE COMPANY

EXHIBIT 2

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

HEATHER HERRON, ET. AL.

Plaintiffs,

VS.

CARMAX AUTO SUPERSTORES, INC., ET.
AL.

Defendants.

) IN THE COURT OF COMMON PLEAS

) CIVIL ACTION NO.: 06-CP-02-1230

**ORDER ESTABLISHING
COMPLEX CASE DESIGNATION
FOR PRETRIAL PURPOSES ONLY**

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
Deputy Clerk of Court of Common Pleas and General
Sessions for Aiken County, South Carolina, hereby certify
that the foregoing constitutes a true and correct copy of the
original documents which have been filed in my office this

FEB - 2 2007

Liz Godard
CCCCP. & G.A., Aiken County, S.C.

This matter comes under the Administrative Order by the Supreme Court regarding Complex Case designation dated July 26, 2006. A status conference was held in this case on January 12, 2007. At that time, the question of designating the case as complex for pretrial purposes only was raised. The Court made inquiry as to the various issues and motions raised in this matter. In accordance with the authority as Chief Administrative Judge for this Circuit, the Court sua sponte designates this matter as complex for pretrial purposes only and assigns the matter to the Honorable Doyet A. Early, III. The parties also agreed to submit a proposed scheduling order for briefing of the motions to dismiss. The designation of this case as complex for pretrial purposes only does not waive any parties' rights.

BASED UPON THE FOREGOING, IT IS THEREFORE ORDERED that this case is designated as complex for pretrial purposes only and that this is assigned to the Honorable Doyet A. Early, III, to hear and handle all pre-trial motions and other matters pertaining to this case.

AND IT IS SO ORDERED.

MA Early III
Hon. Doyet A. Early, III
Chief Administrative Judge
Second Judicial Circuit

Bonkey, South Carolina
January 30, 2007

APP. JOINT PET. CERT.
60

FILED 2-2 2007
Liz Godard
CCCCP. & G.S.
h 8:30 AM
Deputy Clerk

EXHIBIT 3

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

Heather Herron, et al.

☐ Plaintiff

v.

Defendant Car Max Auto Superstores, Inc., Et al.

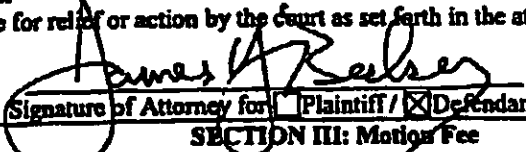
☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2006-CP-02-1230

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: Brady R. Thomas, Esq., Bar No. Address: Lewis & Babcock, LLP PO Box 11208 Columbia, SC 29211 phone: 803-771-8000 fax: 803-733-3534 e-mail: other:		Defendant's Attorney: James Y. Becker, Bar No. 064991 R. David Proffitt, Bar No. Address: Haynsworth Sinkler Boyd, P.A. PO Box 11889 Columbia, SC 29211-1889 phone: 803-779-3080 fax: 803-765-1818 e-mail: jbecker@hsblawfirm.com other:	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: Motion to Dismiss and for Other Relief			
Estimated Time Needed: 2 hours Court Reporter Needed: ☒ YES / ☐ NO			
SECTION II: Motion/Order Type			
☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.			
 Signature of Attorney for		October 6, 2006 Date submitted	
Plaintiff / ☒ Defendant			
SECTION III: Motion Fee			
☒ PAID - AMOUNT: \$25.00 ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check reason) ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:			
JUDGE'S SECTION			
☐ Motion Fee to be paid upon filing of the attached order.		JUDGE CODE: _____ Date: _____	
☐ Other:			
CLERK'S VERIFICATION			
Collected by: _____		Date Filed: _____	

☐	MOTION FEE COLLECTED: _____
☐	CONTESTED - AMOUNT DUE: _____

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS

Case No. 2006-CP-02-1230

Heather Herron, et al.,

Plaintiffs,

vs.

Defendant Car Max Auto Superstores,
Inc., et al.,

Defendants.

**MOTION TO DISMISS FOR IMPROPER VENUE
AND OTHER GROUNDS AND FOR OTHER RELIEF OF DEFENDANTS
GALEANA CHRYSLER-JEEP, INC. AND GALEANA CHRYSLER-PLYMOUTH, INC.**

Defendants, Galeana Chrysler-Jeep, Inc. and Galeana Chrysler-Plymouth, Inc., ("Defendants") by and through their undersigned counsel, hereby move, in the order specified below, before the presiding judge of the Court of Common Pleas for the Second Judicial Circuit, as follows:

Pursuant to Rule 12(b)(3) SCRCP, Defendants move to dismiss this action for improper venue on the grounds that there are no allegations in the Complaint authorizing venue in Aiken County, or in the alternative, pursuant to S.C. Code § 15-7-30 for a change of venue on the grounds that the action must be tried in the county where each Defendant has its principal place of business, or in the alternative, pursuant to S.C. Code § 15-7-100(3) for a change of venue from Aiken County to Greenville County on the grounds that the convenience of witnesses and the ends of justice would be promoted by the change.

Pursuant to the Administrative Order of the South Carolina Supreme Court dated July 26, 2006, Defendants move for an order designating this case as complex and assigning it to a single

judge, on the grounds that the case will involve numerous complex and unsettled issues of law, numerous plaintiffs and defendants, and potential class treatment (*see* additional form attached).

Pursuant to Rule 12(b)(6) SCRCP, Defendants move for an order to dismiss this action on the grounds that the gravamen of the Plaintiffs' Complaint, i.e., closing fees charged in motor vehicle sales transactions, are authorized under the provisions of S.C. Code § 37-2-307 and regulated by the South Carolina Department of Consumer Affairs, and thus the Plaintiffs' complaint fails to state facts sufficient to constitute a cause of action upon which relief may be granted.

Pursuant to Rule 12(b)(6) SCRCP, Defendants move for an order to dismiss this action on behalf of all unnamed Plaintiffs on the grounds that the Complaint fails to allege that Plaintiffs have met the requirements of Rule 23 SCRCP.

Pursuant to Rules 12(b)(4) and (5) SCRCP, Defendants move for an order to dismiss this action against the defendants referred to as "all motor vehicle dealers as defined in S.C. Code Ann. §56-15-10(h) owned or controlled by the named Defendants," on the grounds that the Plaintiffs' process and service of process are insufficient.

Pursuant to Rule 26(c) SCRCP, Defendants further move for a protective order that discovery be stayed until the Court rules on the above motions on the grounds that the discovery requests of the Plaintiff are unduly burdensome, expensive, not reasonably calculated to lead to the discovery of admissible evidence, and seek the discovery of confidential consumer information, or in the alternative, that such confidential consumer information be redacted.

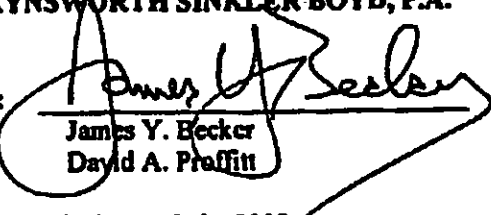
This motion will be based on the pleadings filed with the Court, Plaintiffs' First Set of Interrogatories to Defendants and Plaintiffs' First Set of Requests for Production to Defendants,

the South Carolina Rules of Civil Procedure, and such other and further case and statutory law and supporting affidavits as may be appropriate.

Pursuant to Rule 11(a), SCRCP, the undersigned certifies that consultation with opposing counsel regarding this motion would serve no useful purpose or could not be timely held.

HAYNSWORTH SINKLER BOYD, P.A.

By:


James Y. Becker
David A. Proffitt

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Columbia, South Carolina 29201
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Attorneys for Defendant Galeana Chrysler-
Jeep, Inc. and Defendant Galeana Chrysler-
Plymouth, Inc.

October 6, 2006

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS
Case No. 2006-CP-02-1230

Heather Herron, et al.,

Plaintiffs,

vs.

Defendant Car Max Auto Superstores,
Inc., et al.,

Defendants.

CERTIFICATE OF SERVICE BY E-MAIL

I, the undersigned employee of the law offices of Haynsworth Sinkler Boyd, P.A., attorneys for Defendant Galeana Chrysler-Jeep, Inc. and Defendant Galeana Chrysler-Plymouth, Inc., do hereby certify that I have served the counsel of record specified below in this action with a copy of the Pleading specified below by e-mailing a copy of the same to the following addresses:

DOCUMENTS:

Motion to Dismiss for Improper Venue and Other Grounds and for other Relief of Defendants Galeana Chrysler-Jeep, Inc. and Galeana Chrysler-Plymouth, Inc.

PARTIES SERVED:

Brady R. Thomas, Esq.
Via Email to: brt@lslaw.com
Also served by U.S. Mail
Attorneys for Plaintiff

SEE ATTACHED LIST OF DEFENSE ATTORNEYS

Charlotte D. Ariail
Charlotte D. Ariail

October 6, 2006

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Tracy T. Vann, Esq. - tvann@hmbbslaw.com

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

)

)

)

IN THE COURT OF COMMON PLEAS

C.A. No. 06-CP-02-1230

HEATHER HERRON, NATALIE ARMSTRONG,
ALISON DANNERT, 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.

CARMAX AUTO SUPERSTORES, INC.; DICK
DYER & ASSOCIATES, INC., DICK SMITH MOTORS,
INC.; GALEANA CHRYSLER-JEEP, INC.; GALEANA
CHRYSLER PLYMOUTH, INC.; PULLIAM MOTOR
CO.; DICK SMITH INFINITI, INC.; DICK SMITH
NISSAN OF LEXINGTON, INC.; DICK SMITH NISSAN,
INC.; OVERLAND, INC. D/B/A LAND ROVER OF
COLUMBIA; TOYOTA CENTER, LLC; STOKES
AUTOMOTIVE, INC.; STOKES MOTORS, INC.;
STOKES-CRAVEN AUTOMOTIVE, INC.; STOKES
MAZDA, INC.; PALMETTO CHEVROLET COMPANY,
INC.; PALMETTO NISSAN, INC.; PALMETTO FORD,
INC.; JONES FORD, INC., HAROLD ARNOLD'S
SENTRY BUICK, INC.; J. L. H. INVESTMENTS, LP;
RICK HENDRICK CHEVROLET, LP; RICK
HENDRICK HONDA CARS, CO.; RICK HENDRICK,
JEEP EAGLE, L.P.; OAK TREE, INC. D/B/A WEST
ASHLEY TOYOTA, INC.; GENE REED IMPORTS,
INC.; GENE REED TOYOTA, INC., HOOVER JEEP
CHRYSLER, INC.; HOOVER MOTORS, INC.;
HOOVER CHRYSLER-DODGE, INC.; STROM ALT-
MAN DODGE, INC.; BAKER MOTOR COMPANY OF
CHARLESTON, INC.; MILLER CADILLAC, INC.;
TAYLOR INVESTMENTS, INC. D/B/A TAYLOR
TOYOTA; BENSON CHRYSLER-PLYMOUTH, INC.;
BENSON FORD MERCURY, INC.; BENSON
CADILLAC NISSAN, INC.; BIG "O" DODGE OF
GREENVILLE, INC.; BRADSHAW AUTOMOTIVE
GROUP, INC.; SPARTANBURG CHRYSLER JEEP,
INC.; KIA OF ANDERSON, LLC; TOYOTA OF GREEN-
VILLE, INC., TOYOTA OF EASLEY, INC., FARRELL
AUTOMOTIVE, INC.; FAIRWAY FORD, INC.;
SATURN OF GREENVILLE INC.; STEVE WHITE

SUPPLEMENTAL MOTION OF
TOYOTA OF GREENVILLE, INC.
TO DISMISS THE AMENDED
COMPLAINT AND THIS ACTION,
MOTION TO SEVER, MOTION
FOR CHANGE OF VENUE,
MOTION FOR PROTECTIVE
ORDER AND FOR OTHER
RELIEF

MOTORS OF SOUTH CAROLINA, INC.; D&D
 MOTORS, INC.; BURNS CHRYSLER DODGE JEEP,
 LLC; JOHN FINGER MOTORS, INC.; SONIC AUTO-
 MOTIVE, INC. D/B/A CENTURY BMW; BOB
 RICHARDS NISSAN; DICK SMITH CHRYSLER-JEEP;
 GOODMAN CHEVROLET, INC.; HENNA CHEVROLET
 -OLDS-CADILLAC, LLC; HONDA CARS OF AIKEN;
 JOHNSON MOTOR COMPANY OF SC; SATCHER
 FORD-LINCOLN-MERCURY; SANDERS TRUCK
 SALES; CAROLINA FORD; CAROLINA INTER-
 NATIONAL TRUCKS OF ANDERSON; CLINKSCALES
 CHEVROLET INC.; FAIRWAY FORD-MAZDA; PIED-
 MONT CHRYSLER-JEEP; PIEDMONT HONDA;
 PLANET FORD; RALPH HAYES TOYOTA, INC.; TOM
 HUNTER PONTIAC-BUICK-GMC, LLC; UPSTATE
 AUTOMOTIVE (CHEVROLET-CADILLAC); UPSTATE
 AUTOMOTIVE (ISUZU-KIA); UPSTATE AUTOMOTIVE
 (MITSUBISHI); UPSTATE AUTOMOTIVE (NISSAN);
 GIBBES FORD, INC.; ZEIGLER CHEVROLET, INC.;
 B & B FORD, INC.; WHITTLE MOTOR COMPANY,
 INC.; BUTLER CHRYSLER-DODGE-JEEP; CAROLINA
 VOLVO; HILTON HEAD AUTOMOTIVE LLC; HILTON
 HEAD HONDA; LAND ROVER HILTON HEAD;
 MODERN CLASSIC MOTORS; O. C. WELCH FORD-
 LINCOLN-MERCURY; PARKS AUTOMOTIVE GROUP;
 PARKS CADILLAC; STOKES HONDA CARS OF
 BEAUFORT, INC.; STOKES MITSUBISHI; STOKES-
 BROWN TOYOTA; DICK SMITH CHEVROLET, INC.;
 HOOVER JEEP-CHRYSLER, INC.; HOOVER
 MOTORS, INC.; MCELVEEN PONTIAC-BUICK-GMC,
 Inc.; ALTMAN LINCOLN-MERCURY-HYUNDAI;
 CAROLINA INTERNATIONAL TRUCKS-CHARLESTON;
 CHARLESTON MITSUBISHI; HENDRICK HONDA OF
 CHARLESTON; HOOVER CHRYSLER-JEEP, INC.;
 HUGHES MOTORS, INC.; KIA COUNTRY; LEXUS OF
 CHARLESTON; LOW COUNTRY MAZDA; LOW
 COUNTRY VOLKSWAGEN; MARATHON CHEVRO-
 LET OF N CHARLESTON; MARCHANT CHEVRO-
 LET, INC.; MCDANIELS ACURA OF CHARLESTON
 MCELVEEN CHEVROLET, LLC; MORRIS NISSAN;
 NORTHSIDE NISSAN; RAVENEL FORD, INC.;
 RICK HENDRICK DODGE; RICK HENDRICK'S
 IMPORT SHOWPLACE; SATURN OF CHARLESTON;
 STOKES HONDA NORTH CHARLESTON; STOKES
 ISUZU-KIA-SUBARU; STOKES VOLKSWAGEN;
 VICTORY HYUNDAI OF CHARLESTON; BURNS
 CHEVROLET-CHRYSLER-DODGE-JEEP, INC.; JOE
 GIBSON SUZUKI; ROGER SHIFLETT FORD, INC.;
 WALLACE WHITE NOURSE CHESTER AUTOMO-
 TIVE; NOURSE MOTORS OF CHESTER LLC;
 BENNETT MOTOR CO., INC.; JOHN DONOGHUE
 FORD, INC.; LAWRENCE CHEVROLET-PONTIAC;

PROTHRO CHEVROLET-BUICK-PONTIAC-GMC
 TRUCK; STOKES-CRAVEN, CHRYSLER-JEEP-
 DODGE; STOKES-CRAVEN FORD; PETERS
 PONTIAC BUICK-GMC; RIZER CHEVROLET CO.,
 INC.; WALTERBORO MOTOR SALES CO.; ACTION
 FORD-MERCURY, INC.; JOHN NEWSOME, INC.;
 RACEWAY CHRYSLER-JEEP-DODGE, INC.;
 RACEWAY FORD; CAROLINA INTERNATIONAL
 TRUCKS LLC; MARATHON CHEVROLET; SUMMER-
 VILLE FORD-MERCURY, INC.; HERLONG PONTIAC-
 CHEVROLET-BUICK, INC.; JIM SATCHER, INC.;
 YONCE FORD-MERCURY, INC.; WILSON CHEVRO-
 LET-OLDSMOBILE, INC.; WILSON CHRYSLER-
 DODGE-JEEP, INC.; AUDDIE BROWN MITSUBISHI;
 CALE YARBOROUGH HONDA, INC.; CAROLINA
 INTERNATIONAL TRUCKS; EFIRD CHRYSLER-JEEP-
 DODGE, INC.; FLORENCE MACK, INC.; FLORENCE
 TOYOTA; FLOYD MOTOR CO., INC.; HORNE FORD,
 INC.; KIA OF FLORENCE; KING CADILLAC-BUICK-
 PONTIAC-GMC TRUCK, INC.; LAKE CITY FORD-
 MERCURY, LLC; PETERBILT OF FLORENCE;
 RACEWAY CHEVROLET-PONTIAC-BUICK-GMC;
 SATURN OF FLORENCE; SERVICE MOTOR COM-
 PANY, INC.; COASTAL NISSAN-CHEVROLET-
 CADILLAC; HEMINGWAY MOTOR CO., INC.;
 PARRISH MOTOR CO., INC.; TIDELANDS CHRYSLER
 DODGE; TIDELANDS FORD-LINCOLN-MERCURY;
 BMS, INC. D/B/A BREAKAWAY HONDA; BRAD-
 SHAW ACURA; BROCKMAN AUTOMOTIVE;
 CAROLINA INTERNATIONAL TRUCKS-GREENVILLE;
 CHEROKEE KENWORTH, INC.; CHRISTOPHER
 TRUCKS, INC.; CROWN JEEP-CHRYSLER; CROWN
 NISSAN GREENVILLE; DICK SMITH MITSUBISHI;
 FAIRWAY FORD, INC.; FAIRWAY MOTORCARS LLC;
 GEORGE COLEMAN FORD, INC.; TRAVELERS
 REST; HERITAGE LINCOLN-MERCURY; JOHN
 FINGER MAZDA; KEVIN WHITAKER CHEVROLET-
 CADILLAC; KEVIN WHITAKER CHEVROLET, INC.;
 SIMPSONVILLE CHEVROLET, INC.; SITTON BUICK-
 PONTIAC-GMC TRUCK, INC.; STEVE WHITE
 MOTORS OF SC, INC.; STOKES-TRAINOR FORD;
 C. THOMPSON AUTOMOTIVE; GARY RUSS
 CHEVROLET-CADILLAC, INC.; GEORGE BALLE-
 NTINE FORD-LINCOLN-MERCURY; QUALITY
 CHRYSLER CITY; BRUNSON AUTOMOBILE SALES,
 INC.; TISON MOTOR CO., INC.; ADDY'S HARBOR
 DODGE; ATLANTIC CHRYSLER-JEEP-DODGE;
 ATLANTIC FORD, INC.; BEACH FORD-LINCOLN-

MERCURY-VOLVO, INC. BELL & BELL PONTIAC-
 GMC, INC.; CONWAY CHRYSLER-DODGE-JEEP,
 INC.; CONWAY FORD, INC.; DIAMOND AUTOMO-
 TIVE GROUP, INC.; EAST COAST HONDA; EAST
 COAST VOLKSWAGEN; FOWLER MOTORS; GRAND
 STRAND NISSAN, INC.; HADWIN-WHITE PONTIAC-
 BUICK-GMC-SUBARU; HYATT BUICK-GMC
 TRUCKS; JUD KUHN CHEVROLET; KIA OF
 MYRTLE BEACH; LAY-FISHER CHEVROLET, INC.;
 MYRTLE BEACH CHEVROLET, INC.; MYRTLE
 BEACH CHRYSLER-JEEP, INC.; MYRTLE HYUNDAI-
 ISUZU; MYRTLE BEACH SUZUKI; SPARKS TOYOTA,
 INC.; SUN COAST MAZDA-MITSUBISHI; SUZUKI
 OUTLET OF MYRTLE BEACH SC; HILTON HEAD
 CHRYSLER JEEP DODGE; HILTON HEAD
 HYUNDAI; KEY INFINITI LLC; KEY MAZDA; KEY
 NISSAN, LLC; PORSCHE OF HILTON HEAD;
 PRESTIGE MOTORCARS; LLC DBA HILTON HEAD
 JAGUAR; DICK SMITH PONTIAC-CHRYSLER-
 DODGE-GMC-JEEP; HERITAGE CHEVROLET-
 BUICK, INC.; JAMES ERVIN TOYOTA; REDFEARN
 MOTOR CO., INC.; BURNS FORD-MERCURY, INC.;
 ELROD PONTIAC-BUICK-GMC, INC.; H & H
 CHEVROLET, INC.; LANCASTER DODGE-
 CHRYSLER-JEEP; LANCASTER MOTOR CO.;
 BALDWIN PONTIAC-BUICK-GMC, INC.; COOPER
 FORD, INC.; FIRMIN FORD, INC.; JOHN FOSTER
 MOTORS, INC.; LYNN COOPER, INC.; SMITH
 CHEVROLET-CADILLAC, INC.; ADDY DODGE, MC.;
 CHEROKEE KENWORTH; HAMPTON AUTOMOTIVE,
 INC.; MIDLANDS HONDA; SATURN OF COLUMBIA,
 INC.; STIVERS CHRYSLER-JEEP, INC.; TWIN CITY
 MOTOR CO., INC.; MULLINS MOTORS, INC.; PEE
 DEE FORD LINCOLN MERCURY INC.; GRIFFIN-
 FLYTHE CHEVROLET, INC.; MEGGS FORD-
 CHRYSLER-DODGE-JEEP; CROMLEY'S INC.;
 JEFFREY DEAN CHRYSLER DODGE JEEP GMC;
 KIRBY SCHRADER; STOKES-TRAINOR
 CHEVROLET-OLD-PONTIAC-CADILLAC-BUICK;
 BOBBY WOOD CHEVROLET-PONTIAC; EDWARDS
 AUTO SALES, INC.; LAKE KEOWEE CHRYSLER-
 DODGE LLC; LEADER FORD; PERFORMANCE
 CHEVROLET-BUICK-GMC; BOB RICHARDS AUTO-
 MOTIVE, LLC; FAIREY CHEVROLET-CADILLAC;
 ORANGEBURG CHRYSLER-DODGE-NISSAN, INC.;
 ORANGEBURG FORD; SUPERIOR HONDA;
 SUPERIOR MOTORS, INC.; BENSON FORD-
 MERCURY, INC.; CRANE CHEVROLET-CADILLAC,

INC.; EASLEY MITSUBISHI; EASLEY PONTIAC-
 BUICK-GMC TRUCK, INC.; HENDRICK HONDA;
 NORRIS FORD, INC.; TINSLEY CHEVROLET CO.,
 INC.; BOB BENNETT FORD, INC.; CAPITOL
 CHEVROLET; CAPITOL HYUNDAI; CAROLINA
 INTERNATIONAL TRUCKS-COLA; COLUMBIA
 FREIGHTLINER, LLC; DODGELAND OF COLUMBIA;
 HANCOCK MOTOR CO.; HANCOCK VOLKSWAGEN;
 HONDA CARS OF COLUMBIA; JIM MOORE
 CADILLAC, INC.; MCDANIELS ACURA-PORSCHE;
 SHEALY'S TRUCK CENTER-COLA; STIVERS
 LINCOLN-MERCURY; WRAY AUTOMOTIVE, INC.;
 CROMLEY'S INC.; SALUDA MOTOR SALES, INC.;
 DAVE EDWARDS TOYOTA; DICK BROOKS HONDA;
 FOOTHILLS FORD OF CHESNE; JOE GIBSON
 MITSUBISHI; KIA OF GREER; SATURN OF
 SPARTANBURG; SHEALY'S TRUCK CENTER;
 SPARTANBURG DODGE, INC.; VIC BAILEY FORD,
 INC.; VIC BAILEY HONDA; VIC BAILEY LINCOLN-
 MERCURY, INC.; VIC BAILEY VOLKSWAGEN;
 WAKEFIELD BUICK-PONTIAC-GMC, INC.; BOYLE
 MOTOR COMPANY; BOYLE TOYOTA, INC.;
 GOODWIN BUICK-JEEP; GOODWIN HONDA-
 MITSUBISHI-VW; JONES CHEVROLET CO.; JONES
 NISSAN, INC.; JONES PONTIAC-GMC TRUCK, INC.;
 MCLAUGHLIN MOTORS, INC.; SUMTER CHRYSLER-
 PLYMOUTH-DODGE; UNION CHRYSLER-DODGE-
 JEEP, INC.; BIG COUNTRY CHEVROLET, INC.;
 HASELDEN BROTHERS, INC.; LONGSTREET
 CHEVROLET-BUICK-CADILLAC-GMC; CAROLINA
 MAZDA; CLINTON FAMILY FORD-LINCOLN-
 MERCURY; DICKERSON MOTOR CO., INC.;
 DUNLAP-JOHNSON CHEVROLET CO., INC.; FORT
 MILL FORD, INC.; FRED CALDWELL'S CLOVER
 CHEVROLET; GOOD MOTOR COMPANY; GRIFFIN
 MITSUBISHI; GRIFFIN PONTIAC-BUICK-GMC;
 HARRELSON NISSAN; HARRELSON TOYOTA;
 HONDA CARS OF ROCK HILL; RICK FORD, INC.;
 STATELINE CHRYSLER JEEP DODGE INC.; AND
 AGAINST ALL MOTOR VEHICLE DEALERS OWNED
 OR CONTROLLED BY DEFENDANTS AS DEFINED
 IN S.C. CODE ANN. § 56-15-10(H).

**Supplemental Motion of Defendant Toyota of Greenville, LLC
 to Dismiss the Amended Complaint and this action, Motion to Sever,
 Motion for Change of Venue, Motion for Protective Order and for Other Relief**

Defendant Toyota of Greenville, Inc., (hereafter referred to as "Defendant"), by and through its undersigned counsel, hereby moves the Court of Common Pleas for the Second Judicial Circuit for entry of an order or orders, as follows:

Pursuant to Rule 12(b)(6), SCRCP, Defendant moves for an order to dismiss this action on the grounds that none of the Plaintiffs other than Plaintiff Michael Watts allege that they purchased vehicles from Defendant, and such Plaintiffs lack standing to bring this action against Defendant.

Pursuant to Rule 12(b)(6), SCRCP, Defendant moves for an order to dismiss this action on the grounds that the subject matter of this action, *i.e.*, closing fees charged in motor vehicle sales transactions, are authorized under the provisions of S.C. Code § 37-2-307 and regulated by the South Carolina Department of Consumer Affairs, and thus the Plaintiffs' Amended Complaint fails to state facts sufficient to constitute a cause of action upon which relief may be granted.

Pursuant to Rule 12(b)(6), SCRCP, Defendant moves to dismiss the cause of action by which Plaintiffs seek injunctive relief on the ground that any Plaintiffs who have standing to bring this action and can prove damages have an adequate remedy at law, and the Courts are without authority to issue advisory opinions.

Pursuant to Rule 12(b)(6), SCRCP, Defendant moves for an order to dismiss this action on behalf of all unnamed Plaintiffs on the grounds that the Amended Complaint fails to allege that Plaintiffs have met the requirements of Rule 23, SCRCP, or to show that Plaintiffs have met the requirements of S.C. Code Ann. § 56-15-110(2).

Pursuant to Rules 12(b)(4) and (5), SCRCP, Defendant moves for an order to dismiss

this action against the Defendants referred to as "all motor vehicle dealers owned or controlled by the named Defendants as defined in S.C. Code Ann. § 56-15-10(H)," on the grounds that the Plaintiffs' process and service of process are insufficient.

Pursuant to S.C. Code Ann. § 15-7-100(3), Defendant moves for a change of venue from Aiken County to Greenville County on the grounds that the convenience of witnesses and the ends of justice would be promoted by the change.

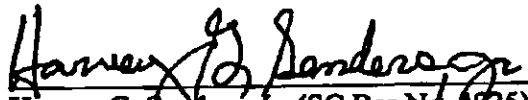
Pursuant to Rule 21, SCRCF, Defendant moves that the claims of any Plaintiff having standing to bring this action be severed from those who lack standing.

Pursuant to the Administrative Order of the South Carolina Supreme Court dated July 26, 2006, Defendant joins in the Motion filed by Defendants Galeana Chrysler Plymouth, Inc., for an order designating this case as complex and assigning it to a single judge for pretrial purposes on the grounds that the case will involve numerous complex and unsettled issues of law, numerous plaintiffs and defendants, and potential class treatment.

Pursuant to Rule 26(c), SCRCF, Defendant moves for a protective order that discovery be stayed until the Court rules on the above motions, on the grounds that the discovery requests of Plaintiffs are unduly burdensome, expensive, not reasonably calculated to lead to the discovery of admissible evidence, and seek the discovery of confidential consumer information or, in the alternative, that such confidential consumer information be redacted.

These motions will be based on the pleadings filed with the Court, Plaintiffs' First Set of Interrogatories to Defendants, Plaintiffs' First Set of Requests for Production to Defendants, Plaintiffs' Second Set of Requests for Production to Defendants, the South Carolina Rules of Civil Procedure, and such other and further case and statutory law and supporting affidavits as may be appropriate.

Pursuant to Rule 11(a), SCRPC, the undersigned certifies that consultation with opposing counsel regarding this motion would serve no useful purpose or could not be timely held.



Harvey G. Sanders, Jr. (SC Bar No. 4925)
James T. Hewitt (SC Bar No. 66422)
Leatherwood Walker Todd & Mann, P.C.
300 East McBee Avenue, Suite 500 (29601)
PO Box 87
Greenville, SC 29602-0087
(864) 242-6440; FAX: (864) 240-2498
hsanders@lwtm.com
jhewitt@lwtm.com

ATTORNEYS FOR DEFENDANT
TOYOTA OF GREENVILLE, LLC

November 17, 2006

EXHIBIT 4



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
CHARLES
ROCK HILL
LEHMAN A. MOSELEY, JR.
VOT CHAIRMAN
GREENVILLE
WILL W. STEWART
GREENVILLE
LONNIE RANDOLPH, JR.
COLUMBIA
JOHN T. CAMPELL
COLUMBIA
BOBBY T. JONES
CAMDEN
THOMAS L. MOORE
CLEANWATER
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 required 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;

ADMINISTRATION
734-8458
TELEPHONE'S AREA CODE 873

PUBLIC INFORMATION
734-8462

CONSUMER COMPLAINTS
734-8452
WATS 1-800-822-1594

NOTIFICATION
734-8461

CONSUMER ADVOCACY
734-8464
EQUAL OPPORTUNITY EMPLOY

0769

Page 2

(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

Exhibit B

REV. 11/20/89

**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.

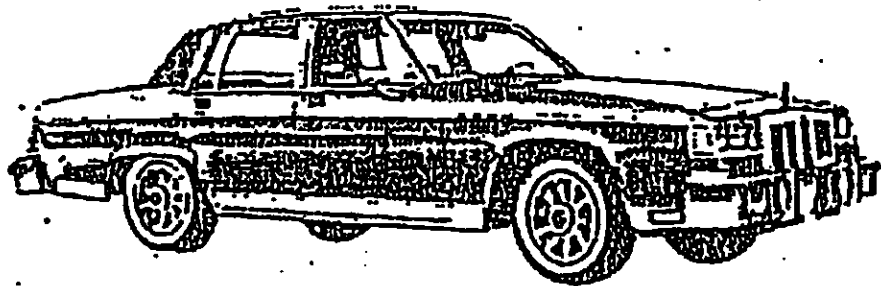
REBATES

EXAMPLE: Wrong Way to Advertise

THIS WEEK ONLY.

\$9999.⁰⁰

(includes rebate)



1989 Oldsmobile
Stk. #1989

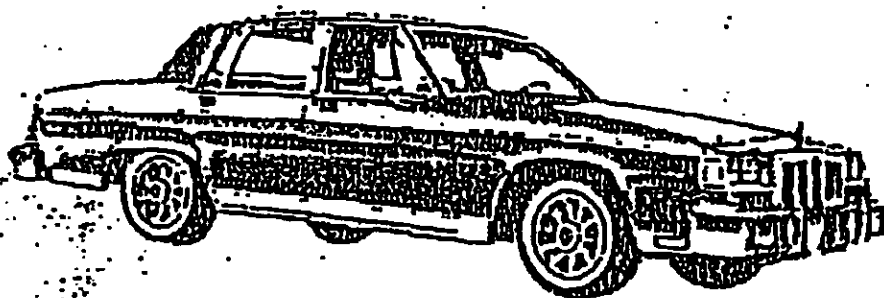
ABC MOTORS, INC.
Columbia, SC
0074

REBATES
EXAMPLE: Right Way to Advertise

THIS WEEK ONLY

\$9999.⁰⁰

(includes \$500.00 rebate)



1989 Oldsmobile
Stk. #1989

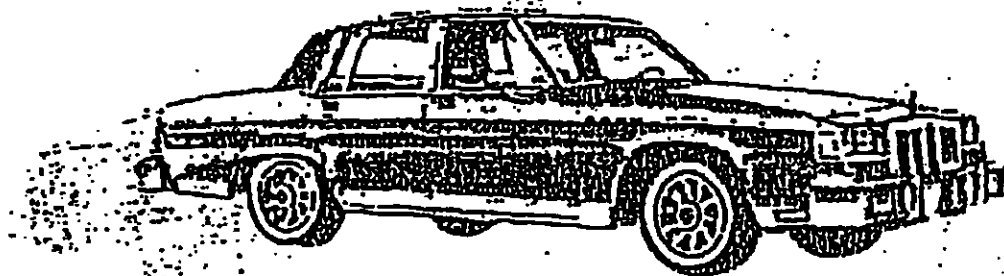
0075

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 ~~SAVINGS~~ Savings	<u>\$1500.00</u>



1989 Oldsmobile
Stk. #1989

ABC MOTORS, INC.
Columbia, SC

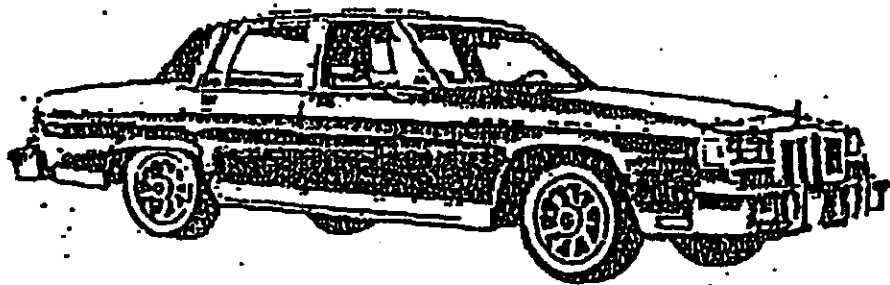
0076

EXAMPLE: **Factory Savings/Discount**
 Right Way to Advertise

THIS WEEK ONLY

Factory Rebate	\$ 500.00
Dealer Discount	\$ 500.00
TOTAL ~~Price~~ Savings	<u>\$1000.00</u>

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:

"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 interest³ 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

³The 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

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."



MODELS NOW OPEN . . .



Largest Traditional Townhomes located in

... Priced from \$58,000

V.A. Financing Available . . .

Up to 95% Conventional Financing Available . . .

Designed for contemporary living . . .

Features Include:

• Walk-out basement	• Customized selections for your kitchen
• Brick & frame construction	• Convenient to modern schools and shopping areas
• Energy Package—C.E. Heat Pump & Air Conditioner	• 5 floor plans
• Storm Windows	

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"

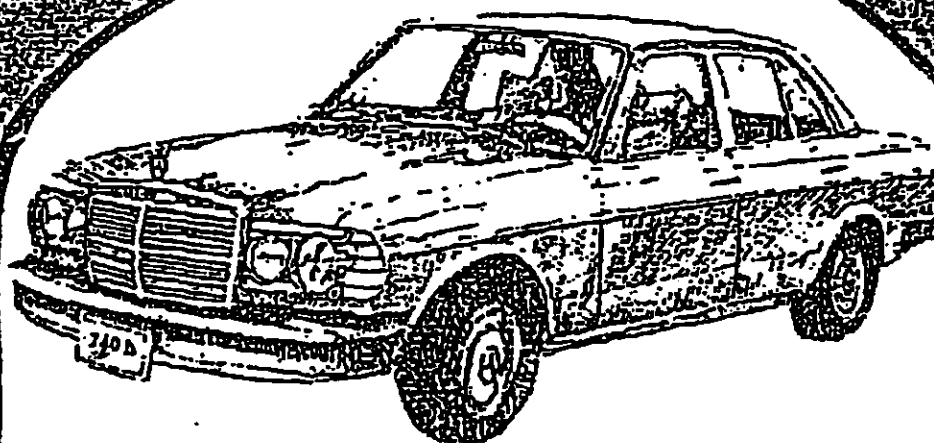
Required Disclosures

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

W.R.O.N.G.

LEASE



You can now **LEASE** a Luxurious
Mercedes-Benz 240 Diesel for Less . . .

only . . . **\$283¹⁸** 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



Trigger
leaves

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.



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

October 20, 1988

for 734-9365
Daniel F. Norfleet, Esquire
Waldman & Associates
Remount Square
1861 Remount Road, Suite 204
PO Box 80466
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

EXHIBIT C

MR. W. W. WOOD
CHIEF OF BUREAU
LESLIE A. MOSELEY, JR.
VICE CHIEF
NELL W. STEWART
LONNIE RANDOLPH, JR.
JOHN T. CAMPELL
BOBBY T. JONES
THOMAS L. MOORE
W. LEWIS BURKE
RICHARD C. MOORE
TIMOTHY P. ROGERS

0083

CONSUMER COMPLAINTS

NOTIFICATION

CONSUMER ADVOCACY

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

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

0085

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.

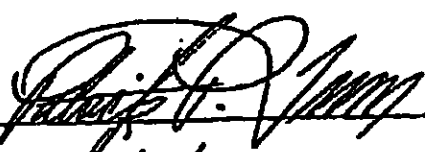
9. Any automobile the Respondent advertises for sale at dealer invoice must be sold at dealer invoice. The dealer invoice price includes freight and national advertising. Dealer invoice is the manufacturer's initial invoice amount to the dealer. It is indicated as the invoice amount at the bottom of 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).

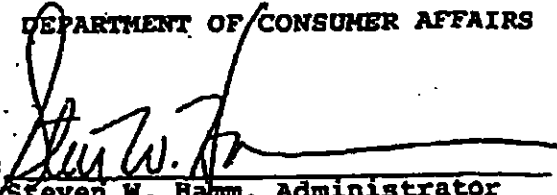
In consideration of the foregoing, the Petitioner agrees to forego further proceedings in this matter. However, it is specifically understood that the Administrator, Steven W. Hamm may reopen this matter if Action Chevrolet should engage in any of the conduct noted in this Assurance.

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

COMMISSIONERS
LEHMAN A. NOSELEY, JR.
CHAIRMAN
GREENVILLE
LONNIE RANDOLPH, JR.
VICE CHAIRMAN
COLUMBIA
ERIL W. WALD
ROCK HILL
MELL W. STEWART
GREENVILLE
JOHN T. CAMPBELL
COLUMBIA
THOMAS L. MOORE
CLEARWATER
RICHARD C. MOORE
GREENVILLE
TIMOTHY P. ROGERS
COLUMBIA
HARRY WALKER
COLUMBIA
A. CLARK JENKINS
JONES 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

ADMINISTRATION
734-8458
TELEPHONES (AREA CODE 803)

PUBLIC INFORMATION
734-8462

CONSUMER COMPLAINTS
734-9452
WATS 1-800-922-1594

NOTIFICATION
734-8461

CONSUMER ADVOCACY
734-8464
EQUAL OPPORTUNITY EMPLOYER

0088

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 possibly 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 and 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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GREENVILLE
TIMOTHY F. ROGERS
COLUMBIA
HARRY WALKER
COLUMBIA
A. CLARK JENKINS
JOHN 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

ADMINISTRATION
734-9458
1111 TROPHIC AREA COUN. BLDG

PUBLIC INFORMATION
734-9462

CONSUMER COMPLAINTS
734-9452
WATS 1-800-827-1534

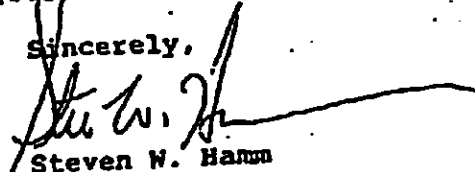
NOTIFICATION
734-9461

CONSUMER ADVOCACY
734-9464
EQUAL OPPORTUNITY (111101)

June 5, 1989
Page 2

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,

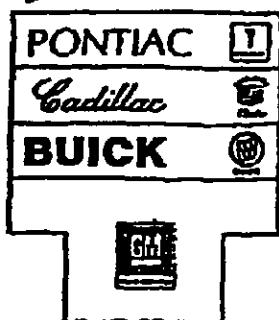


Steven W. Hamm
Administrator

SWH/cam

enclosures

0093



FRITZ'S
Pontiac-Cadillac-Buick

"WE'RE HERE TO SERVE YOU"

4010 College Street Extn.
Newberry, South Carolina 29108

RECEIVED

JUN 20 1989

DEPARTMENT OF
CONSUMER AFFAIRS

(803) 276-8970 (Newberry)
(803) 254-5131 (Columbia)
1-800-428-7433

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.

P.S.

Home # 345-2777
Business # 254-5131
1-276-8970

We got a meeting with Conny Collins June 27th so you don't have to reply to this letter.

Thanks,

Fritz Wachs

0094

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 8757
COLUMBIA, S.C. 29250-5757

July 26, 1990

COMMISSIONERS
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RICHARD G. MOORE
GREENVILLE
TIMOTHY P. ROGERS
COLUMBIA
HARRY WALKER
COLUMBIA
A. CLARK JORDON
JOHN ISLAND
GENE McCASKILL
CARMEN

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

ADMINISTRATION
734-9458

PUBLIC INFORMATION
734-9462

CONSUMER COMPLAINTS
734-9452
WATS 1-800-822-1594

NOTIFICATION
734-9451

CONSUMER ADVOCACY
734-9464
EQUAL OPPORTUNITY EMPLOYER

EXHIBIT 5

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

COURT OF COMMON PLEAS
06-CP-02-1230

HEATHER HERRON, ET AL.
PLAINTIFFS
VS.

TRANSCRIPT OF RECORD

CARMAX AUTO SUPERSTORES,
INC., ET AL.
DEFENDANTS

APRIL 4, 2007
BAMBERG, SOUTH CAROLINA

B E F O R E:

THE HONORABLE D.A. EARLY, III, JUDGE.

A P P E A R A N C E S:

BRADFORD NEAL MARTIN, ESQ.
RICHARD B. NESS, ESQ.
HENRY E. GRIMBALL, ESQ.
STEVE W. HAMM, ESQ.
R. RUSH SMITH, III, ESQ.
ATTORNEYS FOR THE DEFENDANTS

MICHAEL E. SPEARS, ESQ.
RICHARD A. HARPOOTLIAN, ESQ.
ATTORNEYS FOR THE PLAINTIFFS

LISA H. HICKLIN
COURT REPORTER

1 SPARTANBURG. CAM LEWIS WOULD HAVE BEEN HERE FROM
2 COLUMBIA, BUT AS I PREVIOUSLY INFORMED THE COURT HE IS
3 QUITE ILL WITH BACK PROBLEMS. HE IS HAVING SURGERY
4 TOMORROW. SO, IN EFFECT, I GUESS YOU'RE KIND OF DEALING
5 WITH THE JUNIOR VARSITY WHEN IT COMES TO ARGUING THE LAW
6 IN THIS CASE.

7 THE COURT: WELL, IF I REALLY WANTED A THIRD OR
8 FOURTH STRING, I WOULD HAVE HARPOOTLIAN.

9 MR. SPEARS: I DIDN'T WANT TO COMMENT THAT
10 MR. HARPOOTLIAN WAS IN THE ROOM BUT WE DECIDED NOT TO USE
11 HIM.

12 THE COURT: YOU WERE PROBABLY WISE.

13 MR. HARPOOTLIAN: CAN I GO IN, COACH, PLEASE?

14 THE COURT: I AM SURE YOU'LL COME IN.

15 MR. SPEARS: YOUR HONOR, THE VARIOUS ARGUMENTS
16 CONCERNING STANDING, JOINDER --

17 THE COURT: DIDN'T MR. MARTIN HAVE A VERY VALID POINT
18 ABOUT THE MANAGEABILITY OF THIS CASE AND THE POSTURE IN
19 WHICH IT WAS BROUGHT? WE'VE GOT ALL OF THESE DEALERS OVER
20 IN AIKEN, AND HOW IN THE WORLD ARE WE GOING TO CONDUCT A
21 TRIAL AND THE POSTURE IT IS IN RIGHT NOW?

22 MR. SPEARS: YOUR HONOR, THAT'S THE FIRST POINT I
23 WANTED TO ADDRESS BEFORE I GOT TO HIS ISSUES. THE
24 QUESTION OF MANAGEABILITY IS BETTER SERVED IN THIS FORUM
25 IN THIS MANNER THAN IT WOULD BE IN 271 INDIVIDUAL CLASS

1 ACTIONS SCATTERED THROUGHOUT THE STATE OR IN VARIOUS AND
2 DIVERGENT RULINGS FROM DIFFERENT JUDGES IN DIFFERENT
3 JURISDICTIONS. I HAVE A LITTLE PROBLEM WITH THE FACT THAT
4 YOU INQUIRED AND WE ALL AGREED THAT THIS WAS A COMPLEX
5 CASE. YOU INQUIRED AND WE ALL AGREED THAT YOU WOULD HAVE
6 THE CASE AND NOT GIVE THAT HORRIBLE CHRISTMAS PRESENT TO
7 YOUR FELLOW MEMBERS OF THE BENCH AT THAT TIME.

8 THE COURT: WELL, IT MAY MEAN THAT I'LL HAVE 270
9 DIFFERENT SEPARATE CASES.

10 MR. SPEARS: WELL, THE PROBLEM IS THAT WHEN WE ALL
11 AGREED THAT THIS IS CONSOLIDATED FOR DISCOVERY AND FOR
12 MOTIONS AND ALL THAT, WHAT I'M REALLY HEARING IS A
13 DISGUISED MOTION FOR SEVERANCE. IF THEY'RE CLAIMING
14 MISJOINDER, DISMISSAL IS NOT UNDER 12B6 A CURE.

15 THE COURT: I UNDERSTAND.

16 MR. SPEARS: SO, LET'S ADDRESS THE ISSUE OF
17 MANAGEABILITY OF THIS. FIRST OF ALL, WE HAVE ATTEMPTED
18 DEPOSITIONS WHICH WEREN'T ATTENDED, AND THEY WEREN'T
19 ATTENDED PROBABLY PROPERLY BECAUSE AT THAT TIME YOUR HONOR
20 HAD AT LEAST IMPLIED THAT WE WOULD WITHHOLD DISCOVERY
21 UNTIL WE HAD THESE HEARINGS.

22 SO, WE'RE NOT COMPLAINING THAT IT WASN'T DONE, BUT
23 WITHIN SHORT ORDER, YOUR HONOR, ALL DEFENSE COUNSEL AND
24 ALL DEFENDANTS WITHIN THE FIRST TWO DEPOSITIONS THAT WE
25 TAKE WILL KNOW EVERY SINGLE QUESTION THAT WE'RE GOING TO

1 ACT AND THOSE SORTS OF THINGS THAT HAVE PREVIOUSLY BEEN
2 REFERRED TO FROM BEING RISEN BY EVERY SINGLE PERSON WHO
3 BOUGHT A CAR CLAIMING THIS IS AN ILLEGAL COST. YOU MAY
4 REMEMBER AS WE CITED IN OUR BRIEF IT WAS CONTINUOUSLY AND
5 REPETITIVELY THE OPINION OF MR. HAMM AS THE CONSUMER
6 ADVOCATE THAT THOSE FEES WERE NOT LEGAL UNLESS THERE WAS A
7 LAW THAT PERMITTED THEM BECAUSE OF THE UNFAIR TRADE
8 PRACTICES ACT PROHIBITED THAT SORT OF THING.

9 THE AUTOMOBILE DEALERS LOBBIED AND GOT PAST THE VERY
10 SITUATION WE'RE TALKING ABOUT NOW WHICH HAPPENED IN 2000.
11 NOW, IN 2000 THEY WERE ALLOWED TO CHARGE IT. THEY WERE
12 ALLOWED TO CHARGE IT UNDER FOUR CONDITIONS AND THEIR
13 CERTIFICATE SAID IT WAS AN OFFSET AGAINST COST INCURRED.
14 SO, WHEN A DEALER POSTS A \$150 CHARGE CERTIFICATE THAT
15 IMPLIES THAT HE IS REPRESENTED THAT'S HIS COST OF DOING
16 BUSINESS -- THE PAPERWORK. IF THE DEALER POSTS A \$600
17 CHARGE, THAT IMPLIES THAT'S HIS OFFSET COST FOR DOING THE
18 DOCUMENTATION AND PAPERWORK.

19 WELL, IT STRIKES US IT IS KIND OF LIKE IF THAT'S NOT
20 THE CASE, THEN IT'S A SURPRISE CHARGE THAT APPEARS TO BE
21 NON-NEGOTIATEABLE. WE'RE HERE ON A 12B6 AND I WANT TO
22 ADDRESS EVERYTHING THEY SAY, BUT I AM ADDRESSING
23 MANAGEABILITY.

24 THE COURT: WELL, I'M LIKE YOU. WE ALL DECIDED THAT
25 IT WAS GOING TO BE COMPLEX AND ALL DECIDED WE WERE GOING

1 TO CONSOLIDATE FOR DISCOVERY AND IMPROPER JOINDER IS
2 NOT -- I CERTAINLY CAN'T DISMISS IT AND YOU CERTAINLY
3 WOULD BE SUBJECT TO MOTIONS FOR SEVERANCE AT THE PROPER
4 TIME.

5 MR. SPEARS: YES, SIR, AS WELL AS VENUE.

6 THE COURT: AS WELL AS THE OTHER SIDE OF THE COIN.

7 MR. SPEARS: YES, SIR, AND WHEN WE GET FINISHED WITH
8 THIS THEY CAN MAKE THEIR VENUE -- I WANT TO TRY IT IN
9 CHARLESTON OR I WANT TO TRY IT WHEREVER.

10 THE COURT: AND YOU VERY WELL UNDERSTAND THAT THAT
11 PROBABLY WILL BE GRANTED --

12 MR. SPEARS: YES, SIR.

13 THE COURT: -- UNLESS --

14 MR. SPEARS: I THOUGHT WE WERE HERE AS KIND OF A
15 FORUM CONVENIENCE. WE'LL ALL CONDUCT THE DISCOVERY. NOW,
16 LET ME JUST SAY THAT THE NOTION THAT EVERY -- THIS HAS
17 BEEN TOLD TO US BY DEFENSE COUNSEL -- THAT EVERY SINGLE
18 DEFENSE COUNSEL WANTS TO APPEAR AT EVERY SINGLE
19 DEPOSITION.

20 THE COURT: THEY HAVE THAT RIGHT.

21 MR. SPEARS: WELL, WE CERTAINLY THINK THEY HAVE THE
22 RIGHT AND IT'S NOT TO BE ARGUED TODAY, BUT WE THINK THEY
23 HAVE THAT RIGHT IF THAT'S THEIR PARTICULAR DEFENDANT, BUT
24 NEED THEY BE PHYSICALLY PRESENT FOR THAT. WE'LL KNOW MOST
25 OF WHAT WE NEED TO KNOW BY ANSWERS TO INTERROGATORIES AND

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable Doyet A. Early, Circuit Court Judge

RECEIVED

MAY 22 2008

Circuit Court Case No.: 2006-CP-02-1230

SC Court of Appeals

Court of Appeals Docket No.: 03-27371

Heather Herron, Natalie Armstrong, Michael Ritz, Julie Freeman, Christine Watts, Michael Blease and Michael Watts, individually and for the benefit of all car buyers whom paid "administrative fees" as described below to Defendants, ... Respondents,

v.

Century BMW d/b/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, Inc.; and Toyota of Greenville, Inc., ... Defendants,

of whom Century BMW d/b/a Sonic Automotive is the Appellant.

CERTIFICATE OF SERVICE

I, Melanie B Blease, employee to the law firm of Lewis & Babcock, L.L.P., attorneys for the Respondents, do hereby certify that I have served counsel specified below in this action with copies of the pleading specified below by mailing a copy thereof by United States Mail, postage prepaid, on May 22, 2008 to the following addresses:

Pleading:

Return to Motion to Consolidate Appeals or, in the Alternative, to Sever Century BMW and Consolidate.

Counsel Served:

J. Gregory Studemyer
Attorney at Law
P.O. Box 12201
Columbia, South Carolina 29211

James Y. Becker
R. David Profit
Haynesworth Sinkler Boyd, P.A.
1201 Main Street, 22nd Floor
Columbia, South Carolina 29201

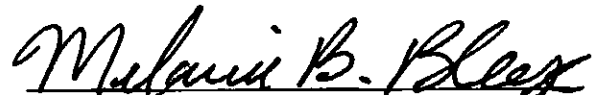
Harvey G. Sanders, Jr.
Leatherwood Walker Todd & Mann, PC
The Leatherwood Plaza
300 East McBee Avenue, Suite 500
Greenville, South Carolina 29601

Columbia, South Carolina

May 22, 2008

Clay Walker
Walker & Reibold
P.O. Box 61140
Columbia, South Carolina 29260

Steve W. Hamm
C. Jo Anne Wessinger Hill
Richardson, Plowden & Robinson, P.A.
P.O. Drawer 7788
Columbia, South Carolina 29202


Melanie B. Bleese

LAW OFFICES
LEWIS & BABCOCK, L.L.P.
POST OFFICE BOX 11208
COLUMBIA, SOUTH CAROLINA 29211

TELEPHONE: 803 / 771-8000

FAX: 803 / 733-3534

INTERNET: BRT@LEWISBABCOCK.COM

A. CAMDEN LEWIS
KEITH M. BABCOCK
MARY G. LEWIS
ARIAIL E. KING
PETER D. PROTOPAPAS
BRADY R. THOMAS
W. JONATHAN HARLING

STREET ADDRESS:
1513 HAMPTON STREET
COLUMBIA, SOUTH CAROLINA 29201

May 22, 2008

VIA HAND DELIVERY

The Honorable Kenneth A. Richstad
Clerk of Court
South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

RE: *Heather Herron, et al. v. Century BMW, et al.*
C/A No.: 2006-CP-02-1230
Our file Number: 06-551

Dear Mr. Richstad:

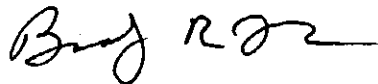
Enclosed for filing please the original and seven copies of Return to Motion to Consolidate Appeals or, in the Alternative, to Sever Century BMW and Consolidate, along with a Proof of Service, in of the above-referenced case. Please file the original and return the additional clocked-copy via our courier.

By copy of this letter, I am serving opposing counsel with copies of same.

If there are questions or concerns, please do not hesitate to contact me.

Sincerely,

LEWIS & BABCOCK, LLP



Brady R. Thomas

BRT:mas
Enclosures

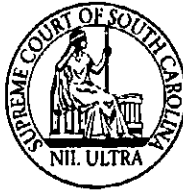
cc: Michael E. Spears, Esquire
Richard A. Harpootlian, Esquire
Gedney M. Howe, III, Esquire
Steve Hamm, Esquire
C. Jo Anne Wessinger Hill, Esquire
James Y. Becker, Esquire
R. David Profitt, Esquire

RECEIVED

MAY 22 2008

SC Court of Appeals

Harvey G. Sanders, Jr., Esquire
H. Clayton Walker, Jr., Esquire
J. Gregory Studemeyer, Esquire
Dennis Black, Esquire



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499

May 13, 2008

Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RE: Heather Herron, et al. v. Century BMW a/k/a Sonic
Automotive, et al.
Case No. 06-CP-02-1230

Dear Clerk of Court:

I certify that the Office of Bar Admissions has received verified applications requesting Dennis M. Black and Ryan L. VanGrack be admitted *pro hac vice* in the above matter. The \$250 filing fee for each applicant has been paid.

Yours truly,

Dayle B. Watts /sl

Deputy Clerk for Bar Admissions

GBW/sp

RECEIVED

MAY 15 2008

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

MAY 13 2008

SC Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable Doyet A. Early, III, Circuit Court Judge

Circuit Court Case No. 2006-CP-01-1230
Court of Appeals Docket No. 03-27371

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 who paid "administrative fees" as described below to Defendants, ... **Respondents,**

v.

Century BMW d/b/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., ... **Defendants**

of whom Sonic Automotive d/b/a Century BMW is the **Appellant.**

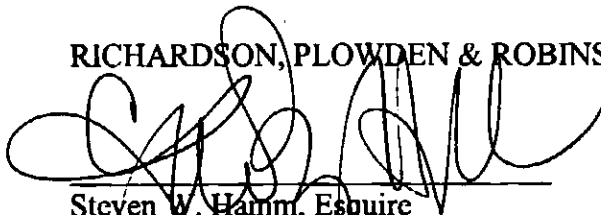
**MOTION FOR PRO HAC VICE ADMISSION OF
DENNIS M. BLACK AND RYAN L. VANGRACK**

Steven W. Hamm, Esquire, C. Jo Anne Wessinger Hill, Esquire, and David A Anderson, Esquire, on behalf of Century BMW d/b/a Sonic Automotive (the "Appellant") respectfully move before the Court of Appeals for the State of South Carolina (the "Court") to permit Dennis M. Black and Ryan L. VanGrack to practice *pro hac vice* before the Court in the above-referenced matter. Pursuant to Rule 404 of the South Carolina Appellate Court Rules,

Messrs. Black and VanGrack, together with the undersigned counsel of record, have filed an application for admission *pro hac vice* with the Supreme Court of South Carolina. Exhibits A and B to this Motion is a file-stamped original applications, indicating that the applications and the \$250.00 filing fee have been filed with the Supreme Court.

Respectfully submitted this 12th day of May, 2008.

RICHARDSON, PLOWDEN & ROBINSON, P.A.



Steven W. Hamm, Esquire

C. JoAnne Wessinger Hill, Esquire

David A. Anderson, Esquire

RICHARDSON, PLOWDEN & ROBINSON, P.A.

P.O. Drawer 7788

1900 Barnwell Street (29201)

Columbia, South Carolina 29202

(803) 771-4400

(803) 779-0016 facsimile

GRANTED

KAYE G. HEARN, C.J.
FOR THE COURT

By:


(Clerk) (Deputy Clerk)

June 6, 2008

FILED

6/6/08 shp

EXHIBIT A

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable Doyet A. Early, III, Circuit Court Judge

Circuit Court Case No. 2006-CP-02-1230

Heather Herron, Natalie Armstrong, Michael Ritz, Julie Freeman, Christine Watts, Michael Blease and Michael Watts, individually and for the benefit of all car buyers who paid "administrative fees" as described below to Dealers, ... **RESPONDENTS,**

v.

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. **Defendants**

of which Century BMW a/k/a Sonic Automotive is **APPELLANT.**

Comes now Ryan L. VanGrack, applicant herein, and respectfully represents the following under oath:

1. Applicant is an attorney in the firm of Williams & Connolly LLP, 725 Twelfth Street, N.W., Washington, DC 20005 (phone 202-434-5543) (fax 202-434-5029) and is counsel for appellant Century BMW a/k/a Sonic Automotive, the true name of which is Sonic Automotive 2752 Laurens Rd., Greenville, Inc. d/b/a Century BMW, named in the above-referenced action.

2. Applicant has been retained personally or as a member of the above-named law firm to provide legal representation in connection with the above case now pending before the South Carolina Court of Appeals.

3. Since March 2007, Applicant has been, and presently is, a member in good standing of the bar of the District of Columbia. Attached is a certificate of good standing.

4. Applicant has been admitted to practice before the following courts: State of Maryland (2006), United States Court of Appeals for the Ninth Circuit (2006) and the District of Columbia (2007).

5. Applicant presently is not subject to any suspension or disbarment proceedings and has not been formally notified of any complaints pending before a disciplinary agency.

6. Applicant has never had any application for admission *pro hac vice* in this or any other jurisdiction denied or any *pro hac vice* admission revoked.

7. Applicant has never had any certificate or privilege to appear and practice before any administrative body suspended or revoked.

8. Local counsel of record associated with applicant in this case is Steven W. Hamm, C. Jo Anne Wessinger Hill and David A. Anderson of Richardson, Plowden & Robinson, P.A., 1900 Barnwell Street, Columbia, South Carolina 29201 (phone 803-576-3714).

9. Applicant has previously filed an application to appear *pro hac vice* in South Carolina in the Court of Common Pleas for Aiken County (trial court). The case number for that active case is 2006-CP-02-1230.

10. Applicant agrees to comply with the applicable statutes, laws and rules of the State of South Carolina and will familiarize himself with and comply with the South Carolina

Rules of Professional Conduct. Applicant consents to the jurisdiction of the South Carolina courts and Commission on Lawyer Conduct.

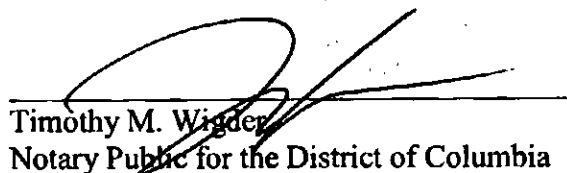
11. Applicant respectfully requests to be admitted to practice in the above-named court for this case only.

Dated this 5 day of May, 2008.



APPLICANT/AFFIANT

SWORN TO AND SUBSCRIBED
before me this 5th day of May, 2008.



Timothy M. Wigger
Notary Public for the District of Columbia

My commission expires on March 14, 2009.

**VERIFIED APPLICATION FOR ADMISSION PRO HAC VICE IN THE
STATE OF SOUTH CAROLINA**

Heather Herron, et al.
Respondents

06-CP-02-1230
Case No.

South Carolina Court of Appeals
Court

vs.

Mailing Address of Court: 1015 Sumter Street, Columbia, SC 29201

Century BMW a/k/a Sonic Automotive, et al.,
Appellants

Comes now Ryan L. VanGrack, applicant herein, and respectfully represents the following:

1. Applicant resides at 2141 P Street, N.W., Apt. 804
Street Address
Washington, --, D.C., 20037 (240) 988-2799
City County State Zip Code Telephone

2. Applicant is an attorney and a member of the law firm of (or practices law under the name of)

Williams & Connolly LLP, with offices at 725 12th Street, N.W.
Street Address
Washington, --, D. C., 20005
City County State Zip Code
202-434-5000, 202-434-5029
Telephone Fax Number

RECEIVED

MAY 13 2008

S.C. SUPREME COURT

3. Applicant has been retained personally or as a member of the above named law firm by appellant Century BMW a/k/a Sonic Automotive, the true name of which is Sonic Automotive 2752 Laurens Rd., Greenville, Inc. d/b/a Century BMW to provide legal representation in connection with the above case now pending before the above named court of the State of South Carolina.

4. Since March of 2007, applicant has been, and presently is, a member in good standing of the bar of the District of Columbia. Applicant regularly practices law in the District of Columbia. Attached is Applicant's certificate of good standing from the District of Columbia.

5. Applicant has been admitted to practice before the following courts: (List all of the following courts applicant has been admitted to practice before: United States District Courts; United States Circuit Courts of Appeals; the Supreme Court of the United States; and courts of other states or the District of Columbia.)

Court:	Date Admitted:
Maryland	2006
United States Court of Appeals for the Ninth Circuit	2006
District of Columbia	2007

Applicant is presently a member in good standing of the bars of those courts listed above, except as listed below: (List any court named in the preceding paragraph that applicant is no longer admitted to practice before.)

N/A

6. Applicant presently is not subject to any suspension or disbarment proceedings, and has not been formally notified of any complaints pending before a disciplinary agency, except as provided below (give particulars, e.g., jurisdiction, court, date):

N/A

7. Applicant never has had any application for admission *pro hac vice* in this or any other jurisdiction denied or any *pro hac vice* admission revoked, except as provided below (give particulars, e.g., date, court, docket number, judge, circumstances; attach a copy of any order of denial or revocation):

N/A

8. Applicant never has had any certificate or privilege to appear and practice before any administrative body suspended or revoked, except as provided below (give particulars, e.g., date, administrative body, date of suspension and reinstatement):

N/A

9. Local counsel of record associated with applicant in this case is Steven W. Hamm, C. Jo Anne Wessinger Hill and David A. Anderson of the Richardson Plowden Robinson, P.A. law firm, which has offices at:

<u>1900 Barnwell Street</u>	<u>Columbia</u>	<u>Richland</u>	<u>South Carolina</u>	<u>29201</u>
Street Address	City	County	State	Zip Code
<u>803-771-4400</u>				
Telephone				

If applicable list all other firms/attorneys you are associated with in this matter
Williams & Connolly, LLP (Dennis M. Black)

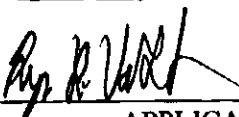
10. Applicant has previously filed an application to appear *pro hac vice* in the following South Carolina cases (give case name and status of litigation, date of application, local counsel of record in each case, and state whether application is pending or was granted).

Heather Herron, et al v. Car Max Superstores, Inc., et al
Case No. 06-CP-02-1230 (trial court)— **ACTIVE**
Date of Application: January 30, 2007, S.C., Admission Granted
Local Counsel: Steven W. Hamm
David A. Anderson
C. Jo Anne Wessinger Hill
RICHARDSON, PLOWDEN, & ROBINSON, P.A.
1900 Barnwell Street
Post Office Drawer 7788
Columbia, South Carolina 29202
(803) 771-4400
(803) 779-0016 facsimile

11. Applicant agrees to comply with the applicable statutes, laws and rules of the State of South Carolina and will familiarize him/herself with and comply with the South Carolina Rules of Professional Conduct. Applicant consents to the jurisdiction of the South Carolina courts and Commission on Lawyer Conduct.

12. Applicant respectfully requests to be admitted to practice in the above named court for this case only.

DATED this 5 day of May, 2008.



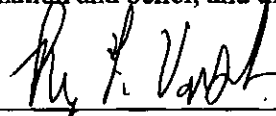
APPLICANT

VERIFICATION

DISTRICT OF COLUMBIA)

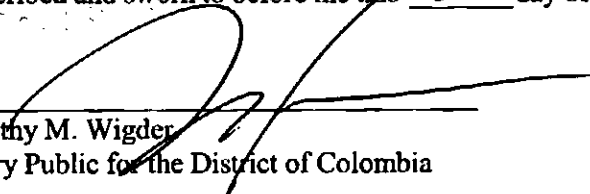
CITY OF WASHINGTON)

I, Ryan L. VanGrack, do hereby swear or affirm under penalty of perjury that I am the applicant in the above styled matter; that I have read the foregoing application and know the contents thereof; and that the contents are true of my own knowledge, except as to those matters stated on information and belief, and that as to those matters I believe them to be true.



APPLICANT/AFFILIANT

Subscribed and sworn to before me this 5th day of May, 2008.



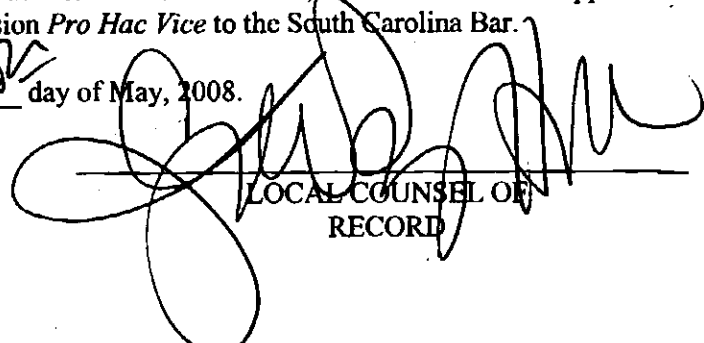
Timothy M. Wigder
Notary Public for the District of Columbia

My Commission Expires: March 14, 2009

LOCAL COUNSEL CONSENT

I hereby consent, as local counsel of record, to the association of applicant in this cause pursuant to Rules Governing Admission *Pro Hac Vice* to the South Carolina Bar.

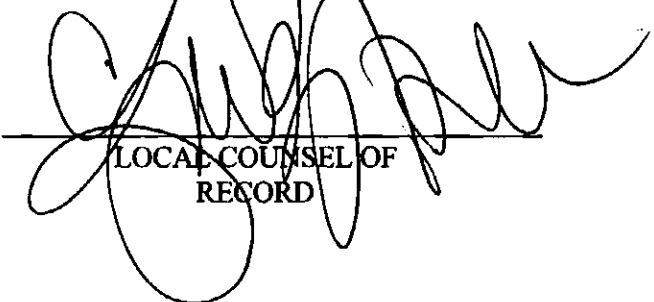
DATED this 12th day of May, 2008.



LOCAL COUNSEL OF
RECORD

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of this application upon the South Carolina Supreme Court by mail addressed to: South Carolina Supreme Court Office of Bar Admissions, PO Box 11330, Columbia, SC 29211, accompanied by payment of the \$250 filing fee payable to the South Carolina Supreme Court on this 17 day of May, 2008.



LOCAL COUNSEL OF
RECORD



District of Columbia Court of Appeals
Committee on Admissions
500 Indiana Avenue, N.W. — Room 4200
Washington, D. C. 20001
202 / 879-2710

I, GARLAND PINKSTON, JR., Clerk of the District of Columbia Court of Appeals, do hereby certify that

RYAN L. VanGRACK

was on the 5TH day of MARCH, 2007

duly qualified and admitted as an attorney and counselor and entitled to practice before this Court and is, on the date indicated below, an active member in good standing of this Bar.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of this Court at the City of Washington, D.C., on April 23, 2008.

GARLAND PINKSTON, JR., CLERK

By: *M. Charles*
Deputy Clerk

EXHIBIT B

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable Doyet A. Early, III, Circuit Court Judge

Circuit Court Case No. 2006-CP-02-1230

Heather Herron, Natalie Armstrong, Michael Ritz, Julie Freeman, Christine Watts, Michael Blease and Michael Watts, individually and for the benefit of all car buyers who paid "administrative fees" as described below to Dealers, ... **RESPONDENTS,**

v.

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. **Defendants**

of which Century BMW a/k/a Sonic Automotive is **APPELLANT.**

Comes now Dennis M. Black, applicant herein, and respectfully represents the following under oath:

1. Applicant is an attorney in the firm of Williams & Connolly LLP, 725 Twelfth Street, N.W., Washington, DC 20005 (phone 202-434-5517) (fax 202-434-5029) and is counsel for appellant Century BMW a/k/a Sonic Automotive, the true name of which is Sonic Automotive 2752 Laurens Rd., Greenville, Inc. d/b/a Century BMW, named in the above-referenced action.

2. Applicant has been retained personally or as a member of the above-named law firm to provide legal representation in connection with the above case now pending before the South Carolina Court of Appeals.

3. Since December 17, 1992, Applicant has been, and presently is, a member in good standing of the bar of the District of Columbia. Attached is a certificate of good standing.

4. Applicant has been admitted to practice before the following courts: District of Columbia (1992), State of Maryland (1990), United States Court of Appeals for the District of Columbia Circuit (1993), United States District Court for the District of Columbia (1993), United States Court of Appeals for the Eleventh Circuit (1995), United States District Court for the Eastern District of Michigan (1998), United States Court of Appeals for the Fifth Circuit (1998), United States Court of Appeals for the Sixth Circuit (1999), and the United States District Court for the District of Colorado (2006).

5. Applicant presently is not subject to any suspension or disbarment proceedings and has not been formally notified of any complaints pending before a disciplinary agency.

6. Applicant has never had any application for admission *pro hac vice* in this or any other jurisdiction denied or any *pro hac vice* admission revoked.

7. Applicant has never had any certificate or privilege to appear and practice before any administrative body suspended or revoked.

8. Local counsel of record associated with applicant in this case is Steven W. Hamm, C. Jo Anne Wessinger Hill and David A. Anderson of Richardson, Plowden & Robinson, P.A., 1900 Barnwell Street, Columbia, South Carolina 29201 (phone 803-576-3714).

9. Applicant has previously filed an application to appear *pro hac vice* in South Carolina in the Court of Common Pleas for Aiken County (trial court). The case number for that active case is 2006-CP-02-1230.

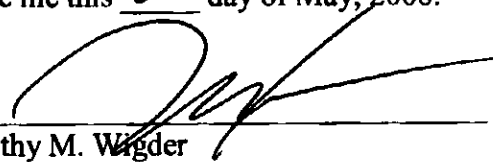
10. Applicant agrees to comply with the applicable statutes, laws and rules of the State of South Carolina and will familiarize himself with and comply with the South Carolina Rules of Professional Conduct. Applicant consents to the jurisdiction of the South Carolina courts and Commission on Lawyer Conduct.

11. Applicant respectfully requests to be admitted to practice in the above-named court for this case only.

Dated this 5 day of May, 2008.


APPLICANT/AFFILIANT

SWORN TO AND SUBSCRIBED
before me this 5th day of May, 2008.


Timothy M. Wigder
Notary Public for the District of Columbia

My commission expires on March 14, 2009.

**VERIFIED APPLICATION FOR ADMISSION PRO HAC VICE IN THE
STATE OF SOUTH CAROLINA**

Heather Herron, et al.
Respondents

06-CP-02-1230
Case No.

South Carolina Court of Appeals
Court

vs.

Mailing Address of Court: 1015 Sumter Street, Columbia, SC 29201

Century BMW a/k/a Sonic Automotive, et al.,
Appellants

RECEIVED

Comes now Dennis M. Black, applicant herein, and respectfully represents the following:

MAY 13 2008

1. Applicant resides at 1733 Q Street, NW
Street Address **S.C. SUPREME COURT**
Washington, —, D.C., 20009 (202) 462-0860
City County State Zip Code Telephone

2. Applicant is an attorney and a member of the law firm of (or practices law under the name of)

Williams & Connolly LLP, with offices at 725 12th Street, N.W.
Street Address

Washington, —, D.C., 20005
City County State Zip Code

202-434-5000, 202-434-5029
Telephone Fax Number

3. Applicant has been retained personally or as a member of the above named law firm by appellant Century BMW a/k/a Sonic Automotive, the true name of which is Sonic Automotive 2752 Laurens Rd., Greenville, Inc. d/b/a Century BMW to provide legal representation in connection with the above case now pending before the above named court of the State of South Carolina.

4. Since December 17 of 1992, applicant has been, and presently is, a member in good standing of the bar of the highest court of the District of Columbia where applicant regularly practices law. Attached is a certificate of good standing.

5. Applicant has been admitted to practice before the following courts: (List all of the following courts applicant has been admitted to practice before: United States District Courts; United States Circuit Courts of Appeals; the Supreme Court of the United States; and courts of other states or the District of Columbia.)

Court:	Date Admitted:
District of Columbia	1992
State of Maryland	1990
U.S. Court of Appeals – 5th Circuit	1998
U.S. Court of Appeals – 6th Circuit	1999
U.S. Court of Appeals – 11th Circuit	1995
U.S. Court of Appeals – D.C. Circuit	1993
U.S. District Court - Eastern District of Michigan	1998
U.S. District Court – District of Columbia	1993
District of Colorado	2006

Applicant is presently a member in good standing of the bars of those courts listed above, except as listed below:
(List any court named in the preceding paragraph that applicant is no longer admitted to practice before.)

N/A

6. Applicant presently is not subject to any suspension or disbarment proceedings, and has not been formally notified of any complaints pending before a disciplinary agency, except as provided below (give particulars, e.g., jurisdiction, court, date):

N/A

7. Applicant never has had any application for admission *pro hac vice* in this or any other jurisdiction denied or any *pro hac vice* admission revoked, except as provided below (give particulars, e.g., date, court, docket number, judge, circumstances; attach a copy of any order of denial or revocation):

N/A

8. Applicant never has had any certificate or privilege to appear and practice before any administrative body suspended or revoked, except as provided below (give particulars, e.g., date, administrative body, date of suspension and reinstatement):

N/A

9. Local counsel of record associated with applicant in this case is Steven W. Hamm, C. Jo Anne Wessinger Hill and David A. Anderson of the Richardson Plowden Robinson, P.A. law firm, which has offices at:

<u>1900 Barnwell Street</u>	<u>Columbia</u>	<u>Richland</u>	<u>South Carolina</u>	<u>29201</u>
Street Address	City	County	State	Zip Code

803-771-4400
Telephone

If applicable list all other firms/attorneys you are associated with in this matter

Williams & Connolly, LLP (Ryan L. VanGrack)

10. Applicant has previously filed an application to appear *pro hac vice* in the following South Carolina cases (give case name and status of litigation, date of application, local counsel of record in each case, and state whether application is pending or was granted).

Heather Herron, et al v. Car Max Superstores, Inc., et al
Case No. 06-CP-02-1230 (trial court) – **ACTIVE**
Date of Application: January 30, 2007, S.C., Admission Granted
Local Counsel: Steven W. Hamm
David A. Anderson
C. Jo Anne Wessinger Hill
RICHARDSON, PLOWDEN & ROBINSON, P.A.
1900 Barnwell Street
Post Office Drawer 7788
Columbia, South Carolina 29202
(803) 771-4400
(803) 779-0016 facsimile

11. Applicant agrees to comply with the applicable statutes, laws and rules of the State of South Carolina and will familiarize him/herself with and comply with the South Carolina Rules of Professional Conduct. Applicant consents to the jurisdiction of the South Carolina courts and Commission on Lawyer Conduct.

12. Applicant respectfully requests to be admitted to practice in the above named court for this case only.

DATED this 5 day of May, 2008.

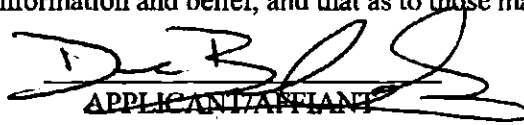

APPLICANT

VERIFICATION

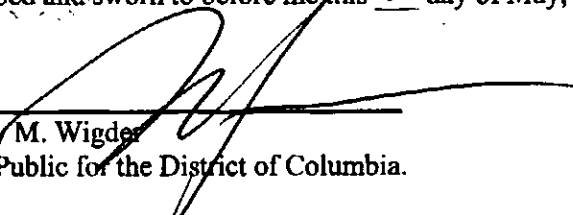
DISTRICT OF COLUMBIA)

CITY OF WASHINGTON)

I, Dennis M. Black, do hereby swear or affirm under penalty of perjury that I am the applicant in the above styled matter; that I have read the foregoing application and know the contents thereof; and that the contents are true of my own knowledge, except as to those matters stated on information and belief, and that as to those matters I believe them to be true.


APPLICANT/AFFILIANT

Subscribed and sworn to before me this 5th day of May, 2008.

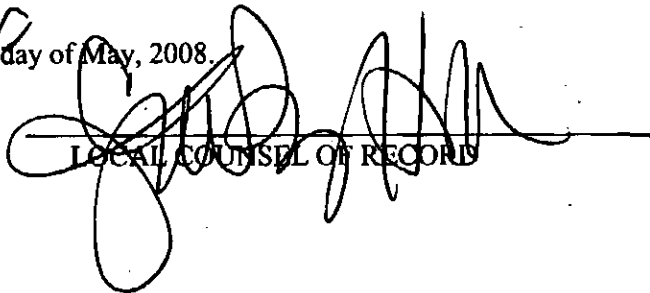

Timothy M. Wigder
Notary Public for the District of Columbia.

My Commission Expires: March 14, 2009

LOCAL COUNSEL CONSENT

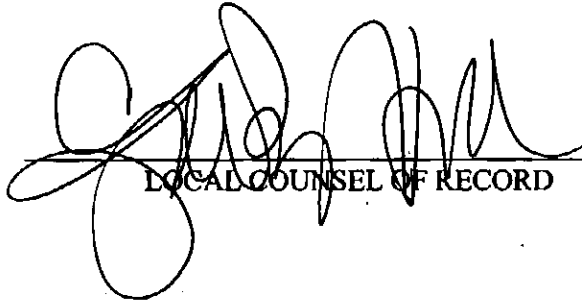
I hereby consent, as local counsel of record, to the association of applicant in this cause pursuant to Rules Governing Admission *Pro Hac Vice* to the South Carolina Bar.

DATED this 12th day of May, 2008.


LOCAL COUNSEL OF RECORD

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of this application upon the South Carolina Supreme Court by mail addressed to: South Carolina Supreme Court Office of Bar Admissions, PO Box 11330, Columbia, SC 29211, accompanied by payment of the \$250 filing fee payable to the South Carolina Supreme Court on this 12th day of May, 2008.


LOCAL COUNSEL OF RECORD

RECEIVED

MAY 13 2008

SC Court of Appeals



District of Columbia Court of Appeals
Committee on Admissions
500 Indiana Avenue, N.W. — Room 4200
Washington, D. C. 20001
202 / 879-2710

I, GARLAND PINKSTON, JR., Clerk of the District of Columbia
Court of Appeals, do hereby certify that

DENNIS M. BLACK

was on the 7TH day of DECEMBER, 1992

duly qualified and admitted as an attorney and counselor and
entitled to practice before this Court and is, on the date
indicated below, an active member in good standing of this Bar.

In Testimony Whereof, I have
hereunto subscribed my name
and affixed the seal of this
Court at the City of
Washington, D.C., on April
23, 2008.

GARLAND PINKSTON, JR., CLERK

By: M. Charles

Deputy Clerk

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

RECEIVED

MAY 13 2008

The Honorable Doyet A. Early, III, Circuit Court Judge SC Court of Appeals

Circuit Court Case No. 2006-CP-02-1230
Court of Appeals Docket No. 03-27371

Heather Herron, Natalie Armstrong, Michael Ritz, Julie Freeman, Christine Watts, Alison Dannert, Michael Bleasc, Michael Watts, individually and for the benefit of all car buyers who paid "administrative fees" as described below to Defendants, ... **Respondents,**

v.

Century BMW d/b/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., ... **Defendants,**

of whom Century BMW d/b/a Sonic Automotive is the **Appellant.**

CERTIFICATE OF SERVICE

The undersigned attorney of RICHARDSON PLOWDEN & ROBINSON, P.A., attorneys for Appellant, does hereby certify that service of the **Pro Hac Vice Applications of Dennis Black and Ryan VanGrack** in the above-captioned matter was made upon all counsel of record this 12th day of May 2008, by depositing a copy of same in the U.S. Mail, postage prepaid, addressed as follows:

A. Camden Lewis, Esq.
Brady R. Thomas, Esq.
LEWIS & BABCOCK, LLP
P.O. Box 11208
Columbia, SC 29211

Michael E. Spears, Esq.
MICHAEL E. SPEARS, P.A.
PO Box 5806
Spartanburg, SC 29304

Richard A. Harpootlian, Esq.
RICHARD A. HARPOOTLIAN, P.A.
P.O. Box 1090
Columbia, SC 29202

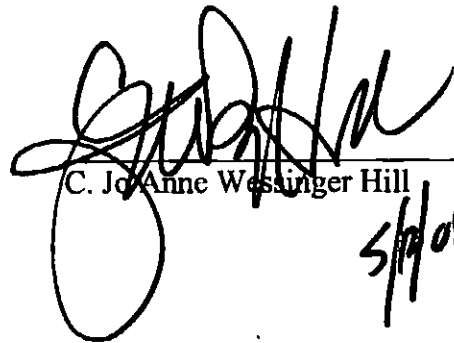
James Y. Becker, Esquire
R. David Proffitt, Esquire
HAYNESWORTH SINKLER BOYD, PA
1201 Main Street, 22nd Floor (29201-3226)
P.O. Box 11889
Columbia, S.C. 29211-1889

Harvey G. Sanders, Jr., Esquire
James T. Hewitt, Esquire
S. Brooke Chapman, Esquire
LEATHERWOOD WALKER TODD & MANN, P.C.
P.O. Box 87
Greenville, SC 29602-0087

Gedney M. Howe, III, Esq.
GEDNEY M. HOWE, III, PA
P.O. Box 1034
Charleston, SC 29402

J. Gregory Studemeyer, Esquire
1804 Bull Street
P.O. Box 12201
Columbia, SC 29211-2201

H. Clayton Walker, Jr., Esquire
Robert L. Reibold, Esquire
WALKER & REIBOLD, LLC
P.O. Box 61140
Columbia, SC 29260



C. JoAnne Wessinger Hill

5/12/08

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable Doyet A. Early, III, Circuit Court Judge

Circuit Court Case No. 2006-CP-01-1230
Court of Appeals Docket No. 03-27371

RECEIVED

MAY 13 2008

SC Court of Appeals

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 who paid "administrative fees" as described below to Defendants, ... **Respondents,**

v.

Century BMW d/b/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., ... **Defendants**

of whom Sonic Automotive d/b/a Century BMW is the **Appellant.**

**[PROPOSED] ORDER GRANTING PRO HAC VICE ADMISSION
OF DENNIS M. BLACK AND RYAN L. VANGRACK**

This matter comes before the Court of Appeals (the "Court") on the Motion of Steven W. Hamm, Esquire, C. Jo Anne Wessinger Hill, Esquire, and David A Anderson, Esquire, on behalf of Sonic Automotive d/b/a Century BMW (the "Appellant") for Admission of Ryan L. VanGrack and Dennis M. Black to practice before the Court *pro hac vice*. Mr. Hamm petitions for Ryan L. VanGrack and Dennis M. Black to appear before the Court as counsel for the named Appellant in the appeal of this matter before the Court.

It appears to this Court that the proper *pro hac vice* applications of Ryan L. VanGrack and Dennis M. Black have been filed with the South Carolina Supreme Court and that the necessary affirmations have been made. The Deputy Clerk for Bar Admissions has certified receipt of the filing and that the filing fee has been paid. We believe that Messrs. VanGrack and Black meet the qualifications for admission to practice before the Court in this Appeal *pro hac vice* and that they should be so admitted.

This Order shall remain in full force and effect until further Order of the Court.

AND IT IS SO ORDERED that the Motion of Steven W. Hamm, C. Jo Anne Wessinger Hill and David A. Anderson for the *pro hac vice* admission of Dennis M. Black and Ryan L. VanGrack is GRANTED.

This ____ day of _____ 2008.

Judge

ATTEST:

Clerk

(SEAL)



The South Carolina Court of Appeals

KENNETH A. RICHSTAD
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

May 16, 2008

Steven W. Hamm, Esquire
C. Jo Anne Wessinger-Hill, Esquire
David A. Anderson, Esquire
Jocelyn T. Newman, Esquire
Richardson, Plowden
& Robinson, PA
P O Drawer 7788
Columbia, SC 29202

Re: Herron, Heather v. Century BMW

Dear Counsel:

This will acknowledge receipt of your Notice of Motion and Motion to Consolidate Appeals in the above entitled matter. Please be advised that we are herewith returning the additional filing fee (check no. 22543 in the amount of twenty-five (\$25) dollars) as this additional filing fee is not necessary.

Opposing counsel is advised that an original and six (6) copies of a return to this motion may be filed no later than ten (10) days from the date of service, pursuant to Rule 224(e). Upon receipt of the return, if one is filed, the matter will be taken under consideration and you will be notified as soon as action has been taken.

Very truly yours,

A handwritten signature in black ink, appearing to read "Kenneth A. Richstad".
CLERK

KAR/ec

cc: Dennis M. Black, Esquire
Ryan L. VanGrack
A. Camden Lewis, Esquire
Brady R. Thomas, Esquire
Gedney M. Howe, III, Esquire
Michael Eugene Spears, Esquire
Richard A. Harpootlian, Esquire

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable Doyet A. Early, Circuit Court Judge

RECEIVED

MAY 12 2008

Case No.: 2006-CP-02-1230

SC Court of Appeals

IN RE: MOTOR VEHICLE CLOSING FEE LITIGATION

Heather Herron, Natalie Armstrong, Michael Ritz, Julie Freeman, Christine Watts, Alison Dannert, Michael Blease and Michael Watts, individually and for the benefit of all car buyers whom paid "administrative fees" as described below to Defendants,

Respondents ,

v.

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., et. al.,

Appellants.

NOTICE OF SUPREME COURT RULING

Respondents hereby file this Notice of Supreme Court ruling. This Court held this matter in abeyance pending the Supreme Court's decision regarding a Joint Motion to Certify Appeal. The South Carolina Supreme Court by letter dated May 7, 2008 denied Appellants' Joint Motion to

Certify this Appeal. A copy of the May 7, 2008 letter from the Supreme Court is attached as Exhibit 1.

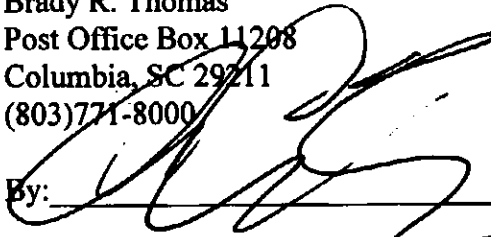
The Motion to Certify was an attempt to have the Supreme Court taken in essence the interlocutory appeal filed in this Court. This Court issued a letter holding this case in abeyance pending the Supreme Court action. Accordingly, Respondents respectfully request that this matter no longer be held in abeyance and that the Court address Respondents' Motion to Dismiss this appeal filed March 26, 2008.

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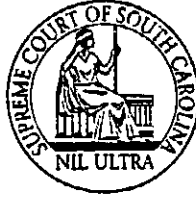
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By: 

Attorneys for the Respondents

Columbia, South Carolina

May __, 2008.



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

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FAX (803) 734-1499

May 7, 2008

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Robert L. Reibold, Esquire
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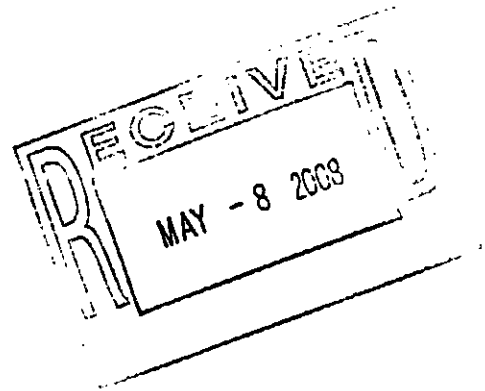
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Re: Herron, Heather v. Dick Dyer & Assoc.



Dear Counsel:

The following Order has been endorsed on your Joint Motion to Certify this Appeal for Review by the Supreme Court in the above entitled case on appeal.

"Motion denied.

s/ Jean H. Toal C.J.
For the Court
Justice Costa M. Pleicones, not participating.

May 7, 2008."

Very truly yours,


CLERK

DES/jjp

cc: Dennis M. Black, Esquire
Ryan L. VanGrack, Esquire
A. Camden Lewis, Esquire
Brady R. Thomas, Esquire
Gedney M. Howe, III, Esquire
Michael Eugene Spears, Esquire
Richard A. Harpootlian, Esquire

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable Doyet A. Early, Circuit Court Judge

RECEIVED

MAY 12 2008

SC Court of Appeals

Case No.: 2006-CP-02-1230

Heather Herron, Natalie Armstrong, Michael Ritz, Julie Freeman, Christine Watts, Alison Dannert, Michael Blease and Michael Watts, individually and for the benefit of all car buyers whom paid "administrative fees" as described below to Defendants,

Respondents,

v.

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., et. al.,

Appellants.

PROOF OF SERVICE

I, Kathy A. Collins, an employee with the law firm of Lewis & Babcock, L.L.P., attorneys for the Respondents, do hereby certify that I have served the Notice of Supreme Court Ruling upon opposing counsel in this action by mailing a copies thereof by United States Mail, postage prepaid, on May 9, 2008 to the following addresses:

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Kathy A. Collins

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May 9, 2008.

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May 9, 2008

The Honorable Kenneth A. Richstad
Clerk of Court
South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

RE: *Heather Herron, et al. v. Century BMW, et al.*
C/A No.: 2006-CP-02-1230
Our file Number: 06-551

Dear Mr. Richstad:

Enclosed for filing please the original and six copies of Notice of Ruling, along with a Proof of Service, in of the above-referenced case. An additional copy of each is enclosed to be clocked and returned to our office via the enclosed envelope.

By copy of this letter, I am serving opposing counsel with copies of same.

Thank you for your assistance.

Sincerely,

LEWIS & BABCOCK, LLP



Kathy A. Collins
Secretary to A. Camden Lewis

cc: Michael E. Spears, Esquire
Richard A. Harpootlian, Esquire
Gedney M. Howe, III, Esquire
Steve Hamm, Esquire
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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

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APPEAL FROM AIKEN COUNTY
Court of Common Pleas

SC Court of Appeals

The Honorable Doyet A. Early, III, Circuit Court Judge

Circuit Court Case No. 2006-CP-02-1230

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 who paid "administrative fees" as described below to Defendants, ... **Respondents,**

v.

Century BMW d/b/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., ... **Defendants**

of whom Century BMW d/b/a Sonic Automotive is the **Appellant.**

DESIGNATION OF MATTER TO BE INCLUDED
IN THE RECORD ON APPEAL

The Appellant Century BMW d/b/a Sonic Automotive, whose true name and correct name is Sonic Automotive 2752 Laurens Rd., Greenville, Inc. d/b/a Century BMW ("Century BMW"), proposes the following be included in the Record on Appeal:

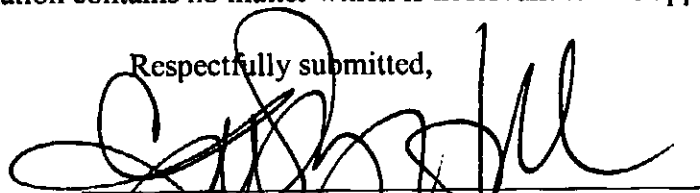
- 1) Arbitration Agreement dated June 25, 2005;
- 2) First Amended Complaint dated October 28, 2006;
- 3) Notice of Motion and Motion of Defendant Century BMW, whose true name is Sonic Automotive 2752 Laurens Rd., Greenville, Inc. d/b/a Century BMW to dismiss the amended complaint and this action, for change of venue, to sever, to

- strike, to compel arbitration, for a protective order, and for costs and fees, dated December 29, 2006;
- 4) Memorandum In Support of Century BMW's Motion to Compel Arbitration, including exhibits, dated February 12, 2007;
 - 5) Plaintiffs' Memorandum In Opposition to Motions to Dismiss (including the motion to compel arbitration), dated March 9, 2007, pp. 29-35
 - 6) Reply Memorandum In Support of Defendant Century BMW's Motion to Compel Arbitration, including exhibits, dated March 26, 2007;
 - 7) Letter to the Honorable Doyt A. Early, dated April 3, 2007;
 - 8) Transcript of Proceedings, dated April 4, 2007, pp. 70-74
 - 9) Order of May 2, 2007;
 - 10) Supplemental Memorandum in Support of Defendant Century BMW's Motion to Compel Arbitration, including exhibits, dated November 27, 2007;
 - 11) Plaintiff Christine Watts's Supplemental Memorandum in Opposition to Century BMW's Motion to Compel Arbitration, dated November 28, 2007;
 - 12) Transcript of Proceedings, November 30, 2007;
 - 13) Deposition Transcript of Michael Watts Deposition, dated January 29, 2008;
 - 14) Deposition Transcript of Christine Watts Deposition, dated January 29, 2008;
 - 15) Deposition Transcript of John Robert Bishop, dated January 30, 2008;
 - 16) Letter to the Honorable Doyt A. Early, dated February 13, 2008;
 - 17) Second Supplemental Memorandum in Support of Defendant Century BMW's Motion to Compel Arbitration, dated February 18, 2008;
 - 18) Plaintiff Christine Watts's Second Supplemental Memorandum in Opposition to Century BMW's Motion to Compel Arbitration, dated February 18, 2008;
 - 19) Second Reply Memorandum in Support of Defendant Century BMW's Motion to Compel Arbitration, dated February 22, 2008
 - 20) Plaintiff Christine Watts's Reply to Second Supplemental Memorandum in Support of Defendant Century BMW's Motion to Compel Arbitration, dated February 22, 2008
 - 21) Order Denying Motion to Compel Arbitration, dated March 10, 2008

I certify that this designation contains no matter which is irrelevant to this appeal.

May 12, 2008

Respectfully submitted,



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INC., D/B/A TAYLOR TOYOTA

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

MAY 12 2008

SC Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable Doyet A. Early, III, Circuit Court Judge

Circuit Court Case No. 2006-CP-02-1230

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 who paid "administrative fees" as described below to Defendants, ... **Respondents,**

v.

Century BMW d/b/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., ...
..... **Defendants**

of whom Century BMW d/b/a Sonic Automotive is the
Appellant.

CERTIFICATE OF SERVICE

The undersigned employee of RICHARDSON PLOWDEN & ROBINSON, P.A., attorneys for Appellant, does hereby certify that service of the foregoing **Initial Brief and Designation of Matter** in the above-captioned matter was made upon all counsel of record this 12th day of May 2008, by depositing a copy of same in the U.S. Mail, postage prepaid, addressed as follows:

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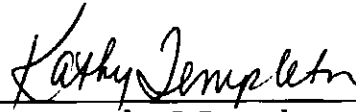
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Kathy J. Templeton

May 12, 2008
Columbia, South Carolina

Reply to: Columbia
jneuman@RichardsonPlowden.com
Direct: 803-253-8716

May 12, 2008

VIA HAND DELIVERY

The Hon. Kenneth A. Richstad,
Clerk – South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29211

Re: Herron et al Respondents v. Dick Dyer Et al,
of which Sonic Automotive, d/b/a Century BMW is Appellant
Appeal of Order in Circuit Court Case No. 2006-CP-01-1230
Our File No. 6665-001

Dear Mr. Richstad:

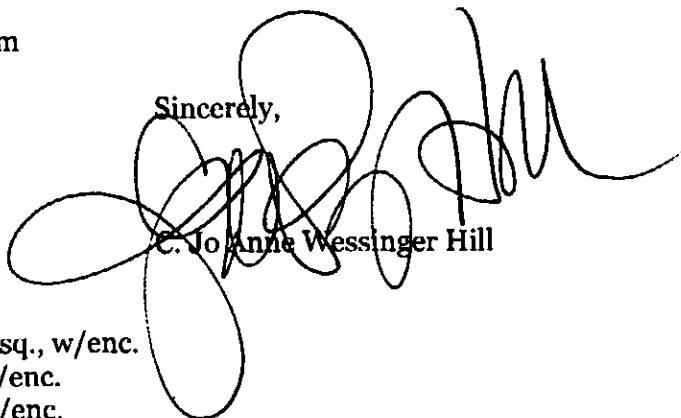
Enclosed please find the original and two copies of the Initial Brief and Designation of Matter of Appellant Sonic Automotive d/b/a Century BMW in the above matter. Please file the original and return two clocked copies to my courier.

By a copy hereof I am serving the same upon all counsel of record as indicated below.

If you should have any questions or concerns, please do not hesitate to contact this office.

With kindest regards, I am

Sincerely,



C. Jo Anne Wessinger Hill

JWH/kjt
Enclosures

Cc: H. Clayton Walker, Jr., Esq., w/enc.
James Y. Becker, Esq., w/enc.
R. David Proffitt, Esq., w/enc.
J. Gregory Studemeyer, Esq., w/enc.
Gedney M. Howe, III, w/enc.
Richard A. Harpootlian, Esq., w/enc.
Michael E. Spears, Esq., w/enc.
A. Camden Lewis, Esq., w/enc.
Brady R. Thomas, Esq., w/enc.
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James T. Hewitt, Esq., w/enc.
S. Brooke Chapman Esq., w/enc.

RECEIVED

MAY 12 2008

SC Court of Appeals

ORIGINAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

MAY 14 2008

The Honorable Doyet A. Early, III, Circuit Court Judge

SC Court of Appeals

Circuit Court Case No. 2006-CP-02-1230
Court of Appeals Docket No. 03-27371

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 who paid "administrative fees" as described below to Defendants, ... **Respondents,**

v.

Century BMW d/b/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., ... **Defendants,**

of whom Century BMW d/b/a Sonic Automotive is the **Appellant.**

**NOTICE OF MOTION AND MOTION TO CONSOLIDATE APPEALS OR, IN THE
ALTERNATIVE, TO SEVER CENTURY BMW AND CONSOLIDATE**

Pursuant to Rule 224, SCACR, Appellant Sonic Automotive d/b/a Century BMW, whose true name is Sonic Automotive 2752 Laurens Rd., Greenville, Inc. d/b/a Century BMW ("Century BMW"), by and through its counsel, moves this Honorable Court for an Order consolidating the two appeals filed in this matter, or, in the alternative, to sever Century BMW's appeal from the Joint Appeal filed on March 10, 2008, and consolidate that with the instant appeal filed on March 12, 2008, from the Order of the Honorable Doyet A. Early, III, dated

March 10, 2008, denying Appellant's Motion to Compel Arbitration of Plaintiff Christine Watts' claims and to dismiss those claims.

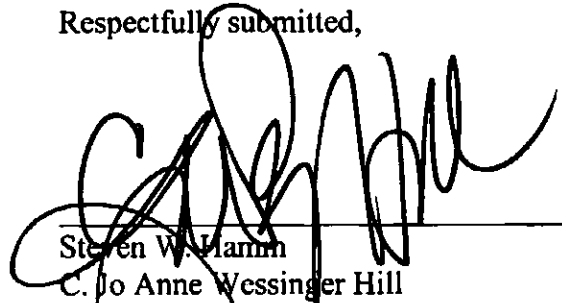
Appellant believes that doing so would best serve the interests of justice as the issues contained in the Joint Appeal timely filed on March 10, 2008 by Century BMW and others, appealing the Order of the Honorable Doyet A. Early filed August 1, 2007, and the Judge Early's Order filed February 5, 2008, in which the circuit court ruled on Appellant's motions to reconsider the Court's earlier order, are related to and affect Century BMW's appeal of Judge Early's March 10, 2008 Order denying Century BMW's Motion to Compel Arbitration. Because Judge Early filed the Order denying the motions to reconsider and the Order denying Century BMW's Motion to Compel Arbitration over one month apart, Century BMW filed notices of appeals of those two Orders at different times. Nevertheless, the two appeals are related to each other and the resolution of Century BMW's appeal of the August 1, 2007 and February 5, 2008 Orders impact Century BMW's appeal of the March 10, 2008 Order. Therefore, consolidating the two appeals would allow this Honorable Court the opportunity to obtain a complete view of all facts and evidence affecting the two Appeals. See Ferguson v. Charleston Lincoln Mercury, 344 S.C. 502, 544 S.E.2d 285 (Ct. App. 2001) ("we may review an interlocutory order when, as now, it contains other appealable issues"); Pruitt v. Bowers, 330 S.C. 483, 499 S.E.2d 250 (Ct. App. 1998) (holding that an interlocutory order is generally not appealable but may be considered by the court because it accompanies the appeal of an appealable ruling or order).

In support of its Motion, Appellant submits the following brief and addendum to the designation of Record. It is in the interest of public justice that these matters be considered together as it provides the Court with the complete and full record of the matters related to the

denial of Century BMW's Motion to Compel Arbitration, and will therefore impact the outcome of Century BMW's appeal of that denial.

Respectfully submitted,

May 12, 2008



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INC., D/B/A TAYLOR TOYOTA

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

MAY 14 2008

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

SC Court of Appeals

The Honorable Doyet A. Early, III, Circuit Court Judge

Circuit Court Case No. 2006-CP-02-1230
Court of Appeals Docket No. 03-27371

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 who paid "administrative fees" as described below to Defendants, ... **Respondents,**

v.

Century BMW d/b/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., ... **Defendants,**

of whom Century BMW d/b/a Sonic Automotive is the **Appellant.**

CERTIFICATE OF SERVICE

The undersigned attorney of RICHARDSON PLOWDEN & ROBINSON, P.A., attorneys for Appellant, does hereby certify that service of the **Motion** in the above-captioned matter was made upon all counsel of record this 12th day of May 2008, by depositing a copy of same in the U.S. Mail, postage prepaid, addressed as follows:

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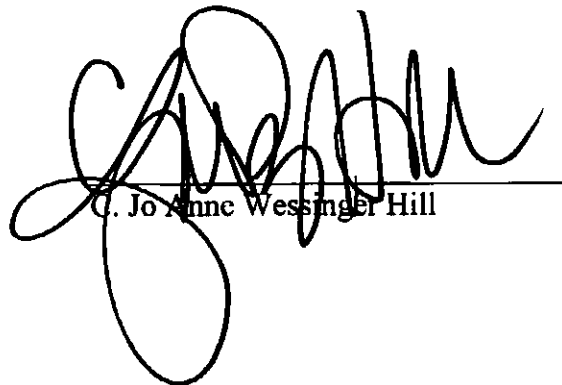
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May 12, 2008

The Hon. Kenneth A. Richstad,
Clerk – South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29211

Re: Herron et al Respondents v. Dick Dyer Et al,
of which Sonic Automotive, d/b/a Century BMW is Appellant
Appeal of Order in Circuit Court Case No. 2006-CP-01-1230
Our File No. 6665-001

Dear Mr. Richstad:

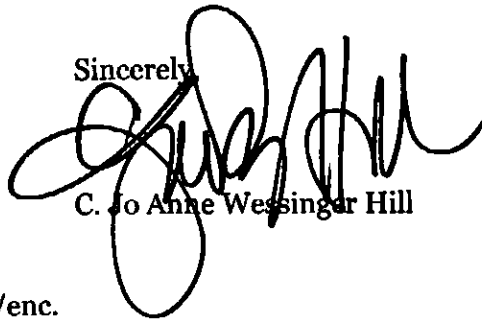
Enclosed please find the original and two copies of the attached Motion in the above matter to amend the prior motion filed earlier today. Please file the original and return at least one clocked copy.

By a copy hereof I am serving the same upon all counsel of record as indicated below.

If you should have any questions or concerns, please do not hesitate to contact this office.

With kindest regards, I am

Sincerely,



C. Jo Anne Wessinger Hill

JWH/kjt
Enclosures

Cc: H. Clayton Walker, Jr., Esq., w/enc.
James Y. Becker, Esq., w/enc.
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Brady R. Thomas, Esq., w/enc.
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James T. Hewitt, Esq., w/enc.
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SC Court of Appeals
Cash \$25

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 who paid "administrative fees" as described below to Defendants, ... **Respondents,**

v.

Century BMW d/b/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., ... **Defendants,**

of whom Century BMW d/b/a Sonic Automotive is the **Appellant.**

**NOTICE OF MOTION AND MOTION TO CONSOLIDATE APPEALS OR, IN THE
ALTERNATIVE, TO SEVER CENTURY BMW AND CONSOLIDATE**

Pursuant to Rule 224, SCACR, Appellant Appellant, Sonic Automotive d/b/a Century BMW, whose true name is Sonic Automotive 2752 Laurens Rd., Greenville, Inc. d/b/a Century BMW ("Century BMW"), by and through its counsel, moves this Honorable Court for an Order consolidating the appeals filed in this matter or, in the alternative, to sever the appeal filed with regard to Century BMW only and consolidate that with the instant case and appeal on March 12, 2008 from the Order which appeals the Order of the Honorable Doyet A. Early, III, dated March

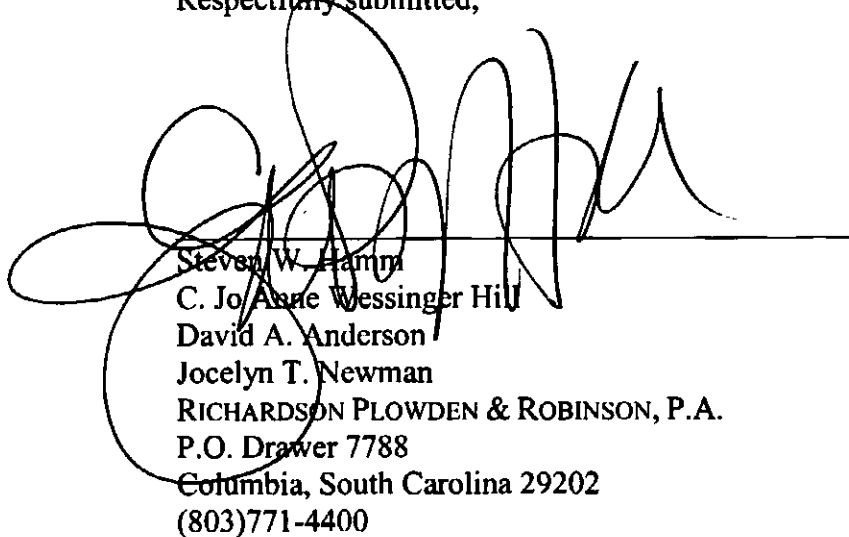
10, 2008, denying Appellant's Motion to Compel Arbitration of Plaintiff Christine Watts' claims and to dismiss those claims.

Appellant believes that doing so would best serve the interests of justice as the issues contained in the Joint Appeal filed on March 10, 2008 by Century BMW and others from the appeal the Order of the Honorable Doyet A. Early filed August 1, 2007, and the Order of Judge Early filed February 5, 2008, in which the circuit court ruled on Appellants' motions to reconsider its earlier order filed pursuant to Rule 59(e), SCRPC. Appellant Century BMW received written notice of entry of the latter Order on February 7, 2008, as specified in the Notice of Appeal. The two appeals are ancillary to each other. Therefore, consolidating the two appeals would allow this Honorable Court the opportunity to view all facts and evidence in their entirety. See Ferguson v. Charleston Lincoln Mercury, 344 S.C. 502, 544 S.E.2d 285 (Ct. App. 2001) ("we may review an interlocutory order when, as now, it contains other appealable issues"); Pruitt v. Bowers, 330 S.C. 483, 499 S.E.2d 250 (Ct. App. 1998) (holding that an interlocutory order is generally not appealable but may be considered by the court because it accompanies the appeal of an appealable ruling or order).

In support of its Motion, the Appellant's submit a brief and addendum to the designation of Record. It is in the interest of public justice that these matters be considered together as it provides the Court with the complete and full record of the matters related to the denial of the Appellant's Motion to Compel Arbitration and which will have an impact on the outcome.

Respectfully submitted,

May 12, 2008



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BMW

ORIGINAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
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The Honorable Doyet A. Early, III, Circuit Court Judge

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Circuit Court Case No. 2006-CP-02-1230

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of whom Century BMW d/b/a Sonic Automotive is the **Appellant.**

**MEMORANDUM IN SUPPORT OF APPELLANT'S MOTION TO JOIN OR
OTHERWISE INCLUDE IN PARI MATERIA ISSUES WITHIN THE APPEAL FILED
ON MARCH 12, 2008 THAT ARE THE RELATED TO LOWER COURT'S DENIAL OF
THE APPELLANT'S MOTION TO COMPEL ARBITRATION**

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In support of its Motion filed contemporaneously with the Memorandum, the Appellant submits this document on the issues as it relates and impacts the Appellant's Notice Appeal dated March 12, 2008 in this matter based upon the grounds outlined in the Motion.

STATEMENTS OF ISSUES ON APPEAL

- I. Did the circuit court err in ruling that Respondents ("Plaintiffs") do not have to plead or prove the requirements of Rule 23, SCRPC, during the liability or litigation phase of this case, but instead may bring an unprecedented and unmanageable "mass action" pursuant to South Carolina Code Ann. § 56-15-110(2) (2006)?
- II. Did the circuit court err in failing to rule on Century BMW's motion to dismiss Plaintiffs' Complaint on the ground that Plaintiffs have improperly joined hundreds of unrelated parties and potentially hundreds of thousands of unrelated claims across South Carolina in a single lawsuit?
- III. Did the circuit court err in denying Century BMW's motion to dismiss Plaintiffs' civil conspiracy cause of action when Plaintiffs failed to plead adequately the elements of civil conspiracy?

STATEMENT OF THE CASE

In this lawsuit, Plaintiffs challenge Dealers' charging of a "closing fee," which the Legislature explicitly authorized by statute in 2000. Under South Carolina Code Ann. § 37-2-307 (2002) (the "Closing Fee Statute"):

[e]very 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.

Most motor vehicle sales or lease transactions are a document-intensive and time-consuming process. A closing fee is a charge by which Dealers recoup all or part of the costs incurred in obtaining, preparing, delivering and storing numerous documents related to the sale of a vehicle on behalf of or as required by the Department of Motor Vehicles in South Carolina and similar agencies in other states, lenders, insurance companies, and automobile manufacturers' warranty divisions. To comply with these requirements and to complete the transaction effectively and efficiently, Dealers provide many administrative services incidental to the closing of the transaction between the customer and the Dealer such as:

- preparing, storing, and retrieving all documents associated with the vehicle purchase and trade-in vehicle, if any;
- processing documentation related to trade-ins, including lost or faulty titles and obtaining out-of-state or bank-held titles;
- verifying loan payoff balances on trade-ins and insuring loan payoffs are properly made to the customer's bank;
- discussing vehicle titling options and alternatives and providing assistance for out-of-state titling, including necessary documentation;
- courier services;
- assisting the customer in preparing documents necessary to apply for refunds and entitlements due from traded or newly-purchased vehicles; and

- creating and maintaining customer records to provide proper handling of the transaction and assisting in documenting the vehicle's history.

PROCEDURAL POSTURE AND FACTUAL BACKGROUND

Plaintiffs filed their first Complaint against certain dealerships in Aiken County on August 29, 2006, with four Plaintiffs suing fifty-one motor vehicle dealerships located in thirteen counties. Heather Herron et al. v. Dick Dyer & Associates, Inc. et al., Case No. 2006-CP-02-1230. [R.p. ____; Summons and Complaint.] Before Dealers answered or otherwise responded, Plaintiffs filed a First Amended Complaint on October 31, 2006, with eight Plaintiffs suing 324 dealerships located in forty-one counties. Each named Plaintiff alleges he or she bought one vehicle from a single dealership; Christine Watts is the only named Plaintiff who allegedly purchased a vehicle from Appellant Century BMW a/k/a Sonic Automotive, the true name of which is Sonic Automotive 2752 Laurens Rd., Greenville, Inc. d/b/a Century BMW ("Century BMW"). [R.p. ____; First Amended Complaint.]

Plaintiffs later voluntarily dismissed claims against about sixty Dealers named in the First Amended Complaint after determining many did not even charge a closing fee or charged a nominal closing fee. Most remaining Dealers, including Century BMW, moved to dismiss the First Amended Complaint based, *inter alia*, on lack of standing, improper joinder, the failure to plead the requirements of Rule 23, SCRPC, and the failure to plead adequately the elements of civil conspiracy. [R.p. ____; First Amended Motion to Dismiss for Lack of Standing, Improper Joinder, etc.]

In the First Amended Complaint Plaintiffs allege (1) Dealers charged the closing fee in violation of the South Carolina Regulation of Manufacturers, Distributors and Dealers Act ("the Dealers Act") contained in South Carolina Code Ann. §§ 56-15-10 to -600 (2006), and failed to

comply with § 37-2-307, the statute authorizing the fee; (2) Dealers engaged in a civil conspiracy by charging the fee; and (3) the circuit court should issue a declaratory judgment finding the fee illegal and awarding damages. Rather than pursuing class certification under Rule 23, SCRCF, Plaintiffs seek to create a “group suit” or “mass action” under South Carolina Code Ann. § 56-15-110(2).

Plaintiffs allege that they “are suing for the benefit of all South Carolina car buyers who paid administrative fees to [Dealers] and against all motor vehicle dealers owned or controlled by [Dealers] as defined in S.C. Code Ann. § 56-15-10(h).” [R.p. ____; First Amended Complaint.] Plaintiffs purport to represent all persons who “paid ‘administrative fees’” in connection with the purchase of a vehicle during the four years preceding the filing of the lawsuit. [R.p. ____; First Amended Complaint.] Plaintiffs allege that Dealers “have conspired together in a common scheme designed to deceive” all vehicle buyers and that Dealers’ actions “amount to concerted consumer fraud.” [R.p. ____; First Amended Complaint.]

On January 12, 2007, a status conference was held before the Honorable Doyet A. Early, who designated the case as complex for pretrial purposes only and assigned the case to himself by order filed February 2, 2007. [R.p. ____; Order Establishing Complex Case Designation for Pretrial Purposes Only; R.p. ____; Defendants’ Status Conference Memorandum Outlining Procedural Posture of Case.]

Judge Early then held a hearing on Dealers’ motions to dismiss on April 4, 2007. [R.p. ____; Transcript of April 4, 2007 Hearing.] Also on April 4, 2007, Judge Early issued an order giving preliminary approval to a proposed class action settlement under Rule 23, SCRCF, between Plaintiffs and CarMax Auto Superstores, Inc. (“CarMax”). [R.p. ____; Preliminary Approval Order.]

On June 1, 2007, before the circuit court issued a final ruling on the motions to dismiss, Plaintiffs moved pursuant to Rule 15, SCRCPP, to file a Second Amended Complaint. In this proposed Complaint, 254 Plaintiffs sought to sue 203 Dealers in thirty-eight counties. [R.p. ____; Motion to Amend Complaint and Second Amended Complaint.] On July 31, 2007, Judge Early held a hearing on Plaintiffs' motion to amend, which Dealers opposed. [R.p. ____; Transcript of July 31, 2007 Hearing.]

In an order filed August 1, 2007, Judge Early denied Dealers' motions to dismiss. The court ruled that the First Amended Complaint sufficiently pleads facts supporting the standing of all named Plaintiffs to proceed on the three causes of action against all Dealers, including Dealers from which a given named Plaintiff had not purchased a vehicle. The circuit court further ruled that Plaintiffs are not required to plead the class certification requirements of Rule 23, SCRCPP, because South Carolina Code Ann. § 56-15-110(2) (2006) created a substantive right under which Plaintiffs are entitled to sue Dealers in a representative capacity without regard or reference to Rule 23. [R.p. ____; Order Denying Motions to Dismiss.] The court also held that the Complaint sufficiently plead a cause of action for civil conspiracy.

On August 10, 2007, and August 13, 2007, Dealers, including Century BMW, timely served two Joint Motions to Amend or Reconsider the denial of the motions to dismiss pursuant to Rule 59(e), SCRCPP. [R.p. ____; Joint Notice and Motion to Reconsider and Amend on Behalf of All Named Defendants.] Dealers filed a joint memorandum in support of their Rule 59(e) motions on November 29, 2007. [R.p. ____; Defendants' Joint Memorandum in Support of Defendants' Rule 59(e) Motions to Reconsider the Denial of Defendants' Motions to Dismiss.]

On August 27, 2007, Judge Early denied Plaintiffs' motion to file a Second Amended Complaint. [R.p. ____; Order.]

On October 2, 2007, Judge Early issued an order giving final approval to Plaintiffs' class action settlement with CarMax. [R.p. ____; Final Order and Judgment.]

On November 30, 2007, Judge Early held a hearing on Dealers' Rule 59(e) motion. [R.p. ____; Transcript of November 30, 2007 Hearing.]

On February 5, 2008, Judge Early granted in part and denied in part Dealers' Rule 59(e) motions. The circuit court granted the motions to reconsider in part and modified its earlier ruling regarding each named Plaintiff's standing. The circuit court ruled that a named Plaintiff has standing to pursue all three causes of action, on behalf of himself or others, against the Dealer from which that particular Plaintiff purchased a vehicle. However, a named Plaintiff does *not* have standing to pursue any of their claims against any Dealer with which he/she did not transact any business. The circuit court ruled that a named Plaintiff may later gain standing to sue Dealers with which a named Plaintiff did not transact any business by presenting evidence sufficient to create a genuine issue of material fact that particular Dealers conspired on the charging of the closing fee with the Dealer from which the named Plaintiff purchased a vehicle. [R.p. ____; Order on Plaintiffs' Rule 41(a) Motion to Voluntarily Dismiss Certain Defendants and Defendants' Rule 59(e) Motion to Reconsider the Denial of their Motions to Dismiss on Certain Grounds.]

Judge Early denied in part Dealers' motions to reconsider, reaffirming his earlier rulings on the inapplicability of Rule 23, SCRCF and the sufficiency of the civil conspiracy claim. The circuit court reserved any rulings on the issues of improper joinder and venue until a later time. [R.p. ____; Order on Plaintiffs' Rule 41(a) Motion to Voluntarily Dismiss Certain Defendants and Defendants' Rule 59(e) Motion to Reconsider the Denial of their Motions to Dismiss on Certain Grounds.]

In the February 5, 2008 Order, Judge Early granted Plaintiffs' Rule 41(a), SCRCP, motion to voluntarily dismiss, without prejudice, all defendants except the seven Dealers with which the seven remaining named Plaintiffs transacted business, including Century BMW.¹ [R.p. ____; Order on Plaintiffs' Rule 41(a) Motion to Voluntarily Dismiss Certain Defendants and Defendants' Rule 59(e) Motion to Reconsider the Denial of their Motions to Dismiss on Certain Grounds.]

On March 10, 2008, Century BMW timely appealed the circuit court's orders.

STANDARD OF REVIEW

An action to recover money damages is an action at law. Sterling Dev. Co. v. Collins, 309 S.C. 237, 240, 421 S.E.2d 402, 404 (1992). In such an action, the primary role of an appellate court is to correct errors of law committed by the lower court. See, e.g., I'On, LLC v. Town of Mt. Pleasant, 338 S.C. 406, 417-23, 526 S.E.2d 716, 721-25 (2000) ("losing party in the lower court . . . must first try to convince the lower court it has ruled wrongly and then, if that effort fails, convince the appellate court that the lower court erred"); S.C. Const. art. V, §§ 5 & 9; S.C. Code Ann. §§ 14-3-330 & 14-8-200 (1976 & Supp. 2007).

ARGUMENT

- I. The circuit court erred in ruling that Plaintiffs do not have to plead or prove the requirements of Rule 23, SCRCP, but instead may bring an unprecedented and unmanageable "mass action" pursuant to South Carolina Code Ann. § 56-15-110(2).**

Century BMW respectfully submits that the circuit court erred in holding that § 56-15-110(2) creates a substantive right that supersedes the class action requirements contained in Rule

¹ Defendant CarMax Auto Superstores, Inc. was previously dismissed as a result of the October 2, 2007 order giving final approval to Plaintiffs' SCRCP Rule 23 class action settlement with CarMax.

23, SCRCP. The circuit court ruled that South Carolina Code Ann. § 56-15-110(2) (2006) creates a substantive right, and Act No. 100 of 1985, 1985 S.C. Acts 277, which enacted the South Carolina Rules of Civil Procedure, does not apply to or affect substantive rights. Therefore, the circuit court held that in pursuing their representative actions, Plaintiffs are not required to plead and prove the class action requirements contained in Rule 23, SCRCP, during the liability or litigation phase of this case, and instead can rely exclusively on § 56-15-110(2). [R.p. ____; Order on Plaintiffs' Rule 41(a) Motion to Voluntarily Dismiss Certain Defendants and Defendants' Rule 59(e) Motion to Reconsider the Denial of their Motions to Dismiss on Certain Grounds; Order Denying Motions to Dismiss.] This erroneous ruling belies a plain reading of the applicable statutes and defies both South Carolina and United States Supreme Court precedent.

A. Interaction between Section 56-15-110(2) and Rule 23

Rule 23 provides the procedural mechanism governing all class actions. This Court should reverse the circuit court and hold that that Plaintiffs must plead and prove the requirements of Rule 23 because South Carolina Code Ann. § 56-15-110(2) simply provides that Plaintiffs may bring a class action in appropriate circumstances. [R.p. ____; Transcript of April 4, 2007 Hearing; Joint Memorandum in Support of Defendants' Motions to Dismiss; Defendants' Joint Reply to Plaintiff's Memorandum in Opposition of Defendants' Motions to Dismiss; Northside Nissan and West Ashley Toyota's Reply Memorandum in Support of Defendants' Motion to Dismiss; Defendants' Joint Memorandum in Support of Defendants' Rule 59(e) Motions to Reconsider the Denial of Defendants' Motions to Dismiss.]

The court's erroneous ruling stems from an illogical and impractical reading of S.C. Code Ann. § 56-15-110(2). The only purpose of § 56-15-110(2) was to remove a then-existing

impediment to filing an action for personal damages as a class action; it was not intended—and cannot reasonably be expected—to accomplish everything Plaintiffs claim it can do. According to Plaintiffs, the statute substitutes for long-accepted principles of standing [R.p. ____; Plaintiffs’ Memorandum in Opposition to Motions to Dismiss]; trumps Rule 23, SCRCP [R.p. ____; Plaintiffs’ Memorandum in Opposition to Motions to Dismiss]; withstands legislative repeal [R.p. ____; Plaintiffs’ Memorandum in Opposition to Motions to Dismiss]; renders irrelevant leading South Carolina Supreme Court precedent [R.p. ____; Plaintiffs’ Memorandum in Opposition to Motions to Dismiss]; allows plaintiffs who did not transact with a defendant to sue it anyway, simply because they transacted with another defendant [R.p. ____; Plaintiffs’ Memorandum in Opposition to Motions to Dismiss]; and creates a type of action (the “group suit”) that has never been recognized by South Carolina law and that offends and repudiates fundamental principles of fairness and due process. That is a lot to ask of any statute, and more than the language or intent of § 56-15-110(2) can bear.

The Rules of Civil Procedure clearly control issues of civil procedure. This straightforward proposition, standing alone, resolves the issue and demonstrates the circuit court’s error. Section 56-15-110(2) is nothing more than a pre-Rules statute that allowed the filing of a class action against a manufacturer, dealer or distributor in appropriate circumstances. After the adoption of the Rules, § 56-15-110(2) merely provides that a plaintiff may bring a class action on behalf of others against a manufacturer, dealer or distributor when he and others are “injured in his business or property by reason of anything forbidden in this act.” S.C. Code § 56-15-110(1). The statute does not create a substantive right to file a “mass action” or “group suit” that ignores longstanding law and rules of class action procedure and joinder.

Section 56-15-110 of the South Carolina Code provides, in pertinent part:

(1) In addition to temporary or permanent injunctive relief as provided in Section 56-15-40(3)(c), any person who shall be injured in his business or property by reason of anything forbidden in this chapter may sue therefore in the court of common pleas and shall recover double the actual damages by him sustained, and the cost of suit, including a reasonable attorney's fee.

(2) When such action is one of common or general interest to many persons or when the parties are numerous and it is impracticable to bring them all before the court, one or more may sue for the benefit of the whole, including actions for injunctive relief.

A statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of lawmakers. Browning v. Hartvigsen, 307 S.C. 122, 125, 414 S.E.2d 115, 117 (1992). A statute must be interpreted with common sense to avoid unreasonable consequences and must be construed to avoid absurd results. A sensible construction, rather than one which leads to irrational results, is always warranted. McLeod v. Montgomery, 244 S.C. 308, 314, 136 S.E.2d 778, 782 (1964).

Based on the language of the statute and prevailing law on class actions at the time the statute was enacted, the Legislature only intended § 56-15-110(2) to remove a then-existing legal impediment to filing a class action for personal damages. Subsections (1) and (2) of § 56-15-110 must be read together. Subsection (1) creates a personal remedy for damages, and subsection (2) provides that "such action" as provided for in subsection (1) may be brought on behalf of others, i.e., in a representative capacity. There is nothing particularly unusual about the wording used in subsection (2); it closely mirrors the statutory predecessor to Rule 23, SCRPC. See S.C. Code Ann. § 15-5-50 (repealed 1985).²

² The language in subsection (2) of Section 56-15-110 is essentially the same as the former class action statute, South Carolina Code Section 15-5-50 (repealed 1985), which stated:

"When the question is one of common or general interest to many persons or when the parties are very numerous and it may be impracticable to bring them all before the court, one or more may sue or defend for the benefit of the whole."

The law at the time of the statute's enactment sheds light on its purpose. Section 56-15-110, adopted in 1972, predates Rule 23 and the other Rules of Civil Procedure. Before the adoption of Rule 23, SCRPC, class actions were governed by state statute (e.g., section 15-5-50). "[T]he general rule as developed by case law in the State [was] . . . that actions at law for personal remedies . . . [could] not be brought as class actions." General Supplies, Inc. v. Southwire Co., 276 S.C. 55, 58, 275 S.E.2d 579, 580 (1981). Consequently, state law prevented the plaintiffs in General Supplies from bringing an action for personal damages under the state antitrust act in a class action. Unless the plaintiffs suffered joint injuries and sought damages in solido, they were not allowed to bring an action for damages as a class action under then-existing law. Id. (citing Ryder v. Jefferson Hotel Co., 121 S.C. 72, 113 S.E. 474 (1922)); Long v. Seabrook, 260 S.C. 562, 568, 197 S.E.2d 659, 662 (1973).

Under the law that existed when § 56-15-110 was enacted, if the Legislature had not included subsection (2), expressly permitting a plaintiff to bring an action for damages as a class action, no such action would have been allowed. Holding that prevailing law did not allow class actions for damages based on violations of the state antitrust act, the South Carolina Supreme Court in General Supplies noted, "[a]bsent a statutory direction to the contrary, the personal remedy provided for at Section 39-3-30 may not be sought through a class suit." General Supplies, 276 S.C. at 59, 275 S.E.2d at 581. Subsection (2) supplies just the sort of statutory direction that the Supreme Court found lacking in the state antitrust act. The language of the statute and the legislative purpose is clear; subsection (2) was meant only to remove a legal bar to class actions, not to create super-rights and super-remedies unlike any other ever recognized in South Carolina.

In 1985, the South Carolina Rules of Civil Procedure were adopted and the Legislature simultaneously repealed various Code portions relating to procedural rules. Act No. 100, 1985 S.C. Acts at 277 (effective July 1, 1985); Rule 86, SCRCP (Rules effective July 1, 1985). The Legislature explicitly provided that, upon taking effect, the Rules would control procedures in a civil lawsuit in the event of any conflicts between the new rules and existing statutes. As provided in 1985 Act No. 100:

In the event of conflict between any provision of the South Carolina Rules of Civil Procedure and *any other statutory provisions as to practice and procedure not repealed by this act, the provision of the rules shall control*. However, neither the promulgation of the rules nor this act may be construed to affect the substantive legal rights of any party to any civil litigation in the courts of this State but shall affect only matters of practice and procedure.

Act No. 100 § 3, 1985 S.C. Acts at 280 (emphasis added).

South Carolina courts promptly recognized that the Rules control matters of procedure, regardless of previously enacted statutes. See McGann v. Mungo, 287 S.C. 561, 568, 340 S.E.2d 154, 156 (1986) (new civil procedure rules, not former statutes, applied in lawsuit); Harper v. Ethridge, 290 S.C. 112, 121, 348 S.E.2d 374, 379 (1986) (new rules of civil procedure replaced statute); accord Gardner v. Newsome Chevrolet-Buick, 304 S.C. 328, 404 S.E.2d 200 (1991) (addressing amount in controversy in Rule 23 class action in which plaintiff alleged he was charged an illegal motor vehicle closing fee). As long as the statutory right granted is not substantive, the Act controls. Accordingly, after the adoption of the Rules, § 56-15-110(2) is merely a vestige of a prior procedural regime.

The circuit court found that § 56-15-110(2) creates a substantive right and thus was not affected by the adoption of the Rules. However, the only substance of the right created by § 56-15-110(2) is the right to bring a claim in a representative capacity for the benefit of the whole. The statute does not create a substantive right to file a “mass action” or “group suit” that ignores

longstanding law and rules of class action procedure and joinder. By Plaintiffs' counsel's own admission, § 56-15-110(2) can only be reasonably interpreted as a procedural right. Plaintiffs' counsel noted during oral argument on Defendants' Motions to Dismiss that § 56-15-110(2) provides "the way" a § 56-15-110(1) action may be filed, noting "it is procedural within the body of the substantive right." [R.p. ____; Transcript of April 4, 2007 Hearing.]

Likewise, South Carolina courts, as well as the United States Supreme Court, have long held that class representation is a procedural, rather than a substantive, right. See, e.g., United States Parole Comm'n v. Geraghty, 445 U.S. 388, 402-03 (1980) ("the right to represent a class" is "a procedural claim.").³

Such a proposition is axiomatic; after all, a party's right to class representation is authorized by Rule 23 of the South Carolina Rules of Civil *Procedure*. Because § 56-15-110(2), when read literally and reasonably, merely permits a party to pursue a representative action—an unmistakable *procedural* right—it is clearly superseded by Act No. 100 of 1985.

Additionally, it is noteworthy that former § 15-5-50, which generally allowed the filing of a class action before the Rules of Civil Procedure were adopted, was among the numerous statutes specifically repealed in 1985. The language of former § 15-5-50 echoed section 56-15-110(2): "When the question is one of common or general interest to many persons or when the parties are very numerous and it may be impracticable to bring them all before the court, one or more may sue or defend for the benefit of the whole." The repeal of § 15-5-50 plainly demonstrates that the Legislature intended Rule 23 to control class actions. Having repealed the

³ See also Deposit Guaranty Nat'l Bank v. Roper, 445 U.S. 326, 332 (1980) ("the right of a litigant to employ Rule 23 is a procedural right only, ancillary to the litigation of substantive claims"); Knowles v. Standard Savings & Loan Assoc., 274 S.C. 58, 59, 261 S.E.2d 49 (1979) (explaining that "[c]lass certification, essentially procedural in nature, does not involve substantial or essential legal rights.").

general class action statute, the Legislature inserted the catchall provision in Act No. 100 of 1985 that "the rules shall control" any other provisions "not repealed by this act" to address the plethora of tailored statutes, scattered throughout the South Carolina Code, that pertain to class actions and other procedural issues.

Therefore, the particular requirements for bringing a representative action are now governed by Rule 23. A plaintiff must plead and prove the requirements of Rule 23 in bringing any and all representative actions, including those brought pursuant to § 56-15-110(2). Moreover, there is no conflict between § 56-15-110(2) and Rule 23. Section 56-15-110(2) simply allows class actions, and Rule 23 provides how and when such actions must be pleaded, defended, and resolved. In other words, Rule 23 and accompanying case law establish the procedural mechanisms that must be followed to prosecute and defend representative actions. In any event, to the extent any conflict exists between the two, Rule 23 controls. See 1985 Act No. 100 § 3, 1985 S.C. Acts at 280.

The practical realities of bringing and defending a class action also militate in favor of applying Rule 23 in this case. Rule 23 has been in effect for nearly twenty-three years and has been applied in numerous decisions rendered by South Carolina's appellate courts. Federal Rule of Civil Procedure 23, governing class actions, has been in effect since 1966 and similarly has been interpreted in an untold number of decisions nationwide. There is an ample body of state and federal case law on which to draw in litigating and resolving class actions.

In contrast, no appellate court has ever applied § 56-15-110(2) in its thirty-six year existence. Its conspicuous absence from case law leaves some daunting questions for a court to resolve. How should the parties proceed if § 56-15-110(2) is deemed a "substantive right" and Rule 23 is deemed irrelevant? How do the parties decide if a class should be certified at all or if

the named Plaintiff is an adequate representative? If a class were certified, how would notice be given to class members and by what standard would any settlement be reviewed by the court? How are the procedural due process rights of defendants and unnamed plaintiffs to be protected? How do parties “opt out” of such proceeding? Answering such questions inevitably requires a return to the Rules of Civil Procedure.

Plaintiffs recognized this quandary, which is undoubtedly why, when Plaintiffs entered into a proposed settlement with Defendant CarMax Auto Superstores, they asked the circuit court to allow amendment of the First Amended Complaint to pursue their claims under Rule 23, and presented a typical Rule 23 notice and proposed order for the circuit court’s approval.⁴

In sum, Rule 23 plainly applies to all class actions, including those brought under the Dealers Act. The motion of Plaintiffs’ counsel in the Carmax settlement demonstrates that even plaintiffs have determined that Rule 23, SCRCF, will apply at some point in their lawsuits. Defendants simply assert that Rule 23, SCRCF, applies at the very beginning. [R.p. ____; Motion.] The Court should reverse the circuit court and hold that Plaintiffs are required to plead and prove the usual class action requirements contained in Rule 23.

B. AmChem Products, Inc. v. Windsor

This Court also should reverse the circuit court’s ruling on the applicability of Rule 23 because Plaintiffs’ methods and approach in this case have been rejected by the United States Supreme Court. [R.p. ____; Defendants’ Joint Memorandum in Support of Defendants’ Rule 59(e) Motions to Reconsider the Denial of Defendants’ Motions to Dismiss.] In Amchem

⁴ In its order giving preliminary approval to the proposed settlement with CarMax, the circuit court stated: “The Parties stipulate that the Complaint in this action as between the Parties for settlement purposes only shall be treated as amended to be a Class Action under Rule 23. . . .” [R.p.: ____, Preliminary Approval Order.]

Products, Inc. v. Windsor, 521 U.S. 591 (1997), plaintiffs and defendants in asbestos litigation negotiated a potential global settlement for current claims (those plaintiffs with a manifest injury who already had sued) and an unknown, untold number of future claims (those persons with no manifest injury who had not yet sued). Id. at 597-602. The parties by stipulation intended to establish an administrative procedure classifying ranges of injuries and compensation. Id. at 602-05. Never intending to litigate the case, the parties on a single day filed a complaint, an answer, a proposed settlement agreement and a joint motion for conditional class certification pursuant to Rule 23(a) and (b)(3), FRCP. Id. at 601-02. The federal district court certified the class action lawsuit—for settlement purposes only—for hundreds of thousands, or perhaps millions, of plaintiffs whose past exposure to asbestos already had caused health problems or might in the future cause such problems. Id. at 605-08.

Several groups and individuals objected to the settlement of all pending and future claims, arguing, among other things, issues of justiciability, standing, and the unfairness or inadequacy of the settlement proposal. Id. The Supreme Court held that, even when a class action is certified only for settlement purposes and not for litigation, the requirements of a Rule 23 class action still must be met, although the settlement itself may be a factor in the analysis. Id. at 619-28.

The Supreme Court stated that a district court, when asked to approve a Rule 23 class action only for settlement purposes, does not have to consider intractable management problems that a trial might present because there would be no trial. Id. at 620. However,

other specifications of the rule – those designed to protect absentees by blocking unwarranted or overbroad class definitions – demand undiluted, even heightened, attention in the settlement context. Such attention is of vital importance, for a court asked to certify a settlement class will lack the opportunity, present when a case is litigated, to adjust the class, informed by the proceedings as they unfold.

...

And, of overriding importance, courts must be mindful that the rule as now composed sets the requirements they are bound to enforce. Federal Rules take effect after an extensive deliberative process involving many reviewers: a Rules Advisory Committee, public commenters, the Judicial Conference, this Court, the Congress. . . . The text of a rule thus proposed and reviewed limits judicial inventiveness.

Id. at 620 (citations and portions omitted).

The Supreme Court went on to explain that Rule 23(e) requires court approval of the settlement and notice given to class members, but the requirements contained in Rule 23(a) and (b)(3) are not diminished or superseded by the court's overall impression of whether a settlement is "fair."

Subdivisions (a) and (b) focus court attention on whether a proposed class has sufficient unity so that absent members can fairly be bound by decisions of class representatives. That dominant concern persists when settlement, rather than trial, is proposed.

The safeguards provided by the Rule 23(a) and (b) class-qualifying criteria, we emphasize, are not impractical impediments – checks shorn of utility – in the settlement-class context. First, the standards set for the protection of absent class members serve to inhibit appraisals of the chancellor's foot kind – class certifications dependent upon the court's gestalt judgment or overarching impression of the settlement's fairness.

Second, if a fairness inquiry under Rule 23(e) controlled certification, eclipsing Rule 23(a) and (b), and permitting class designation despite the impossibility of litigation, both class counsel and court would be disarmed. Class counsel confined to settlement negotiations could not use the threat of litigation to press for a better offer, . . . and the court would face a bargain proffered for its approval without benefit of adversarial investigation. . . .

Federal courts, in any case, lack authority to substitute for Rule 23's certification criteria a standard never adopted – that if a settlement is "fair," then certification is proper.

Id. at 621-22.

The Supreme Court affirmed the Third Circuit's vacatur of the class certification order, holding that plaintiffs had not met the Rule 23 requirements of predominance and adequacy of

representation. Therefore, the class action could not be certified for settlement purposes. Id. at 622-28.⁵

In the present case, Plaintiffs wish to proceed with a class action during the liability and litigation phase under the vague, undefined provision of S.C. Code § 56-15-110(2) and then, if a Dealer settles, rely on Rule 23 during the settlement phase. AmChem Products and its progeny teach that Plaintiffs may not cherry-pick the application of Rule 23 because all requirements of the rule apply across the board during all phases of a case. Plaintiffs are not allowed to avoid the application of Rule 23 during the liability or litigation phase and then suddenly utilize the rule in the settlement phase. If a class cannot be certified as a class under Rule 23 for liability and litigation purposes, then there is no lesser standard by which it may be certified as a class under Rule 23 solely for settlement purposes. The central point emphasized by the Supreme Court in AmChem Products is that Plaintiffs' burden to plead and prove the certification requirements, and the court's role in carefully analyzing those requirements, remain the same throughout the entire case.

Plaintiffs' attempt to maintain a class action pursuant to § 56-15-110(2) during the liability and litigation phase and then pursue certification under Rule 23 in a settlement is improper. Accordingly, this Court should apply the clear standards of AmChem Products and hold that Plaintiffs must plead and prove the requirements of Rule 23 from the outset.

⁵ Accord Smith v. Sprint Commc'n Co., 387 F.3d 612, 614 (7th Cir. 2004) (citing AmChem Products and noting that "settlement is not a cure-all" for prior failed efforts to certify a nationwide class action; court vacated certification order due to inadequate representation of certain parties); In re GMC Pick-Up Truck Fuel Tank Prods. Liab. Litig., 55 F.3d 768, 800 (3d Cir. 1995) ("[A] class action – whether certified for settlement or litigation purposes – must meet the class requisites enunciated in Fed. R. Civ. P. 23 . . . [and the failure to do so] is a plain error of law, and hence an abuse of discretion").

II. The circuit court erred in declining to rule on Century BMW's motion to dismiss Plaintiffs' Complaint on the ground that Plaintiffs have improperly joined hundreds of unrelated parties and potentially hundreds of thousands of unrelated claims in a single lawsuit in a single county

Century BMW respectfully submits that the circuit court plainly erred in declining to rule on the issues of improper joinder and venue. No discovery is necessary to decide these issues; all relevant facts are found within the four corners of the Complaint.

Century BMW jointly moved with the other Dealers for an order, pursuant to Rules 12(b)(6) and 20(a), SCRCF, dismissing the actions against all dealerships on the ground of improper joinder. Plaintiffs improperly joined hundreds of unrelated parties and potentially hundreds of thousands of unrelated claims in this unusual and unprecedented lawsuit. Dealers argued simply that Plaintiffs should be required to follow the rules, which means Plaintiffs must refile their Complaints individually in the county of proper venue. [R.p. ____; Joint Memorandum in Support of Defendants' Motions to Dismiss; Defendants' Joint Memorandum in Support of Defendants' Rule 59(e) Motions to Reconsider the Denial of Defendants' Motions to Dismiss; Transcript of April 4, 2007 Hearing.]

The circuit court initially did not explicitly rule on Dealers' motions relating to improper joinder and venue. [R.p. ____; Order Denying Motions to Dismiss.] Upon reconsideration, the court declined to rule on the motions until discovery is completed. [R.p. ____; Order on Plaintiffs' Rule 41(a) Motion to Voluntarily Dismiss Certain Defendants and Defendants' Rule 59(e) Motion to Reconsider the Denial of their Motions to Dismiss on Certain Grounds; Order Denying Defendants' Motion to Dismiss on Certain Grounds.]

This Court should reject Plaintiffs' blatant and unprecedented attempt to ignore long-established principles of civil procedure and statutory venue rights. The Court should hold that

Plaintiffs may not improperly join Century BMW in this lawsuit with other Dealers and customers with whom Century BMW never transacted any business.

As the Court is aware, permissive joinder of parties is governed by Rule 20, SCRCP, which provides as follows with respect to the joinder of plaintiffs:

All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences *and* if any question of law or fact common to all these persons will arise in the action.

Rule 20(a), SCRCP (emphasis added).

Rule 20 similarly provides as follows with respect to the joinder of defendants:

All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences *and* if any question of law or fact common to all defendants will arise in the action.

Id. (emphasis added).

The two criteria for determining whether either plaintiffs or defendants may be joined in the same case must be satisfied separately. Joinder of plaintiffs or defendants is proper only when the claim (1) arises out of the same transaction, occurrence, or series of transactions or occurrences *and* (2) presents a question of law or fact common to all plaintiffs or all defendants. Joinder is improper unless both criteria are satisfied. Ellis v. Oliver, 307 S.C. 365, 367, 415 S.E.2d 400, 401 (1992). "In spite of the great liberality of Rule 20(a), the rule does not excuse any of the joined parties from the obligation to state a claim against defendant or defendants upon which relief may be granted." Karmanos v. Baker, 617 F. Supp. 809, 814 (E.D. Mich. 1985) (denying motion of plaintiff hockey player's father to join in son's lawsuit because father could not state a claim against defendant university).

Joinder is not proper when the cases do not involve the same transaction or occurrence, do not involve a common question of law or fact, or a party simply is not involved or liable in a given transaction.⁶ Saval v. BL, Ltd., 710 F.2d 1027 (4th Cir. 1983), is particularly instructive in this litigation. There, several Jaguar automobile purchasers filed a single lawsuit against everyone in the chain of distribution for various defects allegedly caused by badly designed cooling systems, presenting claims for warranty, negligence, and product liability. The Fourth Circuit affirmed the district court's rejection of the plaintiffs' effort to bring a single lawsuit pursuant to Rule 20, FRCP, finding that:

[t]he district court did not err in determining that the allegedly similar problems did not satisfy the transaction or occurrence test. The cars were purchased at different times, were driven differently, and had different service histories. Quite probably, severance would have been required in order to keep straight the facts pertaining to the separate automobiles. . . .

Saval, 710 F.2d at 1031-32.

⁶ See Abofreka v. Alston Tobacco Co., 288 S.C. 122, 127-28, 341 S.E.2d 622, 626 (1986) (reversing judgment against bank, which had been improperly joined as defendant only in its capacity as trustee of defendant tortfeasor's funds, because there was no evidence bank had anything to do with tortious conduct of other defendants); Valentine v. Davis, 319 S.C. 169, 172, 460 S.E.2d 218, 220 (Ct. App. 1995) (upholding denial of joinder of additional plaintiffs because allegations asserted by plaintiffs against defendant who allegedly performed defective home repairs did not arise out of the same transaction or occurrence, and "the only connection between the claims is that the [proposed plaintiffs] are represented by the same attorney and they all assert different personal claims against the [defendant]"); Norris v. City of Anderson, 1999 U.S. Dist. LEXIS 21893 (D.S.C. 1999) (denying joinder under Rule 20, FRCP, in suit by seven employees for racially hostile work environment because numerous supervisors and co-workers were implicated in the claims, employees worked in different areas, alleged discrimination occurred at different times and shifts, and combining the factually dissimilar cases would confuse jurors); Turpeau v. Fidelity Fin. Servs., Inc., 936 F. Supp. 975 (N.D. Ga. 1996) (seven plaintiffs, as representatives of a putative class, sued eleven dealers for selling excess credit life insurance in violation of a Georgia statute. The court ruled that "each credit transaction at issue was made by different plaintiffs with different defendants," and thus, held that the transactions were not sufficiently related to permit joinder under Rule 20(a).).

In the present case, joinder is similarly improper because the Plaintiffs are unable to satisfy either of the two requirements for permissive joinder. Each Plaintiff's individual claims do not arise out of the same transaction or occurrence. The circuit court held that each named Plaintiff only has a cognizable claim against the Dealer with which the named Plaintiff transacted. Each named Plaintiff purchased a single vehicle from a single, different dealership. These completely separate and unrelated sales occurred on different dates at different dealerships, owned by different Defendants, in different cities and counties across the State. Each sale involved different sales people; different manufacturers; different sales managers; different vehicles with different accessories and different prices; different closing fees; different negotiations and discussions about price, accessories, and fees; different sales contracts; and different policies and procedures at each dealership—to name only some of the obvious differences.

Nor do Plaintiffs satisfy the second criterion of a question of law or fact common to all Plaintiffs or Defendants. Although Plaintiffs will likely rely on the Dealers Act provisions and closing fee statute in pursuing their claims against each Dealer, this second criterion is not satisfied merely because claims are based on the same legal theory. Wynn v. Nat'l Broadcasting Co., Inc., 234 F. Supp. 2d 1067, 1081 (C.D. Cal. 2002); Grayson v. K Mart Corp., 849 F. Supp. 785, 789 (N.D. Ga. 1994). Here, there is no common question of law because each Dealer and each transaction must be analyzed separately. Each Dealer presents a different scenario as to statutory compliance and standard practices regarding the fee. Additionally, each transaction presents a unique set of facts and circumstances; many customers negotiated the price of the vehicle such that they often paid a smaller fee, if any.

Accordingly, the circuit court erred in not granting Century BMW's motion to dismiss the Complaint on the ground of improper joinder.

Having established improper joinder, it is patently clear that venue is improper with respect to Century BMW. A civil action against either a domestic or foreign corporation "must be brought and tried in the county in which the corporation . . . has its principal place of business at the time the cause of action arose or [the] most substantial part of the alleged act or omissions giving rise to the cause of action occurred." S.C. Code Ann. § 15-7-30(E) (2006) (emphasis added); see also § 15-7-30(F). Century BMW's principal place of business is in Greenville County and the alleged act against Christine Watts giving rise to the cause of action occurred at the dealership. Thus, the proper venue for any claims in this litigation against Century BMW is Greenville County, not Aiken County.

Moreover, there is no reason to delay the decision to sever the matter into separate actions and order Plaintiffs to file their lawsuits in the appropriate venues because all the facts relating to joinder and venue are already known. No discovery on these issues is necessary. Cf. Sinochem Int'l Co. v. Malay. Int'l Shipping Corp., 127 S. Ct. 1184, 1194 (2007) ("If . . . a court can readily determine that it lacks jurisdiction over the cause or the defendant, the proper course would be to dismiss on that ground."); Chestnut v. Reid, 299 S.C. 305, 306-07, 384 S.E.2d 713, 714 (1989) (holding that defendant's motion to change venue pursuant to § 15-7-30 is a question of law, not discretion, and when facts concerning defendant's residence are uncontradicted, defendant's right to have case tried against him in his county of residence is a substantial right and motion must be granted).⁷

⁷ See also McKissick v. J.F. Cleckley & Co., 325 S.C. 327, 334, 479 S.E.2d 67, 70-71 (Ct. App. 1996) (when facts about defendants' residences are uncontradicted, trial court must, as a matter continued . . .

This Court should reverse the circuit court, sever the case into separate actions and order Plaintiffs to file separate Complaints anew against individual Dealers in the appropriate venues.

III. The circuit court erred in denying Century BMW's motion to dismiss Plaintiffs' civil conspiracy cause of action

Civil conspiracy consists of three elements: (1) a combination of two or more persons, (2) for the purpose of injuring the plaintiff, (3) which causes him special damage. Lee v. Chesterfield Gen. Hosp. Inc., 289 S.C. 6, 10, 344 S.E.2d 379, 382 (Ct. App. 1986). "The gravamen of the tort of civil conspiracy is the damage resulting to the plaintiff from an overt act done pursuant to the combination, not the agreement or combination per se." Pyc v. Estate of Fox, 369 S.C. 555, 567-68, 633 S.E.2d 505, 511 (2006).

Plaintiffs in their lengthy First Amended Complaint offer absolutely no factual allegations in support of their civil conspiracy claim. The entire claim rests on the following two sentences out of the entire 72 page, 411 paragraph First Amended Complaint:

Defendants have conspired together in a common scheme designed to deceive all car buyers by all engaging in a common practice of presenting/advertising car prices in a misleading manner by charging "administrative fees."

Plaintiffs have suffered special damages as a result of Defendants' conspiracy.

[R.p. ____; First Amended Complaint.]

Plaintiffs' unsupported allegation that hundreds of Dealers all conspired to charge a closing fee—a fee expressly authorized by the Legislature—is insufficient to meet the required elements to state a conspiracy claim. [R.p. ____; Transcript of April 4, 2007 Hearing; Joint Memorandum in Support of Defendants' Motions to Dismiss; Defendants' Joint Reply to

of law under § 15-7-30, change venue to county where defendant resides); Synapsis, LLC v. Evergreen Data Sys., 2006 U.S. Dist. LEXIS 76233, *8 (N.D. Cal. Oct. 10, 2006) (concluding that court should promptly determine whether venue is proper "to avoid needless expenditure of time and money in the future").

Plaintiff's Memorandum in Opposition to Defendants' Motions to Dismiss; Defendants' Joint Memorandum in Support of Defendants' Rule 59(e) Motions to Reconsider the Denial of Defendants' Motions to Dismiss.] Plaintiffs may not rely on the same facts providing the basis for other underlying claims. Rather, Plaintiffs must allege separate and distinct acts in support of, and specific additional harm caused by, the alleged conspiracy. The South Carolina Supreme Court has expressly affirmed the dismissal of a civil conspiracy charge as a matter of law where the "cause of action does no more than incorporate the prior allegations and then allege the existence of a civil conspiracy." Todd v. S.C. Farm Bureau Mut. Ins. Co., 276 S.C. 284, 293, 278 S.E.2d 607, 611 (1981).⁸ In so ruling, the Court noted that "[n]o additional acts in furtherance of the conspiracy [we]re pled. The only alleged wrongful acts plc[d] [we]re those for which damages ha[d] already been sought." Id.

In this case, any injuries or damages alleged by Plaintiffs stem not from a conspiracy, but from closing fees levied by the Dealer from which they purchased a car. There is no separate injury from the alleged conspiracy. Absent an allegation of damages beyond those asserted in connection with the other causes of action, Plaintiffs may not pursue the civil conspiracy claim.

⁸ Accord Vaught v. Waites, 300 S.C. 201, 208, 387 S.E.2d 91, 95 (Ct. App. 1989) (affirming trial court determination that no conspiracy existed as a matter of law where plaintiff's conspiracy allegations were "simply an embellishment of his breach of contract action"); Kuznik v. Bees Ferry Assocs., 342 S.C. 579, 611, 538 S.E.2d 15, 31 (Ct. App. 2000) ("Because Hoffman, like Todd, merely realleged the prior acts complained of in his other causes of action as a conspiracy action but failed to plead additional acts in furtherance of the conspiracy, he was not entitled to maintain his conspiracy cause of action."); Charleston Aluminum, LLC v. Samuel, Son & Co., No. 3:05-02337-MBS, 2006 WL 2370292, at *2 (D.S.C. Aug. 15, 2006) ("A claim for civil conspiracy must allege additional acts in furtherance of a conspiracy rather than reallege other claims.") (internal quotation and citations omitted); Doe v. Erskine College, No. 8:04-23001RBH, 2006 WL 1473853, at *17 (D.S.C. May 25, 2006) ("Because Plaintiff has not asserted any additional acts in furtherance of the alleged conspiracy, the claim for civil conspiracy is dismissed.").

Furthermore, special damages must be specifically alleged. Sheek v. Lee, 289 S.C. 327, 329, 345 S.E.2d 496, 497 (1986); Rule 9(g), SCRC. It is not enough for a plaintiff to simply make a vague, unsubstantiated claim they have suffered special damages. As the court stated in Robinson v. Metts, 86 F. Supp. 2d 557, 563 (D.S.C. 1997), “plaintiff[s] allege[] special damages, but [have] failed to specify the nature of the alleged special damages arising out of the conspiracy.”⁹

Moreover, to plead adequately a conspiracy, Plaintiffs must assert that all Dealers conspired to harm intentionally each named Plaintiff. Plaintiffs have not made such an allegation because they cannot, and their conspiracy claim also fails as a matter of law for this reason. See Lee, 289 S.C. at 13, 344 S.E.2d at 383 (“essential consideration is not whether lawful or unlawful means are employed to further the conspiracy, but whether the primary purpose or object of the combination is to injure the plaintiff”). Plaintiffs cannot allege that more than a single Dealer was ever aware of each named Plaintiff’s automobile purchase, much less that the hundreds of Dealers conspired to harm intentionally each individual Plaintiff. See Future Group, II v. NationsBank, 324 S.C. 89, 100, 478 S.E.2d 45, 50 (1996) (finding no conspiracy where “no evidence that [defendant] even knew of [plaintiff’s] existence”); Waldrep

⁹ See also Lawson v. S.C. Dep’t of Corr., 340 S.C. 346, 352, 532 S.E.2d 259, 261 (2000) (“Because no special damages are alleged, the trial court correctly granted Department summary judgment on the conspiracy cause of action.”); Vaught, 300 S.C. at 209, 387 S.E.2d at 95 (“Because no special damages are alleged aside from the breach of contract damages, we hold the conspiracy action is barred under Todd.”); Holmes v. Donahoe, No 2:05-2901, 2006 WL 859178, at *2 (D.S.C. Mar. 29, 2006) (holding “plaintiffs’ civil conspiracy claim fails as a matter of law” because “the civil conspiracy damages are identical to the defamation and arson damages, [and] plaintiffs cannot demonstrate that the civil conspiracy damages are in addition to any damages alleged as a result of any other claims”) (internal quotes omitted); Brooks v. Pagan, No. 3:92-1276-19, 1993 WL 153921, at *4 n.4 (D.S.C. March 16, 1993) (“Because plaintiff has neither alleged in the Complaint nor offered into the record any facts supporting her claim of civil conspiracy other than those facts used to support her other causes of action, the Court will grant summary judgment in favor of defendants . . .”).

Bros. Beauty Supply, Inc. v. Wynn Beauty Supply Co., 992 F.2d 59, 63 (4th Cir. 1993) (applying South Carolina law to enter judgment as a matter of law on civil conspiracy allegation where defendants' "object was simply to make money by distributing beauty products in South Carolina; there was no evidence that [defendant] acted with malice towards [plaintiff]").

As supposed support for their civil conspiracy count, Plaintiffs cite cases stating the basic and undisputed legal proposition that parties may plead alternative, contradictory causes of action. [R.p. ____; Plaintiffs' Memorandum in Opposition to Motions to Dismiss.] But Plaintiffs' ability to plead alternative causes of actions is irrelevant and completely unresponsive to their failure to allege the required elements for a civil conspiracy cause of action. Plaintiffs do not, and indeed cannot, cite any precedent contradicting the fundamental legal requirement that parties must adequately plead in their Complaint each alleged cause of action—something Plaintiffs have failed to do.

Plaintiffs' argument that they can wait until some indeterminate later stage in the litigation to plead special damages when they decide whether they actually want to pursue their civil conspiracy count is wrong. [R.p. ____; Plaintiffs' Memorandum in Opposition to Motions to Dismiss.] Long-established South Carolina precedent requires special damages to be pleaded in the complaint on pain of dismissal of the cause of action for civil conspiracy. See, e.g., Pye, 369 S.C. at 568, 633 S.E.2d at 511 ("Because the quiddity of a civil conspiracy claim is the damage resulting to the plaintiff, the damages alleged must go beyond the damages alleged in other causes of action."); Todd, 276 S.C. at 293, 278 S.E.2d at 611;¹⁰ Vaught, 300 S.C. at 209, 387 S.E.2d at 95.

¹⁰ Plaintiffs are also wrong that the South Carolina Supreme Court's decision in Todd is no longer valid law. [R.p. ____; Plaintiffs' Memorandum in Opposition to Motions to Dismiss.] continued . . .

Accordingly, this Court should dismiss Plaintiffs' civil conspiracy cause of action.

CONCLUSION

For all the foregoing reasons, Century BMW respectfully asks the Court to reverse the circuit court's partial denial of Century BMW's motion to dismiss.

Respectfully submitted,

May 1, 2008

Respectfully submitted,

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C. Jo Anne Wessinger Hill, S.C. Bar No. 15025
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South Carolina courts have repeatedly cited Todd's ruling when addressing civil conspiracy allegations. See, e.g., Kuznik, 342 S.C. at 611, 538 S.E.2d at 31; Future Group, II, 324 S.C. at 100, 448 S.E.2d at 50.

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ORIGINAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
MAY 12 2008

SC Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable Doyet A. Early, III, Circuit Court Judge

Circuit Court Case No. 2006-CP-02-1230

Heather Herron, Natalie Armstrong, Michael Ritz, Julie Frecman, Christinc Watts, Alison Dannert, Michael Blease, Michael Watts, individually and for the benefit of all car buyers who paid "administrative fees" as described below to Defendants, ... **Respondents,**

v.

Century BMW d/b/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., ... **Defendants**

of whom Century BMW d/b/a Sonic Automotive is the **Appellant.**

ADDENDUM TO DESIGNATION OF MATTER TO BE INCLUDED
IN THE RECORD ON APPEAL

The Appellant Century BMW d/b/a Sonic Automotive, whose true name and correct name is Sonic Automotive 2752 Laurens Rd., Greenville, Inc. d/b/a Century BMW ("Century BMW"), proposes the following be included in the Record on Appeal:

- 1) Arbitration Agreement dated June 25, 2005;
- 2) First Amended Complaint dated October 28, 2006;
- 3) Notice of Motion and Motion of Defendant Century BMW, whose true name is Sonic Automotive 2752 Laurens Rd., Greenville, Inc. d/b/a Century BMW to dismiss the amended complaint and this action, for change of venue, to sever, to

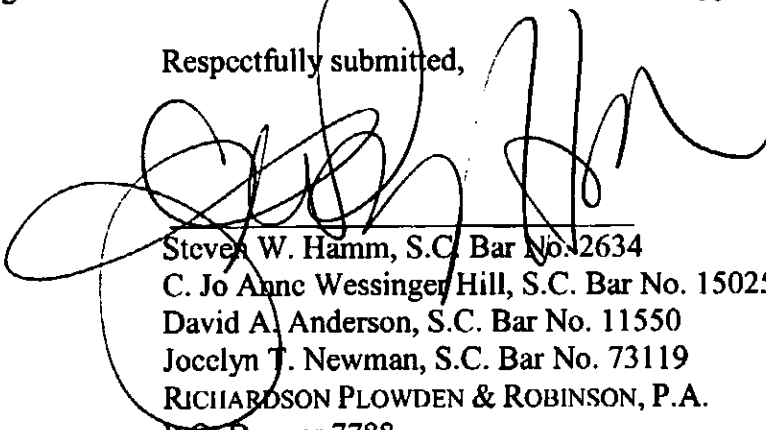
- strike, to compel arbitration, for a protective order, and for costs and fees, dated December 29, 2006;
- 4) Memorandum In Support of Century BMW's Motion to Compel Arbitration, including exhibits, dated February 12, 2007;
 - 5) Plaintiffs' Memorandum In Opposition to Motions to Dismiss (including the motion to compel arbitration), dated March 9, 2007, pp. 29-35
 - 6) Reply Memorandum In Support of Defendant Century BMW's Motion to Compel Arbitration, including exhibits, dated March 26, 2007;
 - 7) Letter to the Honorable Doyt A. Early, dated April 3, 2007;
 - 8) Transcript of Proceedings, dated April 4, 2007, pp. 70-74
 - 9) Order of May 2, 2007;
 - 10) Supplemental Memorandum in Support of Defendant Century BMW's Motion to Compel Arbitration, including exhibits, dated November 27, 2007;
 - 11) Plaintiff Christine Watts's Supplemental Memorandum in Opposition to Century BMW's Motion to Compel Arbitration, dated November 28, 2007;
 - 12) Transcript of Proceedings, November 30, 2007;
 - 13) Deposition Transcript of Michael Watts Deposition, dated January 29, 2008;
 - 14) Deposition Transcript of Christine Watts Deposition, dated January 29, 2008;
 - 15) Deposition Transcript of John Robert Bishop, dated January 30, 2008;
 - 16) Letter to the Honorable Doyt A. Early, dated February 13, 2008;
 - 17) Second Supplemental Memorandum in Support of Defendant Century BMW's Motion to Compel Arbitration, dated February 18, 2008;
 - 18) Plaintiff Christine Watts's Second Supplemental Memorandum in Opposition to Century BMW's Motion to Compel Arbitration, dated February 18, 2008;
 - 19) Second Reply Memorandum in Support of Defendant Century BMW's Motion to Compel Arbitration, dated February 22, 2008
 - 20) Plaintiff Christine Watts's Reply to Second Supplemental Memorandum in Support of Defendant Century BMW's Motion to Compel Arbitration, dated February 22, 2008
 - 21) Order Denying Motion to Compel Arbitration, dated March 10, 2008
 - 22) Order Establishing Complex Case Designation for Pretrial Purposes Only
 - 23) Defendants' Status Conference Memorandum Outlining Procedural Posture of Case and Background Information on Law and Facts
 - 24) Transcript of April 4, 2007 Hearing
 - 25) Preliminary Approval Order
 - 26) Plaintiffs' Notice of Motion and Motion to Amend Complaint and Second Amended Complaint
 - 27) Transcript of July 31, 2007 Hearing
 - 28) Order Denying Motions to Dismiss
 - 29) Joint Notice and Motion to Reconsider on Behalf of all Named Defendants
 - 30) Defendants' Joint Memorandum in Support of Defendants' Rule 59(e) Motions to Reconsider the Denial of Defendants' Motions to Dismiss
 - 31) Order dated August 27, 2007
 - 32) Final Order and Judgment

- 33) Order on Plaintiffs' Rule 41(a) Motion to Voluntarily Dismiss Certain Defendants and Defendants' Rule 59(e) Motion to Reconsider the Denial of their Motions to Dismiss on Certain Grounds
- 34) Defendants' Joint Reply to Plaintiffs' Memorandum in Opposition of Defendants' Motions to Dismiss
- 35) Plaintiff's Memorandum in Opposition to Motions to Dismiss
- 36) Joint Memorandum in Support of Defendants' Motions to Dismiss
- 37) Order Denying Defendants' Motion to Dismiss on Certain Grounds

I certify that this designation contains no matter which is irrelevant to this appeal.

Respectfully submitted,

May 12, 2008



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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable Doyet A. Early, III, Circuit Court Judge

Circuit Court Case No. 2006-CP-02-1230

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 who paid "administrative fees" as described below to Defendants, ... **Respondents,**

v.

Century BMW d/b/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., ...
..... **Defendants**

of whom Century BMW d/b/a Sonic Automotive is the
Appellant.

CERTIFICATE OF SERVICE

The undersigned employee of RICHARDSON PLOWDEN & ROBINSON, P.A., attorneys for Appellant, does hereby certify that service of the foregoing **Motion, together with any and all exhibits, memorandum and related documents** in the above-captioned matter was made upon all counsel of record this 12th day of May 2008, by depositing a copy of same in the U.S. Mail, postage prepaid, addressed as follows:

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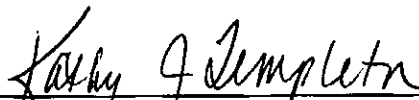
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Kathy J. Templeton

May 12, 2008
Columbia, South Carolina

The South Carolina Court of Appeals

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

Respondents

v.

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

of whom Century BMW a/k/a Sonic
Automotive is the

Appellant

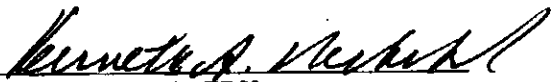
The Honorable Doyet A. Early, III
Aiken County
Trial Court Case No. 2006-CP-02-01230

ORDER

For good cause having been shown, the time for serving and filing the Appellant's Initial Brief and
Designation of Matter in the above entitled matter is hereby extended until May 12, 2008.

IT IS SO ORDERED.

KAYE G. HEARN, CHIEF JUDGE
For the Court

BY 
CLERK

Columbia, South Carolina

04-16-2008

cc: Dennis M. Black, Esquire
Ryan L. VanGrack
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Direct: 803-576-3714

April 11, 2008

South Carolina Court of Appeals
Attention: Elizabeth Carter, Office of the Clerk
1015 Sumter Street
Columbia, SC 29211

RECEIVED
APR 14 2008

Re: Herron et al Respondents v. Dick Dyer Et al,
of which Sonic Automotive, d/b/a Century BMW is Appellant
Appeal of Order in Circuit Court Case No. 2006-CP-01-1230
Our File No. 6665-001

Dear Ms. Carter:

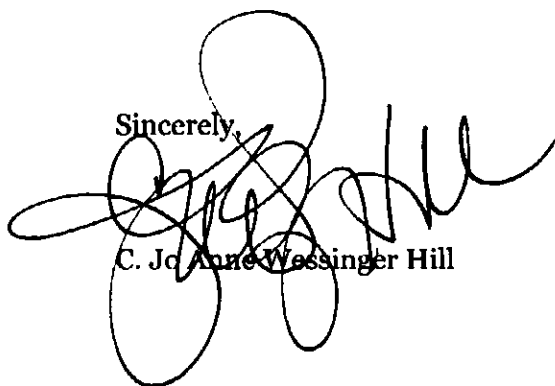
The purpose of this letter is to advise that I have received confirmation from the Plaintiff/Respondent in the above-referenced matter whereby they consent and have no objection to our request for a thirty-day extension in the briefing of this appeal.

A copy of this letter is being served on the parties listed below.

If you should have any questions or concerns, please do not hesitate to contact this office.

With kindest regards, I am

Sincerely,


C. Jo Anne Wessinger Hill

JWH/kjt

Cc: H. Clayton Walker, Jr., Esq.
James Y. Becker, Esq.
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J. Gregory Studemeyer, Esq.
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April 9, 2008

VIA HAND DELIVERY

The Hon. Kenneth A. Richstad,
Clerk – South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29211

RECEIVED
APR 10 2008
SC Court of Appeals

Re: Herron et al Respondents v. Dick Dyer Et al,
of which Sonic Automotive, d/b/a Century BMW is Appellant
Appeal of Order in Circuit Court Case No. 2006-CP-01-1230
Our File No. 6665-001

Dear Mr. Richstad:

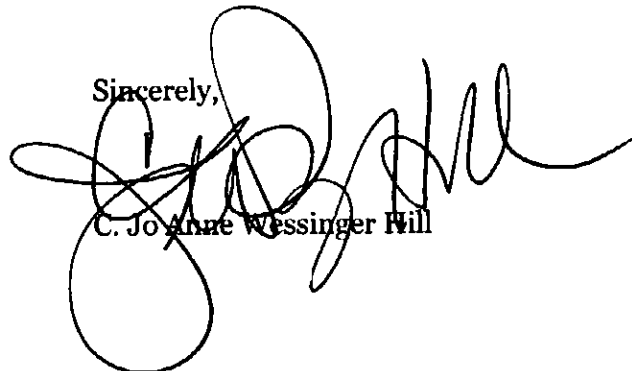
As requested by your letter dated April 1, 2008, a copy of the First Amended Complaint in the above referenced matter is enclosed. It provides the complete and full caption of the case as originally filed against some 324 named defendants. However, in order to be responsive your request for information related to the actual caption of the case, it is important to note that there have been other orders impacting the caption since the time in which the First Amended Complaint was filed. As part of a Final Order and Judgment issued by Judge Early On October 2, 2007, "CarMax Auto Superstores, Inc" was ordered removed from the caption on all subsequent documents filed or served by any and all parties remaining in the action. A further subsequent Order issued by Judge Early and filed on February 5, 2008 limits the case to only seven (7) named defendants and seven (7) named plaintiffs. See, page 3 of the Order filed February 5, 2008 (a copy of which is attached). That Order is currently under appeal filed on March 10, 2008.

I hope that this information will assist your office regarding clarification of the parties in this matter and the appropriate caption related the Order Denying Motion to Compel Arbitration issued by Judge Early and dated March 10, 2008. If additional information is needed, please do not hesitate to contact this office.

Copies of this letter and its enclosures have been provided to the counsel listed below.

With kindest regards, I am

Sincerely,



C. Jo Anne Wessinger Hill

JWH/kjt
Enclosures

Cc: H. Clayton Walker, Jr., Esq., w/enc.
James Y. Becker, Esq., w/enc.
R. David Proffitt, Esq., w/enc.
J. Gregory Studemeyer, Esq., w/enc.
Gedney M. Howe, III, w/enc.
Richard A. Harpootlian, Esq., w/enc.
Michael E. Spears, Esq., w/enc.
A. Camden Lewis, Esq., w/enc.
Brady R. Thomas, Esq., w/enc.
Harvey G. Sanders, Jr, Esq., w/enc.
James T. Hewitt, Esq., w/enc.
S. Brooke Chapman Esq., w/enc.

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF AIKEN

Case No. 2006-CP-02-1230

Heather Herron, et al.,

Plaintiffs,

v.

Dick Dyer & Associates, Inc., et al.,

Defendants.

FILED

215 80830
Liz Godard
Deputy Clerk

**ORDER
ON**

**PLAINTIFFS' RULE 41(a) MOTION
TO VOLUNTARILY DISMISS CERTAIN DEFENDANTS
AND**

**DEFENDANTS' RULE 59(e) MOTION TO RECONSIDER
THE DENIAL OF THEIR MOTIONS TO DISMISS ON CERTAIN GROUNDS**

I. PROCEDURAL POSTURE AND FACTUAL BACKGROUND

Plaintiffs filed their original Complaint against certain Dealers in Aiken County on August 29, 2006, with four Plaintiffs suing 51 motor vehicle dealerships located in thirteen counties. Plaintiffs filed a "Corrigenda" correcting the original Complaint on September 1, 2006. Plaintiffs filed their First Amended Complaint in this case on October 31, 2006, with eight Plaintiffs suing some 324 dealerships ("Defendants" or "Dealers") located in forty-one counties. Each named Plaintiff alleges he or she bought one vehicle from a single Dealer.

As set forth more fully in the First Amended Complaint, Plaintiffs allege among other things that (1) Defendants charged closing fees in violation of the South Carolina Regulation of Manufacturers, Distributors and Dealers Act ("the Dealers Act"), contained in South Carolina Code Ann. §§ 56-15-10 to -600 (2006), and failed to comply with requirements of South

STATE OF SOUTH CAROLINA
Liz Godard, Clerk of Court of Common Pleas and General
Sessions for Aiken County, South Carolina do hereby certify
that the foregoing constitutes a true and correct copy of the
original documents which have been filed in my office this

RECEIVED FEB 07 2008

C.C.P. & G. S., Aiken County, S.C.

Deputy Clerk

Carolina Code Ann. § 37-2-307 (2002) (the "Closing Fee Statute"); (2) Defendants engaged in a civil conspiracy; and (3) Plaintiffs request that the circuit court issue a declaratory judgment finding Defendants' practices illegal and granting other relief.

Defendants moved to dismiss the First Amended Complaint based on lack of standing; improper joinder; Rules 12(b)(1), (2), (3) and (6), SCRCF; failure to plead the requirements of Rule 23, SCRCF; and other grounds.

This Court denied Defendants' various motions to dismiss by Order filed August 1, 2007. Defendants on August 10 and 13, 2007, timely served two Joint Motions to Amend or Reconsider the denial of the motions to dismiss pursuant to Rule 59(e), SCRCF.

Plaintiffs on October 11, 2007, moved pursuant to Rule 41(a), SCRCF, to voluntarily dismiss without prejudice all parties named in the First Amended Complaint, filed October 31, 2006, except for the seven named Plaintiffs and the seven Defendants from which those Plaintiffs purchased a vehicle.¹

A hearing was held before this Court on November 30, 2007, on Plaintiffs' motion to voluntarily dismiss certain Defendants and Defendants' motions to reconsider. Numerous lawyers for Plaintiffs and Defendants were present, with A. Camden Lewis presenting the Plaintiffs' motion and arguments and James Y. Becker, Bradford N. Martin and Steven W. Hamm presenting Defendants' motions and arguments.

This case is related to two other cases before this Court: Janet L. West-Cox et al. v. Cale Yarborough Honda, Inc. et al., Case No. 2007-CP-02-1154 (Complaint filed in Aiken County on

¹ The eighth named Plaintiff in the First Amended Complaint, Alison Dannert, has settled her claims against Defendant CarMax Auto Superstores, Inc., and is no longer involved in this litigation.

Aug. 20, 2007) (the West-Cox case); Howard Adams et al. v. Action Ford Mercury, Inc. et al., Case No. 2007-CP-02-1232 (Complaint filed in Aiken County on Sept. 4, 2007) (the Adams case).

II. PLAINTIFFS' MOTION TO VOLUNTARILY DISMISS CERTAIN DEFENDANTS

The majority of Defendants apparently have consented to Plaintiffs' Rule 41(a) motion to dismiss. Some Defendants have opposed this motion. I find that granting Plaintiffs' Rule 41(a) motion to dismiss serves judicial economy and is in accord with Rule 1, SCRCP, and thus, Plaintiffs' motion is granted. All Defendants in this case are hereby dismissed without prejudice pursuant to Rule 41(a)(2), SCRCP, except the following:

1. Heather Herron v. Land Rover of Columbia;
2. Natalie Armstrong v. Galeana Chrysler Jeep, Inc.;
3. Michael Ritz v. Taylor Investments, Inc. d/b/a Taylor Toyota, Inc.;
4. Julie Freeman v. J.L.H. Investments, d/b/a Hendrick Honda of Easley;²
5. Christine Watts v. Sonic Automotive 2752 Laurens Rd., Greenville, Inc. d/b/a Century BMW;
6. Michael Blease v. Dick Dyer & Associates, Inc.; and
7. Michael Watts v. Toyota of Greenville, Inc.

Defendants, including those which have consented to Plaintiffs' Rule 41(a) motion to dismiss and those which have not, have moved or reserved any and all rights they may have to seek the payment of their attorney's fees and costs by Plaintiffs. Defendants also have reserved any and all rights they may have with regard to any applicable statute of limitations if Plaintiffs

² The First Amended Complaint incorrectly asserts that Ms. Freeman purchased a vehicle from Rick Hendrick Honda Cars Co.

should refile this lawsuit against them. I express no opinion on these motions or issues and reserve ruling on them until a later date. Before I rule on such motions, the parties will be allowed to prepare memoranda and affidavits in support of or opposition to the motions, and present their arguments at a hearing.

III. DEFENDANTS' MOTIONS TO RECONSIDER

I grant Defendants' motions to reconsider in part and modify my earlier ruling on the issue of a Plaintiff's standing to sue Dealers with whom he or she did not transact any business. I deny Defendants' motions to reconsider in part, reaffirming my earlier rulings on the issues of the applicability of Rule 23, SCRPC. I reserve any rulings on the issues of improper joinder and venue until a later time.

A. STANDARD FOR DECIDING MOTION TO DISMISS

*DAE
#4*

A trial judge may dismiss a claim when the defendant demonstrates the plaintiff's failure to state facts sufficient to constitute a cause of action in the pleadings filed with the court. Rule 12(b)(6), SCRPC. When considering the motion to dismiss for failure to state a cause of action, the trial court must base its ruling solely upon the allegations made on the face of the complaint. Baird v. Charleston County, 333 S.C. 519, 511 S.E.2d 69 (1999). If the facts and inferences drawn from the facts alleged in the complaint would entitle the plaintiff to relief on any theory, then the grant of a motion to dismiss for failure to state a cause of action is improper. Brown v. Leverette, 291 S.C. 364, 353 S.E.2d 697 (1987). When it is determined that a plaintiff does not have standing to prosecute, the court must dismiss the action. Brock v. Bennett, 313 S.C. 513, 519, 443 S.E.2d 409, 413 (Ct. App. 1994).

B. STANDING

In my Order filed August 1, 2007, denying Defendants' motions to dismiss, I ruled that the First Amended Complaint sufficiently pled facts supporting standing of the Plaintiffs to proceed under the three causes of action in the First Amended Complaint, and that at this stage of the proceeding, there were sufficient allegations of civil conspiracy in the First Amended Complaint to avoid dismissal. I now reconsider and clarify my ruling on the issue of standing, reversing it to a limited extent.

Defendants' motion to dismiss is granted with regard to a named Plaintiff's claims against "no-sale Defendants," i.e., Defendants with which a named Plaintiff did not transact any business. Otherwise, Defendants' motion to dismiss on this ground is denied.

 In short, I conclude that a named Plaintiff has standing to pursue all three causes of action, on behalf of himself or others, against the Defendant from which that particular Plaintiff purchased a vehicle. However, a named Plaintiff does not have standing to sue, on behalf of himself or others, any Defendant with which he did not transact any business. A named Plaintiff may later gain standing to sue Defendants with which a named Plaintiff did not transact any business by presenting evidence sufficient to create a genuine issue of material fact that particular Defendants conspired on the charging of the closing fee with the Defendant from which the named Plaintiff purchased a vehicle.

Standing is a "fundamental requirement for instituting an action," without which "[n]o justiciable controversy is presented." Brock v. Bennett, 313 S.C. 513, 519, 443 S.E.2d 409, 412-13 (Ct. App. 1994). As a result, upon determining a plaintiff has no standing to prosecute a cause of action, the court must dismiss the action. Id.

To have standing, a party must prove all elements that constitute the "irreducible constitutional minimum of standing":

First, the plaintiff must have suffered an injury in fact – an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical. Second, there must be a causal connection between the injury and the conduct complained of – the injury has to be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court. Third, it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.

Sea Pines Assn. for the Protection of Wildlife, Inc. v. S.C. Dept. of Nat. Resources, 345 S.C. 594, 601, 550 S.E.2d 287, 291 (2001) (internal quotes and ellipses omitted). An injury in fact is a particularized harm that affects the plaintiff in a personal and individual way. Id. at 602, 550 S.E.2d at 292. Plaintiffs bear the burden of demonstrating each of the three elements. Sea Pines, 345 S.C. at 601, 550 S.E.2d at 291.

A plaintiff may not sue a defendant with whom he or she has had no dealings because the law precludes a plaintiff from suing a defendant "unless the plaintiff has suffered an injury at the hands of the defendant." Gardner v. S.C. Dept. of Revenue, 353 S.C. 1, 23 n.14, 577 S.E.2d 190, 201 n.14 (2003). In Blum v. Yaretsky, 457 U.S. 991 (1982), the United States Supreme Court explained that

[i]t is not enough that the conduct of which the plaintiff complains will injure *someone*. The complaining party must also show that he is within the class of persons who will be concretely affected. Nor does a plaintiff who has been subject to injurious conduct of one kind possess by virtue of that injury the necessary stake in litigating conduct of another kind, although similar, to which he has not been subject.

Id. at 999 (emphasis in original).

In the present case, when considering solely the allegations made on the face of the First Amended Complaint, each named Plaintiff has sustained no injury from any of the Dealers with which he or she did not conduct any business, and he or she is not in immediate danger of a

direct injury from any of these Dealers. A named Plaintiff cannot establish standing because there simply is no causal connection between the injury alleged (a closing fee illegally charged by a Dealer that sold a vehicle to an individual Plaintiff) and the challenged actions of the other Dealers (which did not sell a vehicle to Plaintiff). The injury suffered by each named Plaintiff is fairly traceable to the challenged action of only the Dealer from which he or she bought a car, not every other Dealer in the state. A decision in the named Plaintiff's favor would not redress the injuries allegedly suffered by people who bought vehicles from other, unrelated Dealers. Furthermore, each named Plaintiff has a personal stake in an action only against the Dealer with which he or she did transact business. The mere fact that other Dealers may charge a closing fee simply does not give Plaintiffs standing to sue every Dealer in the state that charges such a fee.

Accordingly, a named Plaintiff does not have standing to sue, on behalf of himself or others, any Defendant from which a Plaintiff did not purchase a vehicle or transact any business. Stated conversely, a named Plaintiff who alleges he or she has been charged an illegal motor vehicle closing fee has standing to sue, on behalf of himself or others, only the Defendant which sold a vehicle to that particular Plaintiff. As explained further in Section E below, a named Plaintiff may gain standing to sue other Defendants with which he or she did not transact any business if that Plaintiff, during discovery, obtains evidence sufficient to raise a genuine issue of material fact on whether certain Defendants engaged in a civil conspiracy with regard to the charging of a closing fee.

2. Impact of S.C. Code Ann. § 56-15-110(2) on standing

South Carolina Code Ann. § 56-15-110(2) (2006) does not confer standing for Plaintiffs to sue Dealers with which they did not conduct any business. Under § 56-15-110(1), "any person who shall be injured in his business or property by reason of anything forbidden in this

chapter may sue therefor [sic] in the court of common pleas." (Emphasis added.) This subsection simply gives an injured person a right to sue a Dealer with which he or she did business for damages, but in no way indicates that person may sue every other Dealer in South Carolina. To be liable under this provision, a Dealer must have participated in wrongdoing against a Plaintiff who bought a vehicle from that Dealer. Jackson v. Speed, 326 S.C. 289, 302, 486 S.E.2d 750, 756 (1997); Rowe v. Hyatt, 321 S.C. 366, 468 S.E.2d 649 (1996). The named Plaintiffs were not injured in their person or property by dealers with which they did no business. Therefore, Plaintiffs have no claim under § 56-15-110(1) against those Dealers with which they did no business.

TRC
This ruling is consistent with the South Carolina Supreme Court's decision in Gardner v. S.C. Dept. of Revenue, 353 S.C. 1, 577 S.E.2d 190 (2003), in which the plaintiffs brought an action for violations of the South Carolina Debt Setoff Act and, like the Plaintiffs in this case, they sued defendants with which they had not conducted any business. The plaintiffs alleged that public agencies which collected debts by seizing an individual's state income tax refund under the Debt Setoff Act had failed to comply with the Act's notice provisions. The plaintiffs sued defendant class members that had *not* collected debts from them, but had collected debts from other persons using the Act. The Supreme Court held that the plaintiffs could not sue persons who did *not* collect debts from them and at whose hands they had suffered no injury. Gardner, 353 S.C. at 23 n.14, 577 S.E.2d at 201 n.14.

3. Impact of civil conspiracy claim on standing

The mere assertion of a civil conspiracy cause of action does not confer standing on Plaintiffs to sue Dealers with which they did not transact business. Any use of the conspiracy

allegation to circumvent standing requirements would involve applying the "juridical links doctrine."

The South Carolina Supreme Court has expressly rejected the "juridical links" doctrine, finding that it runs counter to previous decisions that a plaintiff may not sue a defendant unless the plaintiff has suffered an injury at the hands of the defendant. Gardner, 353 S.C. at 23 n.14, 577 S.E.2d at 201 n.14; Edisto Fleets, Inc. v. S.C. Tax Commn., 256 S.C. 350, 182 S.E.2d 713 (1971) (plaintiff cannot maintain a class action where record indicates he was not directly harmed by defendant's actions); Furman Univ. v. Livingston, 244 S.C. 200, 136 S.E.2d 254, 256 (1964) (only a taxpayer directly affected by erroneously paying taxes has a right to seek a refund).

Given the Supreme Court's unconditional rejection of the juridical links doctrine, Plaintiffs cannot now rely on a conspiracy allegation to circumvent the standing requirements. Plaintiffs therefore lack standing at this time to bring any cause of action against Dealers with which they did not transact any business.

4. Impact of declaratory judgment action on standing

me/9
The mere assertion of a declaratory judgment action does not confer standing on Plaintiffs to sue Dealers with which they did not transact business.

The Declaratory Judgment Act provides:

[a]ny person interested under a deed, will, written contract or other writings constituting a contract or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.

S.C. Code Ann § 15-53-30 (2006). Despite the Act's "broad language, it has limits." Sunset Cay, LLC v. City of Folly Beach, 357 S.C. 414, 423, 593 S.E.2d 462, 466 (2004). An

adjudication that “would not settle the legal rights of the parties would only be advisory in nature and, therefore, would be beyond the intended purpose and scope of [the Act.]” Id.

To state a cause of action under the Declaratory Judgment Act, a party “must demonstrate a justiciable controversy.” Id. A justiciable controversy exists “when a concrete issue is present, there is a definite assertion of legal rights and a positive legal duty which is denied by the adverse party.” Graham v. State Farm Mutual Ins. Co., 319 S.C. 69, 71, 459 S.E.2d 844, 845 (1995). Additionally, in declaratory judgment actions “[t]he interest of the parties . . . to the subject matter of the controversy must be more than merely general. It must be a substantial, direct, and legally protected present interest in the relief sought.” Quinn v. City of Columbia 303 S.C. 405, 407-408, 401 S.E.2d 165, 167 (1991) (holding that subdivision residents lacked standing under the Declaratory Judgment Act to challenge the city’s annexation of the subdivision because the residents did not own real property in the subdivision and, therefore, had no “legally protected present interest”).

 Because there was no transaction or interaction between the named Plaintiffs and Dealers with which they did no business, Plaintiffs’ legal interest with respect to such dealerships is neither concrete nor legally protected and any declaratory judgment would be merely advisory in nature. Plaintiffs’ declaratory judgment cause of action is, therefore, an impermissible basis to establish standing against a Dealer with which they did not transact any business.

5. Impact of public interest exception

To establish public interest standing, the reported cases indicate that a government entity or public actor must be a defendant. See e.g. Davis v. Richland County Council, 372 S.C. 497, 642 S.E.2d 740 (2007) (holding county recreation commission members had public interest standing in suit against county regarding the constitutionality of an act changing the authority to

appoint commission members, and citing several cases involving government entities as the defendant). In this case, there is no dispute with governmental entities, public officials, or public bodies. Instead, the lawsuit is an action by private individual plaintiffs against private corporate defendants. Given the well-established general principles on standing outlined above, I find that the public interest exception in this case should not be applied to allow a named Plaintiff to sue Defendants with which that Plaintiff did not transact any business.

C. APPLICABILITY OF RULE 23

Defendants assert that the First Amended Complaint should be dismissed because Plaintiffs have failed to plead the requirements of Rule 23, SCRPC, or, in the alternative, Plaintiffs must be required to plead and prove the requirements of Rule 23 during the liability or litigation phase of this case.

TKR
In my Order filed August 1, 2007, denying Defendants' motions to dismiss, I ruled that South Carolina Code Ann. § 56-15-110(2) (2006) creates a substantial or substantive right. I further found that Act No. 100 of 1985, 1985 S.C. Acts 277, which enacted the South Carolina Rules of Civil Procedure, did not apply to or affect substantive rights. The 1985 Act did not repeal Section 56-15-110(2). Therefore, Plaintiffs are not required to plead and prove the requirements pertaining to class actions contained in Rule 23, SCRPC.

I have considered Defendants' arguments to reconsider my ruling regarding Rule 23, SCRPC. I reaffirm my ruling as set forth in my Order filed August 1, 2007 and deny Defendants' motions to dismiss and to reconsider my earlier ruling on this ground. Plaintiffs are not required to plead and prove the requirements pertaining to class actions contained in Rule 23 SCRPC during the liability or litigation phase of this case.

D. IMPROPER JOINDER AND VENUE

Defendants contend that the First Amended Complaint should be dismissed against all Defendant dealerships on the ground of improper joinder pursuant to Rules 12(b)(6) and 20(a), SCRCF. Defendants assert that Plaintiffs should be required to refile their Complaints individually in the county of proper venue, i.e., where a given Defendant has its principal place of business. In my Order filed August 1, 2007, denying Defendants' motions to dismiss, I did not explicitly rule on Defendants' motions relating to improper joinder and venue.

I have considered the parties' arguments on this issue, including the arguments made in the various memoranda and hearings listed above. These motions in this case now pertain only to seven Plaintiffs and seven Defendants, given my decision to grant Plaintiffs' motion to voluntarily dismiss all no-sale Defendants in the First Amended Complaint. Accordingly, I will refrain from ruling on these issues until after discovery is completed. Defendants may refile or renew their motions related to dismiss for improper venue and improper joinder at that time.

E. CIVIL CONSPIRACY CLAIM

TYPE 12
Defendants assert that Plaintiffs have failed to adequately plead their civil conspiracy claim and so this claim should be dismissed from the First Amended Complaint in its entirety. In my Order filed August 1, 2007, I rejected Defendants' arguments and ruled that Plaintiffs have pleaded a civil conspiracy claim sufficiently to survive a motion to dismiss under Rule 12(b)(6), SCRCF. I reaffirm that ruling, but clarify its extent with regard to Defendants with which the named Plaintiffs did not transact business.

As explained in Section III(B)(3) above, a named Plaintiff may not rely on the mere assertion of an adequately pleaded civil conspiracy claim to obtain standing against no-sale Defendants, i.e., Dealers with which a given Plaintiff did not transact any business. However,

each named Plaintiff has standing to bring and has adequately pleaded in the First Amended Complaint a civil conspiracy claim against the Defendant from which that Plaintiff purchased a vehicle.

If Plaintiffs obtain sufficient evidence during the discovery process to create a genuine issue of material fact on the existence of a civil conspiracy among certain Defendants, then a named Plaintiff at that point would gain standing to sue, on behalf of himself or others, those particular Defendants which allegedly conspired on the charging of a closing fee with the Defendant from which the named Plaintiff purchased a vehicle. The named Plaintiff would not gain standing to sue every other Defendant in the state with which he or she did not transact any business, but only those allegedly involved in a conspiracy with the Defendant from which the Plaintiff did purchase a vehicle. If Plaintiffs do not obtain sufficient evidence of a civil conspiracy, dismissal of this claim pursuant to a summary judgment motion may be appropriate. Defendants may file summary judgment motions related to dismissal of the civil conspiracy claim after discovery is completed and before trial begins. I express no opinion on the validity of any civil conspiracy claim or whether dismissal of the claim ultimately may be appropriate.

F. ARBITRATION AND OTHER GROUNDS FOR DISMISSAL

Numerous Defendants have filed various motions related to arbitration agreements, including motions to dismiss the Complaint for lack of jurisdiction or to compel arbitration based on arbitration clauses found in buyer's orders or invoices and other documents related to the sale or financing of a vehicle. At the hearing on November 30, 2007, I heard arguments from Plaintiff Christine Watts and Defendant Sonic Automotive 2752 Laurens Rd., Greenville, Inc. d/b/a Century BMW, related to the arbitration agreement allegedly signed by Ms. Watts when she purchased a vehicle. I allowed those parties more time to conduct additional discovery,

including depositions, pertaining solely to issues related to the arbitration agreement. No ruling has been issued on the arbitration motion in Ms. Watts' case.

No other arbitration motions from any parties have been heard by the Court. As I previously have stated or ruled at various hearings, no party has waived any substantive or procedural rights or arguments relating to arbitration agreements, including the right to move to compel arbitration. See Green Tree Fin. Corp. v. Bazzle, 539 U.S. 444 (2003). Defendants have been careful throughout this litigation to preserve all rights related to the enforcement of arbitration agreements, as acknowledged on several occasions by Plaintiffs and this Court.

Furthermore, certain Defendants have asserted numerous other arguments and grounds for dismissal in various motions to dismiss and other pleadings filed in response to the Complaint. These other issues have not yet been considered by the Court and are expressly reserved for later review and consideration.

G. DISCOVERY

Discovery has been stayed while the parties and the Court addressed the preliminary issues contained in this Order. Discovery may proceed in this case after the filing of this Order.

IT IS SO ORDERED.



Doyet A. Early, III
Judge of the Second Judicial Circuit

January 31, 2008

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

FORM 4

JUDGMENT IN A CIVIL CASE

IN THE COURT OF COMMON PLEAS

CASE NO. 06-CP-02-1230

MC _____ JR _____

Heather Herron

Dick Dyer, et al

PLAINTIFF(S)

DEFENDANT(S)

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☐ Statement of Judgment by the Court

Dated at _____, South Carolina, this _____ day of _____, 20____

PRESIDING JUDGE

This judgment/order was entered/filed on the 4 day of Feb, 2008, and a copy mailed/hand-delivered/boxed this 4 day of Feb, 2008 to attorneys of record or to parties (when appearing pro se) as follows:

see attached

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

L. Hedard
CLERK OF COURT

SCRPC APP-24

By: DeAnn Nixon
DEPUTY CLERK

Carmax Attorney List

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Nelson Mullins
1320 Main Street
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**Michael M. Nunn, Esquire
Aiken, Bridges, Nunn, Elliott, & Tyler PA
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Greenville, SC 29603**

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Merritt, Flebotte, Wilson, Webb, & Caruso PLLC
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**Paul H. Infinger, Esquire
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Beaufort, SC 29901**

**William M. Bowen
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Hilton Head Island, SC 29938**

**Alice F. Paylor, Esquire
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Charleston, SC 29402**

**Frank S. Potts, Esquire
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Columbia, SC 29211**

**Low Country Mazda
1078 Johnny Dodds Blvd.**

Mt. Pleasant, SC 29464

**Joe Gibson Suzuki
489 West Main Street
Spartanburg, SC 29301**

**Wallace White Pontiac Buick GMC
730 Chesnee HWY
Gaffney, SC 29341-2711**

**Lawrence Chevrolet Pontiac
299 HWY 601 North
Pageland, SC 29728**

**Kia of Florence
3704 East Palmetto Street
Florence, SC 29506**

**Service Motor Company Inc
160 East Main Street
Pamplico, SC 29583**

**Kia of Myrtle Beach
1297 HWY 501
Myrtle Beach, SC 29577**

**Sparks Toyota, Inc.
4855 Hwy 501
Myrtle Beach, SC 29579**

**Jeffrey Dean Chrysler Dodge Jeep GMC
1426 Wilson Road
Newberry, SC 29108**

**Honda Cars of Columbia
178 Greystone Blvd.
Columbia, SC 29210**

**Joe Gibson Mitsubishi
489 West Main Street
Spartanburg, SC 29301**

**Kia of Greer
504 East Wade Hampton Blvd.**

Greer, SC 29651

Toyota of Greer
955 East Wade Hampton Blvd.
Greer, SC 29651

Union Chrysler Dodge Jeep Inc.
1246 South Duncan By Pass
Union, SC 29379

Raceway Chrysler Jeep Dodge, Inc.
900 East Bobo Newsom Hwy.
Hartsville, SC 29551

Raceway Ford
701 South Governor Williams Hwy
Darlington, SC 29532

Raceway Chevrolet Pontiac Buick GMC
410 West Main Street
Lake City, SC 29560

Saturn of Charleston
8261 Rivers Avenue
North Charleston, SC 29406

Whittle Motor Company
12 East Main Street
Williston, SC 29853

Low Country Volkswagen
1001 Johnnie Dodds Blvd
Mount Pleasant, SC 29464

Victory Hyundai of Charleston
1940 Savannah Highway
Charleston, SC 29407

Tison Motor Company
710 Ewast Railroad Avenue South
Estill, SC 29918

H&H Chevrolet
7491 Kershaw Camden Highway
Kershaw, SC 29067

Spartanburg Dodge
1035 North Church Street
Spartanburg, SC 29303

Dunlap Johnson Chevrolet
919 East Liberty
York, SC 29745

Modern Classic Motors, Inc.
Margaret A. Rapp
355 W.M. Hilton Parkway
Hilton Head Island, SC 29926

Rodger Shiflett Ford, Inc.
Roger E. Shiflett
1577 Twin Bridge Road
Gaffney, SC 29341

Wilson Chrysler Dodge Jeep, Inc.
Hiram F. Wilson, Jr.
238 Congress Street
Winnsboro, SC 29180

Floyd Motor Co. Inc.
Joe F. Boswell
211 Armour Street
Lake City, SC 29560

Heritage Lincoln Mercury, Inc.
P O Box 743937
Dallas, TX 75374

C. Thompson Automotive, Inc.
A Claude Thompson
1706 Montague Avenue
Greenwood, SC 29649

Boyle Toyota
Barnes Boyle, Jr.
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Sumter, SC 29150

Carolina Mazda, Inc.

830 N. Anderson Rd.
Rock Hill, SC 29730

Clinton Family Ford Lincoln Mercury Rock Hill
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Rock Hill, SC 29730-708

Atlantic Ford, LLC
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Diamond Automotive Group
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Conway, SC 29526

Elrod Pontiac/Buick/GMC, Inc.
William T. Elrod, Sr.
845 Hwy 9 Pass East
Lancaster, SC 29720

Crane Chevrolet Oldsmobile-Cadillac, Inc.
W.C. Crane
1600 East Main St.
Easley, SC 29640

Dickerson Motor Company
D.M. Dickerson, Jr.
60 N. Congress St.
York, SC 29745

Michael Spears, PA
PO Box 5806
Spartanburg, SC 29304

Gedney M. Howe, III, PA
PO Box 1034
Charleston, SC 29402

Richard A. Harpootlian, PA
PO Box 1090
Columbia, SC 29202

William S. Barr, Esquire

PO Box 1037
Charleston, SC 29401

Capers G. Barr, Esquire
PO Box 1037
Charleston, SC 29401

J. Gregory Studemeyer, Esquire
PO Box 12201
Columbia, SC 29211

Susan C. Rosen, Esquire
PO Box 1840
Charleston, SC 29402

Ronald J. Tyron, Esquire
1201 Main St., Ste. 1450
Columbia, SC 29202-1509

James Y. Becker
1201 Main St. 22nd Floor
Columbia, SC 29201

Harvey G. Sanders, Jr
The Leatherwood Plaza
300 East McBee Ave., Ste. 500
Greenville, SC 29601

Sarah U. Shiflett P.A.
205 West Meadow Street
Gaffney, SC 29341

Karl S. Brehmer, Esquire
PO Box 7966
Columbia, SC 29202

Brad Martin
PO Box 10410
Greenville, SC 29603

Steve Hamm
PO Drawer 7788
Columbia, SC 29202

Matthew N. Tyler
181 East Evans St., Ste. 409

Florence, SC 29506

Henry E. Grimball
5 Exchange Street
Charleston, SC 29401

Clay Walker
PO Box 61140
Columbia, SC 29260

Alexander T. Beard, Esquire
1002 Anna Knapp Blvd., Ste. 6
Mt. Pleasant, SC 29465

H. Clayton Walker, Jr.
Post Office Box 61140
Columbia, South Carolina 29260

LIZ GODARD
Clerk of Court
P.O. Box 563
Aiken, S.C. 29602-0563

Received
RECEIVED FEB 07 2008

Steve Hamm
PO Drawer 7788
Columbia, SC 29202



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STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF AIKEN)

Heather Herron, Natalie Armstrong,
and Alison Dannert individually and for the
benefit of all car buyers whom paid
"administrative fees" as described below to
Defendants,)

CIVIL ACTION COVERSHEET

vs.)

2006-CP-02-1230

CarMax Auto Superstores, Inc., et al)
Defendant(s).)

(Please Print)

SC Bar #: 68304

Submitted By: Brady R. Thomas

Telephone #: (803)771-8000

Address: LEWIS & BABCOCK, LLP

Fax #: (803)733-3534

Post Office Box 11208

Other:

Columbia, South Carolina 29211

E-mail: BRT@lewisbabcock.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

**If Action is Judgment/Settlement do not complete*

☒ JURY TRIAL demanded in complaint.

☐ NON-JURY TRIAL demanded in complaint.

☐ This case is subject to ARBITRATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.

☒ This case is subject to MEDIATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.

☐ This case is exempt from ADR (certificate attached).

NATURE OF ACTION (Check One Box Below)

Contracts

- ☐ Construction (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Wrongful Breach (140)
☐ Other (199)

Torts - Professional Malpractice

- ☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
☐ Other Malpractice (299)

Torts - Personal Injury

- ☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Other (399)

Real Property

- ☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499)

Inmate Petitions

- ☐ PCR (500)
☐ Sexual Predator (510)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599)

Judgments/Settlements

- ☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Other (799)

Administrative Law/Relief

- ☐ Reinstate Driver License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture (840)
☐ Other (899)

Appeals

- ☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Administrative Law Judge (980)
☐ Public Service Commission (990)
☐ Employment Security Comm (991)
☐ Other (999)

Special/Complex/Other

- ☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699)
☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of-State Depositions (650)

Submitting Party Signature: Brady R. Thomas

Date: 7/28/06

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. § 15-36-10 et. seq.

***FOR MANDATED ADR COUNTIES ONLY**

Florence, Horry, Lexington, Richland, Greenville**, and Anderson**
** Contact Respective County Clerk of Court for modified ADR Program Rules

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral within 210 days of filing of this action, and the Plaintiff shall file a "Stipulation of Neutral Selection" on or before the 224th day after the filing of the action. If the parties cannot agree upon the selection of the neutral within 210 days, the Plaintiff shall notify the Court by filing a written "Request for the Appointment of a Neutral" on or before the 224th day after the filing of this action. The Court shall then appoint a neutral from the Court-approved mediator/arbitrator list.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Cases which are appellate in nature such as appeals or writs of certiorari;
 - c. Post Conviction relief matters;
 - d. Contempt of Court proceedings;
 - e. Forfeiture proceedings brought by the State;
 - f. Cases involving mortgage foreclosures; and
 - g. Cases that have been submitted to mediation with a certified mediator prior to the filing of this action.
4. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference had been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
HEATHER HERRON, NATALIE
ARMSTRONG, ALISON DANNERT,
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.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 06-CP-02-1230

Plaintiffs,

CARMAX AUTO SUPERSTORES, INC.;
DICK DYER & ASSOCIATES, INC., DICK
SMITH MOTORS, INC.; GALEANA
CHRYSLER-JEEP, INC.; GALEANA
CHRYSLER PLYMOUTH, INC.; PULLIAM
MOTOR CO.; DICK SMITH INFINITI, INC.;
DICK SMITH NISSAN OF LEXINGTON,
INC.; DICK SMITH NISSAN,
INC.; OVERLAND, INC. D/B/A LAND
ROVER OF COLUMBIA; TOYOTA
CENTER, LLC; STOKES AUTOMOTIVE,
INC.; STOKES MOTORS, INC.; STOKES-
CRAVEN AUTOMOTIVE, INC.; STOKES
MAZDA, INC.; PALMETTO CHEVROLET
COMPANY, INC.; PALMETTO NISSAN,
INC.; PALMETTO FORD, INC.; JONES
FORD, INC., HAROLD ARNOLD'S SENTRY
BUICK, INC.; J. L. H. INVESTMENTS, LP;
RICK HENDRICK CHEVROLET, LP; RICK
HENDRICK HONDA CARS, CO.; RICK
HENDRICK, JEEP EAGLE, L.P.; OAK TREE,
INC. D/B/A WEST ASHLEY TOYOTA, INC.;
GENE

SUMMONS

(Jury Trial Demanded)

RICHARDS AUTOMOTIVE, LLC; FAIREY)
 CHEVROLET-CADILLAC; ORANGEBURG)
 CHRYSLER-DODGE-NISSAN, INC.;)
 ORANGEBURG FORD; SUPERIOR)
 HONDA; SUPERIOR MOTORS, INC.;)
 BENSON FORD-MERCURY, INC.; CRANE)
 CHEVROLET-CADILLAC, INC.; EASLEY)
 MITSUBISHI; EASLEY)
 PONTIAC-BUICK-GMC TRUCK, INC.;)
 HENDRICK HONDA; NORRIS FORD, INC.;)
 TINSLEY CHEVROLET CO., INC.; BOB)
 BENNETT FORD, INC.; CAPITOL)
 CHEVROLET; CAPITOL HYUNDAI;)
 CAROLINA INTERNATIONAL)
 TRUCKS-COLA; COLUMBIA)
 FREIGHTLINER, LLC; DODGELAND OF)
 COLUMBIA; HANCOCK MOTOR CO.;)
 HANCOCK VOLKSWAGEN; HONDA CARS)
 OF COLUMBIA; JIM MOORE CADILLAC,)
 INC.; MCDANIELS ACURA-PORSCHE;)
 SHEALY'S TRUCK CENTER-COLA;)
 STIVERS LINCOLN-MERCURY; WRAY)
 AUTOMOTIVE, INC.; CROMLEY'S INC.;)
 SALUDA MOTOR SALES, INC.; DAVE)
 EDWARDS TOYOTA; DICK BROOKS)
 HONDA; FOOTHILLS FORD OF CHESNE;)
 JOE GIBSON MITSUBISHI; KIA OF GREER;)
 SATURN OF SPARTANBURG; SHEALY'S)
 TRUCK CENTER; SPARTANBURG)
 DODGE, INC.; VIC BAILEY FORD, INC.;)
 VIC BAILEY HONDA; VIC BAILEY)
 LINCOLN-MERCURY, INC.; VIC BAILEY)
 VOLKSWAGEN; WAKEFIELD)
 BUICK-PONTIAC-GMC, INC.; BOYLE)
 MOTOR COMPANY; BOYLE TOYOTA,)
 INC.; GOODWIN BUICK-JEEP; GOODWIN)
 HONDA-MITSUBISHI-VW; JONES)
 CHEVROLET CO.; JONES NISSAN, INC.;)
 JONES PONTIAC-GMC TRUCK, INC.;)
 MCLAUGHLIN MOTORS, INC.; SUMTER)
 CHRYSLER-PLYMOUTH-DODGE;)
)
)

UNION CHRYSLER-DODGE-JEEP, INC.;)
 BIG COUNTRY CHEVROLET, INC.;)
 HASELDEN BROTHERS, INC.;)
 LONGSTREET)
 CHEVROLET-BUICK-CADILLAC-GMC;)
 CAROLINA MAZDA; CLINTON FAMILY)
 FORD-LINCOLN-MERCURY; DICKERSON)
 MOTOR CO., INC.; DUNLAP-JOHNSON)
 CHEVROLET CO., INC.; FORT MILL FORD,)
 INC.; FRED CALDWELL'S CLOVER)
 CHEVROLET; GOOD MOTOR COMPANY;)
 GRIFFIN MITSUBISHI; GRIFFIN)
 PONTIAC-BUICK-GMC; HARRELSON)
 NISSAN; HARRELSON TOYOTA; HONDA)
 CARS OF ROCK HILL; RICK FORD, INC.;)
 STATELINE CHRYSLER JEEP DODGE)
 INC.; AND AGAINST ALL MOTOR)
 VEHICLE DEALERS OWNED OR)
 CONTROLLED BY DEFENDANTS AS)
 DEFINED IN S.C. CODE ANN. §56-15-10(H).)

TO: THE NEW NAMED DEFENDANTS NAMED ABOVE:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action,
 a copy of which is hereby served upon you, and to serve a copy of your Answer to said
 Complaint on the subscriber at their offices, 1513 Hampton Street, Post Office Box 11208,
 Columbia, South Carolina, 29211, within Thirty (30) days after the service hereof, exclusive of
 the date of such service; and if you fail to answer the Complaint within the time aforesaid,
 judgment by default will be rendered against you for the relief demanded in the Complaint.

(Signature Block on Next Page)

MICHAEL SPEARS, PA
Michael E. Spears
Post Office 5806
Spartanburg, SC 29304
(864)583-3235

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
P.O. 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: Brady R. Thomas
Attorneys for the Plaintiffs

October 28, 2006
Columbia, South Carolina

REED IMPORTS, INC.; GENE REED)
 TOYOTA, INC., HOOVER JEEP)
 CHRYSLER, INC.; HOOVER MOTORS,)
 INC.; HOOVER CHRYSLER-DODGE, INC.;)
 STROM ALTMAN DODGE, INC.; BAKER)
 MOTOR COMPANY OF CHARLESTON,)
 INC.; MILLER CADILLAC, INC.; TAYLOR)
 INVESTMENTS, INC. D/B/A TAYLOR)
 TOYOTA; BENSON CHRYSLER-)
 PLYMOUTH, INC.; BENSON FORD)
 MERCURY, INC.; BENSON CADILLAC-)
 NISSAN, INC.; BIG "O" DODGE OF)
 GREENVILLE, INC.; BRADSHAW)
 AUTOMOTIVE GROUP, INC.;)
 SPARTANBURG CHRYSLER JEEP, INC.;)
 KIA OF ANDERSON, LLC; TOYOTA OF)
 GREENVILLE, INC., TOYOTA OF EASLEY,)
 INC., FARRELL AUTOMOTIVE, INC.;)
 FAIRWAY FORD, INC.; SATURN OF)
 GREENVILLE INC.; STEVE WHITE)
 MOTORS OF SOUTH CAROLINA,)
 INC.; D&D MOTORS, INC.; BURNS)
 CHRYSLER DODGE JEEP, LLC; JOHN)
 FINGER MOTORS, INC.; SONIC)
 AUTOMOTIVE, INC. D/B/A CENTURY)
 BMW; BOB RICHARDS NISSAN; DICK)
 SMITH CHRYSLER-JEEP; GOODMAN)
 CHEVROLET, INC.; HENNA)
 CHEVROLET-OLDS-CADILLAC, LLC;)
 HONDA CARS OF AIKEN; JOHNSON)
 MOTOR COMPANY OF SC; SANDERS)
 TRUCK SALES; CAROLINA FORD;)
 CAROLINA INTERNATIONAL TRUCKS OF)
 ANDERSON; CLINKSCALES CHEVROLET)
 INC.; FAIRWAY FORD-MAZDA;)
 PIEDMONT CHRYSLER-JEEP; PIEDMONT)
 HONDA; PLANET FORD; RALPH HAYES)
 TOYOTA, INC. ; TOM HUNTER)
 PONTIAC-BUICK-GMC, LLC; UPSTATE)
 AUTOMOTIVE (CHEVROLET-CADILLAC);)
 UPSTATE AUTOMOTIVE (ISUZU-KIA);)
 UPSTATE AUTOMOTIVE (MITSUBISHI);

UPSTATE AUTOMOTIVE (NISSAN);)
 GIBBES FORD, INC.; ZEIGLER)
 CHEVROLET, INC.; B & B FORD, INC.;)
 WHITTLE MOTOR COMPANY, INC.;)
 BUTLER CHRYSLER-DODGE-JEEP;)
 CAROLINA VOLVO; HILTON HEAD)
 AUTOMOTIVE LLC; HILTON HEAD)
 HONDA; LAND ROVER HILTON HEAD;)
 MODERN CLASSIC MOTORS; O. C.)
 WELCH FORD-LINCOLN-MERCURY;)
 PARKS AUTOMOTIVE GROUP; PARKS)
 CADILLAC; STOKES HONDA CARS OF)
 BEAUFORT, INC.; STOKES MITSUBISHI;)
 STOKES-BROWN TOYOTA; DICK SMITH)
 CHEVROLET, INC.; HOOVER)
 JEEP-CHRYSLER, INC.; HOOVER)
 MOTORS, INC.; MCELVEEN)
 PONTIAC-BUICK-GMC, INC.; ALTMAN)
 LINCOLN-MERCURY-HYUNDAI;)
 CAROLINA INTERNATIONAL)
 TRUCKS-CHARLESTON; CHARLESTON)
 MITSUBISHI; HENDRICK HONDA OF)
 CHARLESTON; HOOVER)
 CHRYSLER-JEEP, INC.; HUGHES)
 MOTORS, INC.; KIA COUNTRY; LEXUS OF)
 CHARLESTON; LOW COUNTRY MAZDA;)
 LOW COUNTRY VOLKSWAGEN;)
 MARATHON CHEVROLET OF N)
 CHARLESTON; MARCHANT)
 CHEVROLET, INC.; MCDANIELS ACURA)
 OF CHARLESTON ; MCELVEEN)
 CHEVROLET, LLC; MORRIS NISSAN;)
 NORTHSIDE NISSAN; RAVENEL FORD;)
 INC.; RICK HENDRICK DODGE; RICK)
 HENDRICK'S IMPORT SHOWPLACE;)
 SATURN OF CHARLESTON; STOKES)
 HONDA NORTH CHARLESTON; STOKES)
 ISUZU-KIA-SUBARU; STOKES)
 VOLKSWAGEN; VICTORY HYUNDAI OF)
 CHARLESTON; BURNS)
 CHEVROLET-CHRYSLER-DODGE-JEEP,)
 INC.; JOE GIBSON SUZUKI; ROGER)
 SHIFLETT FORD, INC.; WALLACE WHITE)

PONTIAC-BUICK-GMC; NOURSE)
 CHESTER AUTOMOTIVE; NOURSE)
 MOTORS OF CHESTER LLC; BENNETT)
 MOTOR CO., INC.; JOHN DONOGHUE)
 FORD, INC.; LAWRENCE)
 CHEVROLET-PONTIAC; PROTHRO)
 CHEVROLET-BUICK-PONTIAC-GMC)
 TRUCK; STOKES-CRAVEN)
 CHRYSLER-JEEP-DODGE;)
 STOKES-CRAVEN FORD; PETERS)
 PONTIAC BUICK-GMC; RIZER)
 CHEVROLET CO., INC.; WALTERBORO)
 MOTOR SALES CO.; ACTION)
 FORD-MERCURY, INC.; JOHN NEWSOME,)
 INC.; RACEWAY)
 CHRYSLER-JEEP-DODGE, INC.;)
 RACEWAY FORD; CAROLINA)
 INTERNATIONAL TRUCKS LLC;)
 MARATHON CHEVROLET;)
 SUMMERVILLE FORD-MERCURY, INC.;)
 HERLONG PONTIAC-CHEVROLET-BUICK,)
 INC.; JIM SATCHER, INC.; YONCE)
 FORD-MERCURY, INC.; WILSON)
 CHEVROLET-OLDSMOBILE, INC.;)
 WILSON CHRYSLER-DODGE-JEEP, INC.;)
 AUDDIE BROWN MITSUBISHI; CALE)
 YARBOROUGH HONDA, INC.; CAROLINA)
 INTERNATIONAL TRUCKS FLORENCE;)
 EFIRD CHRYSLER-JEEP-DODGE, INC.;)
 FLORENCE MACK, INC.; FLORENCE)
 TOYOTA; FLOYD MOTOR CO., INC.;)
 HORNE FORD, INC.; KIA OF FLORENCE;)
 KING CADILLAC-BUICK-PONTIAC-GMC)
 TRUCK, INC.; LAKE CITY)
 FORD-MERCURY, LLC; PETERBILT OF)
 FLORENCE; RACEWAY)
 CHEVROLET-PONTIAC-BUICK-GMC;)
 SATURN OF FLORENCE; SERVICE)
 MOTOR COMPANY, INC.; COASTAL)
 NISSAN-CHEVROLET-CADILLAC;)
 HEMINGWAY MOTOR CO., INC.;)
 PARRISH MOTOR CO., INC.; TIDELANDS)
 CHRYSLER DODGE; TIDELANDS)

FORD-LINCOLN-MERCURY; BMS, INC.)
 D/B/A BREAKAWAY HONDA;)
 BRADSHAW ACURA; BROCKMAN)
 AUTOMOTIVE; CAROLINA)
 INTERNATIONAL TRUCKS-GREENVILLE;)
 CHEROKEE KENWORTH, INC.;)
 CHRISTOPHER TRUCKS, INC.; CROWN)
 JEEP-CHRYSLER; CROWN NISSAN)
 GREENVILLE; DICK SMITH MITSUBISHI;)
 FAIRWAY FORD, INC.; FAIRWAY)
 MOTORCARS LLC; GEORGE COLEMAN)
 FORD, INC.; HERITAGE)
 LINCOLN-MERCURY; JOHN FINGER)
 MAZDA; KEVIN WHITAKER)
 CHEVROLET-CADILLAC; KEVIN)
 WHITAKER CHEVROLET, INC.;)
 SIMPSONVILLE CHEVROLET, INC.;)
 SITTON BUICK-PONTIAC-GMC TRUCK,)
 INC.; STOKES-TRAINOR FORD; C.)
 THOMPSON AUTOMOTIVE; GARY RUSS)
 CHEVROLET-CADILLAC, INC.; GEORGE)
 BALLENTINE FORD-LINCOLN-)
 MERCURY; QUALITY CHRYSLER CITY;)
 BRUNSON AUTOMOBILE SALES, INC.;)
 TISON MOTOR CO., INC.; ADDY'S)
 HARBOR DODGE; ATLANTIC)
 CHRYSLER-JEEP-DODGE; ATLANTIC)
 FORD, INC.; BEACH)
 FORD-LINCOLN-MERCURY-VOLVO, INC.;)
 BELL & BELL PONTIAC-GMC, INC.;)
 CONWAY CHRYSLER-DODGE-JEEP, INC.;)
 CONWAY FORD, INC.; DIAMOND)
 AUTOMOTIVE GROUP, INC.; EAST)
 COAST HONDA; EAST COAST)
 VOLKSWAGEN; FOWLER MOTORS;)
 GRAND STRAND NISSAN, INC.;)
 HADWIN-WHITE)
 PONTIAC-BUICK-GMC-SUBARU; HYATT)
 BUICK-GMC TRUCKS; JUD KUHN)
 CHEVROLET; KIA OF MYRTLE BEACH;)
 LAY-FISHER CHEVROLET, INC.; MYRTLE)
 BEACH CHEVROLET, INC.; MYRTLE)
 BEACH CHRYSLER-JEEP, INC.; MYRTLE)
 BEACH)

HYUNDAI-ISUZU; MYRTLE BEACH)
 SUZUKI; SPARKS TOYOTA, INC.; SUN)
 COAST MAZDA-MITSUBISHI; SUZUKI)
 OUTLET OF MYRTLE BEACH SC; HILTON)
 HEAD CHRYSLER JEEP DODGE; HILTON)
 HEAD HYUNDAI; KEY INFINITI LLC; KEY)
 MAZDA; KEY NISSAN, LLC; PORSCHE OF)
 HILTON HEAD; PRESTIGE MOTORCARS;)
 LLC DBA HILTON HEAD JAGUAR; DICK)
 SMITH)
 PONTIAC-CHRYSLER-DODGE-GMC-JEEP;)
 HERITAGE CHEVROLET-BUICK, INC.;)
 JAMES ERVIN TOYOTA; REDFEARN)
 MOTOR CO., INC.; BURNS)
 FORD-MERCURY, INC.; ELROD)
 PONTIAC-BUICK-GMC, INC.; H & H)
 CHEVROLET, INC.; LANCASTER)
 DODGE-CHRYSLER-JEEP; LANCASTER)
 MOTOR CO.; BALDWIN)
 PONTIAC-BUICK-GMC, INC.; COOPER)
 FORD, INC.; FIRMIN FORD, INC.; JOHN)
 FOSTER MOTORS, INC.; LYNN COOPER,)
 INC. ; SMITH CHEVROLET-CADILLAC,)
 INC. ; ADDY DODGE, INC.; CHEROKEE)
 KENWORTH; HAMPTON AUTOMOTIVE,)
 INC.; MIDLANDS HONDA; SATURN OF)
 COLUMBIA, INC.; STIVERS)
 CHRYSLER-JEEP, INC.; TWIN CITY)
 MOTOR CO., INC.; MULLINS MOTORS,)
 INC.; PEE DEE FORD LINCOLN MERCURY)
 INC.; GRIFFIN-FLYTHE CHEVROLET,)
 INC.; MEGGS)
 FORD-CHRYSLER-DODGE-JEEP;)
 CROMLEY'S INC.; JEFFREY DEAN)
 CHRYSLER DODGE JEEP GMC; KIRBY)
 SCHRADER; STOKES-TRAINOR)
 CHEVROLET-OLD-PONTIAC-CADILLAC-B)
 UICK; BOBBY WOOD)
 CHEVROLET-PONTIAC; EDWARDS AUTO)
 SALES, INC.; LAKE KEOWEE)
 CHRYSLER-DODGE LLC; LEADER FORD;)
 PERFORMANCE)
 CHEVROLET-BUICK-GMC; BOB)

RICHARDS AUTOMOTIVE, LLC; FAIREY)
 CHEVROLET-CADILLAC; ORANGEBURG)
 CHRYSLER-DODGE-NISSAN, INC.;)
 ORANGEBURG FORD; SUPERIOR)
 HONDA; SUPERIOR MOTORS, INC.;)
 BENSON FORD-MERCURY, INC.; CRANE)
 CHEVROLET-CADILLAC, INC.; EASLEY)
 MITSUBISHI; EASLEY)
 PONTIAC-BUICK-GMC TRUCK, INC.;)
 HENDRICK HONDA; NORRIS FORD, INC.;)
 TINSLEY CHEVROLET CO., INC.; BOB)
 BENNETT FORD, INC.; CAPITOL)
 CHEVROLET; CAPITOL HYUNDAI;)
 CAROLINA INTERNATIONAL)
 TRUCKS-COLA; COLUMBIA)
 FREIGHTLINER, LLC; DODGELAND OF)
 COLUMBIA; HANCOCK MOTOR CO.;)
 HANCOCK VOLKSWAGEN; HONDA CARS)
 OF COLUMBIA; JIM MOORE CADILLAC,)
 INC.; MCDANIELS ACURA-PORSCHE;)
 SHEALY'S TRUCK CENTER-COLA;)
 STIVERS LINCOLN-MERCURY; WRAY)
 AUTOMOTIVE, INC.; CROMLEY'S INC.;)
 SALUDA MOTOR SALES, INC.; DAVE)
 EDWARDS TOYOTA; DICK BROOKS)
 HONDA; FOOTHILLS FORD OF CHESNE;)
 JOE GIBSON MITSUBISHI; KIA OF GREER;)
 SATURN OF SPARTANBURG; SHEALY'S)
 TRUCK CENTER; SPARTANBURG)
 DODGE, INC.; VIC BAILEY FORD, INC.;)
 VIC BAILEY HONDA; VIC BAILEY)
 LINCOLN-MERCURY, INC.; VIC BAILEY)
 VOLKSWAGEN; WAKEFIELD)
 BUICK-PONTIAC-GMC, INC.; BOYLE)
 MOTOR COMPANY; BOYLE TOYOTA,)
 INC.; GOODWIN BUICK-JEEP; GOODWIN)
 HONDA-MITSUBISHI-VW; JONES)
 CHEVROLET CO.; JONES NISSAN, INC.;)
 JONES PONTIAC-GMC TRUCK, INC.;)
 MCLAUGHLIN MOTORS, INC.; SUMTER)
 CHRYSLER-PLYMOUTH-DODGE;)
)
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UNION CHRYSLER-DODGE-JEEP, INC.;)
 BIG COUNTRY CHEVROLET, INC.;)
 HASELDEN BROTHERS, INC.;)
 LONGSTREET)
 CHEVROLET-BUICK-CADILLAC-GMC;)
 CAROLINA MAZDA; CLINTON FAMILY)
 FORD-LINCOLN-MERCURY; DICKERSON)
 MOTOR CO., INC.; DUNLAP-JOHNSON)
 CHEVROLET CO., INC.; FORT MILL FORD,)
 INC.; FRED CALDWELL'S CLOVER)
 CHEVROLET; GOOD MOTOR COMPANY;)
 GRIFFIN MITSUBISHI; GRIFFIN)
 PONTIAC-BUICK-GMC; HARRELSON)
 NISSAN; HARRELSON TOYOTA; HONDA)
 CARS OF ROCK HILL; RICK FORD, INC.;)
 STATELINE CHRYSLER JEEP DODGE)
 INC.; AND AGAINST ALL MOTOR)
 VEHICLE DEALERS OWNED OR)
 CONTROLLED BY DEFENDANTS AS)
 DEFINED IN S.C. CODE ANN. §56-15-10(H).)

Plaintiffs Heather Herron, Natalie Armstrong, Alison Dannert, Michael Ritz, Julie
 Freeman, Christine Watts, Michael Blease, and Micheal Watts individually and pursuant to S.C.
 Code Ann. §56-5-110 for the benefit of all others whom paid "administrative fees" (often
 referred to as an "administrative fee," a "recording and processing fee," "closing fee," "dealer
 documentation and closing fee" (collectively "administrative fees")) to Defendants hereby
 complaining of CarMax Auto Superstores, Inc., Defendant Dick Dyer & Associates, Inc., Dick
 Smith Motors, Inc., Galeana Chrysler-Jeep, Inc., Pulliam Motor Co., Dick Smith Infiniti, Inc.,
 Dick Smith Nissan of Lexington, Inc., Dick Smith Nissan, Inc., Overland, Inc. d/b/a Land Rover
 of Columbia, Toyota Center, LLC, Stokes Automotive, Inc., Stokes Motors, Inc., Stokes-Craven
 Automotive, Inc., Stokes Mazda, Inc., Palmetto Chevrolet Company, Inc., Palmetto Nissan, Inc.,
 Palmetto Ford, Inc., Jones Ford, Inc., Harold Arnold's Sentry Buick, Inc., J. L. Investments, LP,

Rick Hendrick Chevrolet, LP, Rick Hendrick Honda Cars Co., Rick Hendrick Jeep Eagle, L.P., Oak Tree, Inc. d/b/a West Ashely Toyota, Inc., Gene Reed Imports, Inc, Gene Reed Toyota, Inc., Hoover Jeep Chrysler, Inc., Hoover Motors, Inc., Hoover Chrysler-Dodge, Inc., Strom Altman Dodge, Inc., Baker Motor Company of Charleston, Inc., Miller Cadillac, Inc., Taylor Investments, Inc. d/b/a Taylor To Defendant Benson Chrysler-Plymouth, Inc. Defendant Benson Ford Mercury, Inc., Benson Cadillac-Nissan, Inc., Big "O" Dodge of Greenville, Inc., Bradshaw Automotive Group, Inc., Spartanburg Chrysler Jeep, Inc., Kia of Anderson, LLC, Toyota of Greenville, Inc., Toyota of Easley, Inc., Farrell Automotive, Inc., Fairway Ford, Inc., Saturn of Greenville, Inc., Steve White Motors of South Carolina, Inc., D&D Motors, Inc., Burns Chrysler Dodge Jeep, LLC, John Finger Motors, Inc., Sonic Automotive, Inc. d/b/a Century BMW, Bob Richards Nissan, Dick Smith Chrysler-Jeep, Goodman Chevrolet, Inc., Henna Chevrolet-Olds-Cadillac, LLC, Honda Cars of Aiken, Johnson Motor Company of SC, Sanders Truck Sales, Carolina Ford, Carolina International Trucks of Anderson, Clinkscates Chevrolet, Inc., Fairway Ford-Mazda, Piedmont Chrysler-Jeep, Piedmont Honda, Planet Ford, Ralph Hayes Toyota, Inc. , Tom Hunter Pontiac-Buick-GMC, LLC, Upstate Automotive (Chevrolet-Cadillac), Upstate Automotive (Isuzu-Kia), Upstate Automotive (Mitsubishi), Upstate Automotive (Nissan), Gibbes Ford, Inc., Zeigler Chevrolet, Inc., B & B Ford, Inc., Whittle Motor Company, Inc., Butler Chrysler-Dodge-Jeep, Carolina Volvo, Hilton Head Automotive LLC, Hilton Head Honda, Land Rover Hilton Head, Modern Classic Motors, O. C. Welch Ford-Lincoln-Mercury, Parks Automotive Group, Parks Cadillac, Stokes Honda Cars of Beaufort, Inc., Stokes Mitsubishi, Stokes-Brown Toyota, Dick Smith Chevrolet, Inc. Hoover Jeep-Chrysler, Inc., Hoover Motors, Inc., McElveen Pontiac-Buick-GMC, Inc., Altman Lincoln-Mercury-Hyundai, Carolina International Trucks-Charleston, Charleston Mitsubishi, Hendrick Honda of Charleston,

Hoover Chrysler-Jeep, Inc., Hughes Motors, Inc., Kia Country, Lexus of Charleston, Low Country Mazda, Low Country Volkswagen, Marathon Chevrolet of N Charleston, Marchant Chevrolet, Inc., McDaniels Acura of Charleston, McElveen Chevrolet, LLC, Morris Nissan, Northside Nissan, Ravenel Ford, Inc., Rick Hendrick Dodge, Rick Hendrick's Import Showplace, Saturn of Charleston, Stokes Honda North Charleston, Stokes Isuzu-Kia-Subaru, Stokes Volkswagen, Victory Hyundai of Charleston, Burns Chevrolet-Chrysler-Dodge-Jeep, Inc., Burns Chevrolet Cadillac, Inc., Joe Gibson Suzuki, Roger Shiflett Ford, Inc., Wallace White Pontiac-Buick-GMC, Nourse Chester Automotive, Nourse Motors of Chester LLC, Bennett Motor Co., Inc., John Donoghue Ford, Inc., Lawrence Chevrolet-Pontiac, Prothro Chevrolet-Buick-Pontiac-GMC Truck, Stokes-Craven Chrysler-Jeep-Dodge, Stokes-Craven Ford, Peters Pontiac Buick-GMC, Rizer Chevrolet Co., Inc., Walterboro Motor Sales Co., Action Ford-Mercury, Inc., John Newsome, Inc., Raceway Chrysler-Jeep-Dodge, Inc., Raceway Ford, Carolina International Trucks LLC, Marathon Chevrolet, Summerville Ford-Mercury, Inc., Herlong Pontiac-Chevrolet-Buick, Inc., Jim Satcher, Inc., Yonce Ford-Mercury, Inc., Wilson Chevrolet-Oldsmobile, Inc., Wilson Chrysler-Dodge-Jeep, Inc., Auddie Brown Mitsubishi, Cale Yarborough Honda, Inc., Carolina International Trucks, Efird Chrysler-Jeep-Dodge, Inc., Florence Mack, Inc., Florence Toyota, Floyd Motor Co., Inc., Home Ford, Inc., Kia of Florence, King Cadillac-Buick-Pontiac-GMC Truck, Inc., Lake City Ford-Mercury, LLC, Peterbilt of Florence, Raceway Chevrolet-Pontiac-Buick-GMC, Saturn of Florence, Service Motor Company, Inc., Coastal Nissan-Chevrolet-Cadillac, Hemingway Motor Co., Inc., Parrish Motor Co., Inc., Tidelands Chrysler Dodge, Tidelands Ford-Lincoln-Mercury, BMS, Inc. d/b/a Breakaway Honda, ✓Bradshaw Acura, Brockman Automotive, Carolina International Trucks-Greenville, Cherokee Kenworth, Inc., Christopher Trucks, Inc., Crown Jeep-Chrysler, Crown Nissan Greenville, Dick

Smith Mitsubishi, Fairway Ford, Inc., Fairway Motorcars LLC, George Coleman Ford, Inc., Heritage Lincoln-Mercury, John Finger Mazda, Kevin Whitaker Chevrolet-Cadillac, Kevin Whitaker Chevrolet, Inc., Simpsonville Chevrolet, Inc., Sitton Buick-Pontiac-GMC Truck, Inc., Steve White Motors of SC, Inc., Stokes-Trainor Ford, C. Thompson Automotive, Gary Russ Chevrolet-Cadillac, Inc., George Ballentine Ford-Lincoln-Mercury, Quality Chrysler City, Brunson Automobile Sales, Inc., Tison Motor Co., Inc., Addy's Harbor Dodge, Atlantic Chrysler-Jeep-Dodge, Atlantic Ford, Inc., Beach Ford-Lincoln-Mercury-Volvo, Inc., Bell & Bell Pontiac-GMC, Inc., Conway Chrysler-Dodge-Jeep, Inc., Conway Ford, Inc., Diamond Automotive Group, Inc., East Coast Honda, East Coast Volkswagen, Fowler Motors, Grand Strand Nissan, Inc., Hadwin-White Pontiac-Buick-GMC-Subaru, Hyatt Buick-GMC Trucks, Jud Kuhn Chevrolet, Kia of Myrtle Beach, Lay-Fisher Chevrolet, Inc., Myrtle Beach Chevrolet, Inc., Myrtle Beach Chrysler-Jeep, Inc., Myrtle Beach Hyundai-Isuzu, Myrtle Beach Suzuki, Sparks Toyota, Inc., Sun Coast Mazda-Mitsubishi, Suzuki Outlet of Myrtle Beach SC, Hilton Head Chrysler Jeep Dodge, Hilton Head Hyundai, Key Infiniti LLC, Key Mazda, Key Nissan, LLC, Porsche of Hilton Head, Prestige Motorcars, LLC dba Hilton Head Jaguar, Dick Smith Pontiac-Chrysler-Dodge-GMC-Jeep, Heritage Chevrolet-Buick, Inc., James Ervin Toyota, Redfearn Motor Co., Inc., Burns Ford-Mercury, Inc., Elrod Pontiac-Buick-GMC, Inc., H & H Chevrolet, Inc., Lancaster Dodge-Chrysler-Jeep, Lancaster Motor Co., Baldwin Pontiac-Buick-GMC, Inc., Cooper Ford, Inc., Firmin Ford, Inc., John Foster Motors, Inc., Lynn Cooper, Inc., Smith Chevrolet-Cadillac, Inc., Addy Dodge, Inc., Cherokee Kenworth, Hampton Automotive, Inc., Midlands Honda, Saturn of Columbia, Inc., Stivers Chrysler-Jeep, Inc., Twin City Motor Co., Inc., Mullins Motors, Inc., Pee Dee Ford Lincoln Mercury Inc., Griffin-Flythe Chevrolet, Inc., Meggs Ford-Chrysler-Dodge-Jeep, Cromley's Inc., Jeffrey Dean Chrysler Dodge

Jeep GMC, Kirby Schrader, Stokes-Trainor Chevrolet-Old-Pontiac-Cadillac-Buick, Bobby Wood Chevrolet-Pontiac, Edwards Auto Sales, Inc., Lake Keowee Chrysler-Dodge LLC, Leader Ford, Performance Chevrolet-Buick-GMC, Bob Richards Automotive, LLC, Fairey Chevrolet-Cadillac, Orangeburg Chrysler-Dodge-Nissan, Inc., Orangeburg Ford, Superior Honda, Superior Motors, Inc., Benson Ford-Mercury, Inc., Crane Chevrolet-Cadillac, Inc., Easley Mitsubishi, Easley Pontiac-Buick-GMC Truck, Inc., Hendrick Honda, Norris Ford, Inc., Tinsley Chevrolet Co., Inc., Bob Bennett Ford, Inc., Capitol Chevrolet, Capitol Hyundai, Carolina International Trucks-Cola, Columbia Freightliner, LLC, Dodgeland of Columbia, Hancock Motor Co., Hancock Volkswagen, Honda Cars of Columbia, Jim Moore Cadillac, Inc., McDaniels Acura-Porsche, Shealy's Truck Center-Cola, Stivers Lincoln-Mercury, Wray Automotive, Inc., Cromley's Inc., Saluda Motor Sales, Inc., Dave Edwards Toyota, Dick Brooks Honda, Foothills Ford of Chesne, Joe Gibson Mitsubishi, Kia of Greer, Saturn of Spartanburg, Shealy's Truck Center, Spartanburg Dodge, Inc., Vic Bailey Ford, Inc., Vic Bailey Honda, Vic Bailey Lincoln-Mercury, Inc., Vic Bailey Volkswagen, Wakefield Buick-Pontiac-GMC, Inc., Boyle Motor Company, Boyle Toyota, Inc., Goodwin Buick-Jeep, Goodwin Honda-Mitsubishi-VW, Jones Chevrolet Co., Jones Nissan, Inc., Jones Pontiac-GMC Truck, Inc., McLaughlin Motors, Inc., Sumter Chrysler-Plymouth-Dodge, Union Chrysler-Dodge-Jeep, Inc., Big Country Chevrolet, Inc., Haselden Brothers, Inc., Longstreet Chevrolet-Buick-Cadillac-GMC, Carolina Mazda, Clinton Family Ford-Lincoln-Mercury, Dickerson Motor Co., Inc., Dunlap-Johnson Chevrolet Co., Inc., Fort Mill Ford, Inc., Fred Caldwell's Clover Chevrolet, Good Motor Company, Griffin Mitsubishi, Griffin Pontiac-Buick-GMC, Harrelson Nissan, Harrelson Toyota, Honda Cars of Rock Hill, Rick Ford, Inc., Stateline Chrysler Jeep Dodge Inc. (collectively "Defendants"), would respectfully show

that:

PARTIES

1. Plaintiff Heather Herron is a citizen and resident of Richland County, South Carolina.
2. Plaintiff Natalie Armstrong is a citizen and resident of Richland County, South Carolina.
3. Plaintiff Alison Dannert is a citizen and resident of Spartanburg County, South Carolina.
4. Plaintiff Michael Ritz is a citizen and resident of Aiken County, South Carolina.
5. Plaintiff Julie Freeman is a citizen and resident of Greenville County, South Carolina.
6. Plaintiff Christine Watts is a citizen and resident of Greenville County, South Carolina.
7. Plaintiff Michael Watts is a citizen and resident of Greenville County, South Carolina.
8. Plaintiff Michael Blease is a citizen and resident of Horry County, South Carolina.
9. Defendant CarMax Auto Superstores, Inc. is a licensed motor vehicle dealer and corporation organized and existing under the laws of the State of Virginia with places of business in Richland County and Greenville County, South Carolina.
10. Defendant Dick Dyer & Associates, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Richland County, South Carolina.
11. Defendant Dick Smith Motors, Inc. is a licensed motor vehicle dealer and a

corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Richland County, South Carolina.

12. Defendant Galeana Chrysler-Jeep, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Richland County, South Carolina.

13. Defendant Pulliam Motor Co. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Richland County, South Carolina.

14. Defendant Dick Smith Infiniti, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Lexington County, South Carolina.

15. Defendant Dick Smith Nissan of Lexington, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Lexington County, South Carolina.

16. Defendant Dick Smith Nissan, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Lexington County, South Carolina.

17. Defendant Overland, Inc. doing business as Land Rover of Columbia is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Lexington County, South Carolina.

18. Defendant Toyota Center, LLC is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Lexington County, South Carolina. W. Columbia.

19. Defendant Stokes Automotive, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

20. Defendant Stokes Motors, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Clarendon County, South Carolina.

21. Defendant Stokes-Craven Automotive, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Clarendon County, South Carolina.

22. Defendant Stokes Mazda, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Dorchester County, South Carolina.

23. Defendant Palmetto Chevrolet Company, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.

24. Defendant Palmetto Nissan, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Florence County, South Carolina.

25. Defendant Palmetto Ford, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

26. Defendant Jones Ford, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its

principal place of business in Charleston County, South Carolina.

27. Defendant Harold Arnold's Sentry Buick, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

28. Defendant J. L. Investments, LP of Charleston is a licensed motor vehicle dealer and a limited partnership organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

29. Defendant Rick Hendrick Chevrolet, LP is a licensed motor vehicle dealer and a limited partnership organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

30. Defendant Rick Hendrick Honda Cars, Co. is a licensed motor vehicle dealer and a limited partnership organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

31. Defendant Rick Hendrick Jeep Eagle, L.P. is a licensed motor vehicle dealer and a limited partnership organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

32. Defendant Oak Tree, Inc. d/b/a West Ashley Toyota, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

33. Defendant Gene Reed Imports, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

34. Defendant Gene Reed Toyota, Inc. is a licensed motor vehicle dealer and a

corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

35. Defendant Hoover Jeep Chrysler, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Dorchester County, South Carolina.

36. Defendant Hoover Motors, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Dorchester County, South Carolina.

37. Defendant Hoover Chrysler-Dodge, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Dorchester County, South Carolina.

38. Defendant Strom Altman Dodge, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

39. Defendant Baker Motor Company of Charleston, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

40. Defendant Miller Cadillac, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

41. Defendant Taylor Investments, Inc. (d/b/a Taylor Toyota, Inc.) is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Aiken County, South Carolina.

42. Defendant Benson Chrysler-Plymouth, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.

43. Defendant Benson Ford Mercury, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.

44. Defendant Benson Cadillac-Nissan, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Spartanburg County, South Carolina.

45. Defendant Big "O" Dodge of Greenville, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.

46. Defendant Bradshaw Automotive Group, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.

47. Defendant Spartanburg Chrysler Jeep, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Spartanburg County, South Carolina.

48. Defendant Kia of Anderson, LLC is a licensed motor vehicle dealer and a limited liability company organized and existing under the laws of the State of South Carolina with its principal place of business in Anderson County, South Carolina.

49. Defendant Toyota of Greenville, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its

principal place of business in Greenville County, South Carolina.

50. Defendant Toyota of Easley, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Pickens County, South Carolina.

51. Defendant Farrell Automotive, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Spartanburg County, South Carolina.

52. Defendant Fairway Ford, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina..

53. Defendant Saturn of Greenville, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.

54. Defendant Steve White Motors of South Carolina, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.

55. Defendant D&D Motors, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.

56. Defendant Burns Chrysler Dodge Jeep, LLC is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Cherokee County, South Carolina.

57. Defendant John Finger Motors, Inc. is a licensed motor vehicle dealer and

a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.

58. Defendant Sonic Automotive, Inc. d/b/a Century BMW is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.

59. Bob Richards Nissan is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Aiken County, South Carolina.

60. Dick Smith Chrysler-Jeep is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Aiken County, South Carolina.

61. Goodman Chevrolet, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Aiken County, South Carolina.

62. Henna Chevrolet-Olds-Cadillac, LLC is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Aiken County, South Carolina.

63. Honda Cars of Aiken is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Aiken County, South Carolina.

64. Johnson Motor Company of SC is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Aiken County, South Carolina.

65. Sanders Truck Sales is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Allendale County, South Carolina.

67. Carolina Ford is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Anderson County, South Carolina.

68. Carolina International Trucks of Anderson is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Anderson County, South Carolina.

69. Clinkscales Chevrolet, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Anderson County, South Carolina.

70. Fairway Ford-Mazda is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Anderson County, South Carolina.

71. Piedmont Chrysler-Jeep is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Anderson County, South Carolina.

72. Piedmont Honda is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Anderson County, South Carolina.

73. Planet Ford is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in

Anderson County, South Carolina.

74. Ralph Hayes Toyota, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Anderson County, South Carolina.

75. Tom Hunter Pontiac-Buick-GMC, LLC is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Anderson County, South Carolina.

76. Upstate Automotive (Chevrolet-Cadillac) is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Anderson County, South Carolina.

77. Upstate Automotive (Isuzu-Kia) is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Anderson County, South Carolina.

78. Upstate Automotive (Mitsubishi) is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Anderson County, South Carolina.

79. Upstate Automotive (Nissan) is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Anderson County, South Carolina.

80. Gibbes Ford, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Bamberg County, South Carolina.

81. Zeigler Chevrolet, Inc. is a licensed motor vehicle dealer and a corporation

organized and existing under the laws of the State of South Carolina with its principal place of business in Bamberg County, South Carolina.

82. B & B Ford, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Barnwell County, South Carolina.

83. Whittle Motor Company, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Barnwell County, South Carolina.

84. Butler Chrysler-Dodge-Jeep is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Beaufort County, South Carolina.

85. Carolina Volvo is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Beaufort County, South Carolina.

86. Hilton Head Automotive LLC is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Beaufort County, South Carolina.

87. Hilton Head Honda is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Beaufort County, South Carolina.

88. Land Rover Hilton Head is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Beaufort County, South Carolina.

89. Modern Classic Motors is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Beaufort County, South Carolina.

90. O. C. Welch Ford-Lincoln-Mercury is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Beaufort County, South Carolina.

91. Parks Automotive Group is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Beaufort County, South Carolina.

92. Parks Cadillac is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Beaufort County, South Carolina.

93. Stokes Honda Cars of Beaufort, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Beaufort County, South Carolina.

94. Stokes Mitsubishi is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Beaufort County, South Carolina.

95. Stokes-Brown Toyota is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Beaufort County, South Carolina.

96. Dick Smith Chevrolet, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of

business in Berkley County, South Carolina.

97. Hoover Jeep-Chrysler, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Berkley County, South Carolina.

98. Hoover Motors, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Berkley County, South Carolina.

99. McElveen Pontiac-Buick-GMC, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Berkley County, South Carolina.

100. Altman Lincoln-Mercury-Hyundai is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

101. Carolina International Trucks-Charleston is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

102. Charleston Mitsubishi is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

103. Hendrick Honda of Charleston is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

104. Hoover Chrysler-Jeep, Inc. is a licensed motor vehicle dealer and a corporation

organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

105. Hughes Motors, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

106. Kia Country is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

107. Lexus of Charleston is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

108. Low Country Mazda is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

109. Low Country Volkswagen is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

110. Marathon Chevrolet of N Charleston is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

111. Marchant Chevrolet, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

112. McDaniels Acura of Charleston is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

113. McElveen Chevrolet, LLC is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

114. Morris Nissan is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

115. Northside Nissan is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

116. Ravenel Ford, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

117. Rick Hendrick Dodge is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

118. Rick Hendrick's Import Showplace is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

119. Saturn of Charleston is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of

business in Charleston County, South Carolina.

120. Stokes Honda North Charleston is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

121. Stokes Isuzu-Kia-Subaru is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

122. Stokes Volkswagen is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

123. Victory Hyundai of Charleston is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.

124. Burns Chevrolet-Chrysler-Dodge-Jeep, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Cherokee County, South Carolina.

125. Burns Chevrolet Cadillac, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Cherokee County, South Carolina.

126. Joe Gibson Suzuki is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Cherokee County, South Carolina.

127. Roger Shiflett Ford, Inc. is a licensed motor vehicle dealer and a corporation

organized and existing under the laws of the State of South Carolina with its principal place of business in Cherokee County, South Carolina.

128. Wallace White Pontiac-Buick-GMC is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Cherokee County, South Carolina.

129. Nourse Chester Automotive is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Chester County, South Carolina.

130. Nourse Motors of Chester LLC is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Chester County, South Carolina.

131. Bennett Motor Co., Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Chesterterfield County, South Carolina.

132. John Donoghue Ford, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Chesterterfield County, South Carolina.

133. Lawrence Chevrolet-Pontiac is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Chesterterfield County, South Carolina.

134. Prothro Chevrolet-Buick-Pontiac-GMC Truck is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Clarendon County, South Carolina.

135. Stokes-Craven Chrysler-Jeep-Dodge is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Clarendon County, South Carolina.

136. Stokes-Craven Ford is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Clarendon County, South Carolina.

137. Peters Pontiac Buick-GMC is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Colleton County, South Carolina.

138. Rizer Chevrolet Co., Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Colleton County, South Carolina.

139. Walterboro Motor Sales Co. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Colleton County, South Carolina.

140. Action Ford-Mercury, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Darlington County, South Carolina.

141. John Newsome, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Darlington County, South Carolina.

142. Raceway Chrysler-Jeep-Dodge, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its

principal place of business in Darlington County, South Carolina.

143. Raceway Ford is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Darlington County, South Carolina.

144. Carolina International Trucks LLC is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Dorchester County, South Carolina.

145. Marathon Chevrolet is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Dorchester County, South Carolina.

146. Summerville Ford-Mercury, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Dorchester County, South Carolina.

147. Herlong Pontiac-Chevrolet-Buick, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Edgefield County, South Carolina.

148. Jim Satcher, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Edgefield County, South Carolina.

149. Yonce Ford-Mercury, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Edgefield County, South Carolina.

150. Wilson Chevrolet-Oldsmobile, Inc. is a licensed motor vehicle dealer and a

corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Fairfield County, South Carolina.

151. Wilson Chrysler-Dodge-Jeep, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Fairfield County, South Carolina.

152. Auddie Brown Mitsubishi is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Florence County, South Carolina.

153. Cale Yarborough Honda, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Florence County, South Carolina.

154. Carolina International Trucks is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Florence County, South Carolina.

155. Efird Chrysler-Jeep-Dodge, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Florence County, South Carolina.

156. Florence Mack, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Florence County, South Carolina.

157. Florence Toyota is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Florence County, South Carolina.

158. Floyd Motor Co., Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Florence County, South Carolina.

159. Horne Ford, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Florence County, South Carolina.

160. Kia of Florence is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Florence County, South Carolina.

161. King Cadillac-Buick-Pontiac-GMC Truck, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Florence County, South Carolina.

162. Lake City Ford-Mercury, LLC is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Florence County, South Carolina.

163. Peterbilt of Florence is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Florence County, South Carolina.

164. Raceway Chevrolet-Pontiac-Buick-GMC is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Florence County, South Carolina.

165. Saturn of Florence is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in

Florence County, South Carolina.

166. Service Motor Company, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Florence County, South Carolina.

167. Coastal Nissan-Chevrolet-Cadillac is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Georgetown County, South Carolina.

168. Hemingway Motor Co., Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Georgetown County, South Carolina.

169. Parrish Motor Co., Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Georgetown County, South Carolina.

169. Tideland's Chrysler Dodge is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Georgetown County, South Carolina.

170. Tideland's Ford-Lincoln-Mercury is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Georgetown County, South Carolina.

171. BMS, Inc. d/b/a Breakaway Honda is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.

172. Bradshaw Acura is a licensed motor vehicle dealer and a corporation organized

and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.

173. Brockman Automotive is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.

174. Carolina International Trucks-Greenville is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.

175. Cherokee Kenworth, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.

176. Christopher Trucks, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.

177. Crown Jeep-Chrysler is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.

178. Crown Nissan Greenville is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.

179. Dick Smith Mitsubishi is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.

180. Fairway Ford, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.

181. Fairway Motorcars LLC is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.

182. George Coleman Ford, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.

183. Heritage Lincoln-Mercury is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.

184. John Finger Mazda is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.

185. Kevin Whitaker Chevrolet-Cadillac is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.

186. Kevin Whitaker Chevrolet, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.

187. Simpsonville Chevrolet, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of

business in Greenville County, South Carolina.

188. Sitton Buick-Pontiac-GMC Truck, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.

189. Stokes-Trainor Ford is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville County, South Carolina.

190. C. Thompson Automotive is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenwood County, South Carolina.

191. Gary Russ Chevrolet-Cadillac, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenwood County, South Carolina.

192. George Ballentine Ford-Lincoln-Mercury is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenwood County, South Carolina.

193. Quality Chrysler City is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenwood County, South Carolina.

194. Brunson Automobile Sales, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Hampton County, South Carolina.

195. Tison Motor Co., Inc. is a licensed motor vehicle dealer and a corporation

organized and existing under the laws of the State of South Carolina with its principal place of business in Hampton County, South Carolina.

196. Addy's Harbor Dodge is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.

197. Atlantic Chrysler-Jeep-Dodge is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.

198. Atlantic Ford, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.

199. Beach Ford-Lincoln-Mercury-Volvo, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.

200. Bell & Bell Pontiac-GMC, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.

201. Conway Chrysler-Dodge-Jeep, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.

202. Conway Ford, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.

203. Diamond Automotive Group, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.

204. East Coast Honda is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.

205. East Coast Volkswagen is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.

206. Fowler Motors is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.

207. Grand Strand Nissan, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.

208. Hadwin-White Pontiac-Buick-GMC-Subaru is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.

209. Hyatt Buick-GMC Trucks is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.

210. Jud Kuhn Chevrolet is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of

business in Horry County, South Carolina.

211. Kia of Myrtle Beach is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.

212. Lay-Fisher Chevrolet, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.

213. Myrtle Beach Chevrolet, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.

214. Myrtle Beach Chrysler-Jeep, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.

215. Myrtle Beach Hyundai-Isuzu is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.

216. Myrtle Beach Suzuki is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.

217. Sparks Toyota, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.

218. Sun Coast Mazda-Mitsubishi is a licensed motor vehicle dealer and a corporation

organized and existing under the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.

219. Suzuki Outlet of Myrtle Beach SC is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.

220. Hilton Head Chrysler Jeep Dodge is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Jasper County, South Carolina.

221. Hilton Head Hyundai is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Jasper County, South Carolina.

222. Key Infiniti LLC is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Jasper County, South Carolina.

223. Key Mazda is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Jasper County, South Carolina.

224. Key Nissan, LLC is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Jasper County, South Carolina.

225. Porsche of Hilton Head is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Jasper County, South Carolina.

226. Prestige Motorcars, LLC dba Hilton Head Jaguar is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Jasper County, South Carolina.

227. Dick Smith Pontiac-Chrysler-Dodge-GMC-Jeep is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Kershaw County, South Carolina.

228. Heritage Chevrolet-Buick, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Kershaw County, South Carolina.

229. James Ervin Toyota is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Kershaw County, South Carolina.

230. Redfearn Motor Co., Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Kershaw County, South Carolina.

231. Burns Ford-Mercury, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Lancaster County, South Carolina.

232. Elrod Pontiac-Buick-GMC, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Lancaster County, South Carolina.

233. H & H Chevrolet, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of

business in Lancaster County, South Carolina.

234. Lancaster Dodge-Chrysler-Jeep is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Lancaster County, South Carolina.

235. Lancaster Motor Co. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Lancaster County, South Carolina.

236. Baldwin Pontiac-Buick-GMC , Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Laurens County, South Carolina.

237. Cooper Ford, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Laurens County, South Carolina.

238. Firmin Ford, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Laurens County, South Carolina.

239. John Foster Motors, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Laurens County, South Carolina.

240. Lynn Cooper, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Laurens County, South Carolina.

241. Smith Chevrolet-Cadillac, Inc. is a licensed motor vehicle dealer and a

corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Laurens County, South Carolina.

242. Addy Dodge, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Lexington County, South Carolina.

243. Cherokee Kenworth is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Lexington County, South Carolina.

244. Hampton Automotive, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Lexington County, South Carolina.

245. Midlands Honda is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Lexington County, South Carolina.

246. Saturn of Columbia, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Lexington County, South Carolina.

247. Stivers Chrysler-Jeep, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Lexington County, South Carolina.

248. Twin City Motor Co., Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Lexington County, South Carolina.

249. Mullins Motors, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Marion County, South Carolina.

250. Pee Dee Ford Lincoln Mercury Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Marion County, South Carolina.

251. Griffin-Flythe Chevrolet, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Marlboro County, South Carolina.

252. Meggs Ford-Chrysler-Dodge-Jeep is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Marlboro County, South Carolina.

253. Cromley's Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Newberry County, South Carolina.

254. Jeffrey Dean Chrysler Dodge Jeep GMC is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Newberry County, South Carolina.

255. Kirby Schrader is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Newberry County, South Carolina.

256. Stokes-Trainor Chevrolet-Old-Pontiac-Cadillac-Buick is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina

with its principal place of business in Newberry County, South Carolina.

257. Bobby Wood Chevrolet-Pontiac is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Oconee County, South Carolina.

258. Edwards Auto Sales, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Oconee County, South Carolina.

259. Lake Keowee Chrysler-Dodge LLC is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Oconee County, South Carolina.

260. Leader Ford is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Oconee County, South Carolina.

261. Performance Chevrolet-Buick-GMC is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Oconee County, South Carolina.

262. Bob Richards Automotive, LLC is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Orangeburg County, South Carolina.

263. Fairey Chevrolet-Cadillac is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Orangeburg County, South Carolina.

264. Orangeburg Chrysler-Dodge-Nissan, Inc. is a licensed motor vehicle dealer and a

corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Orangeburg County, South Carolina.

265. Orangeburg Ford is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Orangeburg County, South Carolina.

266 Superior Honda is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Orangeburg County, South Carolina.

267. Superior Motors, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Orangeburg County, South Carolina.

268. Benson Ford-Mercury, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Pickens County, South Carolina.

269. Crane Chevrolet-Cadillac, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Pickens County, South Carolina.

270. Easley Mitsubishi is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Pickens County, South Carolina.

271. Easley Pontiac-Buick-GMC Truck, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Pickens County, South Carolina.

272. Hendrick Honda is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Pickens County, South Carolina.

273. Norris Ford, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Pickens County, South Carolina.

274. Tinsley Chevrolet Co., Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Pickens County, South Carolina.

275. Bob Bennett Ford, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Richland County, South Carolina.

276. Capitol Chevrolet is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Richland County, South Carolina.

277. Capitol Hyundai is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Richland County, South Carolina.

278. Carolina International Trucks-Cola is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Richland County, South Carolina.

279. Columbia Freightliner, LLC is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of

business in Richland County, South Carolina.

280. Dodgeland of Columbia is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Richland County, South Carolina.

281. Hancock Motor Co. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Richland County, South Carolina.

282. Hancock Volkswagen is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Richland County, South Carolina.

283. Honda Cars of Columbia is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Richland County, South Carolina.

284. Jim Moore Cadillac, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Richland County, South Carolina.

285. McDaniels Acura-Porsche is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Richland County, South Carolina.

286. Shealy's Truck Center-Cola is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Richland County, South Carolina.

287. Stivers Lincoln-Mercury is a licensed motor vehicle dealer and a corporation

organized and existing under the laws of the State of South Carolina with its principal place of business in Richland County, South Carolina.

288. Wray Automotive, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Richland County, South Carolina.

289. Cromley's Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Saluda County, South Carolina.

290. Saluda Motor Sales, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Saluda County, South Carolina.

291. Dave Edwards Toyota is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Spartanburg County, South Carolina.

292. Dick Brooks Honda is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Spartanburg County, South Carolina.

293. Foothills Ford of Chesne is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Spartanburg County, South Carolina.

294. Joe Gibson Mitsubishi is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Spartanburg County, South Carolina.

295. Kia of Greer is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Spartanburg County, South Carolina.

296. Saturn of Spartanburg is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Spartanburg County, South Carolina.

297. Shealy's Truck Center is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Spartanburg County, South Carolina.

298. Spartanburg Dodge, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Spartanburg County, South Carolina.

299. Toyota of Greer is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Spartanburg County, South Carolina.

300. Vic Bailey Ford, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Spartanburg County, South Carolina.

301. Vic Bailey Honda is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Spartanburg County, South Carolina.

302. Vic Bailey Lincoln-Mercury, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its

principal place of business in Spartanburg County, South Carolina.

303. Vic Bailey Volkswagen is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Spartanburg County, South Carolina.

304. Wakefield Buick-Pontiac-GMC, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Spartanburg County, South Carolina.

305. Boyle Motor Company is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Sumter County, South Carolina.

306. Boyle Toyota, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Sumter County, South Carolina.

307. Goodwin Buick-Jeep is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Sumter County, South Carolina.

308. Goodwin Honda-Mitsubishi-VW is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Sumter County, South Carolina.

309. Jones Chevrolet Co. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Sumter County, South Carolina.

310. Jones Nissan, Inc. is a licensed motor vehicle dealer and a corporation organized

and existing under the laws of the State of South Carolina with its principal place of business in Sumter County, South Carolina.

311. Jones Pontiac-GMC Truck, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Sumter County, South Carolina.

312. McLaughlin Motors, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Sumter County, South Carolina.

313. Sumter Chrysler-Plymouth-Dodge is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Sumter County, South Carolina.

314. Union Chrysler-Dodge-Jeep, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Union County, South Carolina.

315. Big Country Chevrolet, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Williamsburg County, South Carolina.

316. Haselden Brothers, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Williamsburg County, South Carolina.

317. Longstreet Chevrolet-Buick-Cadillac-GMC is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Williamsburg County, South Carolina.

318. Carolina Mazda is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in York County, South Carolina.

319. Clinton Family Ford-Lincoln-Mercury is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in York County, South Carolina.

320. Dickerson Motor Co., Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in York County, South Carolina.

321. Dunlap-Johnson Chevrolet Co., Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in York County, South Carolina.

322. Fort Mill Ford, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in York County, South Carolina.

323. Fred Caldwell's Clover Chevrolet is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in York County, South Carolina.

324. Good Motor Company is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in York County, South Carolina.

325. Griffin Mitsubishi is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in

York County, South Carolina.

326. Griffin Pontiac-Buick-GMC is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in York County, South Carolina.

327. Harrelson Nissan is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in York County, South Carolina.

328. Harrelson Toyota is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in York County, South Carolina.

329. Honda Cars of Rock Hill is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in York County, South Carolina.

330. Rick Ford, Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in York County, South Carolina.

331. Stateline Chrysler Jeep Dodge Inc. is a licensed motor vehicle dealer and a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in York County, South Carolina.

VENUE

332. Venue is proper in Aiken County because Defendant Taylor Investments, Inc. d/b/a Taylor Toyota maintains an office and agent for the transaction of business in Aiken County and/or maintains its principal place of business in Aiken County.

FACTS

333. Defendants have conspired together in a common scheme designed to deceive all car buyers (the term "car" as used herein includes new and used cars, trucks, sport utility vehicles and automobiles of all kinds). These actions amount to concerted consumer fraud.

334. Each individual Defendant's conduct vis-a-vis' all consumers was the product of unfair, misleading and/or unconscionable business practices.

335. Defendants have all engaged in a common practice of presenting/advertising car prices in a misleading manner. Defendants set and advertise a sticker price for cars and then in addition charge a second fee often referred to as an "administrative fee," a "recording and processing fee," "closing fee," "dealer documentation and closing fee" (collectively "administrative fees"). Defendants present and advertise the "administrative fees" in a misleading manner and/or in an effort to mislead car buyers. This practice is a deceptive way to secretly artificially raise the sticker price.

336. Defendants conduct is not unlike that found to be an unfair trade practice by an Ohio Court in *Motzer Dodge Jeep Eagle, Inc. v. Ohio Attorney General*, 642 N.E.2d 20 (Oh.Ct.App. 1994).

337. Defendants' advertising is misleading because it fails to include / adequately disclose the fact that Defendants will be charging "administrative fees" that are in addition to the advertised price of the car.

338. Defendants' placement of the "administrative fee" on the dealer invoice is deceptive in that it implies that the fee is separate and distinct from the general overhead that car buyers expect to be included within the sticker price for a car and that the set fee is mandatory.

339. The "administrative fees" are not separate and distinct from Defendants' general

overhead expected to be included in the overhead and advertised price. Instead, the "administrative fees" are tricky and deceptive add-ons.

340. The "administrative fees" are presented to car buyers in a misleading manner because car buyers are misled into believing that administrative fees are mandatory fees required to be paid on every car such as taxes and license fees.

341. The "administrative fees" are charged in addition to advertised and/or list prices for cars.

342. The "administrative fees" are deliberately placed as separate line items on Defendants' invoices along with mandatory fees such as taxes, tags, and title. This implies that the "administrative fees" like the payment of taxes, fees for tags and fees for obtaining title are separate set fees and that there is no option but to pay this fee with every car purchase.

343. Consequently, car buyers purchase cars based on the total sticker price and are misled into believing that any discount received is off the sticker price and that additional fees are a special mandatory fee.

344. If a customer inquires about the fee, Defendants' sales people say that the "administrative fee" is a standard fee that has to be included on every vehicle.

345. In 2000, the General Assembly enacted a very narrow exception for charging these illegal "administrative fees."

346. S.C. Code Ann. §37-2-307 allows a dealership to do what would otherwise be illegal, charge "administrative fees," only if the dealership follows strict rules.

347. S.C. Code Ann. §37-2-307 requires that "administrative fees" be included in the advertised price, disclosed on the sales contract, and conspicuously displayed at the dealership.

348. In order to charge administrative fees, Defendants are also required to annually

register with the Department of Consumer Affairs.

349. Defendants have not availed themselves of the limited exception in S.C. Code Ann. §37-2-307.

350. Even if Defendants had complied with S.C. Code Ann. §37-2-307, Defendants actions are in violation of S.C. Code Ann. §56-15-10 *et. seq.*

351. In 2004, Defendant CarMax Auto Superstores, Inc. charged "administrative fees" and failed to register with the Department of Consumer Affairs as required by S.C. Code Ann. §37-2-307.

352. In 2003, 2004, 2005, and 2006, Defendant CarMax Auto Superstores, Inc. charged "administrative fees" and failed to separately register for each location in the State with the Department of Consumer Affairs Department of Consumer Affairs as required by S.C. Code Ann. §37-2-307.

353. In 2005, Defendant Dick Smith Motors, Inc. charged "administrative fees" and failed to register for each location in the State with the Department of Consumer Affairs as required by S.C. Code Ann. §37-2-307.

354. In 2003, 2004, 2005, and 2006, Defendant Dick Smith Motors, Inc. charged "administrative fees" and failed to register for each location in the State with the Department of Consumer Affairs as required by S.C. Code Ann. §37-2-307.

355. In 2003 and 2004, Defendant Pulliam Motor Co. charged "administrative fees" and failed to register with the Department of Consumer Affairs as required by S.C. Code Ann. §37-2-307.

356. In 2003, 2004, 2005, and 2006, Defendant Dick Smith Infiniti, Inc. charged "administrative fees." In 2005, Defendant Dick Smith Infiniti, Inc. failed to register with the

Department of Consumer Affairs as required by S.C. Code Ann. §37-2-307 and failed to file a registration specific to this entity in the years 2003, 2004 and 2006.

357. In 2003, 2004, 2005, and 2006, Defendant Dick Smith Nissan of Lexington, Inc. charged "administrative fees." In 2005, Defendant Dick Smith Nissan of Lexington, Inc. failed to register with the Department of Consumer Affairs as required by S.C. Code Ann. §37-2-307 and failed to file a registration specific to this entity in the years 2003, 2004 and 2006.

358. In 2003, 2004, 2005, and 2006, Dick Smith Nissan, Inc. charged "administrative fees." In 2005, Dick Smith Nissan, Inc. failed to register with the Department of Consumer Affairs as required by S.C. Code Ann. §37-2-307 and failed to file a registration specific to this entity in the years 2003, 2004 and 2006.

359. In 2003 and 2004, Defendant Overland Inc. d/b/a Land Rover of Columbia charged "administrative fees" and failed to register with the Department of Consumer Affairs as required by S.C. Code Ann. §37-2-307.

360. In 2003, 2004, 2005 and 2006, Defendant Toyota Center, LLC charged "administrative fees" and failed to register with the Department of Consumer Affairs as required by S.C. Code Ann. §37-2-307.

361. In 2003, 2004, 2005 and 2006, Defendant Stokes Motors, Inc. charged "administrative fees" and failed to file a registration specific to this entity with the Department of Consumer Affairs as required by S.C. Code Ann. §37-2-307.

362. In 2003, 2004, 2005 and 2006, Defendant Stokes-Craven Automotive Group, Inc. charged "administrative fees" and failed to file a registration with the Department of Consumer Affairs as required by S.C. Code Ann. §37-2-307.

363. In 2003, 2004, 2005 and 2006, Defendant Stokes Mazda, Inc. charged

"administrative fees" and failed to file a registration specific to this entity with the Department of Consumer Affairs as required by S.C. Code Ann. §37-2-307.

364. In 2003, 2004, 2005, and 2006, Defendant Palmetto Chevrolet Company, Inc. charged "administrative fees" and failed to register with the Department of Consumer Affairs as required by S.C. Code Ann. §37-2-307.

365. In 2003, Defendant Palmetto Ford, Inc. charged "administrative fees" and failed to register with the Department of Consumer Affairs as required by S.C. Code Ann. §37-2-307.

366. In 2003, 2004, 2005, and 2006, Defendant Jones Ford, Inc. charged "administrative fees" and failed to register with the Department of Consumer Affairs as required by S.C. Code Ann. §37-2-307.

367. In 2006, Defendant Rick Hendrick Chevrolet, LP charged "administrative fees" and failed to register with the Department of Consumer Affairs as required by S.C. Code Ann. §37-2-307.

368. In 2003, 2004, 2005, and 2006, Defendant Hoover Chrysler-Dodge, Inc. charged "administrative fees" and failed to register with the Department of Consumer Affairs as required by S.C. Code Ann. §37-2-307.

369. In 2003, 2004, 2005, and 2006, Defendant Baker Motor Company of Charleston charged "administrative fees" and failed to register with the Department of Consumer Affairs as required by S.C. Code Ann. §37-2-307.

370. In 2003, 2004, and 2005, Defendant Big "O" Dodge of Greenville, Inc. charged "administrative fees" and failed to register with the Department of Consumer Affairs as required by S.C. Code Ann. §37-2-307.

371. In 2003, 2004, 2005, and 2006, Defendant Spartanburg Chrysler Jeep, Inc.

charged "administrative fees" and failed to register with the Department of Consumer Affairs as required by S.C. Code Ann. §37-2-307.

372. In 2003, 2004, and 2005, Defendant Kia of Anderson, LLC charged "administrative fees" and failed to register with the Department of Consumer Affairs as required by S.C. Code Ann. §37-2-307.

373. In 2003, Defendant Farrell Automotive, Inc. charged "administrative fees" and failed to register with the Department of Consumer Affairs as required by S.C. Code Ann. §37-2-307.

374. Plaintiff Heather Herron purchased a 2003 Land Rover SUV from Land Rover of Columbia.

375. Plaintiff Herron's sales invoice includes a separate line item for "Recording & Processing Fees." The "Recording & Processing Fees" line item is pre-printed and deceptively placed with fees for SC Sales Tax, Title, and License. This Recording & Processing Fees is an "administrative fee" as described above.

376. Plaintiff Alison Dannert purchased a Nissan Murano from Defendant CarMax Auto Superstores, Inc. in Greenville, South Carolina

377. Plaintiff Alison Dannert's sales invoice includes a separate line item for Dealer Documentation/ Processing Fee. This fee is pre-printed and deceptively placed with fees for tax, title and license. This Dealer Documentation/ Processing Fee is an "administrative fee" as described above.

378. Plaintiff Natalie Armstrong purchased a 2002 Jeep Liberty from Galeana Chrysler-Jeep, Inc.

379. Defendant Galeana Chrysler-Jeep, Inc.'s sales invoice includes a separate line

item for Admin. Fee. This Admin. Fee is an "administrative fee" as described above.

380. Plaintiff Michael Ritz purchased a Tacoma pickup truck from Defendant Taylor Investments, Inc. (d/b/a Taylor Toyota, Inc.).

381. Defendant Taylor Investments Inc.'s sales invoice includes a separate line item for Administrative Serves Fee. This Administrative Services Fee is an "administrative fee" as described above.

382. Plaintiff Julie Freeman purchased a 1999 Mazda from Defendant Rick Hendrick Honda Cars Co.

383. Defendant Rick Hendrick Honda Cars Co.'s sales invoice includes a separate line item for Procurement Fee. This Procurement Fee is an "administrative fee" as described above.

384. Plaintiff Christine Watts purchases a 2004 BMW from Defendant Sonic Automotive, Inc. d/b/a Century BMW.

385. Defendant Sonic Automotive, Inc. d/b/a Century BMW's Retail Buyer's Order includes a separate line item for Recording & Processing Fees. This Recording & Processing Fee is an "administrative fee" as described above.

386. Plaintiff Michael Blease purchased a 2002 Volvo from Defendant Dick Dyer & Associates, Inc.

387. Defendant Dick Dyer & Associates, Inc.'s Buyer's Order and Invoice includes a separate line item for Processing Fee. This Processing Fee is an "administrative fee" as described above.

388. Plaintiff Michael Watts purchased a Toyota from Defendant Toyota of Greenville, Inc.

389. Defendant Toyota of Greenville, Inc.'s purchase order includes a separate line

item for a Procurement Fee. This Procurement Fee is an "administrative fee" as described above.

390. Upon information and belief, Defendants each annually illegally make several hundred thousand dollars off the deceptive use and placement of the "administrative fee" line item and said illegal fees should be disgorged.

FOR A FIRST CAUSE OF ACTION
(Violations of S.C. Code Ann. §56-15-10 *et. seq.*)

391. The allegations set forth in the paragraphs above are incorporated herein as if set forth verbatim.

392. Defendants are motor vehicle dealers subject to Title 56 of the S.C. Code.

393. Defendants deceptive use of "administrative fees" is arbitrary, in bad faith and unconscionable and in violation of statute.

394. Defendants' use and presentation of the administrative fees is designed to deceive and/or mislead car buyers and is thus is arbitrary, in bad faith and unconscionable and in violation of statute.

395. Defendants failure to adequately disclose and/or include "administrative fees" in the advertised price of cars constitutes misleading advertising in violation of statute.

396. Defendants conspired together to all apply similar administrative fees in an effort to cause damage to South Carolina car buyers. This conspiracy in and of itself is a violation of statute.

397. This suit is brought pursuant to S.C. Code Ann. §56-15-110(2) for the benefit of the whole because the action is one of common or general interest to many persons and the parties are numerous and it is impracticable to bring them all before the Court

398. Accordingly, Plaintiffs are suing for the benefit of all South Carolina car buyers

whom paid administrative fees to Defendants and against all motor vehicle dealers owned or controlled by Defendants as defined in S.C. Code Ann. §56-15-10(h).

399. Plaintiffs and all South Carolina car buyers whom paid administrative fees to Defendants in the past four years have been injured by Defendants deceptive acts as described above.

400. As a result of the aforementioned conduct of Defendants, Plaintiffs are entitled to double actual damages, the cost of the suit and a reasonable attorney's fee pursuant to S.C. Code Ann. §56-15-110(1).

401. Furthermore, the aforementioned conduct of Defendants was malicious. Thus, Plaintiffs are entitled to punitive damages in the amount of three times the actual damages pursuant to S.C. Code Ann. §56-15-110(3).

FOR A SECOND CAUSE OF ACTION

(Civil Conspiracy as to Defendants Dick Smith Motors, Inc., Pulliam Motor Co., Dick Smith Infiniti, Inc., Dick Smith Nissan of Lexington, Inc., Dick Smith Nissan, Inc., Overland, Inc. d/b/a Land Rover of Columbia, Toyota Center, LLC, Stokes Automotive, Inc., Stokes Motors, Inc., Stokes-Craven Automotive, Inc., Stokes Mazda, Inc., Palmetto Chevrolet Company, Inc., Palmetto Nissan, Inc., Palmetto Ford, Inc., Jones Ford, Inc., Harold Arnold's SENTRY Buick, Inc., J. L. Investments, LP, Rick Hendrick Chevrolet, LP, Rick Hendrick Jeep Eagle, L.P., Oak Tree, Inc. d/b/a West Ashley Toyota, Inc., Gene Reed Imports, Inc., Hoover Jeep Chrysler, Inc., Hoover Motors, Inc., Hoover Chrysler-Dodge, Inc., Strom Altman Dodge, Inc., Baker Motor Company of Charleston, Inc., Miller Cadillac, Inc., Benson Chrysler-Plymouth, Inc., Benson Ford Mercury, Inc., Big "O" Dodge of Greenville, Inc., Bradshaw Automotive Group, Inc., Spartanburg Chrysler Jeep, Inc., Kia of Anderson, LLC, Toyota of Easley, Inc., Farrell Automotive, Inc., Fairway Ford, Inc., Saturn of Greenville, Inc., Steve White Motors of South Carolina, Inc., D&D Motors, Inc., Burns Chrysler Dodge Jeep, LLC, John Finger Motors, Inc., Bob Richards Nissan, Dick Smith Chrysler-Jeep, Goodman Chevrolet, Inc., Henna Chevrolet-Olds-Cadillac, LLC, Honda Cars of Aiken, Johnson Motor Company of SC, Sanders Truck Sales, Carolina Ford, Carolina International Trucks of Anderson, Clinkscales Chevrolet, Inc., Fairway Ford-Mazda, Piedmont Chrysler-Jeep, Piedmont Honda, Planet Ford, Ralph Hayes Toyota, Inc., Tom Hunter Pontiac-Buick-GMC, LLC, Upstate Automotive (Chevrolet-Cadillac), Upstate Automotive (Isuzu-Kia), Upstate Automotive (Mitsubishi), Upstate Automotive (Nissan), Gibbes Ford, Inc., Zeigler Chevrolet, Inc., B & B Ford, Inc., Whittle Motor Company, Inc., Butler Chrysler-Dodge-Jeep, Carolina Volvo, Hilton Head Automotive LLC, Hilton Head Honda, Land Rover Hilton Head, Modern Classic Motors, O. C. Welch Ford-Lincoln-Mercury,

Parks Automotive Group, Parks Cadillac, Stokes Honda Cars of Beaufort, Inc., Stokes
 Mitsubishi, Stokes-Brown Toyota, Dick Smith Chevrolet, Inc. Hoover Jeep-Chrysler, Inc.,
 Hoover Motors, Inc., McElveen Pontiac-Buick-GMC, Inc., Altman Lincoln-Mercury-Hyundai,
 Carolina International Trucks-Charleston, Charleston Mitsubishi, Hendrick Honda of Charleston,
 Hoover Chrysler-Jeep, Inc., Hughes Motors, Inc., Kia Country, Lexus of Charleston, Low
 Country Mazda, Low Country Volkswagen, Marathon Chevrolet of N Charleston, Marchant
 Chevrolet, Inc., McDaniels Acura of Charleston, McElveen Chevrolet, LLC, Morris Nissan,
 Northside Nissan, Ravenel Ford, Inc., Rick Hendrick Dodge, Rick Hendrick's Import Showplace,
 Saturn of Charleston, Stokes Honda North Charleston, Stokes Isuzu-Kia-Subaru, Stokes
 Volkswagen, Victory Hyundai of Charleston, Burns Chevrolet-Chrysler-Dodge-Jeep, Inc., Joe
 Gibson Suzuki, Roger Shiflett Ford, Inc., Wallace White Pontiac-Buick-GMC, Nourse Chester
 Automotive, Nourse Motors of Chester LLC, Bennett Motor Co., Inc., John Donoghue Ford, Inc.,
 Lawrence Chevrolet-Pontiac, Prothro Chevrolet-Buick-Pontiac-GMC Truck, Stokes-Craven
 Chrysler-Jeep-Dodge, Stokes-Craven Ford, Peters Pontiac Buick-GMC, Rizer Chevrolet Co.,
 Inc., Walterboro Motor Sales Co., Action Ford-Mercury, Inc., John Newsome, Inc., Raceway
 Chrysler-Jeep-Dodge, Inc., Raceway Ford, Carolina International Trucks LLC, Marathon
 Chevrolet, Summerville Ford-Mercury, Inc., Herlong Pontiac-Chevrolet-Buick, Inc., Jim Satcher,
 Inc., Yonce Ford-Mercury, Inc., Wilson Chevrolet-Oldsmobile, Inc., Wilson
 Chrysler-Dodge-Jeep, Inc., Auddie Brown Mitsubishi, Cale Yarborough Honda, Inc., Carolina
 International Trucks, Efird Chrysler-Jeep-Dodge, Inc., Florence Mack, Inc., Florence Toyota,
 Floyd Motor Co., Inc., Home Ford, Inc., Kia of Florence, King Cadillac-Buick-Pontiac-GMC
 Truck, Inc., Lake City Ford-Mercury, LLC, Peterbilt of Florence, Raceway
 Chevrolet-Pontiac-Buick-GMC, Saturn of Florence, Service Motor Company, Inc., Coastal
 Nissan-Chevrolet-Cadillac, Hemingway Motor Co., Inc., Parrish Motor Co., Inc., Tideland
 Chrysler Dodge, Tideland Ford-Lincoln-Mercury, BMS, Inc. d/b/a Breakaway Honda, Bradshaw
 Acura, Brockman Automotive, Carolina International Trucks-Greenville, Cherokee Kenworth,
 Inc., Christopher Trucks, Inc., Crown Jeep-Chrysler, Crown Nissan Greenville, Dick Smith
 Mitsubishi, Fairway Ford, Inc., Fairway Motorcars LLC, George Coleman Ford, Inc., Heritage
 Lincoln-Mercury, John Finger Mazda, Kevin Whitaker Chevrolet-Cadillac, Kevin Whitaker
 Chevrolet, Inc., Simpsonville Chevrolet, Inc., Sitton Buick-Pontiac-GMC Truck, Inc., Steve
 White Motors of SC, Inc., Stokes-Trainer Ford, C. Thompson Automotive, Gary Russ
 Chevrolet-Cadillac, Inc., George Ballentine Ford-Lincoln-Mercury, Quality Chrysler City,
 Brunson Automobile Sales, Inc., Tison Motor Co., Inc., Addy's Harbor Dodge, Atlantic
 Chrysler-Jeep-Dodge, Atlantic Ford, Inc., Beach Ford-Lincoln-Mercury-Volvo, Inc., Bell & Bell
 Pontiac-GMC, Inc., Conway Chrysler-Dodge-Jeep, Inc., Conway Ford, Inc., Diamond
 Automotive Group, Inc., East Coast Honda, East Coast Volkswagen, Fowler Motors, Grand
 Strand Nissan, Inc., Hadwin-White Pontiac-Buick-GMC-Subaru, Hyatt Buick-GMC Trucks, Jud
 Kuhn Chevrolet, Kia of Myrtle Beach, Lay-Fisher Chevrolet, Inc., Myrtle Beach Chevrolet, Inc.,
 Myrtle Beach Chrysler-Jeep, Inc., Myrtle Beach Hyundai-Isuzu, Myrtle Beach Suzuki, Sparks
 Toyota, Inc., Sun Coast Mazda-Mitsubishi, Suzuki Outlet of Myrtle Beach SC, Hilton Head
 Chrysler Jeep Dodge, Hilton Head Hyundai, Key Infiniti LLC, Key Mazda, Key Nissan, LLC,
 Porsche of Hilton Head, Prestige Motorcars, LLC dba Hilton Head Jaguar, Dick Smith
 Pontiac-Chrysler-Dodge-GMC-Jeep, Heritage Chevrolet-Buick, Inc., James Ervin Toyota,
 Redfearn Motor Co., Inc., Burns Ford-Mercury, Inc., Elrod Pontiac-Buick-GMC, Inc., H & H
 Chevrolet, Inc., Lancaster Dodge-Chrysler-Jeep, Lancaster Motor Co., Baldwin

Pontiac-Buick-GMC, Inc., Cooper Ford, Inc., Firmin Ford, Inc., John Foster Motors, Inc., Lynn Cooper, Inc., Smith Chevrolet-Cadillac, Inc., Addy Dodge, Inc., Cherokee Kenworth, Hampton Automotive, Inc., Midlands Honda, Saturn of Columbia, Inc., Stivers Chrysler-Jeep, Inc., Twin City Motor Co., Inc., Mullins Motors, Inc., Pee Dee Ford Lincoln Mercury Inc., Griffin-Flythe Chevrolet, Inc., Meggs Ford-Chrysler-Dodge-Jeep, Cromley's Inc., Jeffrey Dean Chrysler Dodge Jeep GMC, Kirby Schrader, Stokes-Trainor Chevrolet-Old-Pontiac-Cadillac-Buick, Bobby Wood Chevrolet-Pontiac, Edwards Auto Sales, Inc., Lake Keowee Chrysler-Dodge LLC, Leader Ford, Performance Chevrolet-Buick-GMC, Bob Richards Automotive, LLC, Fairey Chevrolet-Cadillac, Orangeburg Chrysler-Dodge-Nissan, Inc., Orangeburg Ford, Superior Honda, Superior Motors, Inc., Benson Ford-Mercury, Inc., Crane Chevrolet-Cadillac, Inc., Easley Mitsubishi, Easley Pontiac-Buick-GMC Truck, Inc., Hendrick Honda, Norris Ford, Inc., Tinsley Chevrolet Co., Inc., Bob Bennett Ford, Inc., Capitol Chevrolet, Capitol Hyundai, Carolina International Trucks-Cola, Columbia Freightliner, LLC, Dodgeland of Columbia, Hancock Motor Co., Hancock Volkswagen, Honda Cars of Columbia, Jim Moore Cadillac, Inc., McDaniels Acura-Porsche, Shealy's Truck Center-Cola, Stivers Lincoln-Mercury, Wray Automotive, Inc., Cromley's Inc., Saluda Motor Sales, Inc., Dave Edwards Toyota, Dick Brooks Honda, Foothills Ford of Chesne, Joe Gibson Mitsubishi, Kia of Greer, Saturn of Spartanburg, Shealy's Truck Center, Spartanburg Dodge, Inc., Vic Bailey Ford, Inc., Vic Bailey Honda, Vic Bailey Lincoln-Mercury, Inc., Vic Bailey Volkswagen, Wakefield Buick-Pontiac-GMC, Inc., Boyle Motor Company, Boyle Toyota, Inc., Goodwin Buick-Jeep, Goodwin Honda-Mitsubishi-VW, Jones Chevrolet Co., Jones Nissan, Inc., Jones Pontiac-GMC Truck, Inc., McLaughlin Motors, Inc., Sumter Chrysler-Plymouth-Dodge, Union Chrysler-Dodge-Jeep, Inc., Big Country Chevrolet, Inc., Haselden Brothers, Inc., Longstreet Chevrolet-Buick-Cadillac-GMC, Carolina Mazda, Clinton Family Ford-Lincoln-Mercury, Dickerson Motor Co., Inc., Dunlap-Johnson Chevrolet Co., Inc., Fort Mill Ford, Inc., Fred Caldwell's Clover Chevrolet, Good Motor Company, Griffin Mitsubishi, Griffin Pontiac-Buick-GMC, Harrelson Nissan, Harrelson Toyota, Honda Cars of Rock Hill, Rick Ford, Inc., Stateline Chrysler Jeep Dodge Inc.)

402. The allegations set forth in the paragraphs above are incorporated herein as if set forth verbatim.

403. Defendants Dick Smith Motors, Inc., Pulliam Motor Co., Dick Smith Infiniti, Inc., Dick Smith Nissan of Lexington, Inc., Dick Smith Nissan, Inc., Overland, Inc. d/b/a Land Rover of Columbia, Toyota Center, LLC, Stokes Automotive, Inc., Stokes Motors, Inc., Stokes-Craven Automotive, Inc., Stokes Mazda, Inc., Palmetto Chevrolet Company, Inc., Palmetto Nissan, Inc., Palmetto Ford, Inc., Jones Ford, Inc., Harold Arnold's Sentry Buick, Inc., J. L. Investments, LP, Rick Hendrick Chevrolet, LP, Rick Hendrick Jeep Eagle, L.P., Oak Tree, Inc. d/b/a West Ashely

Toyota, Inc., Gene Reed Imports, Inc., Hoover Jeep Chrysler, Inc., Hoover Motors, Inc., Hoover
 Chrysler-Dodge, Inc., Strom Altman Dodge, Inc., Baker Motor Company of Charleston, Inc.,
 Miller Cadillac, Inc., Benson Chrysler-Plymouth, Inc., Benson Ford Mercury, Inc., Big "O"
 Dodge of Greenville, Inc., Bradshaw Automotive Group, Inc., Spartanburg Chrysler Jeep, Inc.,
 Kia of Anderson, LLC, Toyota of Easley, Inc., Farrell Automotive, Inc., Fairway Ford, Inc.,
 Saturn of Greenville, Inc., Steve White Motors of South Carolina, Inc., D&D Motors, Inc., Burns
 Chrysler Dodge Jeep, LLC, John Finger Motors, Inc., Bob Richards Nissan, Dick Smith
 Chrysler-Jeep, Goodman Chevrolet, Inc., Henna Chevrolet-Olds-Cadillac, LLC, Honda Cars of
 Aiken, Johnson Motor Company of SC, Sanders Truck Sales, Carolina Ford, Carolina
 International Trucks of Anderson, Clinkscales Chevrolet, Inc., Fairway Ford-Mazda, Piedmont
 Chrysler-Jeep, Piedmont Honda, Planet Ford, Ralph Hayes Toyota, Inc., Tom Hunter
 Pontiac-Buick-GMC, LLC, Upstate Automotive (Chevrolet-Cadillac), Upstate Automotive
 (Isuzu-Kia), Upstate Automotive (Mitsubishi), Upstate Automotive (Nissan), Gibbes Ford, Inc.,
 Zeigler Chevrolet, Inc., B & B Ford, Inc., Whittle Motor Company, Inc., Butler
 Chrysler-Dodge-Jeep, Carolina Volvo, Hilton Head Automotive LLC, Hilton Head Honda, Land
 Rover Hilton Head, Modern Classic Motors, O. C. Welch Ford-Lincoln-Mercury, Parks
 Automotive Group, Parks Cadillac, Stokes Honda Cars of Beaufort, Inc., Stokes Mitsubishi,
 Stokes-Brown Toyota, Dick Smith Chevrolet, Inc. Hoover Jeep-Chrysler, Inc., Hoover Motors,
 Inc., McElveen Pontiac-Buick-GMC, Inc., Altman Lincoln-Mercury-Hyundai, Carolina
 International Trucks-Charleston, Charleston Mitsubishi, Hendrick Honda of Charleston, Hoover
 Chrysler-Jeep, Inc., Hughes Motors, Inc., Kia Country, Lexus of Charleston, Low Country
 Mazda, Low Country Volkswagen, Marathon Chevrolet of N Charleston, Marchant Chevrolet,
 Inc., McDaniels Acura of Charleston, McElveen Chevrolet, LLC, Morris Nissan, Northside

Nissan, Ravenel Ford, Inc., Rick Hendrick Dodge, Rick Hendrick's Import Showplace, Saturn of
 Charleston, Stokes Honda North Charleston, Stokes Isuzu-Kia-Subaru, Stokes Volkswagen,
 Victory Hyundai of Charleston, Burns Chevrolet-Chrysler-Dodge-Jeep, Inc., Joe Gibson Suzuki,
 Roger Shiflett Ford, Inc., Wallace White Pontiac-Buick-GMC, Nourse Chester Automotive,
 Nourse Motors of Chester LLC, Bennett Motor Co., Inc., John Donoghue Ford, Inc., Lawrence
 Chevrolet-Pontiac, Prothro Chevrolet-Buick-Pontiac-GMC Truck, Stokes-Craven
 Chrysler-Jeep-Dodge, Stokes-Craven Ford, Peters Pontiac Buick-GMC, Rizer Chevrolet Co.,
 Inc., Walterboro Motor Sales Co., Action Ford-Mercury, Inc., John Newsome, Inc., Raceway
 Chrysler-Jeep-Dodge, Inc., Raceway Ford, Carolina International Trucks LLC, Marathon
 Chevrolet, Summerville Ford-Mercury, Inc., Herlong Pontiac-Chevrolet-Buick, Inc., Jim Satcher,
 Inc., Yonce Ford-Mercury, Inc., Wilson Chevrolet-Oldsmobile, Inc., Wilson
 Chrysler-Dodge-Jeep, Inc., Auddie Brown Mitsubishi, Cale Yarborough Honda, Inc., Carolina
 International Trucks Florence, Efird Chrysler-Jeep-Dodge, Inc., Florence Mack, Inc., Florence
 Toyota, Floyd Motor Co., Inc., Horne Ford, Inc., Kia of Florence, King
 Cadillac-Buick-Pontiac-GMC Truck, Inc., Lake City Ford-Mercury, LLC, Peterbilt of Florence,
 Raceway Chevrolet-Pontiac-Buick-GMC, Saturn of Florence, Service Motor Company, Inc.,
 Coastal Nissan-Chevrolet-Cadillac, Hemingway Motor Co., Inc., Parrish Motor Co., Inc.,
 Tideland's Chrysler Dodge, Tideland's Ford-Lincoln-Mercury, BMS, Inc. d/b/a Breakaway Honda,
 Bradshaw Acura, Brockman Automotive, Carolina International Trucks-Greenville, Cherokee
 Kenworth, Inc., Christopher Trucks, Inc., Crown Jeep-Chrysler, Crown Nissan Greenville, Dick
 Smith Mitsubishi, Fairway Ford, Inc., Fairway Motorcars LLC, George Coleman Ford, Inc.,
 ✓Heritage Lincoln-Mercury, John Finger Mazda, Kevin Whitaker Chevrolet-Cadillac, Kevin
 Whitaker Chevrolet, Inc., Simpsonville Chevrolet, Inc., Sitton Buick-Pontiac-GMC Truck, Inc.,

Stokes-Trainor Ford, C. Thompson Automotive, Gary Russ Chevrolet-Cadillac, Inc., George
 Ballentine Ford-Lincoln-Mercury, Quality Chrysler City, Brunson Automobile Sales, Inc., Tison
 Motor Co., Inc., Addy's Harbor Dodge, Atlantic Chrysler-Jeep-Dodge, Atlantic Ford, Inc., Beach
 Ford-Lincoln-Mercury-Volvo, Inc., Bell & Bell Pontiac-GMC, Inc., Conway
 Chrysler-Dodge-Jeep, Inc., Conway Ford, Inc., Diamond Automotive Group, Inc., East Coast
 Honda, East Coast Volkswagen, Fowler Motors, Grand Strand Nissan, Inc., Hadwin-White
 Pontiac-Buick-GMC-Subaru, Hyatt Buick-GMC Trucks, Jud Kuhn Chevrolet, Kia of Myrtle
 Beach, Lay-Fisher Chevrolet, Inc., Myrtle Beach Chevrolet, Inc., Myrtle Beach Chrysler-Jeep,
 Inc., Myrtle Beach Hyundai-Isuzu, Myrtle Beach Suzuki, Sparks Toyota, Inc., Sun Coast
 Mazda-Mitsubishi, Suzuki Outlet of Myrtle Beach SC, Hilton Head Chrysler Jeep Dodge, Hilton
 Head Hyundai, Key Infiniti LLC, Key Mazda, Key Nissan, LLC, Porsche of Hilton Head,
 Prestige Motorcars, LLC dba Hilton Head Jaguar, Dick Smith
 Pontiac-Chrysler-Dodge-GMC-Jeep, Heritage Chevrolet-Buick, Inc., James Ervin Toyota,
 Redfearn Motor Co., Inc., Burns Ford-Mercury, Inc., Elrod Pontiac-Buick-GMC, Inc., H & H
 Chevrolet, Inc., Lancaster Dodge-Chrysler-Jeep, Lancaster Motor Co., Baldwin
 Pontiac-Buick-GMC, Inc., Cooper Ford, Inc., Firmin Ford, Inc., John Foster Motors, Inc., Lynn
 Cooper, Inc., Smith Chevrolet-Cadillac, Inc., Addy Dodge, Inc., Cherokee Kenworth, Hampton
 Automotive, Inc., Midlands Honda, Saturn of Columbia, Inc., Stivers Chrysler-Jeep, Inc., Twin
 City Motor Co., Inc., Mullins Motors, Inc., Pee Dee Ford Lincoln Mercury Inc., Griffin-Flythe
 Chevrolet, Inc., Meggs Ford-Chrysler-Dodge-Jeep, Cromley's Inc., Jeffrey Dean Chrysler Dodge
 Jeep GMC, Kirby Schrader, Stokes-Trainor Chevrolet-Old-Pontiac-Cadillac-Buick, Bobby Wood
 Chevrolet-Pontiac, Edwards Auto Sales, Inc., Lake Keowee Chrysler-Dodge LLC, Leader Ford,
 Performance Chevrolet-Buick-GMC, Bob Richards Automotive, LLC, Fairey

Chevrolet-Cadillac, Orangeburg Chrysler-Dodge-Nissan, Inc., Orangeburg Ford, Superior Honda, Superior Motors, Inc., Benson Ford-Mercury, Inc., Crane Chevrolet-Cadillac, Inc., Easley Mitsubishi, Easley Pontiac-Buick-GMC Truck, Inc., Hendrick Honda, Norris Ford, Inc., Tinsley Chevrolet Co., Inc., Bob Bennett Ford, Inc., Capitol Chevrolet, Capitol Hyundai, Carolina International Trucks-Cola, Columbia Freightliner, LLC, Dodgeland of Columbia, Hancock Motor Co., Hancock Volkswagen, Honda Cars of Columbia, Jim Moore Cadillac, Inc., McDaniels Acura-Porsche, Shealy's Truck Center-Cola, Stivers Lincoln-Mercury, Wray Automotive, Inc., Cromley's Inc., Saluda Motor Sales, Inc., Dave Edwards Toyota, Dick Brooks Honda, Foothills Ford of Chesne, Joe Gibson Mitsubishi, Kia of Greer, Saturn of Spartanburg, Shealy's Truck Center, Spartanburg Dodge, Inc., Vic Bailey Ford, Inc., Vic Bailey Honda, Vic Bailey Lincoln-Mercury, Inc., Vic Bailey Volkswagen, Wakefield Buick-Pontiac-GMC, Inc., Boyle Motor Company, Boyle Toyota, Inc., Goodwin Buick-Jeep, Goodwin Honda-Mitsubishi-VW, Jones Chevrolet Co., Jones Nissan, Inc., Jones Pontiac-GMC Truck, Inc., McLaughlin Motors, Inc., Sumter Chrysler-Plymouth-Dodge, Union Chrysler-Dodge-Jeep, Inc., Big Country Chevrolet, Inc., Haselden Brothers, Inc., Longstreet Chevrolet-Buick-Cadillac-GMC, Carolina Mazda, Clinton Family Ford-Lincoln-Mercury, Dickerson Motor Co., Inc., Dunlap-Johnson Chevrolet Co., Inc., Fort Mill Ford, Inc., Fred Caldwell's Clover Chevrolet, Good Motor Company, Griffin Mitsubishi, Griffin Pontiac-Buick-GMC, Harrelson Nissan, Harrelson Toyota, Honda Cars of Rock Hill, Rick Ford, Inc., Stateline Chrysler Jeep Dodge Inc., and the South Carolina Automobile Dealers Association have combined together for the purposes of injuring Plaintiffs and all South Carolina car buyers whom paid administrative fees to Defendants.

404. Defendants have conspired together in a common scheme designed to deceive all

car buyers by all engaging in a common practice of presenting/advertising car prices in a misleading manner by charging "administrative fees."

405. Plaintiffs have suffered special damages as a result of Defendants conspiracy.

FOR A THIRD CAUSE OF ACTION
(Declaratory Judgment)

406. The allegations set forth in the paragraphs above are incorporated herein as if set forth verbatim.

407. This cause of action seeks a declaratory judgment for the purposes of determining a question of actual controversy between all parties.

408. Plaintiffs seek a determination of their rights and legal relations with the Defendants under S.C. Code Ann. §56-15-10 *et. seq.* and/or §37-2-307.

409. The issues raised by Defendants' common practice of charging administrative fees are of such wide concern and public interest that this declaratory judgment action should be decided for future guidance to insure that the public is protected.

410. Plaintiffs seek a determination of the following questions:

- a. Does Defendants charging of "administrative fees," and further acts as described above, violate S.C. Code Ann. §56-15-10 *et. seq.*
- b. Does Defendants charging of "administrative fees" and further acts as described above, violate S.C. Code Ann. §37-2-307.
- c. Are Defendants actions as described above outside the scope of S.C. Code Ann. §37-2-307.

411. Plaintiffs seek a declaratory judgment from this Court that:

- a. A permanent injunction issue preventing Defendants from advertising/charging future customers with administrative fees in a manner which violates S.C. Code Ann. §56-15-10 *et. seq.*;
- b. A permanent injunction issue preventing Defendants from advertising/

charging future customers with administrative fees in a manner which violates S.C. Code Ann. §37-2-307;

- c. Defendants be ordered to disgorge all fees collected from Plaintiffs and all car buyers whom paid administrative fees to Defendants;

WHEREFORE, Plaintiffs prays for judgment against all of the Defendants for actual and compensatory damages, for two times actual damages pursuant to Plaintiffs' first cause of action, for three times actual damages for punitive damages pursuant to Plaintiffs' first cause of action, for disgorgement of all administrative fees collected by Defendants pursuant to Plaintiffs' second cause of action, for a permanent injunction pursuant to Plaintiffs' second cause of action, together with attorneys' fees, prejudgment interest and the costs of this action, and for such other and further relief as this Court may deem just and proper.

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Brady R. Thomas
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(803)771-8000

By: Brady J. [Signature]

Attorneys for the Plaintiffs

October 28, 2006

Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Melanie B. Blease, Paralegal for the law firm of Lewis & Babcock, L.L.P., hereby certify that I have served a copy of **Plaintiffs' Amended Complaint** upon opposing counsel and/or their registered agents, by mailing a copy of same, postage prepaid and return address clearly indicated on said envelope, to said parties at the following address:

**ATTORNEY FOR BAKER MOTOR COMPANY OF CHARLESTON, INC., AND
HAROLD ARNOLDS SENTRY BUICK, INC.**

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William S. Barr, Esquire
Barr, Unger & McIntosh, L.L.C.
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Charleston, South Carolina 29401

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Buist Moore Smythe McGee, P.A.
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Charleston, South Carolina 29401-2593

John T. Lay, Jr., Esquire
Ellis, Lawhorne & Sims, PA
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Columbia, South Carolina 29202

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BURNS CHEVROLET CADILLAC, INC.**

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Hamilton Martens Ballour & Sipe, LLC
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Rock Hill South Carolina 29731

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DICK SMITH INFINITI, INC., DICK SMITH NISSAN, INC., AND DICK SMITH
NISSAN OF LEXINGTON**

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ATTORNEY FOR GENE REED IMPORTS, INC.

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ATTORNEY FOR GALEANA CHRYSLER-JEEP, INC.; GALEANA CHRYSLER-PLYMOUTH, INC.; J.L.H. INVESTMENTS D/B/A HENDRICK'S HONDA; AND RICK HENDRICK CHEVROLET, LP

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Haynesworth Sinkler Boyd, P.A.
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Columbia, South Carolina 29201

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Harvey G. Sanders, Jr., Esquire
Leatherwood Walker Todd & Mann, PC
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300 East McBee Avenue, Suite 500
Greenville, South Carolina 29601

ATTORNEY FOR BENSON CADILLAC NISSAN, INC.; BENSON CHRYSLER PLYMOUTH, INC.; BENSON FORD MERCURY; BRADSHAW AUTOMOTIVE GROUP; BRADSHAW FORD; D&D MOTORS; FARRELL AUTOMOTIVE; SATURN OF GREENVILLE; STEVE WHITE MOTORS; BAKER MOTOR COMPANY OF CHARLESTON; BEN SATCHER MOTORS; BURNS CHEVROLET CADILLAC; BURNS CHRYSLER DODGE JEEP; HOOVER DODGE; HOOVER JEEP CHRYSLER; HOOVER MOTORS; PULLIAM MOTOR COMPANY; STOKES MOTORS, INC.; AND JOHN FINGER MOTORS

✓ Bradford Martin, Esquire
Bradford, Neal, Martin & Associates
75 Beattie Place, Suite 910
Greenville, South Carolina 29601

ATTORNEY FOR PALMETTO NISSAN

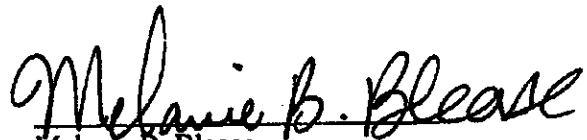
Matthew N. Tyler, Esquire
Aiken, Bridges, Nunn, Elliott & Tyler, P.A.
Post Office Drawer 1931
Florence, South Carolina 29503

**ATTORNEY FOR STROMALTIMAN DODGE; TOYOTA OF EASLEY; BIG "O" DODGE
OF GREENVILLE, INC., PALMETTO FORD, INC.; AND KIA OF ANDERSON**

Steve W. Hamm, Esquire
C. Jo Anne Wessinger Hill, Esquire
Richardson, Plowden, Carpenter & Robinson, P.A.
P.O. Drawer 7788
Columbia, South Carolina 29202

REGISTERED AGENT

CT Corporation System
c/o West Ashley Toyota
75 Beattie Place
Two Shelter Centre
Greenville, South Carolina 29601


Melanie B. Blease

October 28, 2006
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APR 09 2008

SC Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable Doyet A. Early, III, Circuit Court Judge

Circuit Court Case No. 2006-CP-02-1230

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 who paid "administrative fees" as described below to Defendants, ... **Respondents,**

v.

Century BMW d/b/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., ... **Defendants**

of whom Century BMW d/b/a Sonic Automotive is the **Appellant.**

**NOTICE OF MOTION AND MOTION FOR EXTENSION OF TIME TO SERVE
DESIGNATIONS AND FILE AND SERVE APPELLANT'S INITIAL BRIEF**

Pursuant to Rule 234(b), SCACR, Appellants, by and through their counsel, move before this Honorable Court for an Order extending the time and deadlines prescribed by Rule 208 and Rule 209, SCACR.

The Initial Brief of Appellant and Designation of Matter to be Included in the Record on Appeal are due Friday, April 11, 2008. The Appellant respectfully moves this Court to grant a 30-day extension of time, or until Monday, May 12, 2008, to serve and

4-10-08
5-12-08 154

file the Appellant's Initial Brief and the Designation of Matter to be Included in the Record on Appeal.

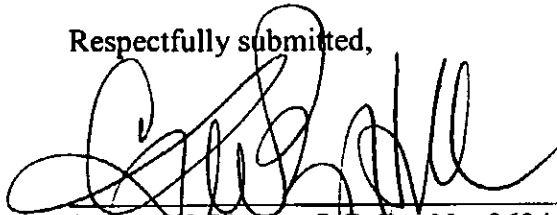
Counsel for the Appellant make this request due to a heavy workload which has included preparing various documents in other cases or matters, other hearings and court proceedings, and responding to various discovery requests in other complex cases. Counsel's Motion is not filed for the purpose of undue delay but in the interest of promoting justice and presenting meaningful arguments to the Court.

Prior to the filing of this motion, Counsel for the Respondents was contacted regarding this request; however, no response has been received from the Respondents. Counsel for the Appellants cannot currently anticipate any basis for an objection from Counsel for the Respondents to this request.

Accordingly, the Appellant respectfully requests a 30-day extension of time in which to file and serve the Initial Brief of Appellant and Designation of Matter to be Included in the Record on Appeal in the above-captioned case. It is further requested that the Clerk hold in abeyance the time upon which the Appellant is to file and serve any and all documents and matters required by or pursuant to Rules 208 and 209, SCACR, until five (5) days following a ruling on this request for extension of time if such request is denied.

WHEREFORE, Counsel for the Appellants pray that this Court issue an Order extending the time limits set forth in Rules 208 and 209, SCACR, as set forth above.

Respectfully submitted,



April 9, 2008

Steven W. Hamm, S.C. Bar No. 2634
C. Jo Anne Wessinger Hill, S.C. Bar No. 15025
David A. Anderson, S.C. Bar No. 11550
Jocelyn T. Newman, S.C. Bar No. 73119
RICHARDSON PLOWDEN & ROBINSON, P.A.
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ATTORNEYS FOR APPELLANT CENTURY BMW D/B/A
SONIC AUTOMOTIVE, WHOSE TRUE NAME IS SONIC
AUTOMOTIVE 2752 LAURENS RD., GREENVILLE, INC.
D/B/A CENTURY BMW

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable Doyet A. Early, III, Circuit Court Judge

Circuit Court Case No. 2006-CP-02-1230

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 who paid "administrative fees" as described below to Defendants, ... **Respondents,**

v.

Century BMW d/b/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., ... **Defendants**

of whom Century BMW d/b/a Sonic Automotive is the **Appellant.**

CERTIFICATE OF SERVICE

The undersigned employee of RICHARDSON PLOWDEN & ROBINSON, P.A., attorneys for Appellant, does hereby certify that service of the **NOTICE OF MOTION AND MOTION FOR EXTENSION OF TIME TO SERVE DESIGNATIONS AND FILE AND SERVE APPELLANT'S INITIAL BRIEF** in the above-captioned matter was made upon all counsel of record this 9th day of April 2008, by depositing a copy of same in the U.S. Mail, postage prepaid, addressed as follows:

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Richard A. Harpootlian, Esq.
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ATTORNEYS FOR RESPONDENTS

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APR 09 2008

SC Court of Appeals

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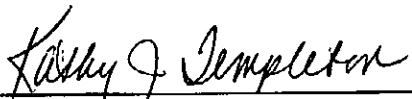
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GREENVILLE, INC., D/B/A TOYOTA OF GREENVILLE

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INVESTMENTS, INC., D/B/A TAYLOR TOYOTA


Kathy J. Templeton

Reply to: Columbia
jneuman@RichardsonPlowden.com
Direct: 803-253-8716

April 9, 2008

VIA HAND DELIVERY

The Hon. Kenneth A. Richstad,
Clerk – South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29211

Rc: Herron et al Respondents v. Dick Dyer Et al,
of which Sonic Automotive, d/b/a Century BMW is Appellant
Appeal of Order in Circuit Court Case No. 2006-CP-01-1230
Our File No. 6665-001

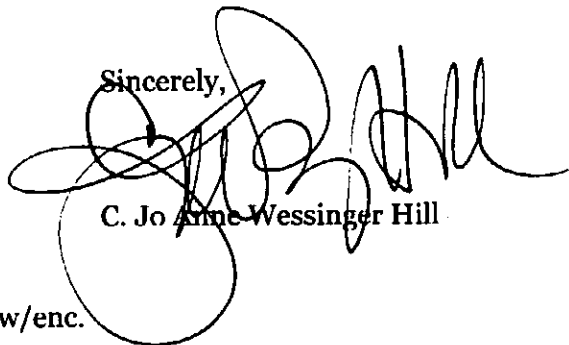
Dear Mr. Richstad:

Please find enclosed the original and eight copies of Notice of Motion and Motion for Extension of Time to Serve Designations and File and Serve Appellant's Initial Brief on behalf of Appellant Century BMW d/b/a Sonic Automotive in this matter. Also enclosed is the Motion fee in the amount of \$25.00. Please return two clocked copies to my courier.

Copies of this letter and its enclosures have been provided to the counsel listed below.

With kindest regards, I am

Sincerely,


C. Jo Anne Wessinger Hill

JWH/kjt
Enclosures

Cc: H. Clayton Walker, Jr., Esq., w/enc.
James Y. Becker, Esq., w/enc.
R. David Proffitt, Esq., w/enc.
J. Gregory Studemeyer, Esq., w/enc.
Gedney M. Howe, III, w/enc.
Richard A. Harpootlian, Esq., w/enc.
Michael E. Spears, Esq., w/enc.
A. Camden Lewis, Esq., w/enc.
Brady R. Thomas, Esq., w/enc.
Harvey G. Sanders, Jr, Esq., w/enc.
James T. Hewitt, Esq., w/enc.
S. Brooke Chapman Esq., w/enc.

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APR 09 2008

SC Court of Appeals
Ck# 21935 \$25

REED IMPORTS, INC.; GENE REED)
 TOYOTA, INC., HOOVER JEEP)
 CHRYSLER, INC.; HOOVER MOTORS,)
 INC.; HOOVER CHRYSLER-DODGE, INC.;)
 STROM ALTMAN DODGE, INC.; BAKER)
 MOTOR COMPANY OF CHARLESTON,)
 INC.; MILLER CADILLAC, INC.; TAYLOR)
 INVESTMENTS, INC. D/B/A TAYLOR)
 TOYOTA; BENSON CHRYSLER-)
 PLYMOUTH, INC.; BENSON FORD)
 MERCURY, INC.; BENSON CADILLAC-)
 NISSAN, INC.; BIG "O" DODGE OF)
 GREENVILLE, INC.; BRADSHAW)
 AUTOMOTIVE GROUP, INC.;)
 SPARTANBURG CHRYSLER JEEP, INC.;)
 KIA OF ANDERSON, LLC; TOYOTA OF)
 GREENVILLE, INC., TOYOTA OF EASLEY,)
 INC., FARRELL AUTOMOTIVE, INC.;)
 FAIRWAY FORD, INC.; SATURN OF)
 GREENVILLE INC.; STEVE WHITE)
 MOTORS OF SOUTH CAROLINA,)
 INC.; D&D MOTORS, INC.; BURNS)
 CHRYSLER DODGE JEEP, LLC; JOHN)
 FINGER MOTORS, INC.; SONIC)
 AUTOMOTIVE, INC. D/B/A CENTURY)
 BMW; BOB RICHARDS NISSAN; DICK)
 SMITH CHRYSLER-JEEP; GOODMAN)
 CHEVROLET, INC.; HENNA)
 CHEVROLET-OLDS-CADILLAC, LLC;)
 HONDA CARS OF AIKEN; JOHNSON)
 MOTOR COMPANY OF SC; SATCHER)
 FORD-LINCOLN-MERCURY; SANDERS)
 TRUCK SALES; CAROLINA FORD;)
 CAROLINA INTERNATIONAL TRUCKS OF)
 ANDERSON; CLINKSCALES CHEVROLET)
 INC.; FAIRWAY FORD-MAZDA;)
 PIEDMONT CHRYSLER-JEEP; PIEDMONT)
 HONDA; PLANET FORD; RALPH HAYES)
 TOYOTA, INC. ; TOM HUNTER)
 PONTIAC-BUICK-GMC, LLC; UPSTATE)
 AUTOMOTIVE (CHEVROLET-CADILLAC);)
 UPSTATE AUTOMOTIVE (ISUZU-KIA);
 UPSTATE AUTOMOTIVE (MITSUBISHI);

UPSTATE AUTOMOTIVE (NISSAN);)
 GIBBES FORD, INC.; ZEIGLER)
 CHEVROLET, INC.; B & B FORD, INC.;)
 WHITTLE MOTOR COMPANY, INC.;)
 BUTLER CHRYSLER-DODGE-JEEP;)
 CAROLINA VOLVO; HILTON HEAD)
 AUTOMOTIVE LLC; HILTON HEAD)
 HONDA; LAND ROVER HILTON HEAD;)
 MODERN CLASSIC MOTORS; O. C.)
 WELCH FORD-LINCOLN-MERCURY;)
 PARKS AUTOMOTIVE GROUP; PARKS)
 CADILLAC; STOKES HONDA CARS OF)
 BEAUFORT, INC.; STOKES MITSUBISHI;)
 STOKES-BROWN TOYOTA; DICK SMITH)
 CHEVROLET, INC.; HOOVER)
 JEEP-CHRYSLER, INC.; HOOVER)
 MOTORS, INC.; MCELVEEN)
 PONTIAC-BUICK-GMC, INC.; ALTMAN)
 LINCOLN-MERCURY-HYUNDAI;)
 CAROLINA INTERNATIONAL)
 TRUCKS-CHARLESTON; CHARLESTON)
 MITSUBISHI; HENDRICK HONDA OF)
 CHARLESTON; HOOVER)
 CHRYSLER-JEEP, INC.; HUGHES)
 MOTORS, INC.; KIA COUNTRY; LEXUS OF)
 CHARLESTON; LOW COUNTRY MAZDA;)
 LOW COUNTRY VOLKSWAGEN;)
 MARATHON CHEVROLET OF N)
 CHARLESTON; MARCHANT)
 CHEVROLET, INC.; MCDANIELS ACURA)
 OF CHARLESTON ; MCELVEEN)
 CHEVROLET, LLC; MORRIS NISSAN;)
 NORTHSIDE NISSAN; RAVENEL FORD;)
 INC.; RICK HENDRICK DODGE; RICK)
 HENDRICK'S IMPORT SHOWPLACE;)
 SATURN OF CHARLESTON; STOKES)
 HONDA NORTH CHARLESTON; STOKES)
 ISUZU-KIA-SUBARU; STOKES)
 VOLKSWAGEN; VICTORY HYUNDAI OF)
 CHARLESTON; BURNS)
 CHEVROLET-CHRYSLER-DODGE-JEEP,)
 INC.; JOE GIBSON SUZUKI; ROGER)
 SHIFLETT FORD, INC.; WALLACE WHITE)

NOURSE CHESTER AUTOMOTIVE;)
 NOURSE MOTORS OF CHESTER LLC;)
 BENNETT MOTOR CO., INC.; JOHN)
 DONOGHUE FORD, INC.; LAWRENCE)
 CHEVROLET-PONTIAC; PROTHRO)
 CHEVROLET-BUICK-PONTIAC-GMC)
 TRUCK; STOKES-CRAVEN)
 CHRYSLER-JEEP-DODGE;)
 STOKES-CRAVEN FORD; PETERS)
 PONTIAC BUICK-GMC; RIZER)
 CHEVROLET CO., INC.; WALTERBORO)
 MOTOR SALES CO.; ACTION)
 FORD-MERCURY, INC.; JOHN NEWSOME,)
 INC.; RACEWAY)
 CHRYSLER-JEEP-DODGE, INC.;)
 RACEWAY FORD; CAROLINA)
 INTERNATIONAL TRUCKS LLC;)
 MARATHON CHEVROLET;)
 SUMMERVILLE FORD-MERCURY, INC.;)
 HERLONG PONTIAC-CHEVROLET-BUICK,)
 INC.; JIM SATCHEL, INC.; YONCE)
 FORD-MERCURY, INC.; WILSON)
 CHEVROLET-OLDSMOBILE, INC.;)
 WILSON CHRYSLER-DODGE-JEEP, INC.;)
 AUDDIE BROWN MITSUBISHI; CALE)
 YARBOROUGH HONDA, INC.; CAROLINA)
 INTERNATIONAL TRUCKS; EFIRD)
 CHRYSLER-JEEP-DODGE, INC.;)
 FLORENCE MACK, INC.; FLORENCE)
 TOYOTA; FLOYD MOTOR CO., INC.;)
 HORNE FORD, INC.; KIA OF FLORENCE;)
 KING CADILLAC-BUICK-PONTIAC-GMC)
 TRUCK, INC.; LAKE CITY)
 FORD-MERCURY, LLC; PETERBILT OF)
 FLORENCE; RACEWAY)
 CHEVROLET-PONTIAC-BUICK-GMC;)
 SATURN OF FLORENCE; SERVICE)
 MOTOR COMPANY, INC.; COASTAL)
 NISSAN-CHEVROLET-CADILLAC;)
 HEMINGWAY MOTOR CO., INC.;)
 PARRISH MOTOR CO., INC.; TIDELANDS)
 CHRYSLER DODGE; TIDELANDS)

FORD-LINCOLN-MERCURY; BMS, INC.)
 D/B/A BREAKAWAY HONDA;)
 BRADSHAW ACURA; BROCKMAN)
 AUTOMOTIVE; CAROLINA)
 INTERNATIONAL TRUCKS-GREENVILLE;)
 CHEROKEE KENWORTH, INC.;)
 CHRISTOPHER TRUCKS, INC.; CROWN)
 JEEP-CHRYSLER; CROWN NISSAN)
 GREENVILLE; DICK SMITH MITSUBISHI;)
 FAIRWAY FORD, INC.; FAIRWAY)
 MOTORCARS LLC; GEORGE COLEMAN)
 FORD, INC.; TRAVELERS REST;)
 HERITAGE LINCOLN-MERCURY; JOHN)
 FINGER MAZDA; KEVIN WHITAKER)
 CHEVROLET-CADILLAC; KEVIN)
 WHITAKER CHEVROLET, INC.;)
 SIMPSONVILLE CHEVROLET, INC.;)
 SITTON BUICK-PONTIAC-GMC TRUCK,)
 INC.; STEVE WHITE MOTORS OF SC, INC.;)
 STOKES-TRAINOR FORD; C. THOMPSON)
 AUTOMOTIVE; GARY RUSS)
 CHEVROLET-CADILLAC, INC.; GEORGE)
 BALLENTINE FORD-LINCOLN-)
 MERCURY; QUALITY CHRYSLER CITY;)
 BRUNSON AUTOMOBILE SALES, INC.;)
 TISON MOTOR CO., INC.; ADDY'S)
 HARBOR DODGE; ATLANTIC)
 CHRYSLER-JEEP-DODGE; ATLANTIC)
 FORD, INC.; BEACH)
 FORD-LINCOLN-MERCURY-VOLVO, INC.;)
 BELL & BELL PONTIAC-GMC, INC.;)
 CONWAY CHRYSLER-DODGE-JEEP, INC.;)
 CONWAY FORD, INC.; DIAMOND)
 AUTOMOTIVE GROUP, INC.; EAST)
 COAST HONDA; EAST COAST)
 VOLKSWAGEN; FOWLER MOTORS;)
 GRAND STRAND NISSAN, INC.;)
 HADWIN-WHITE)
 PONTIAC-BUICK-GMC-SUBARU; HYATT)
 BUICK-GMC TRUCKS; JUD KUHN)
 CHEVROLET; KIA OF MYRTLE BEACH;)
 LAY-FISHER CHEVROLET, INC.; MYRTLE)
 BEACH CHEVROLET, INC.; MYRTLE)
 BEACH CHRYSLER-JEEP, INC.; MYRTLE)

HYUNDAI-ISUZU; MYRTLE BEACH)
 SUZUKI; SPARKS TOYOTA, INC.; SUN)
 COAST MAZDA-MITSUBISHI; SUZUKI)
 OUTLET OF MYRTLE BEACH SC; HILTON)
 HEAD CHRYSLER JEEP DODGE; HILTON)
 HEAD HYUNDAI; KEY INFINITI LLC; KEY)
 MAZDA; KEY NISSAN, LLC; PORSCHE OF)
 HILTON HEAD; PRESTIGE MOTORCARS;)
 LLC DBA HILTON HEAD JAGUAR; DICK)
 SMITH)
 PONTIAC-CHRYSLER-DODGE-GMC-JEEP;)
 HERITAGE CHEVROLET-BUICK, INC.;)
 JAMES ERVIN TOYOTA; REDFEARN)
 MOTOR CO., INC.; BURNS)
 FORD-MERCURY, INC.; ELROD)
 PONTIAC-BUICK-GMC, INC.; H & H)
 CHEVROLET, INC.; LANCASTER)
 DODGE-CHRYSLER-JEEP; LANCASTER)
 MOTOR CO.; BALDWIN)
 PONTIAC-BUICK-GMC, INC.; COOPER)
 FORD, INC.; FIRMIN FORD, INC.; JOHN)
 FOSTER MOTORS, INC.; LYNN COOPER,)
 INC.; SMITH CHEVROLET-CADILLAC,)
 INC.; ADDY DODGE, INC.; CHEROKEE)
 KENWORTH; HAMPTON AUTOMOTIVE,)
 INC.; MIDLANDS HONDA; SATURN OF)
 COLUMBIA, INC.; STIVERS)
 CHRYSLER-JEEP, INC.; TWIN CITY)
 MOTOR CO., INC.; MULLINS MOTORS,)
 INC.; PEE DEE FORD LINCOLN MERCURY)
 INC.; GRIFFIN-FLYTHE CHEVROLET,)
 INC.; MEGGS)
 FORD-CHRYSLER-DODGE-JEEP;)
 CROMLEY'S INC.; JEFFREY DEAN)
 CHRYSLER DODGE JEEP GMC; KIRBY)
 SCHRADER; STOKES-TRAINOR)
 CHEVROLET-OLD-PONTIAC-CADILLAC-B)
 UICK; BOBBY WOOD)
 CHEVROLET-PONTIAC; EDWARDS AUTO)
 SALES, INC.; LAKE KEOWEE)
 CHRYSLER-DODGE LLC; LEADER FORD;)
 PERFORMANCE)
 CHEVROLET-BUICK-GMC; BOB)



The South Carolina Court of Appeals

KENNETH A. RICHSTAD
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE (803) 734-1890
FAX (803) 734-1839
www.sccourts.org

April 1, 2008

Dennis M. Black, Esquire
Ryan L. VanGrack
Williams & Connolly LLP
725 Twelfth Street, NW
Washington, DC 20005

Re: Herron, Heather v. Century BMW
Herron, Heather v. Dick Dyer & Assoc.

Dear Counsel:

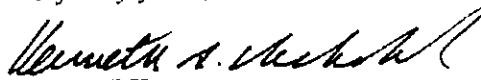
If you desire to represent Century BMW [whose true name is Sonic Automotive 2752, Laurens Road, Greenville, Inc., a/k/a Century BMW] before the Court of Appeals, you must file an Application for Admission Pro Hac Vice and have a member in good standing of the South Carolina Bar associated with you as attorney of record. The specific requirements are outlined in Rule 404 of the South Carolina Appellate Court Rules and are available on the Internet at www.sccourts.org.

The **original** Application for Admission Pro Hac Vice with an **original** certificate of good standing of the Bar from the highest court of any state or the District of Columbia in which you are admitted to practice law must be filed with this Court. A **copy** of the completed application form, including the \$250.00 filing fee and any required attachments, must be filed with the South Carolina Supreme Court Office of Bar Admissions. The Clerk of the Supreme Court will certify to this court that the completed application and fee have been received.

In addition, the South Carolina attorney with whom you will be associated must serve and file a motion to admit you pro hac vice. The motion must be in compliance with the requirements of Rule 224, SCACR, to include the original motion, six copies, proof of service on all other parties, and the filing fee of \$25.00.

The required documents should be served and filed within thirty days of the date of this letter. If you have any questions, please contact this office at (803) 734-1890.

Very truly yours,


CLERK

KAR/ec

cc: Steven W. Hamm, Esquire
C. Jo Anne Wessinger-Hill, Esquire
David A. Anderson, Esquire
Jocelyn T. Newman, Esquire
A. Camden Lewis, Esquire
Brady R. Thomas, Esquire
Gedney M. Howe, III, Esquire
Michael Eugene Spears, Esquire
Richard A. Harboonian, Esquire



The South Carolina Court of Appeals

KENNETH A. RICHSTAD
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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April 1, 2008

Steven W. Hamm, Esquire
C. Jo Anne Wessinger-Hill, Esquire
David A. Anderson, Esquire
Jocelyn T. Newman, Esquire
Richardson, Plowden
& Robinson, PA
P O Drawer 7788
Columbia, SC 29202

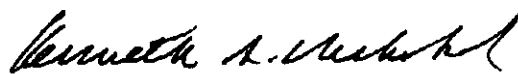
Re: Herron, Heather v. Century BMW

Dear Counsel:

As you are aware, the order from which you have appealed features an abbreviated caption. I am, therefore, requesting that you provide documentation of the complete caption. Such documentation may be in the form of any order issued by the trial court featuring the complete caption or, if there is no such order, a clocked copy of the original summons and complaint.

Please provide this documentation within ten (10) days of the date of this letter.

Very truly yours,


CLERK

KAR/ec

cc: Dennis M. Black, Esquire
Ryan L. VanGrack
A. Camden Lewis, Esquire
Brady R. Thomas, Esquire
Gedney M. Howe, III, Esquire
Michael Eugene Spears, Esquire
Richard A. Harpootlian, Esquire

Reply to: Columbia
jhill@RichardsonPlowden.com
Direct: 803-576-3714

March 26, 2008

VIA HAND DELIVERY

The Hon. Kenneth A. Richstad,
Clerk – South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29211

Re: Herron et al Respondents v. Dick Dyer Et al,
of whom Century BMW d/b/a Sonic Automotive is Appellant
Appeal of Order in Circuit Court Case No. 2006-CP-02-1230
Our File No. 6665-001

Dear Mr. Richstad:

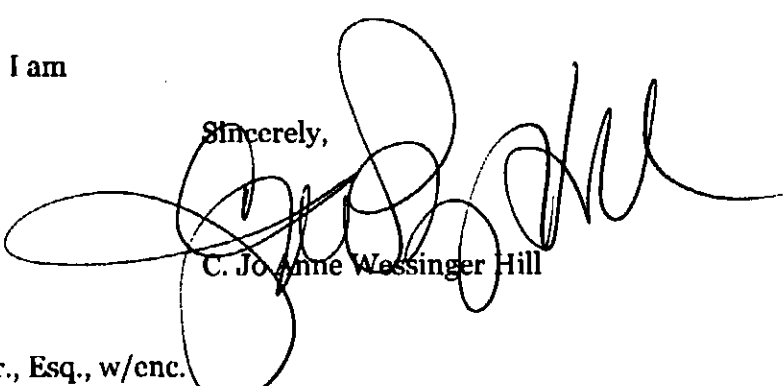
In accordance with the Rule 407, SCACR, the Defendant Century BMW d/b/a Sonic Automotive, whose true and correct name is Sonic Automotive 2752 Laurens Rd., Greenville, Inc. d/b/a Century BMW ("Century BMW"), requested the transcript from the November 30, 2007 hearing on the Motion to Compel Arbitration of Defendant Century BMW on December 2, 2007 and this transcript was received on March 11, 2008.

By a copy hereof I am advising of the receipt of the transcript from the Court Reporter and serving this letter upon all counsel of record as indicated below.

If you should have any questions or concerns, please do not hesitate to contact this office.

With kindest regards, I am

Sincerely,


C. Jo Anne Wessinger Hill

JWH/kjt
Enclosures

Cc: H. Clayton Walker, Jr., Esq., w/enc.
James Y. Becker, Esq., w/enc.
R. David Proffitt, Esq., w/enc.
J. Gregory Studemeyer, Esq., w/enc.
Gedney M. Howe, III, w/enc.
Richard A. Harpootlian, Esq., w/enc.
Michael E. Spears, Esq., w/enc.
A. Camden Lewis, Esq., w/enc.
Brady R. Thomas, Esq., w/enc.
Harvey G. Sanders, Jr, Esq., w/enc.
James T. Hewitt, Esq., w/enc.
S. Brooke Chapman Esq., w/enc.

Reply to: Columbia
jacuman@RichardsonPlowden.com
RECEIVED
MAR 26 2008

March 26, 2008

VIA HAND DELIVERY

MAR 26 2008

SC Court of Appeals

The Hon. Kenneth A. Richstad,
Clerk – South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29211

Re: Herron et al Respondents v. Dick Dyer Et al,
of which Sonic Automotive, d/b/a Century BMW is Appellant
Appeal of Order in Circuit Court Case No. 2006-CP-021230
Our File No. 6665-001

Dear Mr. Richstad:

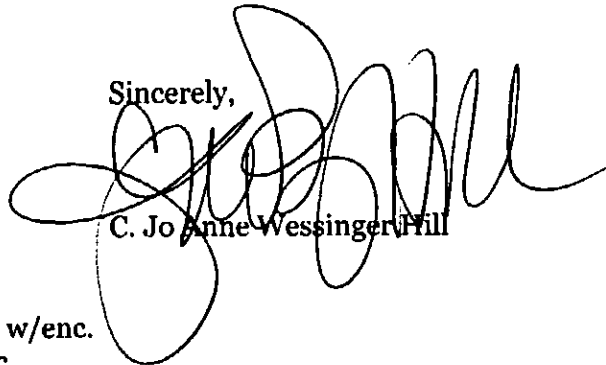
Enclosed please find the original and two copies of an Amended Notice of Appeal and certificate of service, correcting the caption in each, in the above matter. Please file the original and return two clocked copies to my courier.

By a copy hereof I am serving the same upon all counsel of record as indicated below.

If you should have any questions or concerns, please do not hesitate to contact this office.

With kindest regards, I am

Sincerely,



C. Jo Anne Wessinger, Hill

JWH/kjt
Enclosures

Cc: H. Clayton Walker, Jr., Esq., w/enc.
James Y. Becker, Esq., w/enc.
R. David Proffitt, Esq., w/enc.
J. Gregory Studemeyer, Esq., w/enc.
Gedney M. Howe, III, w/enc.
Richard A. Harpootlian, Esq., w/enc.
Michael E. Spears, Esq., w/enc.
A. Camden Lewis, Esq., w/enc.
Brady R. Thomas, Esq., w/enc.
Harvey G. Sanders, Jr, Esq., w/enc.
James T. Hewitt, Esq., w/enc.
S. Brooke Chapman Esq., w/enc.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable Doyet A. Early, III, Circuit Court Judge

Circuit Court Case No. 2006-CP-02-1230

RECEIVED

MAR 26 2008

SC Court of Appeals

Heather Herron, Natalie Armstrong, Michael Ritz, Julie Freeman, Christine Watts, Alison Dannert, Michael Bleasc, Michael Watts, individually and for the benefit of all car buyers who paid "administrative fees" as described below to Defendants, ... **Respondents,**

v.

Century BMW d/b/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., ... **Defendants**

of whom Century BMW d/b/a Sonic Automotive is the **Appellant.**

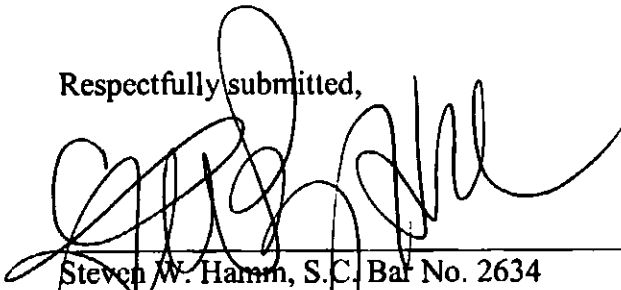
AMENDED NOTICE OF APPEAL

The Appellant Century BMW d/b/a Sonic Automotive, whose true name and correct name is Sonic Automotive 2752 Laurens Rd., Greenville, Inc. d/b/a Century BMW ("Century BMW"), appeals the Order of the Honorable Doyet A. Early, III, dated March 10, 2008, denying Appellant's Motion to Compel Arbitration of Plaintiff Christine Watts' claims and to dismiss those claims. Appellant received written notice of entry of the Order on March 10, 2008. A copy of the Order is enclosed with this notice.

On March 10, 2008, the Appellant jointly appealed with the other named defendants in the above-captioned case the Orders of Judge Early respectively filed on August 1, 2007, and February 5, 2008, in which the circuit court ruled on the defendants' motions to reconsider its earlier order filed pursuant to Rule 59(e), SCRPC. Following the filing of this notice, the Appellant intends to file a Motion to Consolidate these two appeals.

Respectfully submitted,

March 26, 2008



Steven W. Hamm, S.C. Bar No. 2634
C. Jo Anne Wessinger Hill, S.C. Bar No. 15025
David A. Anderson, S.C. Bar No. 11550
Jocelyn T. Newman, S.C. Bar No. 73119
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D/B/A CENTURY BMW

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D/B/A TOYOTA OF GREENVILLE

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Robert L. Reibold, Esquire

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rreibold@walkerreibold.net

ATTORNEYS FOR DEFENDANT TAYLOR INVESTMENTS,

INC., D/B/A TAYLOR TOYOTA

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable Doyet A. Early, III, Circuit Court Judge

Circuit Court Case No. 2006-CP-02-1230

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 who paid "administrative fees" as described below to Defendants, ... **Respondents,**

v.

Century BMW d/b/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., ... **Defendants**

of whom Century BMW d/b/a Sonic Automotive is the **Appellant.**

CERTIFICATE OF SERVICE

The undersigned employee of RICHARDSON PLOWDEN & ROBINSON, P.A., attorneys for Appellant, does hereby certify that service of the **Amended Notice of Appeal** in the above-captioned matter was made upon all counsel of record this 26th day of March 2008, by depositing a copy of same in the U.S. Mail, postage prepaid, addressed as follows:

A. Camden Lewis, Esq.
Brady R. Thomas, Esq.
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H. Clayton Walker, Jr., Esquire
Robert L. Reibold, Esquire
WALKER & REIBOLD, LLC
P.O. Box 61140
Columbia, SC 29260


Kathy J. Templeton

March 26, 2008

Columbia, South Carolina

After the parties agreed to a price for the car, Century BMW's F&I manager took Ms. Watts and her father into a cubicle to sign paperwork. Christine Watts in her affidavit stated that the documents were "hastily presented." Century BMW refers to this process as "rolling out the paper."

The Wattses say they were presented with a big packet of documents containing flags indicating where the Wattses were supposed to sign. Century BMW's General Manager testified that it was the F&I manager's custom to place his finger on the individual documents pointing to the place on the documents that needed to be signed and say "sign here."

The Wattses signed multiple documents. Some of the documents were required to be signed by law.

The arbitration agreement at issue was one of the documents included in the packet. This arbitration agreement is a form contract drafted by Century BMW. The arbitration agreement uses a small font.

The Wattses say there was no discussion with the F&I manager about the arbitration agreement. Century BMW's General Manager did not know what was discussed with the Wattses but stated that he would expect his people to tell the customer that the agreement is "a document providing a remedy for the customer without having to go to court." The Wattses also testified that believed that they were required to sign all of the documents in order to get the car.

DAE
#2

On October 31, 2006, Plaintiff Watts initiated the current action against Defendant Century BMW. In the Amended Complaint, Plaintiff Watts alleged causes of action for a declaratory judgment, civil conspiracy, and violation of the Motor Vehicle Dealers Act. On December 29, 2006, Defendant Century BMW filed a motion to compel arbitration.

ANALYSIS

The Plaintiff and Defendant agree that Simpson v. MSA of Myrtle Beach, Inc., 644 S.E.2d 663 (S.C.,2007) is the controlling authority for this motion. The Simpson Court held that a car dealer's attempt in a form contract to prevent a consumer from prosecuting statutory rights in arbitration was unconscionable and unenforceable. Simpson, 644 S.E.2d at 668-671. Application of the Simpson test here shows that the Century BMW arbitration agreement is also unconscionable and unenforceable.

A. The Century BMW Arbitration is an Adhesion Contract.

The Century BMW arbitration agreement is an adhesion contract. "[A]n adhesion contract is a standard form contract offered on a 'take-it-or-leave-it' basis with terms that are not negotiable." Simpson, 644 S.E.2d at 669. Adhesion contracts "are standard in the automobile retail industry." Id.

The arbitration agreement here is a standard form contract drafted by Century BMW. The contract has only blanks that can be filled in depending on the date of the transaction, the VIN number of the vehicle, the name of the customer, and the name of the dealership. Plaintiff Watts did not participate in the drafting of the agreement and had no voice in the formulation of its terms.

Century BMW presents the arbitration agreement on a take-it-or-leave-it basis. Century BMW's procedures and method of presentation lead to the conclusion that the arbitration agreement must be signed to purchase the car. Century BMW's General Manager stated that the F&I Manager's "practice" was to present the individual documents and point to on the paper to where the customer was supposed to sign and say "sign here." Century BMW had no standard

statements to tell purchasers. This practice indicates that signing the document is required in order to purchase a car. This conclusion is further supported by the fact that in over 6,000 transactions, the only person the General Manager could name who ever bought a car without signing the arbitration agreement was Brad Martin, Esq., a lawyer in this case.

The agreement is a standard form contract. Century BMW's procedures and the Watts's testimony¹ show that the terms of the arbitration agreement were not negotiable. Accordingly, I find that the arbitration agreement is an adhesion contract. Because the Century BMW arbitration agreement is an adhesion contract, the Century BMW arbitration agreement should be viewed with "considerable skepticism." Simpson, 644 S.E.2d at 670(adopting rationale of Ohio Courts in analyzing arbitration agreements by automobile retailers and stating "We...proceed to analyze this contract between a consumer and automobile retailer with 'considerable skepticism'.").

B. Absence of Meaningful Choice.

I also find that there was an absence of meaningful choice in agreeing to arbitrate and waive the statutory right to participate in a multi-plaintiff action. The Simpson case describes absence of meaningful choice as follows:

Absence of meaningful choice on the part of one party generally speaks to the fundamental fairness of the bargaining process in the contract at issue. In determining whether a contract was "tainted by an absence of meaningful choice," courts should take into account the nature of the injuries suffered by the plaintiff; whether the plaintiff is a substantial business concern; the relative disparity in the parties' bargaining power; the parties' relative sophistication; whether there is an element of surprise in the inclusion of

¹The Watts's testimony is the only testimony about the events surrounding the execution of the agreement. The Watts testified they believed they were required to sign the agreement in order to get the car. Century BMW was unable to produce any witness whom remembered the transaction.

the challenged clause; and the conspicuousness of the clause.

Simpson v. MSA of Myrtle Beach, Inc., 644 S.E.2d 663 (internal citation omitted).

Because an automobile is a "necessity" in everyday life, the Simpson Court found this factor should be considered in determining "whether a consumer had a meaningful choice in negotiating the arbitration agreement." Simpson, 644 S.E.2d at 669.

Applying this analysis, the Simpson Court provided as follow:

[T]he contract between Simpson and Addy involved a vehicle intended for use as Simpson's primary transportation, which is critically important in modern day society. Applying the factors considered by the Fourth Circuit in analyzing arbitration clauses, we also acknowledge Simpson's claim that she did not possess the business judgment necessary to make her aware of the implications of the arbitration agreement, and that she did not have a lawyer present to provide any assistance in the matter. *But see Munoz*, 343 S.C. 531, 542 S.E.2d 360 (failing to factor in the weaker party's status as a consumer in analyzing an unconscionability claim in an arbitration agreement between a consumer and a lender). Similarly, we note that Simpson's allegation that the contract was "hastily" presented for her signature.

Simpson, 644 S.E.2d at 670. The facts here support a finding of an absence of meaningful choice by the Plaintiffs.

There was a clear disparity in the parties' bargaining power and the relative sophistication between the parties. Century BMW argues that Ms. Watts is sophisticated because in 2008 she works as an auditor. However, in 2005, when the vehicle was purchased, Ms. Watts was a student at the College of Charleston. Michael Watts sold garage doors. The Wattses did not have any attorney present when they signed the agreement. The Plaintiffs were not sophisticated and obviously not substantial business concerns.

Century BMW, on the other hand, is owned by Sonic Automotive, Inc., a large corporation that owns dozens of cars dealerships. Sonic Automotive, Inc. drafted the arbitration

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agreement and had engaged in thousands of transactions where arbitration clauses were used. Sonic was a sophisticated car dealer with years of arbitration clause use. I find that there was a disparity of bargaining power between the parties.

Additionally, there was unfairness in the bargaining process. Century BMW inconspicuously placed the arbitration agreement within a series of documents that included documents that were required to be signed by law and then had its F&I Manager point on each document (whether required to be signed by law or not) and say sign here. There was nothing telling the Wattses that the arbitration agreement, unlike the documents required to be signed by law was not mandatory. This procedure indicates that signing all of the documents is mandatory and is indicative of unfairness in the bargaining process. Simpson, 644 S.E.2d at 669 ("Absence of meaningful choice on the part of one party generally speaks to the fundamental fairness of the bargaining process in the contract at issue.").

The Watts stated that there was no discussion of the arbitration agreement. Century BMW's General Manager did not know what was discussed with the Wattses but stated that he would expect his people to tell the customer that the agreement is "a document providing a remedy for the customer without having to go to court." This statement, if given by Century BMW, is sorely lacking because the arbitration agreement in actuality takes away remedies and statutory rights. The lack of a Century BMW full explanation is further evidence showing the fundamental unfairness of the bargaining process.

There was also an element of surprise involved in the inclusion of the arbitration agreement because none of the signatories of the arbitration agreement (the Wattses nor the F&I manager) understood what they were signing. Neither of the Wattses had ever participated in an

arbitration nor had any understanding of arbitration. Similarly, Century BMW's General Manager and F&I manager did not have much understanding of the arbitration agreement nor how it worked.

Century BMW's argument that the bargaining process was fair because the Wattses could have read the arbitration agreement is non-availing. The Plaintiff in Simpson also could have read the arbitration agreement at issue in that case. Additionally, even if the Wattses had read the arbitration agreement, the bargaining process was unfair because the arbitration agreement was not easily understandable.

Century BMW's Rule 30(b)(6) representative as the person most knowledgeable on the arbitration agreement testified that he did not have much understanding of how the arbitration agreement worked. Century BMW's General Manager has thirty-two years worth of experience in the car industry, has dealt with the subject arbitration agreement since 2002, and does not understand the arbitration agreement. Similarly, the F&I manager, whom presented the arbitration agreement to the Wattses, does not have much understanding of the agreement. It is unfair to expect the Wattses to understand the agreement, when in a little cubicle with the F&I Manager with his finger on the document pointing to the place to sign.

I also find that use of the car was a necessity to Ms. Watts. The car was purchased to be Ms. Watts's primary source of transportation and was purchased so that she could get back and forth from work. Century BMW argues that the vehicle was not necessity because Christine Watts previously owned a Mitsubishi Montero. The fact that Ms. Watts previously owned another vehicle does not defeat the fact that use of a car is a necessity. The plaintiff in Simpson, prior to purchasing the car in that case, owned a 2001 Toyota 4-Runner and the South Carolina

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Supreme Court expressly found that the car purchased was a necessity. Simpson, 644 S.E.2d at 663. The car purchased by Ms. Watts, like the car purchased in Simpson, was purchased to be her primary source of transportation. As such, I find that the use of the car was a necessity.

In the end, I find that the facts in this case are similar to those in Simpson. These facts, just as they did in Simpson, warrant a finding that Plaintiff Watts had an absence of meaningful choice when she entered into the arbitration agreement.²

C. One-Sided and Oppressive Terms.

The Century BMW arbitration agreement contains oppressive and one-sided terms. In analyzing this factor, the Simpson Court stated:

The general rule is that courts will not enforce a contract which is violative of public policy, statutory law, or provisions of the Constitution. *Carolina Care Plan*, 631 S.C. at 555, 606 S.E.2d at 758. In our opinion, this rule has two applications in the present case. First, this arbitration clause violates statutory law because it prevents Simpson from receiving the mandatory statutory remedies to which she may be entitled in her underlying SCUTPA and Dealers Act claims. Second, unconditionally permitting the weaker party to waive these statutory remedies pursuant to an adhesion contract runs contrary to the underlying statutes' very purposes of punishing acts that adversely affect the public interest. Therefore, under the general rule, this provision in the arbitration clause is unenforceable.

Simpson, 644 S.E.2d at 671(citing the "strong public policy notions behind the enactment of the...Dealers Act."). The Simpson case reasoning is equally applicable here.

²In addition to Simpson, the North Carolina Supreme Court's decision in Tillman v. Commercial Credit Loans, Inc., 655 S.E.2d 362 (N.C.2008) also supports a finding that the arbitration agreement here is unenforceable.

One-Sided Terms

The prohibition of multi-plaintiff and class action in the Century BMW arbitration agreement is one-sided. Although styled as a mutual prohibition on representative class actions, it is difficult to envision the circumstances on which the provision might negatively impact Century BMW, because car dealers typically do not sue their customers in class action lawsuits. Such a one-sided contract is unconscionable. See Kinkel v. Cingular Wireless, LLC, 828 NE2d 812, 820-821 (Ill.App. 5 Dist., 2005) ("cellular telephone service providers typically do not sue their customers in class action lawsuits. Thus, Cingular's provision barring class arbitration is a one-sided limitation on its customers' ability to seek relief...such a one-sided limitation that could effectively deny plaintiffs their day in court is substantively unconscionable."). See also Szetela v. Discover Bank, 97 Cal.App. 4th 1094 (2002) (Holding a similar clause unconscionable and one-sided because "credit card companies typically do not sue their customers in class action lawsuits."). Clearly, the Century BMW arbitration agreement contains one-sided terms.

Oppressive Terms

The arbitration agreement contains oppressive terms that violate public policy and statutory law. The Century BMW arbitration agreement here, like the arbitration agreement in Simpson, attempts to take away Plaintiff Watts's statutory rights. The Dealers Act provides substantive rights to those harmed by violations. S.C. Code Ann. §56-15-110(2) provides:

- (2) When such action is one of common or general interest to many persons or when the parties are numerous and it is impracticable to bring them all before the court, one or more may sue for benefit of the whole. Including actions for injunctive relief.

S.C. Code Ann. §56-15-110(2) provides statutory rights to plaintiffs including the right to bring a

claim on behalf of a group and injunctive relief on behalf of a group. The statute was "[o]bviously enacted...because consumers' remedies at common law were deemed inadequate." See Kucharski v. Rick Hendrick Chevrolet, LP, 2002 WL 313860990 (SC Ct. App., 2002). As stated by the Supreme Court in Simpson, the purpose behind the Dealers Act is to "punish[] acts that adversely affect the public interest." Simpson, 644 S.E.2d at 671.

The Century BMW arbitration agreement's attempted prohibition of group suits prevents Plaintiff Christine Watts from effectively vindicating her statutory rights in arbitration. The right to bring a claim on behalf of a group under S.C. Code Ann. §56-15-110(2) is significant. This protection is necessary because otherwise parties with nominal individual claims, but significant collective claims, would be left with limited avenues for relief and a wrongdoer car dealer with little checks on its abuses of law. S.C. Code Ann. §56-15-110 makes it economical for a car purchaser who has been harmed by violation of the statute to bring claims against a car dealer. Century BMW's attempt to take this right away is violative public policy.

Similarly, Plaintiff Christine Watts's statutory right, as one harmed Plaintiff, to seek group injunctive relief, when an action is of common or general interest to many persons, cannot be effectively vindicated under the Century BMW arbitration Agreement. S.C. Code Ann. §56-15-110(2) is designed so that one person can stop a car dealers from perpetrating wrongdoing against many car purchasers. This right to group injunctive relief was given by the General Assembly to prevent car dealerships from perpetrating mass wrongdoing on the public. This is a significant right that cannot be vindicated in the Century BMW arbitration agreement.

Courts in other jurisdictions have found similar provisions unconscionable and unenforceable. See Tillman v. Commercial Credit Loans, Inc., 655 S.E.2d 362 (N.C.2008);

Cooper v. QC Financial Services, Inc., 503 F.Supp2d 1266, 1290 (D.Ariz.,2007); Eagle v. Fred Martin Motor Co., 809 NE2d 1161 (Ohio App. 2004)(concluding provision preventing right to proceed through a class action or as a private attorney general were both against public policy and the underlying purpose of the Consumer Sales Practices Act and thus were unenforceable). Lozada v. Dale Baker Oldsmobile, Inc., 91 F. Supp. 2d 1087 (W.D. Mich. 2000)(arbitration clause involving the sale of automobiles providing for waiver by buyer's or right to proceed by way of a class action was substantially unreasonable and unconscionable); State Ex Rel. Dunlap v. Berger, 567 SE2d 570, 576 (Fla. Dist. Ct. App., 1998).

The South Carolina Supreme Court has stated that it will not enforce this type of arbitration clause. "[P]reclusion of class-wide or consolidated arbitration in an adhesion contract, even if explicit, undermines principles favoring expeditious and equitable case disposition absent demonstrated prejudice to the drafter of the adhesive contract." Bazzle v. Green Tree Financial Corp., 569 S.E.2d 349, 361 (S.C.,2002)(*Re'vd on other grounds*). Such clauses are unconscionable because they insulate Defendants from significant exposure brought about when otherwise small claims are grouped together.

The class action and representative capacity suit prohibitions in the Century BMW arbitration agreement are contrary to the "strong public policy reasons" behind the enactment of the Dealers Act and contrary to the Dealers Act's purpose of "punishing acts that adversely affect the public's interest." Simpson, 644 S.E.2d at 671. I, therefore, find that the terms of the arbitration agreement are oppressive and violative of public policy and statutory law.

CONCLUSION

Like the arbitration agreement at issue in Simpson, there was an absence of meaningful choice by the Wattses in entering into the Century BMW arbitration agreement. Additionally, the Century BMW arbitration agreement's attempt to take away statutory rights under the Motor Vehicle Dealers Act are one-sided and violative of statutory law. I therefore find that the Century BMW arbitration agreement is unconscionable and unenforceable.

Based upon the foregoing, the Motion to Compel Arbitration filed by Century BMW is denied.

AND IT IS SO ORDERED.

Beaufort, South Carolina

March 10, 2008

Doyet A. Early, Jr.
Hon. Doyet A. Early, Jr.
Circuit Court Judge
Second Judicial Circuit



The South Carolina Court of Appeals

KENNETH A. RICHSTAD
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March 17, 2008

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Re: Herron, Heather v. Century BMW

Dear Counsel:

We have received your Notice of Appeal in the case noted above. This case will be docketed in the Court of Appeals and all communications concerning this case, including motions and petitions, initial and final briefs, and the Record on Appeal, should be directed to and filed in this Court. For all filings, please note the requirements of Rule 238(a) of the South Carolina Appellate Court Rules, and be further advised that Court of Appeals policy requires the firm name of any counsel shown must be included in his or her address.

We suggest that large parcels such as copies of final briefs and the Record On Appeal be sent directly to the Court via the street address: 1015 Sumter Street, Columbia, S.C. 29201.

Thank you for your attention to this. Failure to file in the proper court may result in the dismissal of your appeal.

Please submit an Amended Notice of Appeal and Proof of Service reflecting the correct caption, within 10 days of the date of this letter. The case caption should read as follows:

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 who paid "administrative fees" as described below to Defendants

Respondents

v.

Century BMW d/b/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

of whom Sonic Automotive d/b/a Century BMW is the

Appellant

PLEASE BE ADVISED that, pursuant to Rule 207 of the South Carolina Appellate Court Rules, the transcript must be ordered within ten (10) days of the proof of service of the Notice of Appeal and you must provide this Court, opposing counsel, and the Office of Court Administration with all correspondence regarding the transcript. It is also Appellant's responsibility to make satisfactory arrangements (including agreement regarding payment for the transcript) with the Court Reporter for furnishing the transcript. You are reminded of the notification requirements of Rule 207(a) (5), SCACR, also, please advise the Court in writing upon receipt of the transcript.

NOTE: If you believe this case has been improperly filed in the Court of Appeals, by reason of the limitations set forth in S.C. Code Ann. Section 14-8-200(b)(1998), as amended June 1, 1999, notify the Clerk's office of the Court of Appeals immediately. The cited Code Section prohibits the Court of Appeals from hearing appeals in seven classes of cases:

- 1) any final judgment from the circuit court which includes a sentence of death;
- 2) any final judgment from the circuit court setting public utility rates pursuant to Title 58;
- 3) any final judgment involving a challenge on state or federal grounds to the constitutionality of a state law or county or municipal ordinance where the principal issue is the constitutionality of the law or ordinance;

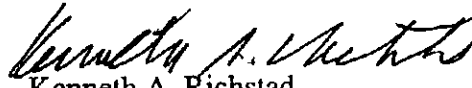
4) any final judgment from the circuit court involving the authorization, issuance, or proposed issuance of general obligation debt, revenue, institutional, industrial, or hospital bonds of the state, its agencies, political subdivisions, public service districts, counties, and municipalities or any other indebtedness now or hereafter authorized by Article X of the Constitution of this state;

5) any final judgment from the circuit court pertaining to elections and election procedure;

6) any order limiting an investigation by a State Grand Jury under S.C. Code Ann. Section 14-7-1630;

7) any order of the family court relating to an abortion by a minor under S.C. Code Ann. Section 44-41-33.

Very truly yours,



Kenneth A. Richstad
CLERK

KAR/mr

cc: A. Camden Lewis, Esquire
Brady R. Thomas, Esquire
Gedney M. Howe, III, Esquire
Michael Eugene Spears, Esquire
Richard A. Harpootlian, Esquire

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

MAR 12 2008

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

SC Court of Appeals

The Honorable Doyet A. Early, III, Circuit Court Judge

POS 3/12/08

Circuit Court Case No. 2006-CP-02-1230

Heather Herron, Natalie Armstrong, Michael Ritz, Julie Freeman, Christine Watts, Michael Bleasc and Michael Watts, individually and for the benefit of all car buyers who paid "administrative fees" as described below to Dealers, ... **RESPONDENTS,**

v.

Dick Dyer & Associates, Inc.; Land Rover of Columbia; Galeana Chrysler Jeep, Inc.; Taylor Investments, Inc. d/b/a Taylor Toyota, Inc.; J.L.H. Investments, d/b/a Hendrick Honda of Easley; Sonic Automotive, d/b/a Century BMW; and Toyota of Greenville, Inc.,

of which Sonic Automotive d/b/a Century BMW is **APPELLANT.**

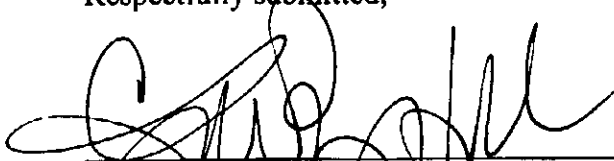
NOTICE OF APPEAL

The Appellant, Sonic Automotive d/b/a Century BMW, whose true name is Sonic Automotive 2752 Laurens Rd., Greenville, Inc. d/b/a Century BMW ("Century BMW"), appeals the Order of the Honorable Doyet A. Early, III, dated March 10, 2008, denying Appellant's Motion to Compel Arbitration of Plaintiff Christine Watts' claims and to dismiss those claims. Appellant received written notice of entry of the Order on March 10, 2008. A copy of the Order is enclosed with this notice.

On March 10, 2008, the Appellant jointly appealed with the other named defendants in the above-captioned case the Orders of Judge Early respectively filed on August 1, 2007, and February 5, 2008, in which the circuit court ruled on the defendants' motions to reconsider its earlier order filed pursuant to Rule 59(e), SCRCP. Following the filing of this notice, the Appellant intends to file a Motion to Consolidate these two appeals.

Respectfully submitted,

March 11, 2008



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable Doyet A. Early, III, Circuit Court Judge

Circuit Court Case No. 2006-CP-02-1230

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MAR 12 2008

SC Court of Appeals

Heather Herron, Natalie Armstrong, Michael Ritz, Julie Freeman, Christine Watts, Michael Blease and Michael Watts, individually and for the benefit of all car buyers who paid "administrative fees" as described below to Dealers, ... **RESPONDENTS,**

v.

Dick Dyer & Associates, Inc.; Land Rover of Columbia; Galeana Chrysler Jeep, Inc.; Taylor Investments, Inc. d/b/a Taylor Toyota, Inc.; J.L.H. Investments, d/b/a Hendrick Honda of Easley; Sonic Automotive, d/b/a Century BMW; and Toyota of Greenville, Inc.,

of which Sonic Automotive, d/b/a Century BMW is **APPELLANT.**

CERTIFICATE OF SERVICE

The undersigned employee of RICHARDSON PLOWDEN & ROBINSON, P.A., attorneys for Appellant, does hereby certify that service of the **Notice of Appeal** in the above-captioned matter was made upon all counsel of record this 12th day of March 2008, by depositing a copy of same in the U.S. Mail, postage prepaid, addressed as follows:

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Kathy J. Templeton

March 12, 2008

Columbia, South Carolina

Reply to: Columbia
jneuman@RichardsonPlowden.com
Direct: 803-253-8716

March 12, 2008

VIA HAND DELIVERY

The Hon. Kenneth A. Richstad,
Clerk – South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29211

Re: Herron et al Respondents v. Dick Dyer Et al,
of which Sonic Automotive, d/b/a Century BMW is Appellant
Appeal of Order in Circuit Court Case No. 2006-CP-01-1230
Our File No. 6665-001

Dear Mr. Richstad:

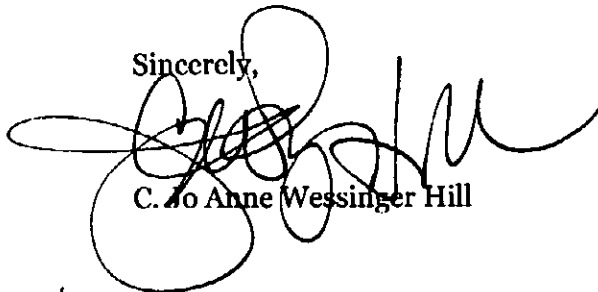
Enclosed please find the original and two copies of a Notice of Appeal in the above matter. Please file the original and return two clocked copies to my courier. Also enclosed is our check in the amount of \$100.00 covering the filing fee.

By a copy hereof I am serving the same upon all counsel of record as indicated below.

If you should have any questions or concerns, please do not hesitate to contact this office.

With kindest regards, I am

Sincerely,



C. Anne Wessinger Hill

JWH/kjt
Enclosures

Cc: H. Clayton Walker, Jr., Esq., w/enc.
James Y. Becker, Esq., w/enc.
R. David Proffitt, Esq., w/enc.
J. Gregory Studemeyer, Esq., w/enc.
Gedney M. Howe, III, w/enc.
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Brady R. Thomas, Esq., w/enc.
Harvey G. Sanders, Jr, Esq., w/enc.
James T. Hewitt, Esq., w/enc.
S. Brooke Chapman Esq., w/enc.

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MAR 12 2008

SC Court of Appeals

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	CIVIL ACTION NO.: 06-CP-02-1230
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,	)	ORDER DENYING MOTION TO
	)	COMPEL ARBITRATION
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 Hendricks	)	
Honda; Overland, Inc. d/b/a Land Rover of	)	
Columbia; Taylor Toyota a/k/a Taylor	)	
Investments; and Toyota of Greenville, Inc., et.	)	
<u>al.</u>	)	
Defendants.	)	

DAE
#1

This matter comes before the Court by way of Century BMW a/k/a Sonic Automotive's ("Century BMW's") Motion to Compel Arbitration. This motion was argued before me on November 30, 2007. After considering the parties' filings, as well as the memoranda and legal arguments of counsel, I have determined that the Motion to Compel Arbitration should be denied.

FACTUAL BACKGROUND

On January 25, 2005, Plaintiff Christine Watts, a twenty-four year old college student, and her father, Michael Watts, a garage door salesman, purchased a car from Defendant Century BMW. The vehicle was a graduation present for Ms. Watts. The car was purchased to be Ms. Watts's primary source of transportation and was needed so that she could get back and forth to work.

After the parties agreed to a price for the car, Century BMW's F&I manager took Ms. Watts and her father into a cubicle to sign paperwork. Christine Watts in her affidavit stated that the documents were "hastily presented." Century BMW refers to this process as "rolling out the paper."

The Wattses say they were presented with a big packet of documents containing flags indicating where the Wattses were supposed to sign. Century BMW's General Manager testified that it was the F&I manager's custom to place his finger on the individual documents pointing to the place on the documents that needed to be signed and say "sign here."

The Wattses signed multiple documents. Some of the documents were required to be signed by law.

The arbitration agreement at issue was one of the documents included in the packet. This arbitration agreement is a form contract drafted by Century BMW. The arbitration agreement uses a small font.

The Wattses say there was no discussion with the F&I manager about the arbitration agreement. Century BMW's General Manager did not know what was discussed with the Wattses but stated that he would expect his people to tell the customer that the agreement is "a document providing a remedy for the customer without having to go to court." The Wattses also testified that believed that they were required to sign all of the documents in order to get the car.

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On October 31, 2006, Plaintiff Watts initiated the current action against Defendant Century BMW. In the Amended Complaint, Plaintiff Watts alleged causes of action for a declaratory judgment, civil conspiracy, and violation of the Motor Vehicle Dealers Act. On December 29, 2006, Defendant Century BMW filed a motion to compel arbitration.

ANALYSIS

The Plaintiff and Defendant agree that Simpson v. MSA of Myrtle Beach, Inc., 644 S.E.2d 663 (S.C.,2007) is the controlling authority for this motion. The Simpson Court held that a car dealer's attempt in a form contract to prevent a consumer from prosecuting statutory rights in arbitration was unconscionable and unenforceable. Simpson, 644 S.E.2d at 668-671. Application of the Simpson test here shows that the Century BMW arbitration agreement is also unconscionable and unenforceable.

A. The Century BMW Arbitration is an Adhesion Contract.

The Century BMW arbitration agreement is an adhesion contract. "[A]n adhesion contract is a standard form contract offered on a 'take-it-or-leave-it' basis with terms that are not negotiable." Simpson, 644 S.E.2d at 669. Adhesion contracts "are standard in the automobile retail industry." Id.

The arbitration agreement here is a standard form contract drafted by Century BMW. The contract has only blanks that can be filled in depending on the date of the transaction, the VIN number of the vehicle, the name of the customer, and the name of the dealership. Plaintiff Watts did not participate in the drafting of the agreement and had no voice in the formulation of its terms.

Century BMW presents the arbitration agreement on a take-it-or-leave-it basis. Century BMW's procedures and method of presentation lead to the conclusion that the arbitration agreement must be signed to purchase the car. Century BMW's General Manager stated that the F&I Manager's "practice" was to present the individual documents and point to on the paper to where the customer was supposed to sign and say "sign here." Century BMW had no standard

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statements to tell purchasers. This practice indicates that signing the document is required in order to purchase a car. This conclusion is further supported by the fact that in over 6,000 transactions, the only person the General Manager could name who ever bought a car without signing the arbitration agreement was Brad Martin, Esq., a lawyer in this case.

The agreement is a standard form contract. Century BMW's procedures and the Watts's testimony¹ show that the terms of the arbitration agreement were not negotiable. Accordingly, I find that the arbitration agreement is an adhesion contract. Because the Century BMW arbitration agreement is an adhesion contract, the Century BMW arbitration agreement should be viewed with "considerable skepticism." Simpson, 644 S.E.2d at 670(adopting rationale of Ohio Courts in analyzing arbitration agreements by automobile retailers and stating "We...proceed to analyze this contract between a consumer and automobile retailer with 'considerable skepticism'.").

B. Absence of Meaningful Choice.

I also find that there was an absence of meaningful choice in agreeing to arbitrate and waive the statutory right to participate in a multi-plaintiff action. The Simpson case describes absence of meaningful choice as follows:

Absence of meaningful choice on the part of one party generally speaks to the fundamental fairness of the bargaining process in the contract at issue. In determining whether a contract was "tainted by an absence of meaningful choice," courts should take into account the nature of the injuries suffered by the plaintiff; whether the plaintiff is a substantial business concern; the relative disparity in the parties' bargaining power; the parties' relative sophistication; whether there is an element of surprise in the inclusion of

¹The Watts's testimony is the only testimony about the events surrounding the execution of the agreement. The Watts testified they believed they were required to sign the agreement in order to get the car. Century BMW was unable to produce any witness whom remembered the transaction.

DAE
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the challenged clause; and the conspicuousness of the clause.

Simpson v. MSA of Myrtle Beach, Inc., 644 S.E.2d 663 (internal citation omitted).

Because an automobile is a "necessity" in everyday life, the Simpson Court found this factor should be considered in determining "whether a consumer had a meaningful choice in negotiating the arbitration agreement." Simpson, 644 S.E.2d at 669.

Applying this analysis, the Simpson Court provided as follow:

[T]he contract between Simpson and Addy involved a vehicle intended for use as Simpson's primary transportation, which is critically important in modern day society. Applying the factors considered by the Fourth Circuit in analyzing arbitration clauses, we also acknowledge Simpson's claim that she did not possess the business judgment necessary to make her aware of the implications of the arbitration agreement, and that she did not have a lawyer present to provide any assistance in the matter. *But see Munoz*, 343 S.C. 531, 542 S.E.2d 360 (failing to factor in the weaker party's status as a consumer in analyzing an unconscionability claim in an arbitration agreement between a consumer and a lender). Similarly, we note that Simpson's allegation that the contract was "hastily" presented for her signature.

Simpson, 644 S.E.2d at 670. The facts here support a finding of an absence of meaningful choice by the Plaintiffs.

There was a clear disparity in the parties' bargaining power and the relative sophistication between the parties. Century BMW argues that Ms. Watts is sophisticated because in 2008 she works as an auditor. However, in 2005, when the vehicle was purchased, Ms. Watts was a student at the College of Charleston. Michael Watts sold garage doors. The Wattses did not have any attorney present when they signed the agreement. The Plaintiffs were not sophisticated and obviously not substantial business concerns.

Century BMW, on the other hand, is owned by Sonic Automotive, Inc., a large corporation that owns dozens of cars dealerships. Sonic Automotive, Inc. drafted the arbitration

agreement and had engaged in thousands of transactions where arbitration clauses were used. Sonic was a sophisticated car dealer with years of arbitration clause use. I find that there was a disparity of bargaining power between the parties.

Additionally, there was unfairness in the bargaining process. Century BMW inconspicuously placed the arbitration agreement within a series of documents that included documents that were required to be signed by law and then had its F&I Manager point on each document (whether required to be signed by law or not) and say sign here. There was nothing telling the Wattses that the arbitration agreement, unlike the documents required to be signed by law was not mandatory. This procedure indicates that signing all of the documents is mandatory and is indicative of unfairness in the bargaining process. Simpson, 644 S.E.2d at 669 ("Absence of meaningful choice on the part of one party generally speaks to the fundamental fairness of the bargaining process in the contract at issue.").

The Watts stated that there was no discussion of the arbitration agreement. Century BMW's General Manager did not know what was discussed with the Wattses but stated that he would expect his people to tell the customer that the agreement is "a document providing a remedy for the customer without having to go to court." This statement, if given by Century BMW, is sorely lacking because the arbitration agreement in actuality takes away remedies and statutory rights. The lack of a Century BMW full explanation is further evidence showing the fundamental unfairness of the bargaining process.

There was also an element of surprise involved in the inclusion of the arbitration agreement because none of the signatories of the arbitration agreement (the Wattses nor the F&I manager) understood what they were signing. Neither of the Wattses had ever participated in an

arbitration nor had any understanding of arbitration. Similarly, Century BMW's General Manager and F&I manager did not have much understanding of the arbitration agreement nor how it worked.

Century BMW's argument that the bargaining process was fair because the Wattses could have read the arbitration agreement is non-availing. The Plaintiff in Simpson also could have read the arbitration agreement at issue in that case. Additionally, even if the Wattses had read the arbitration agreement, the bargaining process was unfair because the arbitration agreement was not easily understandable.

Century BMW's Rule 30(b)(6) representative as the person most knowledgeable on the arbitration agreement testified that he did not have much understanding of how the arbitration agreement worked. Century BMW's General Manager has thirty-two years worth of experience in the car industry, has dealt with the subject arbitration agreement since 2002, and does not understand the arbitration agreement. Similarly, the F&I manager, whom presented the arbitration agreement to the Wattses, does not have much understanding of the agreement. It is unfair to expect the Wattses to understand the agreement, when in a little cubicle with the F&I Manager with his finger on the document pointing to the place to sign.

I also find that use of the car was a necessity to Ms. Watts. The car was purchased to be Ms. Watts's primary source of transportation and was purchased so that she could get back and forth from work. Century BMW argues that the vehicle was not necessity because Christine Watts previously owned a Mitsubishi Montero. The fact that Ms. Watts previously owned another vehicle does not defeat the fact that use of a car is a necessity. The plaintiff in Simpson, prior to purchasing the car in that case, owned a 2001 Toyota 4-Runner and the South Carolina

Supreme Court expressly found that the car purchased was a necessity. Simpson, 644 S.E.2d at 663. The car purchased by Ms. Watts, like the car purchased in Simpson, was purchased to be her primary source of transportation. As such, I find that the use of the car was a necessity.

In the end, I find that the facts in this case are similar to those in Simpson. These facts, just as they did in Simpson, warrant a finding that Plaintiff Watts had an absence of meaningful choice when she entered into the arbitration agreement.²

C. One-Sided and Oppressive Terms.

The Century BMW arbitration agreement contains oppressive and one-sided terms. In analyzing this factor, the Simpson Court stated:

The general rule is that courts will not enforce a contract which is violative of public policy, statutory law, or provisions of the Constitution. *Carolina Care Plan*, 631 S.C. at 555, 606 S.E.2d at 758. In our opinion, this rule has two applications in the present case. First, this arbitration clause violates statutory law because it prevents Simpson from receiving the mandatory statutory remedies to which she may be entitled in her underlying SCUTPA and Dealers Act claims. Second, unconditionally permitting the weaker party to waive these statutory remedies pursuant to an adhesion contract runs contrary to the underlying statutes' very purposes of punishing acts that adversely affect the public interest. Therefore, under the general rule, this provision in the arbitration clause is unenforceable.

Simpson, 644 S.E.2d at 671 (citing the "strong public policy notions behind the enactment of the...Dealers Act."). The Simpson case reasoning is equally applicable here.

²In addition to Simpson, the North Carolina Supreme Court's decision in Tillman v. Commercial Credit Loans, Inc., 655 S.E.2d 362 (N.C.2008) also supports a finding that the arbitration agreement here is unenforceable.

One-Sided Terms

The prohibition of multi-plaintiff and class action in the Century BMW arbitration agreement is one-sided. Although styled as a mutual prohibition on representative class actions, it is difficult to envision the circumstances on which the provision might negatively impact Century BMW, because car dealers typically do not sue their customers in class action lawsuits. Such a one-sided contract is unconscionable. See Kinkel v. Cingular Wireless, LLC, 828 NE2d 812, 820-821 (Ill.App. 5 Dist., 2005) ("cellular telephone service providers typically do not sue their customers in class action lawsuits. Thus, Cingular's provision barring class arbitration is a one-sided limitation on its customers' ability to seek relief...such a one-sided limitation that could effectively deny plaintiffs their day in court is substantively unconscionable."). See also Szetela v. Discover Bank, 97 Cal.App. 4th 1094 (2002) (Holding a similar clause unconscionable and one-sided because "credit card companies typically do not sue their customers in class action lawsuits."). Clearly, the Century BMW arbitration agreement contains one-sided terms.

Oppressive Terms

The arbitration agreement contains oppressive terms that violate public policy and statutory law. The Century BMW arbitration agreement here, like the arbitration agreement in Simpson, attempts to take away Plaintiff Watts's statutory rights. The Dealers Act provides substantive rights to those harmed by violations. S.C. Code Ann. §56-15-110(2) provides:

- DAE
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- (2) When such action is one of common or general interest to many persons or when the parties are numerous and it is impracticable to bring them all before the court, one or more may sue for benefit of the whole. Including actions for injunctive relief.

S.C. Code Ann. §56-15-110(2) provides statutory rights to plaintiffs including the right to bring a

claim on behalf of a group and injunctive relief on behalf of a group. The statute was "[o]bviously enacted...because consumers' remedies at common law were deemed inadequate." See Kucharski v. Rick Hendrick Chevrolet, LP, 2002 WL 313860990 (SC Ct. App., 2002). As stated by the Supreme Court in Simpson, the purpose behind the Dealers Act is to "punish[] acts that adversely affect the public interest." Simpson, 644 S.E.2d at 671.

The Century BMW arbitration agreement's attempted prohibition of group suits prevents Plaintiff Christine Watts from effectively vindicating her statutory rights in arbitration. The right to bring a claim on behalf of a group under S.C. Code Ann. §56-15-110(2) is significant. This protection is necessary because otherwise parties with nominal individual claims, but significant collective claims, would be left with limited avenues for relief and a wrongdoer car dealer with little checks on its abuses of law. S.C. Code Ann. §56-15-110 makes it economical for a car purchaser who has been harmed by violation of the statute to bring claims against a car dealer. Century BMW's attempt to take this right away is violative public policy.

Similarly, Plaintiff Christine Watts's statutory right, as one harmed Plaintiff, to seek group injunctive relief, when an action is of common or general interest to many persons, cannot be effectively vindicated under the Century BMW arbitration Agreement. S.C. Code Ann. §56-15-110(2) is designed so that one person can stop a car dealers from perpetrating wrongdoing against many car purchasers. This right to group injunctive relief was given by the General Assembly to prevent car dealerships from perpetrating mass wrongdoing on the public. This is a significant right that cannot be vindicated in the Century BMW arbitration agreement.

Courts in other jurisdictions have found similar provisions unconscionable and unenforceable. See Tillman v. Commercial Credit Loans, Inc., 655 S.E.2d 362 (N.C.2008);

Cooper v. QC Financial Services, Inc., 503 F.Supp2d 1266, 1290 (D.Ariz.,2007); Eagle v. Fred Martin Motor Co., 809 NE2d 1161 (Ohio App. 2004)(concluding provision preventing right to proceed through a class action or as a private attorney general were both against public policy and the underlying purpose of the Consumer Sales Practices Act and thus were unenforceable). Lozada v. Dale Baker Oldsmobile, Inc., 91 F. Supp. 2d 1087 (W.D. Mich. 2000)(arbitration clause involving the sale of automobiles providing for waiver by buyer's or right to proceed by way of a class action was substantially unreasonable and unconscionable); State Ex Rel. Dunlap v. Berger, 567 SE2d 570, 576 (Fla. Dist. Ct. App.. 1998).

The South Carolina Supreme Court has stated that it will not enforce this type of arbitration clause. "[P]reclusion of class-wide or consolidated arbitration in an adhesion contract, even if explicit, undermines principles favoring expeditious and equitable case disposition absent demonstrated prejudice to the drafter of the adhesive contract." Bazzle v. Green Tree Financial Corp., 569 S.E.2d 349, 361 (S.C.,2002)(*R'vd on other grounds*). Such clauses are unconscionable because they insulate Defendants from significant exposure brought about when otherwise small claims are grouped together.

The class action and representative capacity suit prohibitions in the Century BMW arbitration agreement are contrary to the "strong public policy reasons" behind the enactment of the Dealers Act and contrary to the Dealers Act's purpose of "punishing acts that adversely affect the public's interest." Simpson, 644 S.E.2d at 671. I, therefore, find that the terms of the arbitration agreement are oppressive and violative of public policy and statutory law.

CONCLUSION

Like the arbitration agreement at issue in Simpson, there was an absence of meaningful choice by the Wattses in entering into the Century BMW arbitration agreement. Additionally, the Century BMW arbitration agreement's attempt to take away statutory rights under the Motor Vehicle Dealers Act are one-sided and violative of statutory law. I therefore find that the Century BMW arbitration agreement is unconscionable and unenforceable.

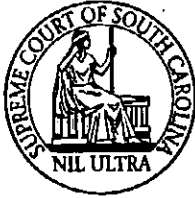
Based upon the foregoing, the Motion to Compel Arbitration filed by Century BMW is denied.

AND IT IS SO ORDERED.

Broussard, South Carolina

March 10, 2008

Doyet A. Early, Jr.
Hon. Doyet A. Early, Jr.
Circuit Court Judge
Second Judicial Circuit



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

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June 9, 2010

REMITTITUR

The Honorable Liz Godard
109 Park Ave
PO Box 583
Aiken, SC 29802-0583

Re: Herron, Heather v. Century BMW - 2006-CP-02-01230

Dear Mrs. Godard:

The above referenced matter is hereby remitted to the lower court. A copy of the judgment of this Court is attached.

Very truly yours,



CLERK

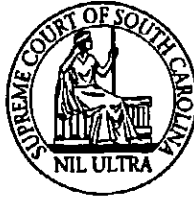
DES/jjp

Enclosure

cc: (without enclosure)
Steven W. Hamm, Esquire
C. Jo Anne Wessinger-Hill, Esquire
David A. Anderson, Esquire



Jocelyn T. Newman, Esquire
Dennis M. Black, Esquire
Ryan L. VanGrack, Esquire
A. Camden Lewis, Esquire
Brady R. Thomas, Esquire
Gedney M. Howe, III, Esquire
Michael Eugene Spears, Esquire
Richard A. Harpootlian, Esquire



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
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June 9, 2010

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725 Twelfth Street, NW
Washington, DC 20005

Re: Herron, Heather v. Century BMW

Dear Counsel:

Enclosed is the order issued in the above entitled matter.

The remittitur is today being forwarded to the lower court.

Very truly yours,



CLERK

DES/jjp

cc: A. Camden Lewis, Esquire
Brady R. Thomas, Esquire
Gedney M. Howe, III, Esquire
Michael Eugene Spears, Esquire
Richard A. Harpootlian, Esquire

The Supreme Court of South Carolina

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 Who Paid
"Administrative Fees" as
Described below to Defendants Respondents,

v.

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

of whom Century BMW a/k/a
Sonic Automotive is the Appellant.

ORDER

On April 19, 2010, we issued our opinion in *Herron v. Century BMW*, Shearouse Adv. Sh. No. 15 at 14 (April 19, 2010), in which we affirmed the trial court's denial of Century's motion to compel arbitration. Although we found the arbitration agreement was not unconscionable, we held the provision banning class actions was invalid on state law grounds. Specifically, we held:

[T]he Legislature has made clear that the public policy of this State is to provide consumers with a non-waivable right to bring class action suits for violations of the Dealers Act and that any contract prohibiting a class action suit violates our State's public policy and is void and unenforceable.

Although the arbitration agreement contained a severance clause, at oral argument, counsel for Century adamantly insisted it was their position that the severance clause not be invoked to sever the provision and repeatedly requested the Court to consider the arbitration as a whole. In honoring Century's position and request, we held the inclusion of the provision banning class action suits rendered the arbitration agreement unenforceable.

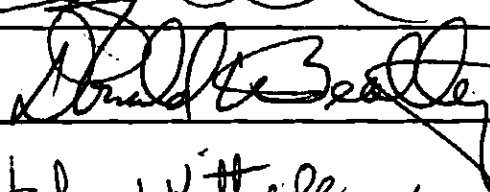
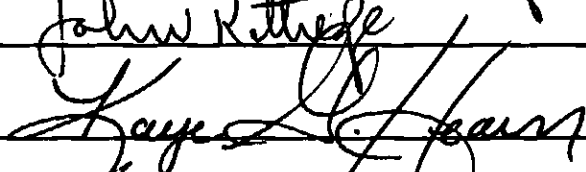
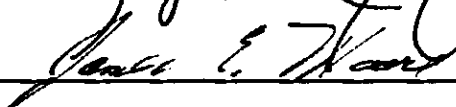
Eight days after we issued our opinion, the United States Supreme Court issued *Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, 130 S.Ct. 1758 (2010), in which the Supreme Court held a party cannot be compelled to submit to class arbitration unless there is a contractual basis for concluding

that the party agreed to do so. Century has now filed a petition for rehearing. Century asserts "[t]his Court held that Century BMW could not arbitrate unless it did so as part of a class arbitration," and argues such a holding is contrary to the holding in *Stolt-Nielsen*.

We deny Century's petition for rehearing. Our opinion affirming the trial court's denial of the motion to compel arbitration is wholly based on state law grounds, namely a provision in a contract banning class action suits is invalid pursuant to the Dealer's Act and the public policy of this State. Although we would have looked to the severance clause of the agreement to sever this invalid provision, Century unequivocally insisted we consider the arbitration agreement as a whole, which we did. Century's attempt to depict our opinion as holding "that Century BMW could not arbitrate unless it did so as part of a class arbitration" is disingenuous to the opinion and a holding we never made. We did not condition the enforcement of the arbitration agreement on the availability of class arbitration or otherwise indicate the plaintiffs could proceed as a class in arbitration. This case is not controlled by *Stolt-Nielsen*, for is distinguishable on the law and the facts.

For these reasons, we deny Century's petition for rehearing.

IT IS SO ORDERED.


C.J.

J.

J.

J.

Columbia, South Carolina
June 9, 2010

Reply to: Columbia
shamm@RichardsonPlowden.com
Direct: 803-576-3713
jhill@RichardsonPlowden.com
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May 28, 2010

The Hon. Daniel E. Shearouse
Clerk
Supreme Court
PO Box 11330
Columbia, SC 29211

RECEIVED

MAY 28 2010

SC Court of Appeals

Re: HERRON ET AL RESPONDENTS V. CENTURY BMW OF WHICH SONIC AUTOMOTIVE, D/B/A
CENTURY BMW IS APPELLANT AND WHOSE TRUE NAME IS SONIC AUTOMOTIVE 2752
LAURENS RD., GREENVILLE, INC. D/B/A CENTURY BMW
SUPREME COURT OPINION NO. 26805 (HEARD 1/20/2010 - DECIDED 4/19/2010)
Our File No. 6665-001

Dear Mr. Shearouse:

Please find enclosed the original and eight (8) copies of the Appellant's Reply in Support of its Petition for Rehearing Pursuant to Rule 221, SCACR in the above-referenced matter. Please return two clocked copies to our courier.

I am also serving a copy of this Petition via hand delivery upon A. Camden Lewis, Esq. and Peter D. Protopapas, Esq., counsel for the Respondent, at their office of Lewis & Babcock, LLP in Columbia.

If you have any questions or concerns, please let me know.

With kindest regards, I am

Sincerely,

Steven W. Hamm

C. Jo Anne Wessinger Hill

SWH/JWH/kjt
Enclosures

Cc: A. Camden Lewis, Esq., w/enc.
Peter D. Protopapas, Esq., w/enc.
Michael E. Spears, Esq., w/enc.
Richard A. Harpootlian, Esq., w/enc.
Gedney M. Howe, III, Esq., w/enc.
Defense Counsel of Record, w/enc.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

MAY 28 2010

SC Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable Doyet A. Early, III, Circuit Court Judge

Circuit Court Case No. 2006-CP-02-1230

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 who paid "administrative fees" as described below to Defendants, ... **Respondents,**

v.

Century BMW d/b/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., ... **Defendants,**

of which Century BMW d/b/a Sonic Automotive is the **Appellant.**

**APPELLANT'S REPLY IN SUPPORT OF ITS PETITION FOR REHEARING
PURSUANT TO RULE 221, SCACR**

**Re: Opinion 26805
Heard January 20, 2010 – Filed April 19, 2010**

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ATTORNEYS FOR APPELLANT CENTURY
BMW D/B/A SONIC AUTOMOTIVE, WHOSE
TRUE NAME IS SONIC AUTOMOTIVE 2752
LAURENS RD., GREENVILLE, INC. D/B/A
CENTURY BMW

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<i>Reply Brief for the Petitioner, AT&T Mobility LLC v. Concepcion</i> , No. 09-893, --- S. Ct. - ---, 2010 WL 303962 (U.S. May 24, 2010)	5

Respondent's Return to the Petition for Rehearing (1) misconstrues *Stolt-Nielsen*, (2) entirely ignores the Due Process problems that would permeate class proceedings if this Court's opinion could lawfully co-exist with *Stolt-Nielsen*, (3) provides no evidence that in the Dealers Act the legislature intended to create a non-waivable right to collective action, and (4) does not dispute that *Herron* allows the parties to arbitrate the second and third causes of action on an individual basis.

ARGUMENT

I. *Stolt-Nielsen* Mandates Reconsideration and Reversal.

A. Century BMW's Argument Regarding the Impact of *Stolt-Nielsen* Is Timely.

Respondent's waiver argument is wholly without merit. Century BMW has argued consistently that the Federal Arbitration Act ("FAA") governs this dispute and that the FAA requires enforcement of arbitration agreements according to their terms. *See* Appellant's Final Br. at 11 ("This Court should therefore reverse the circuit court's order as inconsistent with federal law and enforce the arbitration agreement.") & 27 (requesting the Court enter an order compelling arbitration "in accordance with the terms of the arbitration agreement"); Appellant's Reply Br. at 4 ("Ms. Watts's arbitration agreement is governed by the Federal Arbitration Act."). To the extent Respondent's argument is predicated on Century BMW's failure to raise previously the holding of *Stolt-Nielsen S.A. v. Animalfeeds Int'l Corp.*, No. 08-1198, --- U.S. ---, 2010 WL 1655826 (U.S. April 27, 2010), Century BMW obviously could not cite a decision that the Supreme Court of the United States had not yet authored. Moreover, Century BMW brought *Stolt-Nielsen* to this Court's attention less than a week after the Supreme Court issued the decision.

B. *Stolt-Nielsen* Moots All Prior Debate Regarding the Enforceability of Class Action Waivers.

Respondent cites a number of pre-*Stolt-Nielsen* cases finding class action waivers unenforceable under a variety of theories. Century BMW can cite just as many finding such waivers enforceable; indeed the majority of courts addressing the issue found such waivers enforceable before *Stolt-Nielsen*. See, e.g., *Caley v. Gulfstream Aerospace Corp.*, 428 F.3d 1359, 1378 (11th Cir. 2005); *Livingston v. Assocs. Fin., Inc.*, 339 F.3d 553, 559 (7th Cir. 2003); *Snowden v. Checkpoint Check Cashing*, 290 F.3d 631, 638 (4th Cir. 2002); *Johnson v. W. Suburban Bank*, 225 F.3d 366, 374 (3d Cir. 2000); *Morgan v. Advance Am.*, 2008 WL 4191754, at *16 (D.S.C. Sept. 5, 2008); *Pomposi v. Gamestop, Inc.*, 2010 WL 147196, at *8-11 (D. Conn. Jan. 11, 2010); *Coffey v. Kellogg Brown & Root*, 2009 WL 2515649, at *10-13 (N.D. Ga. Aug. 13, 2009); *Nayal v. Hip Network Servs. IPA, Inc.*, 620 F. Supp. 2d 566, 573 (S.D.N.Y. 2009); *Stephens v. Wachovia Corp.*, 2008 WL 686214, at *6-7 (W.D.N.C. Mar. 7, 2008); *Milligan v. Comcast Corp.*, 2007 WL 4885492, at *2 (N.D. Ala. Jan. 22, 2007); *Pyburn v. Bill Heard Chevrolet*, 63 S.W.3d 351, 364-65 (Tenn. Ct. App. 2001). What Respondent does not grapple with is that *Stolt-Nielsen* moots this debate.¹ *Stolt-Nielsen*'s holding that the FAA precludes forcing a party to participate in a class arbitration absent that party's contractual agreement to do so made state law on the subject of class arbitration waivers irrelevant. Respondent is effectively arguing that the federal law's presumption violates state public policy, turning the Supremacy Clause on its head. If a party cannot be compelled to class arbitration absent contractual

¹ It is undisputed that *Stolt-Nielsen* applies to this case. See, e.g., *Harper v. Va. Dep't of Taxation*, 509 U.S. 86, 97 (1993) ("When this Court applies a rule of federal law to the parties before it, that rule is the controlling interpretation of federal law and must be given full retroactive effect in all cases still open on direct review and as to all events, regardless of whether such events predate or postdate our announcement of the rule.").

evidence that it agreed to do so, it follows that a party cannot be forced to class arbitration where the parties expressly agreed *not* to arbitrate as a class.

C. The FAA Preempts South Carolina Law as *Herron* Construed It.

The FAA, as *Stolt-Nielsen* construed it, preempts any South Carolina public policy requiring class arbitration under the Dealers Act. Under *Stolt-Nielsen*, an arbitration clause that is silent as to class arbitration cannot be construed to allow this procedure; yet under *Herron*, an arbitration clause is per se invalid if it does not permit class arbitration. Thus, for *Herron* and *Stolt-Nielsen* to co-exist, South Carolina law would effectively require arbitration agreements – and only arbitration agreements – to include an explicit provision allowing for class arbitration. Under well-established Supreme Court of the United States and South Carolina precedent, however, the FAA precludes States from imposing unique requirements on arbitration agreements. See *Doctor's Assocs., Inc. v. Casarotto*, 517 U.S. 681 (1996) (FAA preempts state law conditioning enforceability of arbitration agreements “on compliance with a special notice requirement not applicable to contracts generally.”); *Soil Remediation Co. v. Nu-Way Environmental, Inc.*, 323 S.C. 454 (1996) (holding that the “FAA preempts” South Carolina’s requirement that contracts with arbitration agreements provide notice on the first page of the contract); see also *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 539 (2001) (a state law that “places arbitration clauses on an unequal footing with contracts generally . . . is preempted if the FAA applies.”). State law therefore cannot condition the enforceability of arbitration agreements on the inclusion of a provision permitting class arbitration. Yet the *Herron* decision would void all agreements to arbitrate under the Dealers Act unless the parties expressly agree to class arbitration. By imposing this additional requirement on arbitration agreements under the Dealers Act, this Court’s decision “singles out arbitration agreements,” *Soil Remediation*, 323 S.C. at 459, and therefore, is preempted by the FAA.

D. Ms. Watts Ignores the Significant Due Process Problems this Court's Decision Would Create In Light of *Stolt-Nielsen*.

Ms. Watts may want to arbitrate on a class basis, but *Stolt-Nielsen* holds that the absent class members presumptively do not and that their silence does not equal consent to a class arbitration. Ms. Watts's Return does not contest that forcing the absent class members into class arbitration raises significant due process problems that Century BMW identified in its petition. Instead, Ms. Watts responds with silence. Given the Supreme Court's holding in *Stolt-Nielsen* that a party cannot be compelled to class arbitration absent an agreement, sending Century BMW and absent class members into class arbitration—even though virtually all of them expressly agreed *not* to arbitrate as a class—would violate due process by (1) compelling absent class members into class proceedings against their will, and (2) compelling Century BMW to defend a representative action in which the absent class members would not be bound to the result.

E. Subsequent Supreme Court Precedent Confirms that *Stolt-Nielsen* Mandates Reversal.

The actions of the Supreme Court of the United States subsequent to *Stolt-Nielsen* demonstrate that this Court should reconsider the *Herron* decision.

First, in *American Express Co., v. Italian Colors Restaurant*, No. 08-1473, --- S. Ct. ---, 2010 WL 1740528 (U.S. May 3, 2010), the Supreme Court granted certiorari, vacated the opinion of the United States Court of Appeals for the Second Circuit, and remanded the case for reconsideration in light of *Stolt-Nielsen*. The similarities between the Second Circuit's decision in *American Express* and this Court's decision in *Herron* are striking. In *American Express*, the Second Circuit held that class actions were necessary to allow parties to vindicate their statutory rights in arbitration, rather than relying on a finding of unconscionability. *In re Am. Express Merchants Litig.*, 554 F.3d 300, 304, 320 (2d Cir. 2009). Likewise, in *Herron*, this Court adopted a statutory rights analysis, rather than relying on unconscionability. *Herron v. Century*

BMW, No. 26805, --- S.E.2d ----, 2010 WL 1541297 (S.C. Apr. 19, 2010) (finding the arbitration agreement was not unconscionable). Moreover, just as in *Herron*, the Second Circuit effectively forced the defendant to choose between proceeding in class arbitration or remaining in court. *In re Am. Express Merchants Litig.*, 554 F.3d at 321.

The Supreme Court's decision to grant certiorari, vacate the judgment in *American Express* and remand the case for reconsideration means that because of the intervening *Stolt-Nielsen* decision, the Court believes that there is "a reasonable probability that the decision below rests upon a premise that the lower court would reject if given the opportunity for further consideration" and that "such a redetermination may determine the ultimate outcome of the litigation." *Lawrence v. Chater*, 516 U.S. 163, 167 (1996). Thus, the Supreme Court clearly found that *Stolt-Nielsen* directly impacts—and likely invalidates—the Second Circuit's holding that the class action waiver was unenforceable under a statutory rights analysis. This Court should similarly reconsider its decision.

Second, on May 24, 2010, the Supreme Court granted certiorari in *Laster v. AT&T Mobility LLC*, 584 F.3d 849 (9th Cir. 2009). In *Laster*, the Ninth Circuit held that an arbitration provision was unconscionable under California law because it required customers to arbitrate on an individual basis. *AT&T Mobility LLC v. Concepcion*, No. 09-893, --- S. Ct. ----, 2010 WL 303962 (U.S. May 24, 2010). In seeking certiorari, AT&T Mobility relied on *Stolt-Nielsen* to argue that the FAA preempts States from conditioning enforcement of an arbitration agreement on the availability of class arbitration. *See Reply Brief for the Petitioner, AT&T Mobility LLC v. Concepcion*, No. 09-893 at 3-5 (May 3, 2010); *Petition for Writ of Certiorari, AT&T Mobility LLC v. Concepcion*, No. 09-893 at 34 (Jan. 25, 2010).

Third, the United States District Court of Colorado recognized in *Stender v. Cardwell*, 2010 WL 1930260, at *5 (D. Colo. May 12, 2010), that *Stolt-Nielsen* eviscerated plaintiffs' argument that barriers to class arbitration made the arbitration agreement unenforceable. Indeed, the consequences of *Stolt-Nielsen* were so apparent that plaintiffs abandoned their class arbitration argument altogether. *Id.*

Finally, Respondent's reliance on *McArdle v. AT&T Mobility LLC* is disingenuous. Not only does Respondent's Return ignore the Supreme Court's decision in *American Express*, but also *McArdle* is inapposite. Unlike *Herron* and *American Express*, the court in *McArdle* invalidated the arbitration agreement based on its finding that the class arbitration waiver was unconscionable. *See McArdle v. AT&T Mobility LLC*, No. C 09-1117, 2010 WL 1875812, at *1 (N.D. Cal. May 10, 2010). *McArdle* also held that the class arbitration waiver was not severable from the rest of the arbitration provision, and therefore, the entire arbitration provision was unenforceable. Moreover, as noted, the Supreme Court has now granted certiorari in the Ninth Circuit case upon which *McArdle* principally relied. *See McArdle*, 2010 WL 1875812, at *1 n.1 (citing *Laster v. AT&T Mobility LLC*, 584 F.3d 849 (9th Cir. 2009)).

In light of *Stolt-Nielsen*, the Supreme Court's decision in *American Express*, and the *Herron* Court's reliance on a similar statutory rights argument, this Court should reconsider its decision.

II. Ms. Watts Failed to Meet Her Burden of Establishing that the Right to Collective Action is Non-Waivable.

Other than the ipse dixit argument that the difference between "waive" and "violate" is a semantic one (something that is clearly untrue), Ms. Watts's Return does not offer any argument that the South Carolina legislature intended to create a non-waivable right to pursue a collective

action under the Dealers Act. As discussed in Century BMW's petition, neither the text of the Dealers Act nor the legislative history of § 56-15-110(2) support this Court's holding. The Court should therefore reconsider its decision.

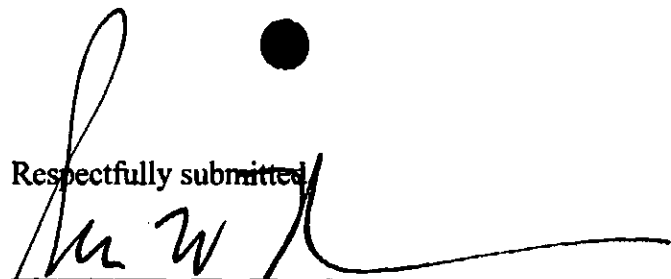
III. Ms. Watts Concedes that the Second and Third Causes of Action Do Not Arise Under the Dealers Act.

Ms. Watts does not dispute that (1) this Court's rationale in *Herron* was limited to the Dealers Act, and (2) her second and third causes of action do not arise under the Dealers Act. As a result, Ms. Watts does not contest the merits of Century BMW's argument that it can arbitrate the second and third causes of action on an individual basis even under this Court's rationale. Instead, Ms. Watts side-steps the issue by claiming that the argument is moot because Century BMW opted not to sever the class action waiver from the arbitration agreement. Century BMW, however, never waived its ability to arbitrate the second and third causes of action on an individual basis. Rather, Century BMW only waived its right to arbitrate on a *class basis*. Because the second and third claims do not arise under the Dealers Act, this Court's decision does not require class arbitration of those causes of action and Century BMW is amenable to arbitrating those claims on an individual basis.

CONCLUSION

For the reasons set forth above, Century BMW respectfully requests that this Court withdraw its opinion, reverse the Circuit Court, and remand with instructions to compel Respondent Watts to arbitrate all of her claims individually.

Respectfully submitted


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May 28, 2010
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
MAY 28 2010
SC Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable Doyet A. Early, III, Circuit Court Judge

Circuit Court Case No. 2006-CP-02-1230

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 who paid "administrative fees" as described below to Defendants, ... Respondents,

v.

Century BMW d/b/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., ... Defendants,

of whom Century BMW d/b/a Sonic Automotive is the Appellant.

PROOF OF SERVICE

The undersigned employee of RICHARDSON FLOWDEN & ROBINSON, P.A., attorneys for Appellant, does hereby certify that service of the foregoing Appellant's Reply in Support of its Petition for Rehearing Pursuant to Rule 221, SCACR, in the above-captioned matter was made upon all counsel of record this 28th day of May, 2010, by depositing a copy of same in the U.S. Mail, postage prepaid, addressed as follows:

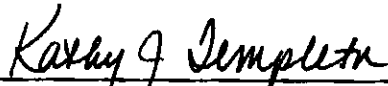
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S.C. SUPREME COURT

VIA HAND DELIVERY

The Honorable Daniel E. Shearouse
Clerk of Court for the SC Supreme Court
Supreme Court Building.
1231 Gervais Street
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Re: Herron, Heather, et al v. Century BMW d/b/a Sonic Automotive, et al
Circuit Court Case No.: 2006-CP-02-1230
Our File No.: 06-551

Dear Mr. Sherouse:

Enclosed for filing, please find the original and six copies of Respondents' Return to the Appellant's Petition for Rehearing, along with Proof of Service. An additional copy of each is enclosed to be clocked and returned to our office via our courier.

By separate letter, I served copies of the Respondents' Return upon opposing counsel on May 21, 2010.

Thank you for your assistance in this matter.

Sincerely,

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Margarita Sosa

Legal Assistant to Peter D. Protopapas

Enclosures

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable Doyet A. Early, Circuit Court Judge

Circuit Court Case No.: 2006-CP-02-1230

Court of Appeals Docket No.: 03-27371

RECEIVED
MAY 21 2010
SC Court of Appeals

Heather Herron, Natalie Armstrong, Michael Ritz, Julie Freeman, Christine Watts, Michael Blease and David Carroll,¹ individually and for the benefit of all car buyers whom paid "administrative fees" as described below to Defendants,..... Respondents,

v.

Century BMW d/b/a Sonic Automotive; Dick Dyer & Associates, Inc.; Galeana Chrysler Plymouth, Inc. a/k/a Galeana Chrysler Jeep, Inc.; J.I.H. Investments, LP a/k/a Hendrick Honda; Overland, Inc., d/b/a Land Rover of Columbia; Taylor Toyota a/k/a Taylor Investments, Inc.; and Toyota of Greenville, Inc.,..... Defendants,

of whom Century BMW d/b/a Sonic Automotive is the.....Appellant.

**RESPONDENTS' RETURN TO THE
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Respondents file this Return to the Appellant's Petition for Rehearing. For the reasons set forth herein, the Petition should be denied.

ARGUMENT

I. The main argument concerning preemption has never been raised before and it is not appropriate in a petition for rehearing.

In its rehearing petition, Appellant Century ("Century") argues for the first time that "[t]he FAA clearly preempts South Carolina law" to the extent that our state law allows classwide proceedings in this case. (Pet for Rehearing at 3-4). This argument has never been raised before the trial court or during the appeal in this Court, and therefore, cannot be raised at this time.

An argument may not presented for the first time in a rehearing petition. *See Kennedy v. South Carolina Retirement System*, 349 S.C. 531, 532 (S.C. 2001). "In order to prevail on a petition for rehearing, appellants must demonstrate the Court overlooked or misapprehended their argument." *Id.* (citing Rule 221(a), SCACR). "The purpose of a petition for rehearing is not to present points which lawyers for the losing parties have overlooked or misapprehended, nor is it the purpose of the petition for rehearing to have the case tried in the appellate court a second time." Jean H. Toal, Shahin Vafai & Robert Muckenfuss, *Appellate Practice in South Carolina* 309 (1999). In declining to entertain an argument presented for the first time in a rehearing petition, *Kennedy* "reiterate[d] this Court's longstanding principle of error preservation." 349 S.C. at 532. Following that approach, "South Carolina cases clearly hold that one cannot present

and try a case on one theory and then attack the result below by presenting another theory on appeal.” *Id.* (citing *See Butler v. Town of Edgefield*, 328 S.C. 238, 493 S.E.2d 838 (1997)).¹

In its briefs to this Court, Century’s arguments included only the following: there is presumption in favor of arbitration; the agreement was not unconscionable due to oppressive or one-sided terms; the agreement was not a contract of adhesion; there was equal bargaining power; arbitration provided an effective forum; Respondents had an opportunity to read the agreement; and Respondents had the opportunity to make a meaningful choice. Neither the Final Brief nor the Final Reply Brief of Appellants raised a preemption argument. Preemption was never mentioned. For this reason alone, the petition for rehearing should be denied.

II. The case upon which Century relies involves the interpretation of a federal statute, and not preemption, and does not apply here.

The Petition for Rehearing relies heavily on the Supreme Court’s recent decision in *Stolt-Nielsen S.A. v. Animalfeeds International*, ___ U.S. ___, 2010 WL 1655826 (Apr. 27, 2010).

However, a recent case addresses the same argument made here. In *McArdle v. AT&T Mobility, LLC*, 2010 WL 1875812 (N.D. Calif. May 10, 2010), a California district court considered whether the *Stolt-Nielsen* decision mandated a reconsideration of its ruling that a prohibition on class actions was unconscionable. In that case, as here, the defendant argued that *Stolt-Nielsen* created “a substantial question as to whether the FAA would pre-empt any holding” that state law would not enforce the arbitration agreement. In response, the court stated:

The Court disagrees. The issue presented in *Stolt-Nielsen* was “whether imposing class arbitration on parties whose arbitration clauses are ‘silent’ on that issue is consistent with the Federal Arbitration Act (FAA).” The Supreme Court did not

¹The fact that the *Stolt-Nielsen* opinion was issued after this Court’s decision does not change this analysis because federal courts in various circuits have addressed preemption under the FAA, and Appellant could have raised issue through those cases.

address FAA preemption. Nor did it overrule its precedent upon which the Ninth Circuit relied in *Shroyer v. New Cingular Wireless Services, Inc.*, which held that a California law on unconscionability could render an arbitration clause unenforceable. *Stolt-Nielsen* is distinguishable on both the facts and the law, and therefore, does not require this Court to reconsider its order on Defendants' Motion to stay this action pending their appeal.

Id. (internal citations omitted). *Stolt-Nielsen* did not even mention *Shroyer*, which found that the FAA does not prevent courts from applying generally applicable state law principles in refusing to enforce a class action waiver.²

Stolt-Nielsen--which discussed neither unconscionability nor preemption--has no bearing on this case and does not undermine this Court's opinion. *Stolt-Nielsen* merely found that where an arbitration agreement was silent as to classwide arbitration, the parties could not, under the Federal Arbitration Act 9 U.S.C. §1 et seq. ("FAA"), be forced into classwide arbitration:

a party may not be compelled under the FAA to submit to class arbitrations unless there is a contractual basis for concluding that the parties *agreed* to do so.

Id. (emphasis in original). The Supreme Court also stated that:

an implicit agreement to authorize class-action arbitration, however, is not a term that the arbitrator can infer solely from the fact of the parties' agreement to arbitrate.

Id. The issue raised in *Stolt-Nielsen* is not remotely present in this case, and does not bear on the question presented. Here, there is no dispute that Century BMW's arbitration agreement addresses classwide arbitration.³ The issue here is not (as in *Stolt-Nielsen*) whether a party may be compelled to participate in class arbitration in the face of an agreement that is silent as to classwide arbitration, but rather whether the agreement itself must be interpreted under generally

²*Shroyer*, 498 F.3d 976, 987 (9th Cir. 2007).

³The clear question answered by this Court is what happens when a consumer protection law clashes with an arbitration agreement.

applicable South Carolina contract law. The Supreme Court did not address that issue in *Stolt-Nielsen*, and no party raised it. Indeed, the Supreme Court made clear that the arbitral decision under review there did not rest on general contract law at all. Slip op. at 8 (panel “did not attempt to determine what rule would govern under either maritime or New York law”).

In addition, *Stolt-Nielsen* simply did not resolve the question of whether the FAA preempts general principles of state contract law that would render unconscionable class arbitration bans. However, every federal circuit and state court of last resort to have decided the question has reached the same conclusion: The FAA does not preempt court holdings that strike down particular class-action bans under state law. This Court’s decision is consistent with the courts of last resort in at least nine states--Alabama, California, Illinois, Massachusetts, New Jersey, New Mexico, North Carolina, Washington, and West Virginia. *See, Feeney v. Dell, Inc.*, 908 N.E.2d 753, 762-68 (Mass. 2009) (holding that the FAA did not preempt a finding that a class action ban was unenforceable because it violated state public policy); *Fiser v. Dell Computer Corp.*, 188 P.3d 1215, 1222 (N.M. 2008)(invalidation of the ban on class relief based on violation of public policy or unconscionability, a doctrine that exists for the revocation of any contract, is not preempted by the FAA); *Tillman v. Commercial Credit Loans, Inc.*, 655 S.E.2d 362, 373 (N.C. 2008)(determination that state common law principles, such as unconscionability, make a contract unenforceable is not preempted by FAA); *Scott v. Cingular Wireless*, 161 P.3d 1000, 1008-09 (Wash. 2007)(FAA did not preempt state law finding class action waiver unenforceable as against public policy); *Kinkel v. Cingular Wireless LLC*, 857 N.E.2d 250, 260-63 (Ill. 2006) (Finding no preemption where a state court applies state law on unconscionability to a question of the enforceability of a class action waiver); *Muhammad v. County Bank of*

Rehoboth, Del., 912 A.2d 88, 94-96 (N.J. 2006), *cert. denied*, 127 S. Ct. 2032 (2007) (FAA does not preclude an examination as to whether arbitration agreement is unconscionable under state law); *Discover Bank v. Superior Court of Los Angeles*, 113 P.3d 1100, 1110-17 (Cal. 2005) (FAA does not preempt finding of unconscionability on class actions bans, whether the ban in arbitration agreement or other contract); *Leonard v. Terminix Int'l Co., L.P.*, 854 So. 2d 529, 535-36 (Ala. 2002) (Under FAA, a state can find agreement enforceable based on general contract law); *State ex rel. Dunlap v. Berger*, 567 S.E.2d 265, 272 n.3 (W. Va. 2002) (FAA does not bar a state court from examining the conscionability of a contract that limits remedies afforded under state law.)⁴

The federal circuits that have decided the question presented have come to the same conclusion. The First, Third, Ninth, and Eleventh Circuits have all held that the FAA does not preempt determinations that class-action bans are invalid under state law. *See, e.g., Homa v. Am. Express Co.*, 558 F.3d 225, 231 (3d Cir. 2009) (New Jersey law); *Lowden v. T-Mobile USA*, 512 F.3d 1213, 1219-22 (9th Cir. 2008) (Washington law), *cert. denied*, 129 S. Ct. 45 (2008); *Skirchak v. Dynamics Research Corp.*, 508 F.3d 49, 57-59 (1st Cir. 2007) (Massachusetts law); *Shroyer v. New Cingular Wireless Services, Inc.*, 498 F.3d 976, 987-93 (9th Cir. 2007)

⁴Intermediate courts in states including Missouri, Oregon, and Wisconsin have agreed. *See Vasquez-Lopez v. Beneficial Oregon, Inc.*, 152 P.3d 940, 944 (Or. App. 2007); *Coady v. Cross Country Bank, Inc.*, 729 N.W.2d 732, 746 (Wis. App. 2007), *review denied*, 737 N.W.2d 432 (Wis. 2007); *Whitney v. Alltel Communications, Inc.*, 173 S.W.3d 300, 308, 310 (Mo. App. 2005).

(California law); *Dale v. Comcast Corp.*, 498 F.3d 1216, 1219 (11th Cir. 2007) (Georgia law); *see also Pendergast v. Sprint Nextel Corp.*, 592 F.3d 1119 (11th Cir. 2010) (certifying question whether a class ban is enforceable under Florida law to the Florida Supreme Court).

The fact that one arbitration agreement that is silent on class actions cannot impose class arbitration (which is all *Stolt-Nielsen* held) does not mean that all arbitration agreements that contain class bans are automatically valid. Century is disingenuous in suggesting *Stolt-Nielsen*'s holding extends that far.

Clearly, the *Stolt-Nielsen* decision did not address whether the FAA would preempt any state law that could render an arbitration clause unenforceable. The cases that have addressed the issue have found that the FAA does not effect such a preemption. *See*, p. 4-5, *supra*. As in *McArdle*, "*Stolt-Nielsen* is distinguishable on both the facts and the law" and thus, has no application here.

III. This Court properly held that the class action prohibition in the arbitration agreement is against public policy and unenforceable.

In the opinion issued April 19, 2010, this Court found that the ban on class action was against public policy because § 56-15-110 *et. seq* ("the Dealers Act") expressly provides a right to a class action.⁵ The Dealers Act specifically states that if the Act is violated, "one or more [persons] may sue for the benefit of the whole...." Code Ann. §56-15-110(2). Section 56-15-30

states that “[a]ny contract or part thereof or practice thereunder in violation of any provision of this chapter shall be deemed against public policy and shall be void and unenforceable.”

This Court’s opinion recognized that the arbitration agreement, which took away a substantive right under the Dealers Act, violated public policy. In other words, an arbitration agreement (contract) cannot prohibit class actions in the face of a statutory provision that explicitly provides a public policy substantive right.

This Court’s holding is not inconsistent with other courts’ holdings. Various courts have held that class action waivers are unenforceable. *See, e.g., Johnson v. Tele-Cash, Inc.*, 82 F.Supp.2d 264, 270 (D.Del.1999) (holding that inherent conflict existed between TILA right to class action and arbitration clause and refusing to enforce); *Lozada v. Dale Baker Oldsmobile, Inc.*, 91 F.Supp.2d 1087, 1105 (W.D.Mich.2000) (refusing to enforce arbitration agreement prohibiting class remedies that were expressly permitted by state consumer laws); *Shaffer v. Royal Gate Dodge, Inc.*, 300 S.W.3d 556, 561 (Mo.App. E.D.,2009)(In light of the strong public policy authorizing class actions in state consumer law, the court held that an arbitration agreement that prohibited class actions was unenforceable); *Schwartz v. Alltel Corp.*, 2006-Ohio-3353 ¶ 36, 2006 WL 2243649 (Ohio Ct.App.)(holding that the elimination of a consumer’s right to proceed through a class action hindered the state consumer protection statute and therefore

⁵While that provision could have been severed, Century stated that it did not wish to invoke the severance clause and expressed its intent for the arbitration agreement to stand or fall as a whole. *Herron*, Shearouse Adv. Sh. No. 15, p. 23.

was unenforceable). *See also*, *Ting v. AT & T*, 319 F.3d 1126, 1150 (9th Cir.2003); *Skirchak v. Dynamics Research Corp.*, 508 F.3d 49(1st Cir. 2007); *Edwards v. Blockbuster Inc.*, 400 F.Supp.2d 1305, 1309 (E.D.Okla.2005); *Luna v. Household Fin. Corp. III*, 236 F.Supp.2d 1166, 1178 (W.D.Wash.2002); *Leonard v. Terminix Int'l Co., L.P.*, 854 So.2d 529, 538 (Ala. 2002); *Discover Bank v. Superior Court of Los Angeles*, 113 P.3d 1100 (Cal. App. 2005); *Powertel, Inc. v. Bexley*, 743 So.2d 570, 576 (Fla.Dist.Ct.App.1999); *Kinkel v. Cingular Wireless, L.L.C.*, 306 Ill.Dec. 157 (Ill. 2006); *Whitney v. Alltel Commc'ns, Inc.*, 173 S.W.3d 300, 314 (Mo.Ct.App.2005); *Muhammad v. County Bank of Rehoboth Beach*, 912 A.2d 88 (N.J. 2006); *Vasquez-Lopez v. Beneficial Or., Inc.*, 152 P.3d 940 (Or. App. 2007); *Thibodeau v. Comcast Corp.*, 912 A.2d 874 (Pa. 2006).⁶ This Court's decision is also fully consistent with federal law. The plain text of the FAA makes arbitration agreements enforceable unless "such grounds as exist in law or equity for the revocation of any contract." 9 U.S.C. § 2. Under that savings clause, "generally applicable contract defenses such as fraud, duress, or unconscionability, may be applied to invalidate arbitration agreements without contravening § 2" of the FAA. *Doctor's Associates, Inc. v. Casarotto*, 517 U.S. 681, 687 (1996). In its analysis, this Court determined that the ban on classwide arbitration was in violation of public policy because the ban took away substantive rights given by the Dealers Act, which is consistent with the FAA. *Herron*, Shearouse Adv. Sh. No. 15, p. 22-23.

⁶Additional cases finding class actions bans unenforceable are in light of state laws

IV. This Court has already found that Appellants had a non-waivable substantive right under the Dealers Act and Century does not get another bite at the apple.

Century argues that the General Assembly did not intend to convey a substantive, non-waivable right to class actions. However, this Court has already considered this argument⁷ and ruled that:

the Legislature has made clear that the public policy of this State is to provide consumers with a non-waivable right to bring class action suits for violations of the Dealers Act and any contract prohibiting a class action suit violates our State's public policy and is void and unenforceable.

Herron v. Century BMW, Shearouse Adv. Sh. No. 15, p. 22 (April 19, 2010). A petition for rehearing is not for the purpose of having the case tried for the second time. *Kennedy v. South Carolina Retirement Sys.*, S.C. Sup. Ct. Order, dated July 23, 2001.

Furthermore, courts across the country have found the right to a class action is nonwaivable. *See, Johnson v. Tele-Cash, Inc., Lozada v. Dale Baker Oldsmobile, Inc., and Schwartz v. Alltel Corp.*, *supra*, p. 7.

Finally, the cases upon which Century relies do not apply. For example, *Gilmer v. Interstate/Johnson Lane Corporation*, 500 U.S. 20 (1991), does not involve a clause banning classwide arbitration in the arbitration agreement. In *Adkins v. Labor Ready, Inc.*, 303 F.3d 496 (4th Cir. 2002), not only was there no express ban on class actions in the agreement, the court did

and/or remedies are listed on pp. 4-5 herein.

⁷Century included this argument in its Final Brief, p. 25.

not even consider the issue, finding that other defects in the plaintiff's case rendered "his further complaint about the inability to bring a class action moot." *Id.* at 503. In contrast, as this Court clearly held, the issue here involves an arbitration agreement that specifically prohibits classwide arbitration despite statutes that explicitly permits a suit for the benefit of a group and which states that any contract in violation of any provision of the chapter is against public policy. S.C. Code §§ 56-15-110 and 56-15-130.⁸

V. The remaining argument is without merit.

Century claims that Appellants' second and third causes of action, for civil conspiracy and declaratory judgment, do not arise under the Dealers Act and thus, Century is entitled to individual arbitration on those claims. These arguments are moot, because Century has already agreed to forego any individual arbitration rights in light of the court's ruling that the classwide arbitration ban is unenforceable:

[C]ounsel for Century unambiguously stated at oral argument that Century did not wish to invoke the severance clause and sever the provision banning class actions from the remainder of the agreement. Counsel unequivocally expressed its intent for the arbitration agreement to stand or fall as a whole.

Herron, Shearouse Adv. Sh. No. 15 at 23.

⁸With the exception of one (S.C. Code § 56-31-30), none of the statutes cited by Century as containing express waivers even mention public policy. Section 56-31-30 is similar to the statute here, §56-15-30, except this statute uses the word violate instead of waive. Century is arguing semantics.

CONCLUSION

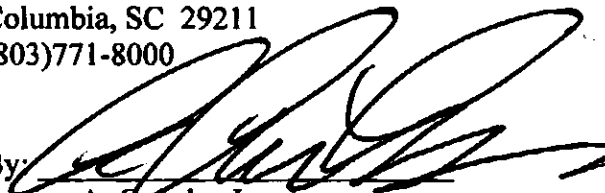
For the reasons set forth herein, Respondents respectfully submit that the Petition for Rehearing should be denied.

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Columbia, SC
May 21st, 2010

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable Doyet A. Early, Circuit Court Judge

Circuit Court Case No.: 2006-CP-02-1230

Court of Appeals Docket No.: 03-27371

RECEIVED
MAY 21 2010
SC Court of Appeals

Heather Herron, Natalie Armstrong, Michael Ritz, Julie Freeman, Christine Watts, Michael Blease and David Carroll,¹ individually and for the benefit of all car buyers whom paid "administrative fees" as described below to Defendants, ... Respondents,

v.

Century BMW d/b/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, Inc.; and Toyota of Greenville, Inc., ... Defendants,

of whom Century BMW d/b/a Sonic Automotive is the Appellant.

PROOF OF SERVICE

I, Margarita Sosa, secretary to the law firm of Lewis & Babcock, L.L.P., attorneys for the Respondents, do hereby certify that I have served counsel specified below with copies of **Respondents' Return to the Appellant's Petition for Rehearing** by mailing a copies thereof by United States Mail, postage prepaid, on May 21, 2010 to the following addresses:

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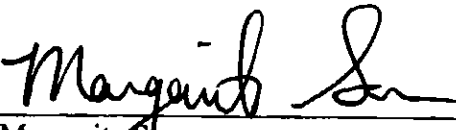
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May 21, 2010


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THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable Doyet A. Early, Circuit Court Judge

Circuit Court Case No.: 2006-CP-02-1230

Court of Appeals Docket No.: 03-27371

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S.C. SUPREME COURT

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v.

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of whom Century BMW d/b/a Sonic Automotive is the Appellant.

**RESPONDENTS' RETURN TO THE
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Respondents file this Return to the Appellant's Petition for Rehearing. For the reasons set forth herein, the Petition should be denied.

ARGUMENT

I. The main argument concerning preemption has never been raised before and it is not appropriate in a petition for rehearing.

In its rehearing petition, Appellant Century ("Century") argues for the first time that "[t]he FAA clearly preempts South Carolina law" to the extent that our state law allows classwide proceedings in this case. (Pet for Rehearing at 3-4). This argument has never been raised before the trial court or during the appeal in this Court, and therefore, cannot be raised at this time.

An argument may not presented for the first time in a rehearing petition. *See Kennedy v. South Carolina Retirement System*, 349 S.C. 531, 532 (S.C. 2001). "In order to prevail on a petition for rehearing, appellants must demonstrate the Court overlooked or misapprehended their argument." *Id.* (citing Rule 221(a), SCACR). "The purpose of a petition for rehearing is not to present points which lawyers for the losing parties have overlooked or misapprehended, nor is it the purpose of the petition for rehearing to have the case tried in the appellate court a second time." Jean H. Toal, Shahin Vafai & Robert Muckenfuss, *Appellate Practice in South Carolina* 309 (1999). In declining to entertain an argument presented for the first time in a rehearing petition, *Kennedy* "reiterate[d] this Court's longstanding principle of error preservation." 349 S.C. at 532. Following that approach, "South Carolina cases clearly hold that one cannot present

and try a case on one theory and then attack the result below by presenting another theory on appeal.” *Id.* (citing *See Butler v. Town of Edgefield*, 328 S.C. 238, 493 S.E.2d 838 (1997)).²

In its briefs to this Court, Century’s arguments included only the following: there is presumption in favor of arbitration; the agreement was not unconscionable due to oppressive or one-sided terms; the agreement was not a contract of adhesion; there was equal bargaining power; arbitration provided an effective forum; Respondents had an opportunity to read the agreement; and Respondents had the opportunity to make a meaningful choice. Neither the Final Brief nor the Final Reply Brief of Appellants raised a preemption argument. Preemption was never mentioned. For this reason alone, the petition for rehearing should be denied.

II. The case upon which Century relies involves the interpretation of a federal statute, and not preemption, and does not apply here.

The Petition for Rehearing relies heavily on the Supreme Court’s recent decision in *Stolt-Nielsen S.A. v. Animalfeeds International*, ___ U.S. ___, 2010 WL 1655826 (Apr. 27, 2010).

However, a recent case addresses the same argument made here. In *McArdle v. AT&T Mobility, LLC*, 2010 WL 1875812 (N.D. Calif. May 10, 2010), a California district court considered whether the *Stolt-Nielsen* decision mandated a reconsideration of its ruling that a prohibition on class actions was unconscionable. In that case, as here, the defendant argued that *Stolt-Nielsen* created “a substantial question as to whether the FAA would pre-empt any holding” that state law would not enforce the arbitration agreement. In response, the court stated:

The Court disagrees. The issue presented in *Stolt-Nielsen* was “whether imposing class arbitration on parties whose arbitration clauses are ‘silent’ on that issue is consistent with the Federal Arbitration Act (FAA).” The Supreme Court did not

²The fact that the *Stolt-Nielsen* opinion was issued after this Court’s decision does not change this analysis because federal courts in various circuits have addressed preemption under the FAA, and Appellant could have raised issue through those cases.

address FAA preemption. Nor did it overrule its precedent upon which the Ninth Circuit relied in *Shroyer v. New Cingular Wireless Services, Inc.*, which held that a California law on unconscionability could render an arbitration clause unenforceable. *Stolt-Nielsen* is distinguishable on both the facts and the law, and therefore, does not require this Court to reconsider its order on Defendants' Motion to stay this action pending their appeal.

Id. (internal citations omitted). *Stolt-Nielsen* did not even mention *Shroyer*, which found that the FAA does not prevent courts from applying generally applicable state law principles in refusing to enforce a class action waiver.³

Stolt-Nielsen--which discussed neither unconscionability nor preemption--has no bearing on this case and does not undermine this Court's opinion. *Stolt-Nielsen* merely found that where an arbitration agreement was silent as to classwide arbitration, the parties could not, under the Federal Arbitration Act 9 U.S.C. §1 et seq. ("FAA"), be forced into classwide arbitration:

a party may not be compelled under the FAA to submit to class arbitrations unless there is a contractual basis for concluding that the parties *agreed* to do so.

Id. (emphasis in original). The Supreme Court also stated that:

an implicit agreement to authorize class-action arbitration, however, is not a term that the arbitrator can infer solely from the fact of the parties' agreement to arbitrate.

Id. The issue raised in *Stolt-Nielsen* is not remotely present in this case, and does not bear on the question presented. Here, there is no dispute that Century BMW's arbitration agreement addresses classwide arbitration.⁴ The issue here is not (as in *Stolt-Nielsen*) whether a party may be compelled to participate in class arbitration in the face of an agreement that is silent as to classwide arbitration, but rather whether the agreement itself must be interpreted under generally

³Shroyer, 498 F.3d 976, 987 (9th Cir. 2007).

⁴The clear question answered by this Court is what happens when a consumer protection law clashes with an arbitration agreement.

applicable South Carolina contract law. The Supreme Court did not address that issue in *Stolt-Nielsen*, and no party raised it. Indeed, the Supreme Court made clear that the arbitral decision under review there did not rest on general contract law at all. Slip op. at 8 (panel “did not attempt to determine what rule would govern under either maritime or New York law”).

In addition, *Stolt-Nielsen* simply did not resolve the question of whether the FAA preempts general principles of state contract law that would render unconscionable class arbitration bans. However, every federal circuit and state court of last resort to have decided the question has reached the same conclusion: The FAA does not preempt court holdings that strike down particular class-action bans under state law. This Court’s decision is consistent with the courts of last resort in at least nine states--Alabama, California, Illinois, Massachusetts, New Jersey, New Mexico, North Carolina, Washington, and West Virginia. *See, Feeney v. Dell, Inc.*, 908 N.E.2d 753, 762-68 (Mass. 2009) (holding that the FAA did not preempt a finding that a class action ban was unenforceable because it violated state public policy); *Fiser v. Dell Computer Corp.*, 188 P.3d 1215, 1222 (N.M. 2008)(invalidation of the ban on class relief based on violation of public policy or unconscionability, a doctrine that exists for the revocation of any contract, is not preempted by the FAA); *Tillman v. Commercial Credit Loans, Inc.*, 655 S.E.2d 362, 373 (N.C. 2008)(determination that state common law principles, such as unconscionability, make a contract unenforceable is not preempted by FAA); *Scott v. Cingular Wireless*, 161 P.3d 1000, 1008-09 (Wash. 2007)(FAA did not preempt state law finding class action waiver unenforceable as against public policy); *Kinkel v. Cingular Wireless LLC*, 857 N.E.2d 250, 260-63 (Ill. 2006) (Finding no preemption where a state court applies state law on unconscionability to a question of the enforceability of a class action waiver); *Muhammad v. County Bank of*

Rehoboth, Del., 912 A.2d 88, 94-96 (N.J. 2006), *cert. denied*, 127 S. Ct. 2032 (2007) (FAA does not preclude an examination as to whether arbitration agreement is unconscionable under state law); *Discover Bank v. Superior Court of Los Angeles*, 113 P.3d 1100, 1110-17 (Cal. 2005) (FAA does not preempt finding of unconscionability on class actions bans, whether the ban in arbitration agreement or other contract); *Leonard v. Terminix Int'l Co., L.P.*, 854 So. 2d 529, 535-36 (Ala. 2002) (Under FAA, a state can find agreement enforceable based on general contract law); *State ex rel. Dunlap v. Berger*, 567 S.E.2d 265, 272 n.3 (W. Va. 2002) (FAA does not bar a state court from examining the conscionability of a contract that limits remedies afforded under state law.)⁵

The federal circuits that have decided the question presented have come to the same conclusion. The First, Third, Ninth, and Eleventh Circuits have all held that the FAA does not preempt determinations that class-action bans are invalid under state law. *See, e.g., Homa v. Am. Express Co.*, 558 F.3d 225, 231 (3d Cir. 2009) (New Jersey law); *Lowden v. T-Mobile USA*, 512 F.3d 1213, 1219-22 (9th Cir. 2008) (Washington law), *cert. denied*, 129 S. Ct. 45 (2008); *Skirchak v. Dynamics Research Corp.*, 508 F.3d 49, 57-59 (1st Cir. 2007) (Massachusetts law); *Shroyer v. New Cingular Wireless Services, Inc.*, 498 F.3d 976, 987-93 (9th Cir. 2007)

⁵Intermediate courts in states including Missouri, Oregon, and Wisconsin have agreed. *See Vasquez-Lopez v. Beneficial Oregon, Inc.*, 152 P.3d 940, 944 (Or. App. 2007); *Coady v. Cross Country Bank, Inc.*, 729 N.W.2d 732, 746 (Wis. App. 2007), *review denied*, 737 N.W.2d 432 (Wis. 2007); *Whitney v. Alltel Communications, Inc.*, 173 S.W.3d 300, 308, 310 (Mo. App. 2005).

(California law); *Dale v. Comcast Corp.*, 498 F.3d 1216, 1219 (11th Cir. 2007) (Georgia law); *see also Pendergast v. Sprint Nextel Corp.*, 592 F.3d 1119 (11th Cir. 2010) (certifying question whether a class ban is enforceable under Florida law to the Florida Supreme Court).

The fact that one arbitration agreement that is silent on class actions cannot impose class arbitration (which is all *Stolt-Nielsen* held) does not mean that all arbitration agreements that contain class bans are automatically valid. Century is disingenuous in suggesting *Stolt-Nielsen*'s holding extends that far.

Clearly, the *Stolt-Nielsen* decision did not address whether the FAA would preempt any state law that could render an arbitration clause unenforceable. The cases that have addressed the issue have found that the FAA does not effect such a preemption. *See*, p. 4-5, *supra*. As in *McArdle*, "*Stolt-Nielsen* is distinguishable on both the facts and the law" and thus, has no application here.

III. This Court properly held that the class action prohibition in the arbitration agreement is against public policy and unenforceable.

In the opinion issued April 19, 2010, this Court found that the ban on class action was against public policy because § 56-15-110 *et. seq* ("the Dealers Act") expressly provides a right to a class action.⁶ The Dealers Act specifically states that if the Act is violated, "one or more [persons] may sue for the benefit of the whole...." Code Ann. §56-15-110(2). Section 56-15-30

states that “[a]ny contract or part thereof or practice thereunder in violation of any provision of this chapter shall be deemed against public policy and shall be void and unenforceable.”

This Court’s opinion recognized that the arbitration agreement, which took away a substantive right under the Dealers Act, violated public policy. In other words, an arbitration agreement (contract) cannot prohibit class actions in the face of a statutory provision that explicitly provides a public policy substantive right.

This Court’s holding is not inconsistent with other courts’ holdings. Various courts have held that class action waivers are unenforceable. *See, e.g., Johnson v. Tele-Cash, Inc.*, 82 F.Supp.2d 264, 270 (D.Del.1999) (holding that inherent conflict existed between TILA right to class action and arbitration clause and refusing to enforce); *Lozada v. Dale Baker Oldsmobile, Inc.*, 91 F.Supp.2d 1087, 1105 (W.D.Mich.2000) (refusing to enforce arbitration agreement prohibiting class remedies that were expressly permitted by state consumer laws); *Shaffer v. Royal Gate Dodge, Inc.*, 300 S.W.3d 556, 561 (Mo.App. E.D.,2009)(In light of the strong public policy authorizing class actions in state consumer law, the court held that an arbitration agreement that prohibited class actions was unenforceable); *Schwartz v. Alltel Corp.*, 2006-Ohio-3353 ¶ 36, 2006 WL 2243649 (Ohio Ct.App.)(holding that the elimination of a consumer's right to proceed through a class action hindered the state consumer protection statute and therefore

⁶While that provision could have been severed, Century stated that it did not wish to invoke the severance clause and expressed its intent for the arbitration agreement to stand or fall as a whole. *Herron*, Shearouse Adv. Sh. No. 15, p. 23.

was unenforceable). *See also*, *Ting v. AT & T*, 319 F.3d 1126, 1150 (9th Cir.2003); *Skirchak v. Dynamics Research Corp.*, 508 F.3d 49(1st Cir. 2007); *Edwards v. Blockbuster Inc.*, 400 F.Supp.2d 1305, 1309 (E.D.Okla.2005); *Luna v. Household Fin. Corp. III*, 236 F.Supp.2d 1166, 1178 (W.D.Wash.2002); *Leonard v. Terminix Int'l Co., L.P.*, 854 So.2d 529, 538 (Ala. 2002); *Discover Bank v. Superior Court of Los Angeles*, 113 P.3d 1100 (Cal. App. 2005); *Powertel, Inc. v. Bexley*, 743 So.2d 570, 576 (Fla.Dist.Ct.App.1999); *Kinkel v. Cingular Wireless, L.L.C.*, 306 Ill.Dec. 157 (Ill. 2006); *Whitney v. Alltel Commc'ns, Inc.*, 173 S.W.3d 300, 314 (Mo.Ct.App.2005); *Muhammad v. County Bank of Rehoboth Beach*, 912 A.2d 88 (N.J. 2006); *Vasquez-Lopez v. Beneficial Or., Inc.*, 152 P.3d 940 (Or. App. 2007); *Thibodeau v. Comcast Corp.*, 912 A.2d 874 (Pa. 2006).⁷ This Court's decision is also fully consistent with federal law. The plain text of the FAA makes arbitration agreements enforceable unless "such grounds as exist in law or equity for the revocation of any contract." 9 U.S.C. § 2. Under that savings clause, "generally applicable contract defenses such as fraud, duress, or unconscionability, may be applied to invalidate arbitration agreements without contravening § 2" of the FAA. *Doctor's Associates, Inc. v. Casarotto*, 517 U.S. 681, 687 (1996). In its analysis, this Court determined that the ban on classwide arbitration was in violation of public policy because the ban took away substantive rights given by the Dealers Act, which is consistent with the FAA. *Herron*, Shearouse Adv. Sh. No. 15, p. 22-23.

⁷Additional cases finding class actions bans unenforceable are in light of state laws

IV. This Court has already found that Appellants had a non-waivable substantive right under the Dealers Act and Century does not get another bite at the apple.

Century argues that the General Assembly did not intend to convey a substantive, non-waivable right to class actions. However, this Court has already considered this argument⁸ and ruled that:

the Legislature has made clear that the public policy of this State is to provide consumers with a non-waivable right to bring class action suits for violations of the Dealers Act and any contract prohibiting a class action suit violates our State's public policy and is void and unenforceable.

Herron v. Century BMW, Shearouse Adv. Sh. No. 15, p. 22 (April 19, 2010). A petition for rehearing is not for the purpose of having the case tried for the second time. *Kennedy v. South Carolina Retirement Sys.*, S.C. Sup. Ct. Order, dated July 23, 2001.

Furthermore, courts across the country have found the right to a class action is nonwaivable. See, *Johnson v. Tele-Cash, Inc.*, *Lozada v. Dale Baker Oldsmobile, Inc.*, and *Schwartz v. Alltel Corp.*, supra, p. 7.

Finally, the cases upon which Century relies do not apply. For example, *Gilmer v. Interstate/Johnson Lane Corporation*, 500 U.S. 20 (1991), does not involve a clause banning classwide arbitration in the arbitration agreement. In *Adkins v. Labor Ready, Inc.*, 303 F.3d 496 (4th Cir. 2002), not only was there no express ban on class actions in the agreement, the court did

and/or remedies are listed on pp. 4-5 herein.

⁸Century included this argument in its Final Brief, p. 25.

not even consider the issue, finding that other defects in the plaintiff's case rendered "his further complaint about the inability to bring a class action moot." *Id.* at 503. In contrast, as this Court clearly held, the issue here involves an arbitration agreement that specifically prohibits classwide arbitration despite statutes that explicitly permits a suit for the benefit of a group and which states that any contract in violation of any provision of the chapter is against public policy. S.C. Code §§ 56-15-110 and 56-15-130.⁹

V. The remaining argument is without merit.

Century claims that Appellants' second and third causes of action, for civil conspiracy and declaratory judgment, do not arise under the Dealers Act and thus, Century is entitled to individual arbitration on those claims. These arguments are moot, because Century has already agreed to forego any individual arbitration rights in light of the court's ruling that the classwide arbitration ban is unenforceable:

[C]ounsel for Century unambiguously stated at oral argument that Century did not wish to invoke the severance clause and sever the provision banning class actions from the remainder of the agreement. Counsel unequivocally expressed its intent for the arbitration agreement to stand or fall as a whole.

Herron, Shearouse Adv. Sh. No. 15 at 23.

⁹With the exception of one (S.C. Code § 56-31-30), none of the statutes cited by Century as containing express waivers even mention public policy. Section 56-31-30 is similar to the statute here, §56-15-30, except this statute uses the word violate instead of waive. Century is arguing semantics.

CONCLUSION

For the reasons set forth herein, Respondents respectfully submit that the Petition for Reharing should be denied.

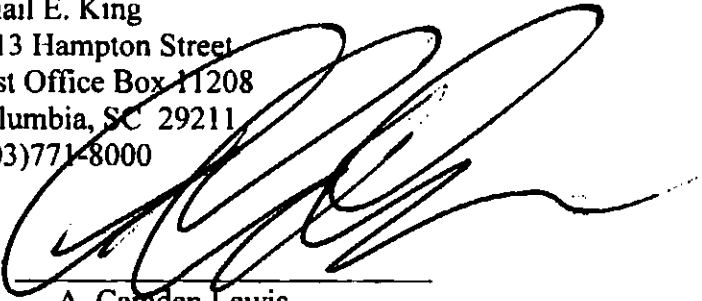
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By


A. Camden Lewis

Columbia, SC
May 21, 2010

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable Doyet A. Early, Circuit Court Judge

Circuit Court Case No.: 2006-CP-02-1230

Court of Appeals Docket No.: 03-27371

RECEIVED

MAY 24 2010

S.C. SUPREME COURT

Heather Herron, Natalie Armstrong, Michael Ritz, Julie Freeman, Christine Watts, Michael Blease and David Carroll,¹ individually and for the benefit of all car buyers whom paid “administrative fees” as described below to Defendants,..... Respondents,

v.

Century BMW d/b/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, Inc.; and Toyota of Greenville, Inc.,..... Defendants,

of whom Century BMW d/b/a Sonic Automotive is the..... Appellant.

PROOF OF SERVICE

I, Margarita Sosa, secretary to the law firm of Lewis & Babcock, L.L.P., attorneys for the Respondents, do hereby certify that I have served counsel specified below with copies of **Respondents’ Return to the Appellant’s Petition for Rehearing** by mailing a copies thereof by United States Mail, postage prepaid, on May 21, 2010 to the following addresses:

¹ David Carroll was substituted for Michael Watts as the named Plaintiff for Toyota of Greenville by Order of the Circuit Court dated October 12, 2009.

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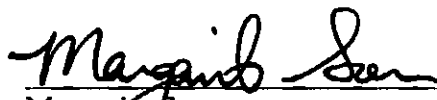
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THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable Doyet A. Early, Circuit Court Judge

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of whom Century BMW d/b/a Sonic Automotive is the.....Appellant.

PROOF OF SERVICE

I, Margarita Sosa, secretary to the law firm of Lewis & Babcock, L.L.P., attorneys for the Respondents, do hereby certify that I have served counsel specified below with copies of **Respondents' Return to the Appellant's Petition for Rehearing** by mailing a copies thereof by United States Mail, postage prepaid, on May 21, 2010 to the following addresses:

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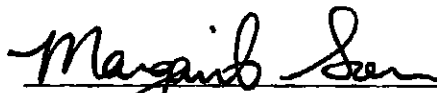
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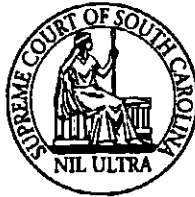
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Re: Herron, Heather v. Century BMW

Dear Counsel:

A. Camden Lewis, Esquire
Re: Herron, Heather v. Century BMW
May 13, 2010
Page 2

This is to confirm that the Court has requested that Respondents file a Return to the Appellant's Petition for Rehearing in this matter no later than May 24, 2010. We will need an original and six (6) copies of the Return. Upon receipt of the Return, the matter will be taken under consideration and all counsel will be notified as soon as action has been taken.

Very truly yours,



CLERK

DES/jjp

cc: Dennis M. Black, Esquire
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THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

RECEIVED

MAY 03 2010

The Honorable Doyet A. Early, III, Circuit Court Judge

S.C. SUPREME COURT

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of which Century BMW d/b/a Sonic Automotive is the Appellant.

APPELLANT'S PETITION FOR REHEARING
PURSUANT TO RULE 221, SCACR

Re: Opinion 26805

Heard January 20, 2010 – Filed April 19, 2010

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Pursuant to Rule 221, SCACR, Appellant Century BMW d/b/a Sonic Automotive, whose true name is Sonic Automotive 2752 Laurens Rd., Greenville, Inc. d/b/a Century BMW ("Century BMW"), hereby respectfully moves for reconsideration of this Court's April 19, 2010 decision (Opinion No. 26805) affirming in result the trial court's order denying Century BMW's motion to compel arbitration.

INTRODUCTION

Eight days after this Court's April 19th Opinion, the Supreme Court of the United States decided *Stolt-Nielsen S.A. v. Animalfeeds Int'l Corp.*, No. 08-1198, --- U.S. ---, 2010 WL 1655826 (April, 27, 2010), which changed the legal landscape governing Century BMW's appeal. This Court held that Century BMW could not arbitrate unless it did so as part of a class arbitration. *Stolt-Nielsen*, however, holds that the Federal Arbitration Act ("FAA") requires individual – and not class – arbitration unless a party has *agreed* to class arbitration. Century BMW never agreed to class arbitration. To the contrary, the parties expressly agreed not to arbitrate as a class. Requiring Century BMW to arbitrate in a class arbitration—or not at all—violates the FAA as announced in *Stolt-Nielsen*. The Court, therefore, should withdraw its opinion, reverse the Circuit Court, and remand with instructions to compel Ms. Watts to arbitrate her claim individually.

Even were it not for the intervening *Stolt-Nielsen* opinion, this Court should reconsider its opinion. The Court found that the agreement's class action waiver was unenforceable because the South Carolina Legislature intended the Dealers Act to provide a non-waivable right to bring a collective action under the Act. *Herron v. Century BMW*, No. 26805, --- S.E.2d ---, 2010 WL 1541297 (S.C. Apr. 19, 2010). Ms. Watts never cited the statutory provision upon which the Court rested its opinion (S.C. Code § 56-15-130) and, therefore, Century BMW never had a reason to discuss it. The text of the Dealers Act and the legislative history of the collective

action provision demonstrate that the legislature did not intend any collective action right to be non-waivable. Moreover, the Court's rationale was limited to the Dealers Act; as Ms. Watts's second and third causes of action do not arise under the Dealers Act, even under the Court's reasoning, the Court should have compelled individual arbitration of Counts II and III.

BACKGROUND

On October 31, 2006, Respondent Christine Watts, along with the other plaintiffs below, brought this lawsuit as a representative action against hundreds of South Carolina car dealerships, alleging that in connection with her purchase of a vehicle, Century BMW impermissibly charged her an administrative fee. *See* Am. Compl. ¶¶ 384-85.

On December 29, 2006, pursuant to the FAA and the arbitration agreement that Ms. Watts executed, Century BMW moved to compel arbitration of Ms. Watts's claims and to dismiss this action. The arbitration agreement included a provision in which the parties waived "their right to bring or participate in any class action or multi-plaintiff or claimant action in court or through arbitration." [R.p. 1100, Arbitration Agreement.] On March 10, 2008, Judge Early denied Century BMW's Motion to Compel Arbitration of Ms. Watts's claims on the ground that the arbitration agreement was unconscionable. Century BMW timely appealed.

This Court subsequently certified Century BMW's appeal for review on July 6, 2009. After hearing oral argument, the Court on April 19, 2010, affirmed in result the trial court's order. The Court held that the arbitration agreement was not unconscionable, but held that the provision precluding class actions was unenforceable because, according to the Court, language in the Dealers Act created a non-waivable right to bring a class action suit.

ARGUMENT

I. THIS COURT'S OPINION IS INCONSISTENT WITH THE SUPREME COURT OF THE UNITED STATES'S RECENT DECISION IN *STOLT-NIELSEN S.A. V. ANIMALFEEDS INTERNATIONAL CORP.*

A. *Stolt-Nielsen S.A. v. Animalfeeds International Corp.* Holds that the FAA Precludes Class Arbitration Absent An Agreement To Do So.

This Court held that the Dealers Act requires parties to submit to class arbitration even if they have agreed otherwise. In *Stolt-Nielsen*, the Supreme Court of the United States held that the FAA¹ embodies a federal policy precisely to the contrary – precluding class arbitration unless the parties affirmatively agreed to arbitrate on a class basis. The FAA clearly preempts South Carolina law, as this Court construed it. See, e.g., *Toler's Cove Homeowners Ass'n, Inc. v. Trident Constr. Co.*, 355 S.C. 605, 611, 586 S.E.2d 581 (S.C. 2003) (“the FAA will preempt any state law that completely invalidates the parties’ agreement to arbitrate”); *Blanton v. Stathos*, 351 S.C. 534, 539, 570 S.E.2d 565 (S.C. App. 2002) (“The FAA preempts state laws that invalidate the parties’ agreement to arbitrate.”); *Tritech Elec., Inc. v. Frank M. Hall & Co.*, 343 S.C. 396, 400, 540 S.E.2d 864 (S.C. App. 2000) (“FAA preempts conflicting state arbitration law”).

In *Stolt-Nielsen*, plaintiffs sought to pursue a class action in arbitration against various shipping companies. *Stolt-Nielsen*, 2010 WL 1655826 at *4. The parties agreed that

¹ Ms. Watts does not dispute that the FAA governs the arbitration agreement; indeed the Agreement says so expressly. [R.p. 1100, Arbitration Agreement (“The parties acknowledge and agree that the Federal Arbitration Act . . . shall govern any arbitration under this Agreement.”).] The FAA and the United States Supreme Court decisions interpreting it bind this Court. See *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 590, 553 S.E.2d 110, 115 (2001); *South Carolina v. Yetter*, 192 S.C. 1, 5 S.E.2d 291 (1939) (State courts look to decisions of the United States Supreme Court in determining issues involving a federal question); *U.S. v. Gilbert*, 345 U.S. 361, 363 (1953) (“the meaning of a federal statute is for [the United States Supreme Court] to decide”); see also *Atlantic Coast Line R.R. Co. v. Wannamaker Chem. Co.*, 216 S.C. 226, 233, 57 S.E.2d 311 (1950) (South Carolina Supreme Court bound by the terms of the Interstate Commerce Act “and the decisions of the United States Supreme Court construing same”).

their arbitration clause was “silent” on the issue of class arbitration. *Id.* The arbitration panel held that the arbitration clause allowed for class arbitration. The United States Supreme Court disagreed, holding that a party may not be compelled under the FAA to submit to class arbitration unless there is a contractual basis for concluding all parties to the pertinent arbitration provision agreed to arbitrate on a class basis. *Id.* at *13.

The Court held that under the FAA courts and arbitrators must “give effect to the contractual rights and expectations of the parties.” *Id.* at *11. The parties’ “intentions control,” and they are “generally free to structure their arbitration agreements as they see fit.” *Id.* at *11-12. Therefore, the parties may agree to limit the issues arbitrated and may agree to the rules under which an arbitration will proceed. *Id.* at 12. Additionally, “parties may specify *with whom* they choose to arbitrate their disputes.” *Id.* (citing *EEOC v. Waffle House, Inc.*, 534 U. S. 279, 289 (2002)). Under the FAA it “falls to courts and arbitrators to give effect to these contractual limitations.” *Id.* When doing so, “courts and arbitrators must not lose sight of the purpose of the exercise: to give effect to the intent of the parties.” *Id.*

The Supreme Court therefore concluded that “a party may not be compelled under the FAA to submit to class arbitration unless there is a contractual basis for concluding that the party *agreed* to do so.” *Id.* at *13 (emphasis in original). The Court found that the “differences between bilateral and class-action arbitration are too great for arbitrators to presume . . . that the parties’ mere silence on the issue of class-arbitration constitutes consent to resolve their disputes in class proceedings.” *Id.* Because the parties had reached “no agreement” on the issue of class arbitration, the parties could not “be compelled to submit their dispute to class arbitration.” *Id.*

If a party cannot be compelled to class arbitration absent an agreement to arbitrate as a class, a fortiori the FAA preempts any public policy requiring class arbitration even where

the parties agreed *not* to arbitrate as a class. See *Toler's Cove Homeowners Ass'n*, 355 S.C. at 605, 611. Indeed, after *Stolt-Nielsen* class action waivers are superfluous because courts and arbitrators cannot compel class arbitration unless parties affirmatively agree to that procedure. *Stolt-Nielsen*, 2010 WL 1655826, at *13.

The *Stolt-Nielsen* decision mandates reversal of the Circuit Court's opinion and a remand directing the Circuit Court to compel Ms. Watts to arbitrate her claim on an individual basis as the agreement requires. Indeed, there are more compelling reasons to reject class arbitration here than in *Stolt-Nielsen*. Whereas the parties in *Stolt-Nielsen* reached "no agreement" on the issue of class arbitration, here, the parties expressly agreed *not* to arbitrate on a class basis. As a result, if class arbitration is precluded where the arbitration agreement is silent on the issue, then certainly a court cannot compel class arbitration where the parties explicitly agreed *not* to arbitrate on a class basis.

Century BMW insisted on remaining in a judicial forum only if this Court held that Century BMW had to arbitrate on a class basis, which is precisely what *Stolt-Nielsen* now prohibits. This Court should therefore withdraw its Opinion, reverse the Circuit Court's ruling and remand with directions to compel Ms. Watts to arbitrate her claims on an individual basis.

B. Under *Stolt-Nielsen*, Class Arbitration Is Impermissible Because Absent Class Members Would Not Be Bound To a Result.

As this Court noted, virtually all of Century BMW's customers signed the arbitration agreement, in which the parties agreed not to arbitrate as a class. As a result, in addition to Century BMW and Ms. Watts, none of the absent class members has contractually agreed to class-wide arbitration. Given the Supreme Court's holding in *Stolt-Nielsen* that a party cannot be compelled to class arbitration absent an agreement, sending Century BMW and absent class members into class arbitration (i) would violate due process by seeking to compel the

absent class members into class proceedings against their will, and (ii) would violate Century BMW's due process rights by compelling it to defend a representative action where the absent class members would not be bound to a result in Century BMW's favor.

One of the most basic expected benefits of arbitration is that it will lead to a "mutual, final and definite award." 9 U.S.C. § 10(a)(4). From a defendant's perspective, the principal advantage of a class action is finality—obtaining a judgment that will bind the entire class. *See, e.g., Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 805 (1985) ("Whether it wins or loses on the merits, [defendant] has a distinct and personal interest in seeing the entire plaintiff class bound by res judicata just as [defendant] is bound."); *United States Parole Comm'n v. Geraghty*, 445 U.S. 388, 402-03 (1980) (avoiding inconsistent judgments is a principal protection that class actions afford defendants). Such finality cannot be achieved without ensuring adequate due process protections for absent class members. *Shutts*, 472 U.S. at 811-12 ("If the forum State wishes to bind an absent plaintiff concerning a claim for money damages or similar relief at law, it must provide minimal procedural due process protection."). Compelling absent class members to a class arbitration to which they did not agree would deny the members due process and confront Century BMW with the prospect of class litigation without the assurance of finality.²

Where, as here, absent class members have not agreed to arbitrate as a class, *Stolt-Nielsen* precludes an adjudicator (whether a judge or an arbitrator) from compelling them into

² Moreover, although the court below purported to allow Ms. Watts to proceed in a representative capacity, it has not defined the group she purports to represent, has not found that her claims are typical of the group's claims, has provided the group with no notice, and has provided no procedure for group members to opt out. Nor has the court evinced any intent to do or address any of these issues in the future. These blatant due process problems underscore Century BMW's continuing concern that any class-wide arbitral award or settlement would lack finality.

class arbitration. Moreover, because the absent class members expressly agreed not to participate in a class arbitration, the members could cite *Stolt-Nielsen* for the proposition that they cannot be bound by an award resulting from an arbitration proceeding to which they never agreed.³ See *Volt Info. Scis., v. Bd. of Trustees of Leland Stanford Jr. Univ.*, 489 U.S. 468, 479 (1989) (arbitration “is a matter of consent, not coercion.”). Indeed, because a party cannot be compelled to class arbitration absent an agreement to do so, and none of the absent class members agreed to arbitrate as a class, a court or arbitrator would lack any basis to give a class-wide arbitral award or settlement *res judicata* effect. Compelling Century BMW to a class arbitration would thus deprive it of the certainty that, if it wins or settles the case, all of the absent class members would be bound by the outcome.

As a result, compelling Century BMW to arbitrate in a class arbitration would violate absent class members’ due process rights and eliminate Century BMW’s ability to achieve finality in arbitration.

II. THE SOUTH CAROLINA LEGISLATURE DID NOT INTEND TO CREATE A NON-WAIVABLE RIGHT TO BRING A CLASS ACTION UNDER THE DEALERS ACT.

Even were it not for the intervening *Stolt-Nielsen* opinion, this Court should reconsider its decision because the South Carolina legislature did not intend to create a non-waivable class action right under the Dealers Act.

³ Even were absent class members given the ability to opt out of a class (which the Circuit Court has shown no intention of providing), that would not remedy this concern. *Stolt-Nielsen* held that “silence” could not constitute “consent to resolve [a] dispute in class proceedings.” *Id.* at *14. As a result, an absent class member’s failure to opt out—presumably by remaining silent—does not mean, as a matter of law, that he or she “agreed to authorize class arbitration.” *Id.* That is particularly true here because the absent class members expressly agreed *not* to arbitrate as a class.

A. Ms. Watts Has the Burden of Proving that the Right to Collective Action Is Non-Waivable.

A party opposing waiver of a statutory right has the burden of proving that the legislature “intended to preclude waiver.” *See, e.g., Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 26 (1991); *Adkins v. Labor Ready, Inc.*, 303 F.3d 496, 503 (4th Cir. 2002); *Randolph v. Green Tree Fin. Corp.*, 244 F.3d 814, 818 (11th Cir. 2001). If the legislature intended to preclude “waiver of the right . . . that intention will be deducible from text [of the statute] or [its] legislative history.” *See, e.g., Gilmer*, 500 U.S. at 28 (quoting *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 628, (1985)); *Long John Silver’s Rests., Inc. v. Cole*, 514 F.3d 345, 350 (4th Cir. 2008).

On the face of the pleadings, Ms. Watts did not meet her burden, having failed to allege that the statutory right to bring a collective action under S.C. Code Ann. § 56-15-110(2) is non-waivable. Even if this Court were inclined to disregard Ms Watts’s failure even to allege that the right to collective action is non-waivable, the text of the Dealers Act and the legislative history of § 56-15-110(2) provide no indication or support that the legislature intended to create a non-waivable right. To the contrary, the legislature was capable of making the class action right non-waivable, but declined to do so.

B. Neither the Text of the Dealers Act, Nor the Legislative History of the Collective Action Provision Evinces Any Legislative Intent to Create a Non-Waivable Right.

1. That a Legislature Confers a Statutory Right Does Not Mean that It Intended to Preclude Parties From Bargaining Around the Right.

As this Court reaffirmed in *Simpson v. MSA of Myrtle Beach, Inc.*, “parties are always free to contract away their rights.” 373 S.C. 14, 28 644 S.E.2d 633 (2007). This is no less true in the context of arbitration. Indeed, the “primary” purpose behind the FAA is “to

ensure that private agreements to arbitrate are enforced according to their terms.” *Stolt-Nielsen*, 2010 WL 1655826, at *11.

As a result, parties generally may enter into agreements extinguishing or limiting statutory provisions that confer a right on one or both parties. *See Gilmer*, 500 U.S. at 26-32. Consistent with this contractual freedom, courts have long distinguished between a statutory right and a *non-waivable* statutory right. Courts across the country—including the Supreme Court of the United States—have concluded that absent a legislature’s clear intention to preclude waiver, parties are free to waive their right to participate in a representative action.

The Supreme Court of the United States’s decision in *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20 (1991), is directly on point. There, an employer moved to compel arbitration of an employee’s lawsuit alleging that the employee’s termination violated the Age Discrimination in Employment Act (“ADEA”). The employee opposed arbitration, arguing the arbitral forum did not adequately further the purposes of the ADEA because arbitration did not, *inter alia*, provide for a “class action.” Although the ADEA explicitly provided a right to sue collectively, *see* 29 U.S.C. § 626(b) (referencing the remedies in 29 U.S.C. § 216 (“An action . . . may be maintained against any employer . . . by any one or more employees for and on behalf of himself or themselves and other employees similarly situated.”))), the Court ruled that the ADEA did not preclude arbitration notwithstanding the unavailability of a class action:

But even if the arbitration could not go forward as a class action or class relief could not be granted by the arbitrator, the fact that the ADEA provides for the possibility of bringing a collective action does not mean that individual attempts at conciliation were intended to be barred.

Id. at 32 (internal quotation omitted). Because nothing in the text or legislative history of the ADEA indicated that Congress intended to make the class action right non-waivable, the *Gilmer* Court compelled the parties to arbitration pursuant to their arbitration agreement.⁴

Numerous courts have echoed *Gilmer*'s holding that providing a statutory right to pursue a class action does not create a non-waivable class action right.

In *Bowen v. First Family Fin. Servs.*, 233 F.3d 1331 (11th Cir. 2000), plaintiffs filed a class action lawsuit, claiming that the defendant-lender's practice of requiring customers to sign arbitration agreements before obtaining a consumer loan violated the Equal Credit Opportunity Act ("ECOA"), 15 U.S.C. § 1691 et seq., and the Truth in Lending Act ("TILA"), 15 U.S.C. § 1601 et seq. Plaintiffs contended that the ECOA and the TILA granted consumers a non-waivable right to litigate any claims arising under the statutes through a class action. The Eleventh Circuit observed that the ECOA provided a party with a statutory right to pursue a class action. *See id.* (citing 15 U.S.C. § 1691e).⁵ Moreover, the court recognized that a "class action is an available, important means of remedying violations of the TILA," noting that the TILA contained (1) a provision regarding class action remedies, 15 U.S.C. § 1640(a), and (2) a legislative history "which stresses the importance of class action procedures in the TILA scheme." *Id.* at 1337. The court found, however, that "there exists a difference between the availability of the class action tool, and possessing a blanket right to that tool under any circumstance." *Id.* at 1337 (quoting *Wood v. Cooper Chevrolet, Inc.*, 102 F. Supp. 2d 1345,

⁴ That the ADEA was enacted "to further important social policies" did not change the Court's conclusion that arbitration was permissible despite the parties' inability to pursue claims on a class-wide basis. *Id.* at 27.

⁵ "Any creditor who fails to comply with any requirement imposed under this subchapter shall be liable to the aggrieved applicant for any actual damages sustained by such applicant acting either in an individual capacity or as a member of a class." 15 U.S.C. 1691e(a).

1349 (N.D.Ala.2000)). Despite the statutory importance of the class action right, the court could not glean “an intent to create [a] . . . non-waivable right to litigate by class action . . . from the text and the legislative history.” *Id.* at 1338. Although “the legislative history of § 1640” revealed that “Congress thought class actions were a significant means of achieving compliance with the TILA, *see* S. Rep. 93-278 (1973), it d[id] not indicate that Congress intended to confer upon individuals a non-waivable right to pursue a class action nor does it even address the issue of arbitration.” *Id.* As a result, “Congress did not create a non-waivable right to pursue TILA claims . . . through a class action.” *Id.*⁶

Similarly, in *Johnson v. West Suburban Bank*, the plaintiff argued that the TILA created a non-waivable right to bring a class action. 225 F.3d 366, 369 (3d Cir. 2000). The Third Circuit disagreed, holding that arbitration “clauses are effective even though they may render class actions to pursue statutory claims under the TILA . . . unavailable.” *Id.* The court found that nothing in the text of the TILA created a non-waivable right to bring a class action. Although the plaintiff argued that the legislative history “demonstrates the centrality of class actions to the TILA’s effective enforcement,” the court concluded that such history did not demonstrate legislative intent to create a non-waivable right: “simply because judicial remedies are part of a law does not mean that Congress meant to preclude parties from bargaining around their availability.” *Id.* at 377. The Third Circuit thus held that Congress did not intend to preclude parties from contracting away their ability to seek class action relief under the TILA. *Id.* at 378.

⁶ *See also Randolph v. Green Tree Fin. Corp.*, 244 F.3d 814, 818-19 (11th Cir. 2001) (finding that Congress did not intend to preclude parties from contracting away their ability to seek class action relief under the TILA, and therefore, “a contractual provision to arbitrate TILA claims is enforceable even if it precludes a plaintiff from utilizing class action procedures in vindicating statutory rights under TILA.”).

The Fourth Circuit adopted this rationale in *Adkins v. Labor Ready, Inc.*, 303 F.3d 496 (4th Cir. 2002). There, an employee brought a class action alleging that a temporary employment agency violated the Fair Labor Standards Act (“FLSA”). The court found that the employee failed to “carry his burden of proof” that “Congress intended to confer a nonwaivable right to a class action under [FLSA].” *Id.* at 503. Citing *Johnson*, the Fourth Circuit confirmed that “simply because judicial remedies are part of a law does not mean that Congress meant to preclude parties from bargaining around their availability.” *Id.* Because the employee pointed to “no suggestion in the text, legislative history, or purpose of the FLSA that Congress intended to confer a nonwaivable right to a class action under that statute . . . [h]is inability to bring a class action . . . [could not] suffice to defeat the strong congressional preference for an arbitral forum.” *Id.*⁷

2. The Text of the Dealers Act Does Not Evince Any Legislative Intent To Create a Non-Waivable Right to Collective Action.

The text of the Dealers Act demonstrates that the legislature did not intend to create a non-waivable right to pursue a collective action.

First, nothing in the Dealers Act states that the right to collective action is non-waivable. When interpreting a statute, this Court looks to the “plain language of the statute

⁷ Similarly, in *Gipson v. Cross Country Bank*, 294 F. Supp. 2d 1251 (M.D. Ala. 2003), the plaintiff argued that an arbitration clause’s prohibition on class actions rendered the entire clause unenforceable because it limited remedies that were available to her under the Fair Credit Billing Act (“FCBA”), 15 U.S.C. § 1666. The court observed that the FCBA permits plaintiffs to “seek classwide relief pursuant to the TILA’s general civil liability provision,” which provides a statutory right to pursue a class action. *Id.* at 1258 (citing 15 U.S.C. § 1640(a)(2)(B) (stating that “any creditor who fails to comply with the requirements imposed under . . . [the FCBA] . . . is liable to such person in an amount equal to the sum of . . . in the case of a class action, such amount as the court may allow . . . ”)). Despite this statutory right, the court concluded that the prohibition on class actions was “enforceable” because the plaintiff was unable to establish a congressional intent to create a non-waivable right. *Id.* at 1260.

itself.” *King v. Am. Gen. Fin., Inc.*, 386 S.C. 82, 90, 687 S.E.2d 321 (2009) (internal quotation omitted). Here, this Court relied on § 56-15-130 to conclude that the collective action right was non-waivable, but § 56-15-130 will not bear that weight. Section 56-15-130 states that any contract “in violation of any provision of this chapter shall be deemed against public policy and shall be void and unenforceable.” (emphasis added). That a contract waives a provision does not mean that the contract “violat[es]” the provision. See *Browning v. Hartvigsen*, 307 S.C. 122, 125, 414 S.E.2d 115, 117 (1992) (statutes “must receive a practical, reasonable, and fair interpretation”). Indeed, the South Carolina legislature recognizes that “waiver” and “violation” are two different things, having included both concepts in S.C. Code § 27-32-110: it “is a violation of this chapter . . . to . . . include in a contract a provision purporting to waive a right or benefit provided for purchasers pursuant to this chapter.” § 27-32-110(10) (emphasis added). By contrast, § 56-15-130 does not state that a waiver of a right provided by the Dealers Act constitutes a violation of the Act.

Moreover, an interpretation conflating “violate” with “waive” would openly ignore the plain language of the statute (since “violate” is not synonymous with “waive”), and lead to absurd results. See *Lancaster County Bar Ass’n v. S.C. Comm. on Indigent Defense*, 380 S.C. 219, 670 S.E.2d 371 (2008) (courts should avoid a statutory construction that would lead to an absurd result); *McLeod v. Montgomery*, 244 S.C. 308, 314, 136 S.E.2d 778, 782 (1964). For example, § 56-15-110(1) grants a party the right to “sue . . . in the court of common pleas.” Every arbitration agreement between a dealership and a customer waives the parties’ right to sue in court under the Dealers Act. As a result, if “violate” means “waive,” then any agreement to

arbitrate under the Dealers Act would be unenforceable.⁸ Yet this Court recognizes—as it must under the FAA—that agreements to arbitrate Dealers Act claims are enforceable. *See Herron*, 2010 WL 1541297, at *5 (finding Century BMW’s arbitration agreement “enforceable,” except for the class action waiver). Just as an agreement to arbitrate does not “violate” § 56-15-110(1), an agreement to waive a party’s right to bring a class action does not “violate” § 56-15-110(2).

Third, other provisions within the Dealers Act make clear that § 56-15-130 was not enacted to preclude waiver of all rights provided under the Act. *See Higgins v. South Carolina*, 307 S.C. 446, 449, 415 S.E.2d 799 (1992) (“In construing statutory language, the statute must be read as a whole . . .”). The Dealers Act contains several subsections that specifically limit the types of provisions that can go into a contract. *See, e.g.*, S.C. Code Ann. §§ 56-15-40(3)(k) (precluding manufacturer from requiring a motor vehicle dealer “to assent to a release [or] waiver . . . which would relieve any person from liability imposed by this Chapter), (i) (precluding manufacturer from preventing a dealer from selling or transferring his interest), (h) (precluding manufacturer from preventing a dealer from changing the capital structure of his dealership); 56-15-40(4)(a) (dealer cannot require new motor vehicle buyer to also purchase special features not already installed on the vehicle when received by the dealer); 56-15-70 (manufacturer cannot impose unreasonable restrictions on motor vehicle dealer regarding right to renew, transfer, etc.), 56-15-140 (venue must be in South Carolina for any action brought under the Dealers Act). By enacting § 56-15-130, the legislature provided an enforcement mechanism to ensure compliance with these limitations: any contractual provision that contravenes these specific requirements “violat[es]” the Act and therefore, is unenforceable. Unlike the above

⁸ Indeed, if a “waiver” constitutes a “violation,” then most agreements to arbitrate a civil damages claim under the FAA would “violate” the Seventh Amendment to the United States Constitution. U.S. Const. Amend. VII (“In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved . . .”).

provisions, § 56-15-110(2) does not specifically prohibit a party from waiving its right to pursue a collective action.

Finally, the lack of a provision in the Dealers Act precluding waiver of the right to collective action demonstrates that the South Carolina legislature did not intend to create a non-waivable right. When the legislature creates non-waivable rights, it says so expressly, including in the consumer protection context. The South Carolina code is replete with examples:

- § 33-44-103, which regulates operating agreements for a limited liability company, delineates seven “nonwaivable provisions,” including that an operating agreement “may not . . . eliminate the duty of loyalty” or “eliminate the obligation of good faith and fair dealing.”
- § 33-44-203(c), regarding articles of organization of a limited liability company, states that the article of organization “may not vary the nonwaivable provisions of § 33-44-103(b).”
- § 37-1-107 of the Consumer Protection Code states that “[e]xcept as otherwise provided in this title, a buyer, lessee or debtor may not waive or agree to forego rights or benefits under this title.”
- § 37-3-410 of the Consumer Protection Code states that “An agreement may not limit or waive the claims or defenses of a debtor under this section.”
- § 36-9-602, pertaining to secured transactions, states that “[e]xcept as otherwise provided in Section 36-9-624, to the extent that they give rights to a debtor or obligor and impose duties on a secured party, the debtor or obligor may not waive or vary the rules stated in the following listed sections”
- § 27-32-110, which addresses vacation time sharing plans, states that it “is a violation of this chapter for a seller of vacation time sharing plans to include in a contract a provision purporting to waive a right or benefit provided for purchasers pursuant to this chapter.”
- § 27-29-160, regarding remedies for purchasers of subdivided land, provides that “[a]ny stipulation or provision purporting to bind any person acquiring subdivided to waive compliance with the chapter or any rule or order under it is void.”
- § 56-31-30, which regulates the rates and fees a rental car company can charge, provides that a “waiver of the requirements of the provisions of this section is unenforceable as contrary to public policy.”

This sample of South Carolina statutes confirms that the legislature knows how to make a right “non-waivable.” Because in the Dealers Act the legislature did not restrict a party’s ability to waive its right to collective action, the text of the Act plainly establishes that the legislature did not intend to create a non-waivable right.

3. Nothing in the Legislative History of § 56-15-110(2) Suggests that the Legislature Intended to Confer a Non-Waivable Right to Collective Action.

The legislative history of § 56-15-110(2) contains no indication that the legislature intended to create a non-waivable right to pursue a collective action. Instead, the language of the statute and the prevailing law on class actions at the time the statute was enacted demonstrate that the only purpose of § 56-15-110(2) was to remove a then-existing impediment to filing a class action for personal damages.

The law at the time of the statute’s enactment sheds light on its purpose. Section 56-15-110, adopted in 1972, predated Rule 23 and the other South Carolina Rules of Civil Procedure. Before the adoption of Rule 23, SCRCPP, class actions were governed by state statute (*e.g.*, § 15-5-50). Indeed, the wording in subsection (2) closely mirrors this statutory predecessor to Rule 23, SCRCPP. *Compare* S.C. Code Ann. § 56-15-110(2) (“When such action is one of common or general interest to many persons or when the parties are numerous and it is impracticable to bring them all before the court, one or more may sue for the benefit of the whole, including actions for injunctive relief.”) *with* S.C. Code Ann. § 15-5-50 (repealed 1985) (“When the question is one of common or general interest to many persons or when the parties are very numerous and it may be impracticable to bring them all before the court, one or more may sue or defend for the benefit of the whole.”).

At the time, however, the “general rule as developed by case law in the State [was] . . . that actions at law for personal remedies [could] not be brought as class actions.”

General Supplies, Inc. v. Southwire Co., 276 S.C. 55, 58, 275 S.E.2d 579, 580 (1981). As a result, state law prevented the plaintiffs in *General Supplies* from bringing a class action for damages under the state antitrust act.

Consistent with *General Supplies*, if the legislature had not included subsection (2), which permits a plaintiff to bring an action for damages as a class action, then no such action would have been allowed under the Dealers Act. As the *General Supplies* Court noted, “[a]bsent a statutory direction to the contrary, the personal remedy provided for at Section 39-3-30 may not be sought through a class suit.” *General Supplies*, 276 S.C. at 59, 275 S.E.2d at 581. Section 56-15-110(2) supplied the statutory direction that this Court found lacking in the state antitrust act and thus permitted class actions under the Dealers Act before Rule 23 was adopted. But nothing suggests the legislature intended the class action vehicle to be non-waivable.

In 1985, the South Carolina Rules of Civil Procedure were adopted and the Legislature simultaneously repealed various Code portions relating to procedural rules. Act No. 100, 1985 S.C. Acts 277 (effective July 1, 1985); Rule 86, SCRCP (Rules effective July 1, 1985). The Legislature explicitly provided that, upon taking effect, the Rules would control procedures in a civil lawsuit in the event of any conflicts between the new rules and existing statutes. As provided in Act No. 100:

In event of conflict between any provision of the South Carolina Rules of Civil Procedure and *any other statutory provisions as to practice and procedure not repealed by this act, the provision of the rules shall control*. However, neither the promulgation of the rules nor this act may be construed to affect the substantive legal rights of any party to any civil litigation in the courts of this State but shall affect only matters of practice and procedure.

Act No. 100 § 3, 1985 S.C. Acts at 280 (emphasis added). South Carolina courts immediately recognized that the Rules control matters of procedure, regardless of previously enacted statutes.

See McGann v. Mungo, 287 S.C. 561, 568, 340 S.E.2d 154, 156 (1986) (new civil procedure rules, not former statutes, applied in lawsuit); *Harper v. Ethridge*, 290 S.C. 112, 121, 348 S.E.2d 374, 379 (1986) (new rules of civil procedure replaced statute). Section 56-15-110(2) is a pre-Rules statute that allowed the filing of a class action against a manufacturer, dealer or distributor in appropriate circumstances. After the adoption of the Rules, § 56-15-110(2) is merely a vestige of a prior procedural regime.

Taken together, the language of the Dealers Act and the legislative history of § 56-15-110(2) clearly demonstrate that the South Carolina legislature did not intend to create a non-waivable right to pursue a collective action under the Dealers Act.

III. EVEN UNDER THIS COURT'S RATIONALE MS. WATTS'S SECOND AND THIRD CAUSES OF ACTION, WHICH DO NOT ARISE UNDER THE DEALERS ACT, SHOULD BE COMPELLED TO INDIVIDUAL ARBITRATION.

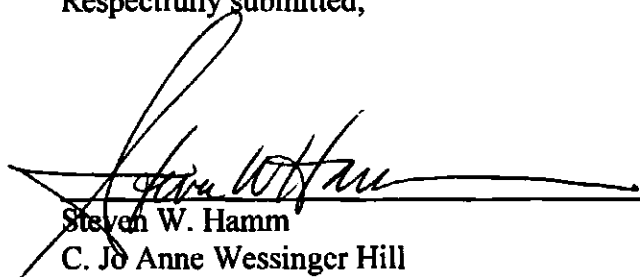
The Court's rationale in affirming the trial court's denial of Century BMW's motion to compel arbitration was limited to the Dealers Act. *Herron*, 2010 WL 1541297, at *5 (the legislature provided "consumers with a non-waivable right to bring class action suits for violations of the Dealers Act."). Only one of Ms. Watts's claims, however, arises under the Dealers Act.

The Complaint asserts three causes of action. The first cause of action seeks damages under § 56-15-110(2) based on violations of the Dealers Act. *See* First Amended Complaint at ¶¶ 391-401. By contrast, the second and third claims (for civil conspiracy and declaratory judgment) do not arise under the Dealers Act. As a result, even if there were a non-waivable class action right under the Dealers Act, the Court identified no similar non-waivable right that applied to a claim for common law conspiracy or declaratory judgment. Even under the Court's rationale, therefore, it should compel individual arbitration of Counts II and III.

CONCLUSION

For the reasons set forth above, Century BMW respectfully requests that this Court withdraw its opinion, reverse the Circuit Court, and remand with instructions to compel Respondent Watts to arbitrate all of her claims individually.

Respectfully submitted,



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TRUE NAME IS SONIC AUTOMOTIVE 2752
LAURENS RD., GREENVILLE, INC. D/B/A
CENTURY BMW

May 3, 2010
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

MAY 03 2010

S.C. SUPREME COURT

The Honorable Doyet A. Early, III, Circuit Court Judge

Circuit Court Case No. 2006-CP-02-1230

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 who paid "administrative fees" as described below to Defendants, ... **Respondents,**

v.

Century BMW d/b/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., ... **Defendants,**

of whom Century BMW d/b/a Sonic Automotive is the **Appellant.**

PROOF OF SERVICE

The undersigned employee of RICHARDSON FLOWDEN & ROBINSON, P.A., attorneys for Appellant, does hereby certify that service of the foregoing Petition for Rehearing in the above-captioned matter was made upon all counsel of record this 3rd day of May, 2010, by depositing a copy of same in the U.S. Mail, postage prepaid, addressed as follows:

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Kathy J. Templeton

May 3, 2010
Columbia, South Carolina

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May 3, 2010

The Hon. Daniel E. Shearouse
Clerk
Supreme Court
PO Box 11330
Columbia, SC 29211

MAY 03 2010

S.C. SUPREME COURT

Re: HERRON ET AL RESPONDENTS V. CENTURY BMW OF WHICH SONIC AUTOMOTIVE, D/B/A
CENTURY BMW IS APPELLANT AND WHOSE TRUE NAME IS SONIC AUTOMOTIVE 2752 LAURENS
RD., GREENVILLE, INC. D/B/A CENTURY BMW
SUPREME COURT OPINION NO. 26805 (HEARD 1/20/2010 - DECIDED 4/19/2010)
Our File No. 6665-001

Dear Mr. Shearouse:

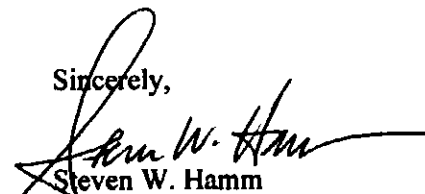
Please find enclosed the original and eight (8) copies of the ^{Appellant} Respondent's Petition for Rehearing Pursuant to SCAR Rule 221 in the above-referenced matter, together with our check in the amount of \$25.00 in payment of the filing fee. Please return two clocked copies to our courier.

I am also serving a copy of this Petition via hand delivery upon A. Camden Lewis, Esq. and Peter D. Protopapas, Esq., counsel for the Respondent, at their office of Lewis & Babcock, LLP in Columbia.

If you have any questions or concerns, please let me know.

With kindest regards, I am

Sincerely,


Steven W. Hamm
C. Jo Anne Wessinger Hill

SWH/JWH/kjt
Enclosures

Cc: A. Camden Lewis, Esq., w/enc.
Peter D. Protopapas, Esq., w/enc.
Michael E. Spears, Esq., w/enc.
Richard A. Harpootlian, Esq., w/enc.
Gedney M. Howe, III, Esq., w/enc.
Defense Counsel of Record, w/enc.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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 Who Paid
"Administrative Fees" as
Described below to Defendants Respondents,

v.

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

of whom Century BMW a/k/a
Sonic Automotive is the Appellant.

Appeal from Aiken County
Doyet A. Early, III, Circuit Court Judge

Opinion No. 26805
Heard January 20, 2010 – Filed April 19, 2010

AFFIRMED IN RESULT

Dennis M. Black and Ryan L. VanGrack, of Williams & Connolly, of Washington, Steven W. Hamm, C. Jo Anne Wessinger-Hill, David A. Anderson, and Jocelyn T. Newman, all of Richardson, Plowden & Robinson, of Columbia, for Appellant.

A. Camden Lewis and Brady R. Thomas, both of Lewis & Babcock, of Columbia, Gedney M. Howe, III, of Charleston, Michael Eugene Spears, of Spartanburg, and Richard A. Harpootlian, of Columbia, for Respondents.

JUSTICE KITTREDGE: This case concerns the enforceability of an arbitration agreement. Respondents Christine and Michael Watts entered into a contract with Appellant Century BMW (Century) for the purchase of a car. The transaction included the execution of an arbitration agreement. Subsequently, the Wattses filed a class action suit against Century alleging the dealership had charged illegal administrative fees. Century moved to compel arbitration. The trial court found the arbitration agreement was unconscionable and unenforceable and denied the motion to compel. Century appealed, and we granted certification pursuant to Rule 204, SCACR.

We hold the arbitration agreement, although an adhesion contract, is not unconscionable. Yet the arbitration provision prohibiting class actions is against public policy, which would ordinarily be severed pursuant to the agreement's severance clause. Century has insisted, however, that if the class

action prohibition provision is unenforceable, it will abandon the balance of its rights under the arbitration agreement and consent to the action proceeding in the trial court. Although the arbitration agreement is otherwise enforceable, in accordance with Century's request, we affirm in result the trial court's order denying the motion to compel arbitration.

I.

In 2005, Michael Watts began looking for a car to purchase for his daughter, Christine Watts, as a graduation present. He negotiated with Century for the sale of a 2004 BMW Z4 convertible. Michael gave Century a bottom line price of \$32,000, which Century initially rejected, but ultimately accepted. On the day of sale, Century presented a packet of documents Michael and Christine were to sign. Within the packet was a document titled "**ARBITRATION AGREEMENT**." The arbitration agreement provided that any dispute between the parties would be subject to arbitration¹ and that the agreement was governed by the Federal Arbitration Act (FAA). The agreement further provided that the parties were waiving their right to bring or participate in a class action suit.

The Wattses brought a class action suit against Century and numerous other car dealerships in South Carolina, alleging the dealers charged an illegal administrative fee in violation of the South Carolina Regulation of Manufacturers, Distributors, and Dealers Act ("Dealers Act"). S.C. Code Ann. § 56-15-10 *et. seq.* (2005). Century filed a motion to compel arbitration pursuant to the terms of the agreement. Relying heavily on *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 644 S.E.2d 663 (2007), the trial court found the arbitration agreement was unconscionable because there was an absence of a meaningful choice and the agreement contained oppressive and one-sided terms. Accordingly, the trial court found the arbitration agreement was unenforceable and denied Century's motion to compel.

¹ The Wattses have never contended that this dispute is not within the scope of the arbitration agreement.

II.
A.
Arbitration

The question of arbitrability of a claim is an issue for the courts. *Partain v. Upstate Automotive Group*, Op. No. 26768 (S.C. Sup. Ct. filed February 8, 2010) (Shearouse Adv. Sh. No. 6 at 28). The determination of whether a claim is subject to arbitration is subject to de novo review, but a circuit court's factual findings will not be reversed on appeal if any evidence reasonably supports the findings. *Id.*

At the outset, we recognize that there is a strong presumption in favor of the validity of arbitration agreements because both state and federal policy favor arbitration of disputes. *Heffner v. Destiny, Inc.*, 321 S.C. 536, 537, 471 S.E.2d 135, 136 (1995). At the same time, general contract principles of state law apply to a court's evaluation of the enforceability of an arbitration clause governed by the FAA. *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 539, 542 S.E.2d 360, 364 (2001) (citing *Doctor's Assoc., Inc. v. Casarotto*, 517 U.S. 681, 685 (1996)). To this end, if a court as a matter of law finds any clause of a contract involving the sale of goods to have been unconscionable at the time it was made, the court may refuse to enforce the unconscionable clause, or so limit its application so as to avoid any unconscionable result. S.C. Code Ann. § 36-2-302(1) (2003).

B.
Adhesion Contract

The Wattses and Century dispute whether this contract is an adhesion contract. Century argues the transaction was thoroughly negotiated and the sale was not conditioned upon the Wattses agreeing to sign the arbitration agreement. The Wattses, on the other hand, argue there is evidence to support the trial court's finding that this was an adhesion contract, including the fact that this was a standard form contract. It appears that one customer (and certainly no more than a few customers) out of approximately six thousand failed to sign the arbitration agreement.

We agree with the trial court that this is an adhesion contract. This was a contract on a standard form, presented on a take-it-or-leave-it basis. The Watts did not contribute to the drafting of the contract or possess the bargaining power to negotiate the terms of the contract.² See *Lackey v. Green Tree Fin. Corp.*, 330 S.C. 388, 394, 498 S.E.2d 898, 901 (Ct. App. 1998) (recognizing a contract of adhesion is generally thought of as a standard form contract, offered on a take-it-or-leave-it basis, containing non-negotiable terms). Nevertheless, although this Court has approached adhesion contracts between a consumer and automobile retailer with "considerable skepticism," adhesion contracts are not per se unconscionable. *Simpson*, 373 S.C. at 27, 644 S.E.2d at 669. Finding a contract to be one of adhesion is merely the beginning point in the analysis of whether the contract is unconscionable. *Lackey*, 330 S.C. at 395, 498 S.E.2d at 902.

C. Unconscionability

In South Carolina, unconscionability is defined as the absence of meaningful choice on the part of one party, due to one-sided contract provisions, together with terms that are so oppressive that no reasonable person would make them and no fair and honest person would accept them. *Simpson v.* 373 S.C. at 25, 644 S.E.2d at 668.

1. *Absence of Meaningful Choice*

Absence of meaningful choice on the part of one party generally speaks to the fundamental fairness of the bargaining process in the contract at issue. *Id.* at 25, 644 S.E.2d at 669. In determining whether there is an absence of a meaningful choice, courts consider the relative disparity in the parties' bargaining power; the parties' relative sophistication; the nature of the injuries suffered by the plaintiff; whether the plaintiff is a substantial business concern; whether there is an element of surprise in the inclusion of the challenged clause; and the conspicuousness of the clause. *Id.*

² Although the Watts negotiated the *price of the car*, they did not have the power to negotiate the *terms of the contract*.

We are firmly convinced and find the Wattses had a meaningful choice in signing the contract. We recognize that this was a contract for the sale of a vehicle Christine Watts planned to use as her primary means of transportation, "which is critically important in modern day society." *Id.* at 27, 644 S.E.2d at 670. We also recognize that there was an inherent disparity in bargaining power between the parties, as this was a transaction between a consumer and a commercial entity.³ However, the arbitration agreement is a separate, one-page document which both Michael and Christine Watts signed. It is clearly labeled to be an arbitration agreement at the top of the document in bold, capital, and underlined font. The important terms and provisions of the agreement appear in the body of the contract and again in capital letters just above the signature line.

The Wattses both admitted they did not read the arbitration agreement, and their deposition testimony confirmed the failure to read the documents was solely attributed to them and not to Century's actions. Our jurisprudence forbids us to allow the Wattses to invalidate the enforceability of the arbitration agreement by claiming they did not read it. *Regions Bank v. Schmauch*, 354 S.C. 648, 663, 582 S.E.2d 432, 440 (Ct. App. 2003) (citing *Sims v. Tyler*, 276 S.C. 640, 643, 281 S.E.2d 229, 230 (1981)) ("A person who signs a contract or other written document cannot avoid the effect of the document by claiming he did not read it.").

This arbitration agreement and the actions of Century surrounding the transaction are markedly different from the actual agreement as well as surrounding circumstances in *Simpson*. The *Simpson* arbitration agreement was inconspicuously buried in the sales contract, on the opposite page from the customer's signature, in paragraph "10" of sixteen other paragraphs. Additionally, the *Simpson* customer alleged the contract was "hastily" presented for her signature.

³ Contrary to Century's assertion, we find no significance in the fact that this was a luxury vehicle or that Christine Watts was "highly-educated." These factors do not change the "consumer/business nature" of the transaction.

The significant features that impacted the unconscionability determination in *Simpson* are not present here. We hold the Watts had a meaningful choice in making the decision to enter into this contract with Century.

2. *Oppressive One-Sided Terms*

First, we will address the provisions in the arbitration agreement, save for the provision prohibiting a customer from bringing a class action suit against Century.

Under the agreement, all claims must be brought within the applicable statute of limitations, the arbitrator shall be an attorney or retired judge, and each party is responsible for his or her own attorney's fees. Additional terms include: no arbitration is required if the claim is brought in small claims court; the arbitration shall be conducted, at the customer's option, in the federal district in which the customer resides or in which the vehicle was purchased; the arbitrator shall apply governing local, state or federal laws and award damages or other relief allowed by such governing laws; if the customer initiates a claim, Century will pay the portion of the filing fee which exceeds the court filing fee; if Century initiates the claim, it will pay the entire filing fee; Century will pay up to \$1,500 of the arbitrator's fees; and parties shall equally share fees in excess of \$1,500.

In our view, these terms are neither oppressive nor one-sided. Moreover, nothing in the agreement prevents the arbitrator from awarding punitive damages or double or treble compensatory damages, nor does the agreement limit any available statutory remedies. Several provisions favor the customer, such as allowing the customer a choice of venue and Century's obligation to pay certain fees. Moreover, both the customer and Century are subject to the same terms in the arbitration agreement, thus there is no lack of mutuality of remedy. See *Simpson*, 373 S.C. at 32, 644 S.E.2d at 672 (adhering to previous holdings in that lack of mutuality of remedy will not invalidate an arbitration agreement, but finding the provision dictating that the dealer's judicial remedies supersede the consumer's arbitral remedies was one-sided and oppressive).

These terms stand in sharp contrast to the terms present in *Simpson*. In *Simpson*, the arbitration provision required the customer to waive her right to mandatory statutory remedies, including the right to punitive damages and double and treble compensatory damages. There was a lack of mutuality of remedies, as the customer was forced to arbitrate all claims she may have had against the dealer, while the dealer reserved its right to judicial remedies in certain circumstances. Further, the scope of the arbitration agreement in *Simpson* was so broad it included non-arbitratable disputes.⁴

3. *Ban on Class Actions*

Finding the terms in the arbitration agreement not to be oppressive or one-sided, we next turn to the provision banning class action suits. This provision provides: "By entering into this Agreement the Parties are waiving their right to...bring or participate in any class action or multi-plaintiff or claimant action in court or through arbitration." The Wattses argue this provision is unenforceable because it is oppressive in that it takes away statutory rights, and it is one-sided in that Century would not bring a class action suit against its customers. While we agree with the Wattses that the provision is unenforceable, we hold the ban on class actions is unenforceable on public policy grounds.

The purpose of the Dealers Act is consumer protection. Damages are typically small in individual consumer cases, thereby discouraging plaintiffs

⁴ The Court found the scope of the arbitration agreement was broad enough to implicate claims arising under the Magnuson-Moss Warranty Act (MMWA), a federal statute that governs warranties on consumer products. The Court noted that federal regulations state that informal dispute resolution procedures set forth in written warranties under the MMWA are not to be legally binding on any person. 16 C.F.R. § 703.5(j) (2006). Accordingly, the Court held "the inclusion of the MMWA in the scope of the arbitration clause is unenforceable as a matter of public policy." *Simpson*, 373 S.C. at 33, 644 S.E.2d at 673.

from bringing individual actions. Our Legislature recognized this and expressly provided plaintiffs with the right to bring class action lawsuits for violations of the Dealers Act:

When such action is one of common or general interest to many persons or when the parties are numerous and it is impracticable to bring them all before the court, one or more may sue for the benefit of the whole, including actions for injunctive relief.

Section 56-15-110(2). The Dealers Act further provides: "Any contract or part thereof or practice thereunder in violation of any provision of this chapter shall be deemed against public policy and shall be void and unenforceable." Section 56-15-130.

Stated succinctly, the Legislature has made clear that the public policy of this State is to provide consumers with a non-waivable right to bring class action suits for violations of the Dealers Act and that any contract prohibiting a class action suit violates our State's public policy and is void and unenforceable. We note that courts across the country are split over whether an arbitration agreement may include a waiver of the right to bring a class action suit. *See Scott v. Cingular Wireless*, 161 P.3d 1000, 1004 (Wash. 2007) (highlighting the split in authority with a list of nationwide cases finding class action waivers enforceable and unenforceable). We are guided by our state law, and the unmistakable statutory language contained in the Dealers Act indicating our Legislature intended for this to be a non-waivable right. We therefore hold this provision is unenforceable on public policy grounds. *See Carolina Care Plan, Inc. v. United HealthCare Servs., Inc.*, 361 S.C. 544, 555, 606 S.E.2d 752, 758 (2004) (holding the general rule is that courts will not enforce a contract which is violative of public policy, statutory law, or provisions of the Constitution).

4. *Severance*

Finding this provision unenforceable would normally not end the inquiry on the enforceability of the remainder of the contract, as courts will attempt to sever an illegal provision in an otherwise valid contract and

enforce the remaining terms.⁵ The parties' arbitration agreement provides that "[i]f any part of this Agreement shall be deemed or found unenforceable for any reason, the remainder of the Agreement shall remain enforceable."

Nevertheless, counsel for Century unambiguously stated at oral argument that Century did not wish to invoke the severance clause and sever the provision banning class actions from the remainder of the agreement. Century unequivocally expressed its intent for the arbitration agreement to stand or fall as a whole. Obviously, the Wattses seek to avoid the arbitration agreement and proceed in court. We will not provide a remedy that neither party seeks. We treat the issue of severability as abandoned. Therefore, we decline to enforce the arbitration agreement and affirm in result the trial court's denial of Century's motion to compel arbitration.

III.

We hold, except for the provision prohibiting customers from bringing class actions, the arbitration agreement is not unconscionable, for the Wattses had a meaningful choice in entering this agreement and the agreement does not contain oppressive or one-sided terms. The arbitration agreement is enforceable except for the ban on class actions, which, under ordinary circumstances, would be severed. However, Century has abandoned its right to severance and seeks to litigate this matter in court if the ban on class actions is unenforceable. Accordingly, we affirm in result the trial court's order denying the motion to compel arbitration.

⁵ A severable contract is one in its nature and purpose susceptible of division and apportionment, with an emphasis on discerning the parties' intent. *Columbia Architectural Group, Inc. v. Barker*, 274 S.C. 639, 641, 266 S.E.2d 428, 429 (1980). Whether an illegal provision in an otherwise valid contract may be severed from the contract is a matter of the intent of the parties. *Beach Co. v. Twillman, Ltd.*, 351 S.C. 56, 64, 566 S.E.2d 863, 867 (Ct. App. 2002).

AFFIRMED IN RESULT.

TOAL, C.J., BEATTY, HEARN JJ., and Acting Justice James E. Moore, concur.

Reply to: Columbia
shamm@RichardsonPlowden.com
Direct: 803-576-3713
jhill@RichardsonPlowden.com
Direct: 803-576-3714

January 25, 2010

RECEIVED

JAN 26 2010

S.C. SUPREME COURT

The Hon. Daniel E. Shearouse
Clerk
Supreme Court
PO Box 11330
Columbia, SC 29211

Re: Herron et al Respondents v. Century BMW
of which Sonic Automotive, d/b/a Century BMW is Appellant
Appeal of Order in Circuit Court Case No. 2006-CP-01-1230
Our File No. 6665-001

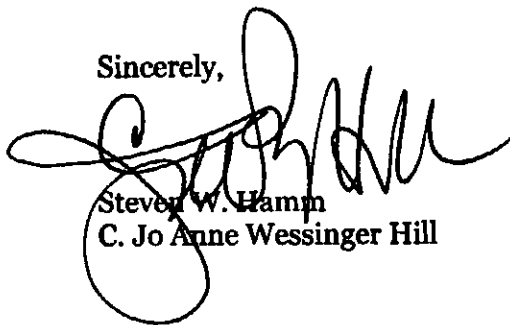
Dear Mr. Shearouse:

Please provide a copy of the transcript tape of the oral argument in this matter that took place on January 20, 2010. Enclosed is our check in the amount of \$20.00 in payment of the requisite fee. Please call when the tape is available for pick up.

Thank you for your consideration of this request. If you have any questions or concerns, please let me know.

With kindest regards, I am

Sincerely,



Steven W. Hamm
C. Jo Anne Wessinger Hill

SWH/JWH/kjt

Cc: A. Camden Lewis, Esq.
Brady R. Thomas, Esq.
Michael E. Spears, Esq.
Richard A. Harpootlian, Esq.
Gedney M. Howe, III, Esq.

LAW OFFICES
LEWIS & BABCOCK, L.L.P.
POST OFFICE BOX 11208
COLUMBIA, SOUTH CAROLINA 29211

TELEPHONE: 803 / 771-8000
FAX: 803 / 733-3534
INTERNET: MB@LEWISBABCOCK.COM

A. CAMDEN LEWIS
KEITH M. BABCOCK
MARY G. LEWIS
ARIAIL E. KING
PETER D. PROTOPAPAS
W. JONATHAN HARLING

STREET ADDRESS:
1513 HAMPTON STREET
COLUMBIA, SOUTH CAROLINA 29201

January 25, 2010

RECEIVED

JAN 25 2010

S.C. SUPREME COURT

HAND-DELIVERY

The Honorable Daniel E. Shearouse
Clerk of Court
South Carolina Supreme Court
1231 Gervais Street
Columbia, Sc 29201

RE: *Heather Herron, et al. v. Century BMW d/h/a Sonic Automotive, et al.*
C/A No.: 2006-CP-02-1230
Our file Number: 06-551

Dear Mr. Shearouse:

I am writing to request the transcript tape for the oral argument that took place on January 20, 2010 in the above-referenced matter. Enclosed please find a check for \$20.00 for the fee for requested tape. Please let our office know when the tape might be available.

Thank you for your consideration of my request.

With highest regards, I remain

Sincerely,

LEWIS & BABCOCK, LLP



Melanie B. Blease
Paralegal to A. Camden Lewis

Enclosure

cc: Michael E. Spears, Esquire
Richard A. Harpootlian, Esquire
Gedney M. Howe, III, Esquire
Steve Hamm, Esquire (VIA HAND-DELIVERY)
C. Jo Anne Wessinger Hill, Esquire (VIA HAND-DELIVERY)



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

January 12, 2010

Steven W. Hamm, Esquire
C. Jo Anne Wessinger-Hill, Esquire
David A. Anderson, Esquire
Jocelyn T. Newman, Esquire
Richardson, Plowden
& Robinson, PA
P O Drawer 7788
Columbia, SC 29202

A. Camden Lewis, Esquire
Brady R. Thomas, Esquire
Lewis & Babcock, LLP
P.O. Box 11208
Columbia, SC 29211

Gedney M. Howe, III, Esquire
Gedney M. Howe III, PA
P.O. Box 1034
Charleston, SC 29402

Michael Eugene Spears, Esquire
Michael Spears, PA
P.O. Box 5806
Spartanburg, SC 29304

Richard A. Harpootlian, Esquire
Richard A. Harpootlian, PA
P.O. Box 1090
Columbia, SC 29202

Dennis M. Black, Esquire
Ryan L. VanGrack, Esquire
Williams & Connolly LLP
725 Twelfth Street, NW
Washington, DC 20005

Re: Herron, Heather v. Century BMW

Dear Counsel:

The record in the above case has been reviewed and the time allotment for oral argument for this case is as follows:

Appellant	15 minutes
Respondents	15 minutes
Appellant in Reply	5 minutes

Reminder:

This case is scheduled for hearing at 9:30 a.m. on Wednesday, January 20, 2010.

Very truly yours,

Daniel E. Shearouse, Clerk

By Jean J. Peebles
Administrative Assistant

DES/jjp

Richard A. Harpootlian, P.A.

ATTORNEYS AT LAW
1410 LAUREL STREET
COLUMBIA, SOUTH CAROLINA 29201
WEBSITE: WWW.HARPOOTLIANLAW.COM

RICHARD A. HARPOOTLIAN
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GRAHAM L. NEWMAN
gln@harpootlianlaw.com

JAMIE L. HARPOOTLIAN*
OF COUNSEL
*admitted in Louisiana

MAILING ADDRESS:
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COLUMBIA, S.C. 29202

TELEPHONE (803) 252-4848
FACSIMILE (803) 252-4810
TOLL FREE (866) 706-3997

November 16, 2009
VIA HAND DELIVERY

RECEIVED
NOV 16 2009
S.C. SUPREME COURT

The Honorable Daniel E. Shearouse
Clerk for the SC Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re: Elizabeth K. Gooding v. Donald M. Brandt, et al.
Civil Action No.: 99-CP-02-0211

Dear Mr. Shearouse:

With regards to the Court's correspondence concerning the hearing of the above-referenced matter being scheduled during the January 2010 term of court, please be advised of the following:

- I am scheduled to be in front of the SC Supreme Court in the case *Herron v. Hendrick Honda, et al.* on either January 5th, 6th, or 7th as well as January 20th or January 21st;
- I am planning to attend the South Carolina Bar Convention scheduled to begin on January 21, 2009.

Should you need any further information regarding scheduling, please do not hesitate to contact me.

With warmest personal regards, I am

Sincerely,


Richard A. Harpootlian

/hnh

cc: Dan Speights, Esq.
A. Gibson Solomons, III, Esquire
Jack Swerling, Esquire
Jim Griffin, Esquire
Christian Stegmaier, Esquire
Joel Collins, Esquire

Reply to: Columbia
shamm@RichardsonPlowden.com
Direct: 803-576-3713
jhill@RichardsonPlowden.com
Direct: 803-576-3714

November 12, 2009

The Hon. Daniel E. Shearouse
Clerk
Supreme Court
PO Box 11330
Columbia, SC 29211

RECEIVED

NOV 12 2009

S.C. SUPREME COURT

Re: Herron et al Respondents v. Century BMW
of which Sonic Automotive, d/b/a Century BMW is Appellant
Appeal of Order in Circuit Court Case No. 2006-CP-01-1230
Our File No. 6665-001

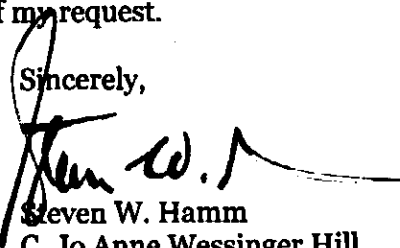
Dear Mr. Shearouse:

I am responding to your letter advising that the Herron v. Century BMW appeal will be heard on either January 5th, 6th, 7th, 20th or 21st of January 2010. In light of your letter, I have consulted with Mike Spears, opposing counsel, and we have determined that either January 20th or 21st are dates that both parties are mutually available to appear before the Court.

I respectfully await further instruction from the Court. I am providing this letter to opposing counsel as indicated below.

Thank you for your consideration of my request.

Sincerely,


Steven W. Hamm
C. Jo Anne Wessinger Hill

SWH/JWH/kjt

Cc: A. Camden Lewis, Esq.
Brady R. Thomas, Esq.
H. Clayton Walker, Jr., Esq.
James Y. Becker, Esq.
Mary Caskey, Esq.
J. Gregory Studemeyer, Esq.
Gedney M. Howe, III, Esq.
Richard A. Harpootlian, Esq.
Michael E. Spears, Esq.
David A. Anderson, Esq.
Jocelyn T. Newman, Esq.



The South Carolina Supreme Court

DANIEL E. SHEAROUSE
CLERK OF COURT
BRENDA F. SHEALY
DEPUTY CLERK

P.O. BOX 11330
COLUMBIA, S.C. 29211
PHONE NO. 734-1080

To: A. Camden Lewis, Esquire
Brady R. Thomas, Esquire
From: Daniel E. Shearouse
Date: November 05, 2009
RE: January Preliminary List

Pursuant to the provisions of Rule 216 of the South Carolina Appellate Court Rules, this is to advise that the following case(s) will probably be reached for hearing at the January 2010 term of the South Carolina Supreme Court. Our records indicate that you are counsel of record in one or more of these case(s).

Court will meet the days of January 5, 6, 7, 20 and 21. Please notify this office in writing prior to November 12, 2009 as to any scheduling conflicts for the January term, and any changes or additions of counsel that should be made to the record for the purpose of argument. If you do have a scheduling conflict, please advise as to the specific nature of the conflict.

Herron, Heather v. Century BMW



The South Carolina Supreme Court

DANIEL E. SHEAROUSE
CLERK OF COURT
BRENDA F. SHEALY
DEPUTY CLERK

P.O. BOX 11330
COLUMBIA, S.C. 29211
PHONE NO. 734-1080

To: Dennis M. Black, Esquire
Ryan L. VanGrack, Esquire
From: Daniel E. Shearouse
Date: November 05, 2009
RE: January Preliminary List

Pursuant to the provisions of Rule 216 of the South Carolina Appellate Court Rules, this is to advise that the following case(s) will probably be reached for hearing at the January 2010 term of the South Carolina Supreme Court. Our records indicate that you are counsel of record in one or more of these case(s).

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Herron, Heather v. Century BMW



The South Carolina Supreme Court

DANIEL E. SHEAROUSE
CLERK OF COURT
BRENDA F. SHEALY
DEPUTY CLERK

P.O. BOX 11330
COLUMBIA, S.C. 29211
PHONE NO. 734-1080

To: Gedney Howe, III, Esquire
From: Daniel E. Shearouse
Date: November 05, 2009
RE: January Preliminary List

Pursuant to the provisions of Rule 216 of the South Carolina Appellate Court Rules, this is to advise that the following case(s) will probably be reached for hearing at the January 2010 term of the South Carolina Supreme Court. Our records indicate that you are counsel of record in one or more of these case(s).

Court will meet the days of January 5, 6, 7, 20 and 21. Please notify this office in writing prior to November 12, 2009 as to any scheduling conflicts for the January term, and any changes or additions of counsel that should be made to the record for the purpose of argument. If you do have a scheduling conflict, please advise as to the specific nature of the conflict.

Herron, Heather v. Century BMW



The South Carolina Supreme Court

DANIEL E. SHEAROUSE
CLERK OF COURT
BRENDA F. SHEALY
DEPUTY CLERK

P.O. BOX 11330
COLUMBIA, S.C. 29211
PHONE NO. 734-1080

To: Michael Eugene Spears, Esquire
From: Daniel E. Shearouse
Date: November 05, 2009
RE: January Preliminary List

Pursuant to the provisions of Rule 216 of the South Carolina Appellate Court Rules, this is to advise that the following case(s) will probably be reached for hearing at the January 2010 term of the South Carolina Supreme Court. Our records indicate that you are counsel of record in one or more of these case(s).

Court will meet the days of January 5, 6, 7, 20 and 21. Please notify this office in writing prior to November 12, 2009 as to any scheduling conflicts for the January term, and any changes or additions of counsel that should be made to the record for the purpose of argument. If you do have a scheduling conflict, please advise as to the specific nature of the conflict.

Herron, Heather v. Century BMW



The South Carolina Supreme Court

DANIEL E. SHEAROUSE
CLERK OF COURT
BRENDA F. SHEALY
DEPUTY CLERK

P.O. BOX 11330
COLUMBIA, S.C. 29211
PHONE NO. 734-1080

To: Richard Harpootlian, Esquire
From: Daniel E. Shearouse
Date: November 05, 2009
RE: January Preliminary List

Pursuant to the provisions of Rule 216 of the South Carolina Appellate Court Rules, this is to advise that the following case(s) will probably be reached for hearing at the January 2010 term of the South Carolina Supreme Court. Our records indicate that you are counsel of record in one or more of these case(s).

Court will meet the days of January 5, 6, 7, 20 and 21. Please notify this office in writing prior to November 12, 2009 as to any scheduling conflicts for the January term, and any changes or additions of counsel that should be made to the record for the purpose of argument. If you do have a scheduling conflict, please advise as to the specific nature of the conflict.

Herron, Heather v. Century BMW



The South Carolina Supreme Court

DANIEL E. SHEAROUSE
CLERK OF COURT
BRENDA F. SHEALY
DEPUTY CLERK

P.O. BOX 11330
COLUMBIA, S.C. 29211
PHONE NO. 734-1080

To: Steven W. Hamm, Esquire
C. Jo Anne Wessinger-Hill, Esquire
David A. Anderson, Esquire
Jocelyn T. Newman, Esquire

From: Daniel E. Shearouse

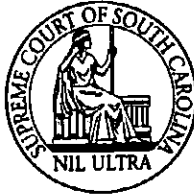
Date: November 05, 2009

RE: January Preliminary List

Pursuant to the provisions of Rule 216 of the South Carolina Appellate Court Rules, this is to advise that the following case(s) will probably be reached for hearing at the January 2010 term of the South Carolina Supreme Court. Our records indicate that you are counsel of record in one or more of these case(s).

Court will meet the days of January 5, 6, 7, 20 and 21. Please notify this office in writing prior to November 12, 2009 as to any scheduling conflicts for the January term, and any changes or additions of counsel that should be made to the record for the purpose of argument. If you do have a scheduling conflict, please advise as to the specific nature of the conflict.

Herron, Heather v. Century BMW



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

November 5, 2009

Steven W. Hamm, Esquire
C. Jo Anne Wessinger-Hill, Esquire
David A. Anderson, Esquire
Jocelyn T. Newman, Esquire
Richardson, Plowden & Robinson
P O Drawer 7788
Columbia, SC 29202

A. Camden Lewis, Esquire
Brady R. Thomas, Esquire
Lewis & Babcock
P.O. Box 11208
Columbia, SC 29211

Re: Herron, Heather v. Century BMW

Dear Counsel:

When the roster for the December 2009 term of Court was prepared, the above referenced case was not scheduled. Our records indicate that you are counsel of record in this case.

This case will be placed on the January 2010 Preliminary List of Cases. Court will meet the days of January 5, 6, 7, 20 and 21, 2010.

Very truly yours,

CLERK

DES/jjp

cc: Dennis M. Black, Esquire
Ryan L. VanGrack, Esquire
Gedney Howe, III, Esquire
Michael Eugene Spears, Esquire
Richard Harpootlian, Esquire

8P
MICHAEL E. SPEARS, P.A.

ATTORNEYS AT LAW

172 EAST MAIN ST.

SUITE 200

P.O. BOX 5806

SPARTANBURG, SOUTH CAROLINA 29304-5806

MICHAEL E. SPEARS
E. GREY WICKER

TELEPHONE
(864) 583-3535

FACSIMILE
(864) 583-3525

attyspears@charter.net
gwicker@mikespearspa.com

October 22, 2009

via U.S. mail and Hand-Delivery

The Supreme Court of South Carolina
Honorable Daniel E. Shearouse, Clerk of Court
1231 Gervais Street
P.O. Box 11330
Columbia, SC 29211

RECEIVED

OCT 21 2009

S.C. SUPREME COURT

RE: Herron, Heather v. Century BMW

Dear Mr. Shearouse:

This letter is in response to your letter of October 15, 2009 wherein, pursuant to Rule 216 of the South Carolina Appellate Court Rules, you advised all counsel of record that the above named Appeal will be reached at the December 2009 term of the South Carolina Supreme Court.

You indicated that the Court will meet on the days of November 30, December 1 and December 2nd. You further instructed us to contact the Court prior to October 22, 2009 as to any scheduling conflicts for the December term. By this time, you have already received a written communication from Steve Hamm as counsel for the Appellant Century BMW that he has a conflict on November 30th as well as a written communication from Richard Harpootlian that he has an oral argument in the case of Ward vs. Dixie in front of the Fourth Circuit Court of Appeals on December 1st. As he indicated, he will be traveling to Richmond, Virginia on November 30 and returning from Richmond, Virginia to Columbia, South Carolina on December 2. Mr. Harpootlian is one of the counsel of record for the Respondent in the above named case.

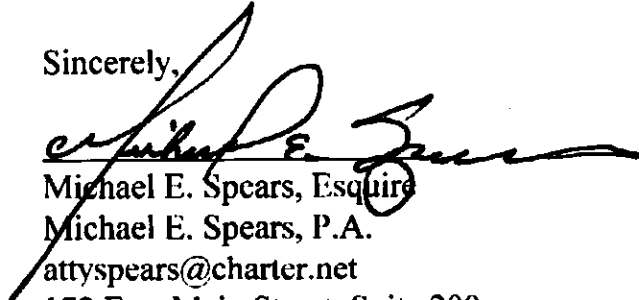
After receiving notice of these two communications to the Supreme Court, I embarked on attempting to ascertain when all Counsel of record would be available and conflict free for a hearing on this matter so that there would be no need for repetitive communications between the Supreme Court and all counsel of record. I have always believed that when one poses a problem to such an august body as the Supreme Court of South Carolina, one should have a suggested solution available should it be helpful to the decision makers involved.

Through repetitive phone conferences with opposing counsel, Mr. Steven Hamm representing Century BMW, and all counsel of record on behalf of the Respondent, Heather Herron, I have been able to firmly establish that the Court term of January 20th and 21st are in fact "conflict free" for all counsel of record. If it pleases the Court, all counsel of record can be available at any time on any of these two dates should the Court find this acceptable. Should the Court so desire I will be happy to list the conflicts of the various counsel of record which would make the earlier January term of the Court (January 4-6) a problem but for now please allow me to say that those dates have been thoroughly investigated.

Accordingly, may it please the Court, all counsel of record would apply to this Court for the opportunity to be heard on one of these dates on **January 20th or 21st** for the Appeal in the matter of Herron v. Century BMW. By and with the permission and knowledge of Mr. Steven Hamm representing the Appellant Century BMW, I, as one of the counsel for the Respondent Heather Herron, hereby request that the Court allow this matter to be scheduled sometime during the Court term of January 20 and 21st so that all counsel of record may attend and participate without conflict.

Should the Court have any questions whatsoever, please feel free to contact me at the address shown above or Mr. Steven Hamm of Columbia, South Carolina. All Counsel of record stand ready to act at the Court's pleasure.

Sincerely,



Michael E. Spears, Esquire

Michael E. Spears, P.A.

attyspears@charter.net

172 East Main Street, Suite 200

P.O. Box 5806

Spartanburg, SC 29304

(864) 583-3535

A. Camden Lewis, Esquire

Lewis and Babcock, LLP

PO Box 11208

Columbia, SC 29211

Gedney M Howe, III, Esquire

Gedney M. Howe III, P.A.

PO Box 1034

Charleston, SC 29402

Richard A. Harpootlian, Esquire
Richard A. Harpootlian, P.A.
PO Box 1090
Columbia, SC 29202

MES/ler

cc: Brenda Shealy, Chief Deputy Clerk
Steven Hamm, Attorney for Appellant Century BMW
A. Camden Lewis, Esquire
Gedney M. Howe, III, Esquire
Richard A. Harpootlian, Esquire
Lauren V. Spears, Paralegal

Richard A. Harpootlian, P.A.

ATTORNEYS AT LAW
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COLUMBIA, SOUTH CAROLINA 29201
WEBSITE: WWW.HARPOOTLIANLAW.COM

RICHARD A. HARPOOTLIAN
rah@harpootlianlaw.com

GRAHAM L. NEWMAN
gln@harpootlianlaw.com

JAMIE L. HARPOOTLIAN*
OF COUNSEL
*admitted in Louisiana

October 21, 2009
VIA HAND DELIVERY

MAILING ADDRESS:
POST OFFICE BOX 1090
COLUMBIA, S.C. 29202

TELEPHONE (803) 252-4848
FACSIMILE (803) 252-4810
TOLL FREE (866) 706-3997

The Honorable Daniel E. Shearouse
Clerk of Court, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

In re: Herron, et al. (Respondents) v. Century BMW, et al. (Appellants)
Circuit Court Case No.: 2006-CP-01-1230

Dear Mr. Shearouse:

With regards to advising the Clerk's office on the possible dates for this case to be heard, I am scheduled to be in the Fourth Circuit Court of Appeals on December 1, 2009, and will be traveling to Richmond, Virginia on November 30, 2009, and returning to Columbia on December 2, 2009.

I have attached a hearing notice regarding *Ward, et al. v. Dixie National Life Insurance Company, et al.*

With warm personal regards, I am

Sincerely,


Richard A. Harpootlian

RAH:hmh
enclosure

cc: (via U.S. Mail Only)
A. Camden Lewis, Esquire
Brady Thomas, Esquire
H. Clayton Walker, Esquire
James Y. Beck, Esquire
Mary Caskey, Esquire
J. Gregory Studemeyer, Esquire
Gedney M. Howe, III, Esquire
Michael Spears, Esquire
David Anderson, Esquire
Jocelyn Newman, Esquire

RECEIVED

OCT 21 2009

S.C. SUPREME COURT

RECEIVED

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

OCT 21 2009

October 7, 2009

S.C. SUPREME COURT

ORAL ARGUMENT NOTIFICATION

Please take notice that this case has been scheduled for oral argument. The time for notifying the Court of any conflict or filing any motion that would affect the scheduling of argument has expired. Therefore, the case will not be rescheduled absent a showing of good cause for the requested relief and that the relief could not have been requested within the notice period.

No. 08-2378, Martha Ward v. Dixie National Life Insurance
3:03-cv-03239-JFA

Place: U. S. Courthouse, Room 222
10th & Main Streets *** MAIN STREET ENTRANCE ***
Richmond, Virginia 23219

Date: 12/01/2009

Time: Counsel must register between 8:45 - 9:00

Argument Time: Each side is normally allowed 20 minutes; if more than one attorney is arguing per side, the attorneys must agree on how the time is to be divided. In social security disability cases, black lung cases, and labor cases in which the primary issue is whether the agency's decision is supported by substantial evidence, each side is limited to 15 minutes. In en banc cases, each side is allowed 30 minutes. Appellants and cross-appellants may reserve up to one-third of their time for rebuttal when they register.

Criminal & CJA Cases: In criminal cases, an attorney must appear on behalf of each defendant separately represented unless the defendant signs a waiver of counsel's appearance and co-defendant's counsel certifies in advance of argument that he or she is prepared to argue on behalf of the defendant whose attorney is not present. CJA attorneys traveling by plane or train must call 804-916-2700 and request a CJA Travel Authorization to obtain government travel rates.

Identity of Panel/Order of Cases: The identity of the panel hearing a case is not disclosed until the morning of argument. The order of cases is subject to change until the morning of argument.

Courthouse Information: Directions, hotel information, parking suggestions, and information about courtroom protocol are available at our web site, www.ca4.uscourts.gov. All visitors are required to show picture identification before being directed through screening by the Court Security Officers. The following items are prohibited: electronic devices, including cell phones, pagers, cameras, tape recorders, computers, and PDA's; potential weapons, including pocket knives, scissors, and mace; and food and beverages. Umbrellas must be left in the lobby.

Oral Argument Acknowledgment: Any attorney arguing a case and any attorney in a criminal case who is simply attending the argument must return the Oral Argument Acknowledgment form (click on this link or complete form at end of notice).

Joseph L. Coleman
Deputy Clerk

October 21, 2009

The Hon. Daniel E. Shearouse
Clerk
Supreme Court
PO Box 11330
Columbia, SC 29211

RECEIVED

OCT 21 2009

S.C. SUPREME COURT

Re: Herron et al Respondents v. Century BMW
of which Sonic Automotive, d/b/a Century BMW is Appellant
Appeal of Order in Circuit Court Case No. 2006-CP-01-1230
Our File No. 6665-001

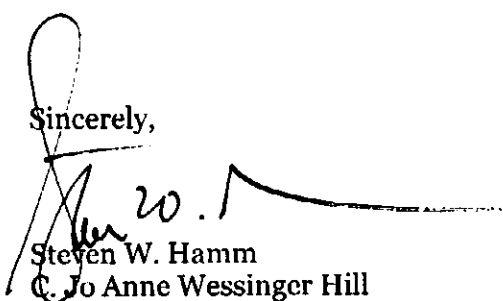
Dear Mr. Shearouse:

Pursuant to your letter advising that the Herron v. Century BMW appeal will be heard on either Monday November 30 or December 1st or 2nd, I would respectfully request that the Court set the hearing for either December 1st or 2nd. I have a conflict on November 30th.

Thank you for your consideration of my request.

With kindest regards, I am

Sincerely,


Steven W. Hamm
C. Jo Anne Wessinger Hill

SWH/JWH/kjt

Cc: A. Camden Lewis, Esq.
Brady R. Thomas, Esq.
H. Clayton Walker, Jr., Esq.
James Y. Becker, Esq.
Mary Caskey, Esq.
J. Gregory Studemeyer, Esq.
Gedney M. Howe, III, Esq.
Richard A. Harpootlian, Esq.
Michael E. Spears, Esq.
David A. Anderson, Esq.
Jocelyn T. Newman, Esq.



The South Carolina Supreme Court

DANIEL E. SHEAROUSE
CLERK OF COURT
BRENDA F. SHEALY
DEPUTY CLERK

P.O. BOX 11330
COLUMBIA, S.C. 29211
PHONE NO. 734-1080

To: A. Camden Lewis, Esquire
Brady R. Thomas, Esquire
From: Daniel E. Shearouse
Date: October 15, 2009
RE: December Preliminary List

Pursuant to the provisions of Rule 216 of the South Carolina Appellate Court Rules, this is to advise that the following case(s) will probably be reached for hearing at the December 2009 term of the South Carolina Supreme Court. Our records indicate that you are counsel of record in one or more of these case(s).

Court will meet the days of November 30, December 1 and 2. Please notify this office in writing prior to October 22, 2009 as to any scheduling conflicts for the December term, and any changes or additions of counsel that should be made to the record for the purpose of argument. If you do have a scheduling conflict, please advise as to the specific nature of the conflict.

Herron, Heather v. Century BMW



The South Carolina Supreme Court

DANIEL E. SHEAROUSE
CLERK OF COURT
BRENDA F. SHEALY
DEPUTY CLERK

P.O. BOX 11330
COLUMBIA, S.C. 29211
PHONE NO. 734-1080

To: Dennis M. Black, Esquire
Ryan L. VanGrack, Esquire
From: Daniel E. Shearouse
Date: October 15, 2009
RE: December Preliminary List

Pursuant to the provisions of Rule 216 of the South Carolina Appellate Court Rules, this is to advise that the following case(s) will probably be reached for hearing at the December 2009 term of the South Carolina Supreme Court. Our records indicate that you are counsel of record in one or more of these case(s).

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Herron, Heather v. Century BMW



The South Carolina Supreme Court

DANIEL E. SHEAROUSE
CLERK OF COURT
BRENDA F. SHEALY
DEPUTY CLERK

P.O. BOX 11330
COLUMBIA, S.C. 29211
PHONE NO. 734-1080

To: Gedney Howe, III, Esquire
From: Daniel E. Shearouse
Date: October 15, 2009
RE: December Preliminary List

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Herron, Heather v. Century BMW



The South Carolina Supreme Court

DANIEL E. SHEAROUSE
CLERK OF COURT
BRENDA F. SHEALY
DEPUTY CLERK

P.O. BOX 11330
COLUMBIA, S.C. 29211
PHONE NO. 734-1080

To: Michael Eugene Spears, Esquire
From: Daniel E. Shearouse
Date: October 15, 2009
RE: December Preliminary List

Pursuant to the provisions of Rule 216 of the South Carolina Appellate Court Rules, this is to advise that the following case(s) will probably be reached for hearing at the December 2009 term of the South Carolina Supreme Court. Our records indicate that you are counsel of record in one or more of these case(s).

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Herron, Heather v. Century BMW



The South Carolina Supreme Court

DANIEL E. SHEAROUSE
CLERK OF COURT
BRENDA F. SHEALY
DEPUTY CLERK

P.O. BOX 11330
COLUMBIA, S.C. 29211
PHONE NO. 734-1080

To: Richard Harpootlian, Esquire
From: Daniel E. Shearouse
Date: October 15, 2009
RE: December Preliminary List

Pursuant to the provisions of Rule 216 of the South Carolina Appellate Court Rules, this is to advise that the following case(s) will probably be reached for hearing at the December 2009 term of the South Carolina Supreme Court. Our records indicate that you are counsel of record in one or more of these case(s).

Court will meet the days of November 30, December 1 and 2. Please notify this office in writing prior to October 22, 2009 as to any scheduling conflicts for the December term, and any changes or additions of counsel that should be made to the record for the purpose of argument. If you do have a scheduling conflict, please advise as to the specific nature of the conflict.

Herron, Heather v. Century BMW



The South Carolina Supreme Court

DANIEL E. SHEAROUSE
CLERK OF COURT
BRENDA F. SHEALY
DEPUTY CLERK

P.O. BOX 11330
COLUMBIA, S.C. 29211
PHONE NO. 734-1080

To: Steven W. Hamm, Esquire
C. Jo Anne Wessinger-Hill, Esquire
David A. Anderson, Esquire
Jocelyn T. Newman, Esquire

From: Daniel E. Shearouse

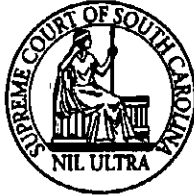
Date: October 15, 2009

RE: December Preliminary List

Pursuant to the provisions of Rule 216 of the South Carolina Appellate Court Rules, this is to advise that the following case(s) will probably be reached for hearing at the December 2009 term of the South Carolina Supreme Court. Our records indicate that you are counsel of record in one or more of these case(s).

Court will meet the days of November 30, December 1 and 2. Please notify this office in writing prior to October 22, 2009 as to any scheduling conflicts for the December term, and any changes or additions of counsel that should be made to the record for the purpose of argument. If you do have a scheduling conflict, please advise as to the specific nature of the conflict.

Herron, Heather v. Century BMW



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

July 23, 2009

Steven W. Hamm, Esquire
C. Jo Anne Wessinger-Hill, Esquire
David A. Anderson, Esquire
Jocelyn T. Newman, Esquire
Richardson, Plowden & Robinson, PA
P O Drawer 7788
Columbia, SC 29202

Re: Herron, Heather v. Century BMW

Dear Counsel:

The following Order has been endorsed on your Motion for Oral Argument in the above entitled case on appeal.

“Granted.

s/ Jean H. Toal C.J.
For the Court

July 23, 2009.”

Steven W. Hamm, Esquire
Re: Herron, Heather v. Century BMW
Page two

Counsel will be advised when this case is placed on a preliminary list as provided by Rule 216, SCACR.

Very truly yours,


CLERK

DES/jjp

cc: Dennis M. Black, Esquire
Ryan L. VanGrack, Esquire
A. Camden Lewis, Esquire
Brady R. Thomas, Esquire
Gedney Howe, III, Esquire
Michael Eugene Spears, Esquire
Richard Harpootlian, Esquire

The Supreme Court of South Carolina

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

Respondents

v.

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

of whom Century BMW a/k/a
Sonic Automotive is the

Appellant

The Honorable Doyet A. Early, III
Aiken County
Trial Court Case No. 2006-CP-02-01230

ORDER

Pursuant to Rule 204(b), this appeal is hereby certified or review by the
South Carolina Supreme Court.

IT IS SO ORDERED.



C.J.
FOR THE COURT

Columbia, South Carolina

July 6, 2009

cc: Dennis M. Black, Esquire
Ryan L. VanGrack
Steven W. Hamm, Esquire
C. Jo Anne Wessinger-Hill, Esquire
David A. Anderson, Esquire
Jocelyn T. Newman, Esquire
A. Camden Lewis, Esquire
Brady R. Thomas, Esquire
Gedney Howe, III, Esquire
Michael Eugene Spears, Esquire
Richard Harpootlian, Esquire
The Honorable Jeanette F. Barber

The Supreme Court of South Carolina

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

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v.

Century BMW a/k/a Sonic
Automotive; Dick Dyer &
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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

of whom Century BMW a/k/a
Sonic Automotive is the

Appellant

RECEIVED

JUL 06 2009

SC Court of Appeals

The Honorable Doyet A. Early, III
Aiken County

Trial Court Case No. 2006-CP-02-01230

ORDER

Pursuant to Rule 204(b), this appeal is hereby certified or review by the
South Carolina Supreme Court.

IT IS SO ORDERED.



C.J.
FOR THE COURT

Columbia, South Carolina

July 6, 2009

cc: Dennis M. Black, Esquire
Ryan L. VanGrack
Steven W. Hamm, Esquire
C. Jo Anne Wessinger-Hill, Esquire
David A. Anderson, Esquire
Jocelyn T. Newman, Esquire
A. Camden Lewis, Esquire
Brady R. Thomas, Esquire
Gedney Howe, III, Esquire
Michael Eugene Spears, Esquire
Richard Harpootlian, Esquire
The Honorable Jeanette F. Barber

RECEIVED

APR 07 2009

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable Doyet A. Early, III, Circuit Court Judge

Circuit Court Case No. 2006-CP-02-1230

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 who paid "administrative fees" as described below to Defendants, ... **Respondents,**

v.

Century BMW d/b/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., ... **Defendants,**

of whom Century BMW d/b/a Sonic Automotive is the **Appellant.**

APPELLANT'S MOTION AND MEMORANDUM FOR ORAL ARGUMENT

On March 12, 2008, the Appellant Century BMW d/b/a Sonic Automotive, the true name of which is Sonic Automotive 2752 Laurens Rd., Greenville, Inc. d/b/a Century BMW ("Century BMW") timely appealed the Honorable Doyet A. Early's Order dated March 10, 2008, in which the circuit court denied Century BMW's Motion to Compel Arbitration of Plaintiff Christine Watts's claims and to dismiss those claims. The parties have filed their final briefs with the Court, along with the Record on Appeal. In light of the statewide importance of the issues presented in this appeal, the importance of such issues to Century BMW and thousands of South

Carolínians, and applicable federal and South Carolina law favoring arbitration, *see, e.g., Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 590, 553 S.E.2d 110, 115 (2001), Century BMW respectfully requests oral argument before the Court and makes this motion seeking oral argument pursuant to Rule 224, SCACR. *See Kennedy v. S.C. Retirement Sys.*, 349 S.C. 531, 564 S.E.2d 322 (2001) (demonstrating that appellate court has discretion to hear oral argument on motions and petitions due to significance or complexity of particular issue); *Watts v. Metro Security Agency*, 346 S.C. 235, 237 n.1, 550 S.E.2d 869 (Ct. App. 2001); *Blejski v. Blejski*, 325 S.C. 491, 493 n.1, 480 S.E.2d 462 (Ct. App. 1997) (two of the many cases in which Court of Appeals has stated it has the discretion to hear oral argument when it would aid the Court in resolving an issue on appeal); Rule 215, SCACR (granting discretion to appellate court to hear oral argument when necessary). Due to the significance of the issues presented in this appeal, Century BMW respectfully submits that oral argument will aid the court in its consideration and resolution of this important appeal.

WHEREFORE, the Appellant moves the Court for an Order granting the Appellant's request for oral argument of its appeal.

Respectfully submitted this 6th day of April, 2009,



Steven W. Hamm
C. Jo Anne Wessinger Hill
David A. Anderson
Jocelyn T. Newman
RICHARDSON PLOWDEN & ROBINSON, P.A.
P.O. Drawer 7788 (1900 Barnwell Street, 29201)
Columbia, South Carolina 29202
(803)771-4400
(803)779-0016 (facsimile)

Granted



For the Court
July 23, 2009

Dennis M. Black (*pro hac vice admitted*)
Ryan L. VanGrack (*pro hac vice admitted*)
WILLIAMS & CONNOLLY LLP
725 Twelfth St., N.W.
Washington, DC 20005
(202) 434-5000
(202) 434-5029 (facsimile)

ATTORNEYS FOR APPELLANT CENTURY BMW, THE TRUE
NAME OF WHICH IS SONIC AUTOMOTIVE 2752 LAURENS RD.,
GREENVILLE, INC. D/B/A CENTURY BMW

April 6, 2009
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

APR 07 2009

SC Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable Doyet A. Early, III, Circuit Court Judge

Circuit Court Case No. 2006-CP-02-1230
Court of Appeals Docket No. 03-27371

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 who paid "administrative fees" as described below to Defendants, ... **Respondents,**

v.

Century BMW d/b/a Sonic Automotive; Dick Dycr & 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., ... **Defendants,**

of whom Century BMW d/b/a Sonic Automotive is the **Appellant.**

CERTIFICATE OF SERVICE

The undersigned attorney of RICHARDSON PLOWDEN & ROBINSON, P.A., attorneys for Appellant, does hereby certify that service of the foregoing **APPELLANTS' MOTION AND MEMORANDUM FOR ORAL ARGUMENT** in the above-captioned matter was made upon all counsel of record this 7th day of April 2009, by depositing a copy of same in the U.S. Mail, postage prepaid, addressed as follows:

A. Camden Lewis, Esq.
Brady R. Thomas, Esq.
LEWIS & BABCOCK, LLP
P.O. Box 11208
Columbia, SC 29211

Michael E. Spears, Esq.
MICHAEL E. SPEARS, P.A.
PO Box 5806
Spartanburg, SC 29304

Richard A. Harpootlian, Esq.
RICHARD A. HARPOOTLIAN, P.A.
P.O. Box 1090
Columbia, SC 29202

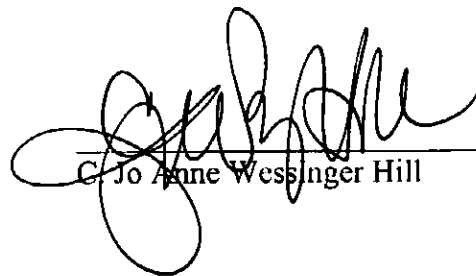
Gedney M. Howe, III, Esq.
GEDNEY M. HOWE, III, PA
P.O. Box 1034
Charleston, SC 29402

James Y. Becker, Esquire
R. David Proffitt, Esquire
HAYNESWORTH SINKLER BOYD, PA
1201 Main Street, 22nd Floor (29201-3226)
P.O. Box 11889
Columbia, S.C. 29211-1889

Brad Martin, Esq.
Laura Teer, Esq.
Bradford Neal Martin & Associates, P.A.
PO Box 10410
Greenville, SC 29603

J. Gregory Studemeyer, Esquire
1804 Bull Street
P.O. Box 12201
Columbia, SC 29211-2201

H. Clayton Walker, Jr., Esquire
Robert L. Reibold, Esquire
WALKER & REIBOLD, LLC
P.O. Box 61140
Columbia, SC 29260



C. Jo Anne Wessinger Hill

April 7, 2009

Reply to: Columbia
jneuman@RichardsonPlowden.com
Direct: 803-253-8716

April 7, 2009

VIA HAND DELIVERY

The Hon. Kenneth A. Richstad,
Clerk – South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29211

RECEIVED

APR 07 2009

SC Court of Appeals

Re: Herron et al Respondents v. Dick Dyer Et al,
of which Sonic Automotive, d/b/a Century BMW is Appellant
Appeal of Order in Circuit Court Case No. 2006-CP-01-1230
Our File No. 6665-001

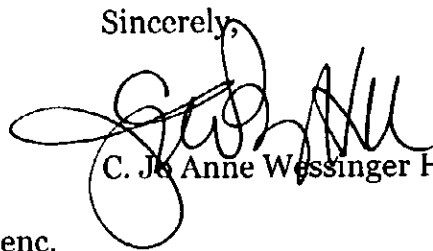
Dear Mr. Richstad:

Enclosed please find the original and seven copies of Appellants' Motion and Memorandum for Oral Argument, together with our check in the amount of \$25.00 in payment of the required fee. Please return a clocked copy to my courier.

If you should have any questions or concerns, please do not hesitate to contact this office.

With kindest regards, I am

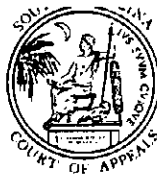
Sincerely,



C. Jo Anne Wessinger Hill

JWH:kjt
Enclosures

Cc: A. Camden Lewis, Esq., w/enc.
Brady R. Thomas, Esq., w/enc.
Gedney M. Howe, III, Esq., w/enc.
Richard A. Harpootlian, Esq., w/enc.
Michael Spears, Esq., w/enc.
H. Clayton Walker, Jr., Esq., w/enc.
James Y. Becker, Esq., w/enc.
R. David Proffitt, Esq., w/enc.
J. Gregory Studemeyer, Esq., w/enc.
Brad Martin, Esq., w/enc.
Laura Teer, Esq., w/enc.



The South Carolina Court of Appeals

KENNETH A. RICHSTAD
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11639
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMMER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

November 12, 2008

Steven W. Hamm, Esquire
C. Jo Anne Wessinger-Hill, Esquire
David A. Anderson, Esquire
Jocelyn T. Newman, Esquire
Richardson, Plowden
& Robinson, PA
P O Drawer 7788
Columbia, SC 29202

Re: Herron, Heather v. Century BMW
Case Tracking #: 200884146

Dear Counsel:

The following Order has been endorsed on "Appellant's Motion and Memorandum for Expedited Review" in the above entitled case on appeal.

"Denied.

s/ Jasper M. Cureton A.J.

November 12, 2008."

Please be advised that all final briefs and the record on appeal will be submitted to the Court for consideration.

Very truly yours,

Kenneth A. Richstad, vca
CLERK

KAR/ec

cc: Dennis M. Black, Esquire
Ryan L. VanGrack
A. Camden Lewis, Esquire
Brady R. Thomas, Esquire
Gedney M. Howe, III, Esquire
Michael Eugene Spcars, Esquire
Richard A. Harpootlian, Esquire

RECEIVED

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

OCT 23 2008

SC Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable Doyet A. Early, III, Circuit Court Judge

Circuit Court Case No. 2006-CP-02-1230

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 who paid "administrative fees" as described below to Defendants, ... **Respondents,**

v.

Century BMW d/b/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., ... **Defendants,**

of whom Century BMW d/b/a Sonic Automotive is the **Appellant.**

**APPELLANT'S REPLY IN SUPPORT OF ITS MOTION FOR EXPEDITED
REVIEW**

Appellant Century BMW d/b/a Sonic Automotive, whose true name is Sonic Automotive 2752 Laurens Rd., Greenville, Inc. d/b/a Century BMW ("Century BMW"), filed its motion requesting expedited review of this appeal to which the Respondents have now stated and presented to this Court that they do "not oppose an expedited review." Respondent Christine Watts's Return to Motion for Expedited Review at 1.

This Court's August 4, 2008 Order stayed "all aspects of the litigation except matters not affected by the appeal." Despite this clear directive, Respondents have

moved before the circuit court to compel discovery from other co-defendants and to strike defendants' pleadings. Given Respondents' civil conspiracy claim¹, their attempt to strike the pleadings, and that they will seek to use any discovery against Century BMW, directly and/or indirectly, by seeking precedential rulings from the circuit court, Respondents' actions could adversely impact Century BMW and this appeal, in direct violation of the Court's Order. Furthermore, in response to the actions of the Respondents to compel and seek sanctions, the other named Defendants to this "group suit" have filed a Motion for Protective Order, or In the Alternative, for a Discovery Plan and Case Management Plan on October 2, 2008. Determinations by the lower court (Judge Early) to set parameters of discovery, issues of Rule 23 application, representative capacity, and other procedural issues arising from these motions² are compelling reasons to grant this Motion since actions of the Plaintiffs will impact and cause unfair prejudice and/or violate the due process rights of Century BMW.

An expedited review of this appeal is needed to protect the rights of Century BMW to avoid any prejudice and infringement of its due process rights. It is the Respondents that bought this "group lawsuit" of multiple plaintiffs against multiple dealerships and made allegations related to a common practice associated with the

¹ Paragraphs 333, 396-399 and 402-405 of the Amended Complaint dated October 26, 2008 and filed on October 31, 2006 sets forth allegations of conspiracy which give rise to the concerns of Century BMW that its due process rights are at peril and that it is subject to prejudice if the stay of this Court is not enforced. [R.p. 130, 137-145.]

² Judge Early has re-scheduled the hearing date of the Century BMW's Motion to Stay and for Protective Order to enforce the Order of the SC Court of Appeals dated August 4, 2008 to be heard on Monday, November 24, 2008 along with the Plaintiffs' Motion to Compel and for Sanctions and with the Motion of the Defendants (other than Century BMW) for a Protective Order, or In the Alternative, for a Discovery Plan and Case Management Plan on October 2, 2008.

charging of a closing fee by these defendant car dealers.³ The rulings, discovery, motions, and orders in the case impact each of the seven defendant members of this "group suit" brought by the Respondents. Judge Early has denied the Century BMW's motion to compel arbitration, which is currently under appeal before this Court. As a practical matter, until there is a ruling otherwise by the appellate court to compel arbitration, Century BMW remains a member and part of this "group suit" pending before Judge Early.

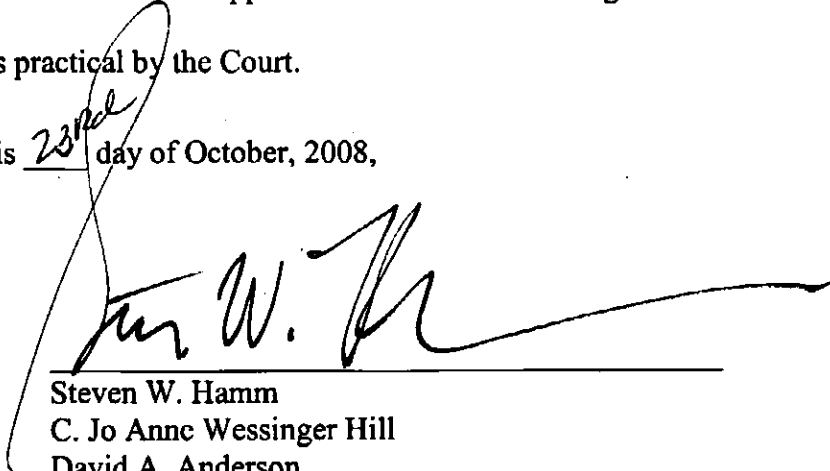
The motion filed by Century BMW in the lower court in August 2008 to enforce the stay of this Court and its Order dated August 4, 2008 has been rescheduled for hearing before Judge Early on November 24, 2008. The other named defendants have joined in support of Century BMW's motion to enforce the stay in order to avoid redundant and wasteful proceedings, as well as to avoid any denial of any due process rights and potential prejudice. See, Exhibit A (Memorandum In Support of Defendant Sonic Automotive Inc.'s d/b/a Century BMW's Motion to Stay and for Protective Order).

Both the Appellant and the Respondent have filed their final briefs. Due to the statewide significance of the issues presented in this appeal, the importance of those issues to Century BMW, and Respondents' attempt to seek discovery and depositions from other co-defendant dealerships in this litigation, Century BMW respectfully requests expedited review of this appeal.

³ The South Carolina Code authorizes an automobile dealer to charge a closing fee. Section 37-2-307 of the Code provides that "[e]very 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." S.C. Code §37-2-307.

For these reasons, Century BMW requests that the Court grant its Motion and issue an Order for an expedited review of this appeal and for the scheduling of oral argument in this appeal as soon as practical by the Court.

Respectfully submitted this 23rd day of October, 2008,



Steven W. Hamm
C. Jo Anne Wessinger Hill
David A. Anderson
Jocelyn T. Newman
RICHARDSON FLOWDEN & ROBINSON, P.A.
P.O. Drawer 7788
Columbia, South Carolina 29202
(803)771-4400
(803)779-0016 facsimile

Dennis M. Black (*pro hac vice admitted*)
Ryan L. VanGrack (*pro hac vice admitted*)
WILLIAMS & CONNOLLY LLP
725 Twelfth St., N.W.
Washington, DC 20005
(202) 434-5000
(202) 434-5029 (facsimile)

ATTORNEYS FOR APPELLANT CENTURY BMW, THE
TRUE NAME OF WHICH IS SONIC AUTOMOTIVE 2752
LAURENS RD., GREENVILLE, INC. D/B/A CENTURY
BMW

October 23, 2008
Columbia, South Carolina

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF AIKEN

Case No. 2006-CP-02-1230

Heather Herron, Natalie Armstrong,
Michael Ritz, Julie Freeman, Christine
Watts, Michael Blease and Michael Watts,
individually and for the benefit of all car
buyers who paid "administrative fees" as
described below to Dealers,

Plaintiffs.

v.

Dick Dyer & Associates, Inc.; Overland,
Inc. d/b/a Land Rover of Columbia;
Galeana Chrysler-Jeep, Inc.; Taylor
Investments, Inc. d/b/a Taylor Toyota;
J.L.H. Investments, LP, d/b/a Hendrick
Honda of Easley; Sonic Automotive, Inc.
d/b/a Century BMW; and Toyota of
Greenville, Inc.

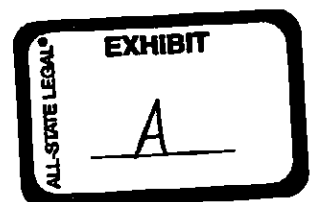
Defendants.

**MEMORANDUM IN SUPPORT OF DEFENDANT SONIC AUTOMOTIVE,
INC.'S d/b/a CENTURY BMW'S
MOTION TO STAY AND FOR A PROTECTIVE ORDER**

BY DEFENDANTS

**DICK DYER & ASSOCIATES, INC.,
OVERLAND, INC. d/b/a LAND ROVER OF COLUMBIA,
GALEANA CHRYSLER JEEP, INC.,
TAYLOR INVESTMENTS, INC. d/b/a TAYLOR TOYOTA, INC.,
J.L.H. INVESTMENTS, LP, d/b/a HENDRICK HONDA OF EASLEY, and
TOYOTA OF GREENVILLE, INC.**

Dick Dyer & Associates, Inc.; Overland, Inc. d/b/a Land Rover of Columbia;
Galeana Chrysler Jeep, Inc.; Taylor Investments, Inc. d/b/a Taylor Toyota, Inc.; J.L.H.
Investments, LP, d/b/a Hendrick Honda of Easley; and Toyota of Greenville, Inc.
("Defendants), by and through their undersigned counsel, join in Defendant Sonic



Automotive, Inc. d/b/a Century BMW's ("Century BMW") Motion to Stay and for a Protective Order ("Motion to Stay"), and memorandum in support, filed in this Court on August 22, 2008, and October 8, 2008, respectively. In its Motion to Stay, Century BMW moved pursuant to Rule 26(c), SCRCP, and Rule 225, SCACR, for a protective order staying all discovery, motions and proceedings while Century BMW appealed this Court's order denying Century BMW's motion to compel arbitration to the South Carolina Court of Appeals. Century BMW argues that proceeding with discovery or motions during its appeal will deprive it of its due process rights and that proceedings would be redundant and wasteful, depending on the outcome of its appeal.

Defendants now join Century BMW's motion and memorandum because the Court has several motions by Plaintiffs and the Defendants before it which, when decided, may affect Century BMW. Plaintiffs filed a Motion to Compel Discovery on September 12, 2008, and Defendants filed a Motion for Protective Order Or, In the Alternative, For a Discovery Plan and Case Management Order, on October 2, 2008. Any determinations by the Court regarding the parameters of discovery or other procedural issues arising from these motions may cause unfair prejudice or violate the due process rights of Century BMW at a later date, depending on the outcome of its appeal and whether its case is sent to arbitration or heard in circuit court.

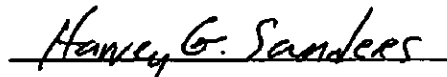
Respectfully submitted,



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October 8, 2008

ATTORNEYS FOR DEFENDANT
Taylor Investments, Inc. d/b/a Taylor Toyota

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF AIKEN

Case No. 2006-CP-02-1230

Heather Herron, Natalie Armstrong,
Michael Ritz, Julie Freeman, Christine
Watts, Michael Blease and Michael Watts,
individually and for the benefit of all car
buyers who paid "administrative fees" as
described below to Dealers,

Plaintiffs,

v.

Dick Dyer & Associates, Inc.; Overland,
Inc. d/b/a Land Rover of Columbia;
Galeana Chrysler-Jeep, Inc.; Taylor
Investments, Inc. d/b/a Taylor Toyota;
J.L.H. Investments, LP. d/b/a Hendrick
Honda of Easley; Sonic Automotive, Inc.
d/b/a Century BMW; and Toyota of
Greenville, Inc. et al.,

Defendants.

CERTIFICATE OF SERVICE

I, the undersigned employee of the law offices of Haynsworth Sinkler Boyd, P.A., attorneys for Defendant, do hereby certify that I have served counsel specified below in this action with a copy of the Pleading specified below by mailing a copy of the same by United States Mail, postage prepaid, to the following addresses:

Pleading:

**MEMORANDUM IN SUPPORT OF DEFENDANT SONIC
AUTOMOTIVE, INC. d/b/a CENTURY BMW'S MOTION
TO STAY AND FOR A PROTECTIVE ORDER
BY DEFENDANTS OVERLAND, INC. d/b/a LAND
ROVER OF COLUMBIA, GALEANA CHRYSLER JEEP,
INC., TAYLOR INVESTMENTS, INC. d/b/a TAYLOR
TOYOTA, INC., J.L.H. INVESTMENTS, LP. d/b/a
HENDRICK HONDA OF EASLEY, DICK DYER &
ASSOCIATES, INC., and TOYOTA OF GREENVILLE,
INC.**

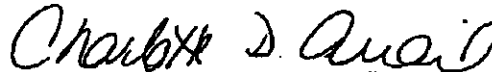
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Charlotte D. Ariail

October 8, 2008

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

OCT 23 2008

SC Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable Doyet A. Early, III, Circuit Court Judge

Circuit Court Case No. 2006-CP-02-1230
Court of Appeals Docket No. 03-27371

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 who paid "administrative fees" as described below to Defendants, ... **Respondents,**

v.

Century BMW d/b/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., ... **Defendants,**

of whom Century BMW d/b/a Sonic Automotive is the **Appellant.**

CERTIFICATE OF SERVICE

The undersigned, an employee of the firm of RICHARDSON PLOWDEN & ROBINSON, P.A.,

attorneys for Appellant, does hereby certify that service of the **Appellant's Reply in Support of**

Motion for Expedite Review in the above-captioned matter was made upon all counsel of

record this 23rd day of October 2008, by depositing a copy of same in the U.S. Mail, postage

prepaid, addressed as follows:

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Kathy J. Templeton

October 23, 2008

Reply to: Columbia
jneuman@RichardsonPlowden.com
Direct: 803-253-8716

RECEIVED

OCT 23 2008

SC Court of Appeals

October 23, 2008

VIA HAND DELIVERY

The Hon. Kenneth A. Richstad,
Clerk – South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29211

Re: Herron et al Respondents v. Dick Dyer Et al,
of which Sonic Automotive, d/b/a Century BMW is Appellant
Appeal of Order in Circuit Court Case No. 2006-CP-01-1230
Our File No. 6665-001

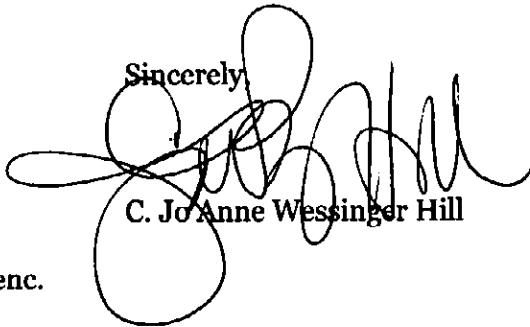
Dear Mr. Richstad:

Enclosed please find the original and seven copies of Appellants' Reply in Support of Motion for Expedited Review, together with our check in the amount of \$25.00 in payment of the required fee. Please return a clocked copy to my courier.

If you should have any questions or concerns, please do not hesitate to contact this office.

With kindest regards, I am

Sincerely,



C. Jo Anne Wessinger Hill

JWH:kjt
Enclosures

Cc: A. Camden Lewis, Esq., w/enc.
Brady R. Thomas, Esq.
H. Clayton Walker, Jr., Esq., w/enc.
James Y. Becker, Esq., w/enc.
R. David Proffitt, Esq.
J. Gregory Studemeyer, Esq., w/enc.
Gedney M. Howe, III, Esq., w/enc.
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S. Brooke Chapman Esq.

Reply to: Columbia
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Direct: 803-253-8716

RECEIVED

OCT 16 2008

SC Court of Appeals

October 16, 2008

VIA HAND DELIVERY

The Hon. Kenneth A. Richstad,
Clerk – South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29211

Re: Herron et al Respondents v. Dick Dyer Et al,
of which Sonic Automotive, d/b/a Century BMW is Appellant
Appeal of Order in Circuit Court Case No. 2006-CP-01-1230
Our File No. 6665-001

Dear Mr. Richstad:

As requested in your letter dated October 10, 2008, please find enclosed the original and fifteen copies of each of the following documents, original filed on October 6, 2008, in this matter. Please file the originals and return a clocked copy of each document to my courier.

1. Certificate of Counsel for the Appellant's Final Brief
2. Proof of Service for the Appellant's Final Brief
3. Certificate of Counsel for the Appellant's Final Reply Brief
4. Proof of Service for the Appellant's Final Reply Brief

By a copy hereof I am serving the same upon Respondents' counsel of record as indicated below.

If you should have any questions or concerns, please do not hesitate to contact this office.

With kindest regards, I am

Sincerely,

C. Jo Anne Wessinger Hill

JWH:kjt
Enclosures

Cc: A. Camden Lewis, Esq., w/enc.
Brady R. Thomas, Esq.
H. Clayton Walker, Jr., Esq., w/enc.
James Y. Becker, Esq., w/enc.
R. David Proffitt, Esq.
J. Gregory Studemeyer, Esq., w/enc.
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Richard A. Harpootlian, Esq.
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James T. Hewitt, Esq.
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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable Doyet A. Early, Circuit Court Judge

Circuit Court Case No.: 2006-CP-02-1230

Court of Appeals Docket No.: 03-27371

RECEIVED

OCT 16 2008

SC Court of Appeals

Heather Herron, Natalie Armstrong, Michael Ritz, Julie Freeman, Christine Watts, Michael Blease and Michael Watts, individually and for the benefit of all car buyers whom paid "administrative fees" as described below to Defendants, ... Respondents,

v.

Century BMW d/b/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, Inc.; and Toyota of Greenville, Inc., ... Defendants,

of whom Century BMW d/b/a Sonic Automotive is the Appellant.

**RESPONDENT CHRISTINE WATTS'S RETURN TO APPELLANT CENTURY BMW
D/B/A SONIC AUTOMOTIVE'S MOTION AND MEMORANDUM FOR AN
EXPEDITED REVIEW**

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Respondent Christine Watts submits this Return to Century BMW's Motion and Memorandum for Expedited Review dated October 6, 2008. There is no reason for an expedited review of this appeal. Ms. Watts, however, does not oppose an expedited review.

BACKGROUND

This is an appeal of a motion to compel arbitration made by Century BMW. This appeal only involves Respondent Christine Watts versus Appellant Century BMW. This appeal is a fact based inquiry about the fairness of the bargaining process for the arbitration agreement between Respondent and Appellant. The only question in this appeal is whether Century BMW can force Ms. Watts to arbitrate using an unbargained for adhesion contract.

Ms. Watts's case against Century BMW was brought along with six other car purchasers claims against six other car dealers from whom they purchased a car.¹ Century BMW and the other six car dealers all engaged in a common practice of charging illegal administrative fees. This case was designated as complex and assigned to Judge Early for pretrial purposes only. Judge Early held motions to dismiss by the car dealers for improper venue and improper joinder in abeyance pending the completion of discovery. Thus, the cases are under Judge Early for discovery only.

On August 4, 2008, this Court dismissed interlocutory appeals by the other six car dealers of the trial court's denial of motions to dismiss. This Court also denied Century BMW's motion to consolidate this appeal with the other six car dealers' interlocutory appeal.

On August 21, 2008, this Court issued a remittitur, remitting the case against the other six car dealers. Accordingly, the case between the other six car purchasers and other six car dealers

¹For a detailed discussion of the factual background and procedural history of this case see the Return to Motion to Consolidate Appeals Or, in the Alternative, to Sever Century BMW and Consolidate filed by Respondents on July 9, 2008.

is moving forward. There are pending motions in the trial court involving the other six car dealers' refusal to engage in discovery.

Century BMW filed this motion seeking an expedited review of this appeal on October 6, 2008.

ARGUMENT

The arguments made by Century BMW do not warrant an expedited review of this appeal. Century BMW makes the following argument:

Given Respondent's civil conspiracy claim, their attempt to strike the pleadings and that they will seek to use any discovery against Century BMW, directly and/or indirectly, by seeking precedential rulings from the circuit court, Respondents' actions could impact Century BMW and this appeal in direct violation of this Court's Order.

Century BMW's Motion and Memorandum for Expedited Review, p. 2. For the following reasons, this statement is wrong and does not warrant an expedited review of this appeal.

1. Respondent is in Compliance With All Court Orders and This is Not a Reason Warranting an Expedited Review of this Appeal.

Respondent Christine Watts and Respondent's counsel have not violated any Order of this Court. Century BMW argues that discovery sought from the other six car dealers violates the following sentence from this Court's August 4, 2008 Order: "We note Century BMW's appeal from the order refusing to compel arbitration automatically stays all aspect of the litigation except 'matters not affected by the appeal.' See Rule 225, SCACR." August 4, 2008 Order, p. 2. It should be noted that this Order was only entered in Century BMW's appeal.

The continued prosecution of the cases against the other six dealers does not violate the Court's August 4, 2008 Order. The Court's August 4, 2008 Order did not stay the case against the other six car dealers. Those cases were sent back to Judge Early. This appeal is a fact based

inquiry about the fairness of the bargaining process for the Century BMW arbitration agreement. The only question is whether Century BMW can force Ms. Watts to arbitrate using an unbargained for adhesion contract. This appeal has no affect on the cases against the other six dealers which center on whether the other six dealers charged illegal administrative fees. Accordingly, the case against the other six dealers is not stayed and the continuation of discovery is proper. Moreover, the continued prosecution of the case against the other six dealers in no way violates the Court's August 4, 2008 Order.

2. The Civil Conspiracy Cause of Action Is Not A Reason Warranting an Expedited Review of this Appeal.

The only pending civil conspiracy claim against Century BMW is the cause of action asserted by Respondent Christine Watts. The trial court in response to the car dealers' motions to dismiss, held that the other six car purchasers did not have standing to pursue a civil conspiracy cause of action against Century BMW at this time. The trial court's order provides in part:

[A] named Plaintiff may not rely on the mere assertion of an adequately pleaded civil conspiracy claim to obtain standing against no-sale Defendants, i.e., Dealers with which a given Plaintiff did not transact any business. However, each named Plaintiff has standing to bring and has adequately pleaded in the First Amended Complaint a civil conspiracy claim against the Defendant from which that Plaintiff purchases a vehicle.

Exhibit A, January 31, 2008 Order.²

Discovery by the other six car purchasers on their cause of action for civil conspiracy against their car dealer is not affected by this appeal. This discovery is proper regardless of the outcome of this appeal. Thus, there is no reason to expedite review of this appeal based on the civil conspiracy cause of action.

²There is no conspiracy involving Century BMW in the cases against the other six car dealers.

3. The Motion to Compel and Discovery as to the Other Six Car Dealers Do Not Mandate an Expedited Review of this Appeal.

The motion to compel discovery and for sanctions against the other six car dealers is not a reason for expediting this appeal. The motion to compel discovery only applies to the other six car dealers (not Appellant Century BMW). The discovery sought from the other six car dealers relates to those other six car dealers charging illegal administrative fees. Discovery about the other six car dealers charging illegal administrative fees is not impacted by the arbitration question at issue in this appeal. This discovery relates to the facts about the other dealers and would be proper regardless of whether there were claims against Century BMW or not. Thus, the discovery is not stayed and the continued pursuit of the discovery is proper.

Furthermore, the continuation of discovery during the appeal works to Century BMW's advantage. Respondent's counsel agrees that Century BMW, upon losing their appeal, can conduct all the discovery they want. Thus, if Century BMW loses this appeal, Century BMW can go back and depose all witnesses. This affords Century BMW the advantage of reading transcripts and then formulating questions.³ Therefore, the discovery as to the other six car dealers does not require an expedited review of this appeal.

CONCLUSION

For the foregoing reasons, the arguments made by Century BMW in support of an expedited review of this appeal are wrong and do not warrant an expedited review of this appeal. Respondent Ms. Watts, however, does not oppose an expedited review.

[signature block located on the following page]

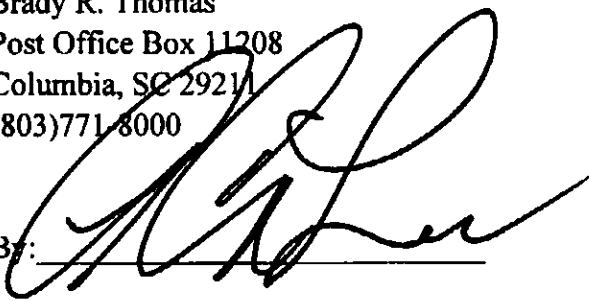
³The car dealers in this case claim to have entered into a joint defense agreement. Thus, the car dealers are sharing information and there is no need for Century BMW to depose the other car dealers.

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By: 

Attorneys for the Respondents

Columbia, South Carolina

October 16, 2008

EXHIBIT A

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS

Case No. 2006-CP-02-1230

Heather Herron, et al.,

Plaintiffs,

v.

Dick Dyer & Associates, Inc., et al.,

Defendants.

FILED

2/5

2006

20830

Deputy Clerk

**ORDER
ON
PLAINTIFFS' RULE 41(a) MOTION
TO VOLUNTARILY DISMISS CERTAIN DEFENDANTS
AND
DEFENDANTS' RULE 59(e) MOTION TO RECONSIDER
THE DENIAL OF THEIR MOTIONS TO DISMISS ON CERTAIN GROUNDS**

I. PROCEDURAL POSTURE AND FACTUAL BACKGROUND

DAE
Plaintiffs filed their original Complaint against certain Dealers in Aiken County on August 29, 2006, with four Plaintiffs suing 51 motor vehicle dealerships located in thirteen counties. Plaintiffs filed a "Corrigenda" correcting the original Complaint on September 1, 2006. Plaintiffs filed their First Amended Complaint in this case on October 31, 2006, with eight Plaintiffs suing some 324 dealerships ("Defendants" or "Dealers") located in forty-one counties. Each named Plaintiff alleges he or she bought one vehicle from a single Dealer.

As set forth more fully in the First Amended Complaint, Plaintiffs allege among other things that (1) Defendants charged closing fees in violation of the South Carolina Regulation of Manufacturers, Distributors and Dealers Act ("the Dealers Act") contained in South Code Ann. §§ 56-15-10 to -600 (2006), and failed to comply with requirements of the South

STATE OF SOUTH CAROLINA
I, Liz Godard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

FEB 5 2008

Carolina Code Ann. § 37-2-307 (2002) (the "Closing Fee Statute"); (2) Defendants engaged in a civil conspiracy; and (3) Plaintiffs request that the circuit court issue a declaratory judgment finding Defendants' practices illegal and granting other relief.

Defendants moved to dismiss the First Amended Complaint based on lack of standing; improper joinder; Rules 12(b)(1), (2), (3) and (6), SCRPC; failure to plead the requirements of Rule 23, SCRPC; and other grounds.

This Court denied Defendants' various motions to dismiss by Order filed August 1, 2007. Defendants on August 10 and 13, 2007, timely served two Joint Motions to Amend or Reconsider the denial of the motions to dismiss pursuant to Rule 59(e), SCRPC.

Plaintiffs on October 11, 2007, moved pursuant to Rule 41(a), SCRPC, to voluntarily dismiss without prejudice all parties named in the First Amended Complaint, filed October 31, 2006, except for the seven named Plaintiffs and the seven Defendants from which those Plaintiffs purchased a vehicle.¹

A hearing was held before this Court on November 30, 2007, on Plaintiffs' motion to voluntarily dismiss certain Defendants and Defendants' motions to reconsider. Numerous lawyers for Plaintiffs and Defendants were present, with A. Camden Lewis presenting the Plaintiffs' motion and arguments and James Y. Becker, Bradford N. Martin and Steven W. Hamm presenting Defendants' motions and arguments.

This case is related to two other cases before this Court: Janet L. West-Cox et al. v. Cale Yarborough Honda, Inc. et al., Case No. 2007-CP-02-1154 (Complaint filed in Aiken County on

¹ The eighth named Plaintiff in the First Amended Complaint, Alison Dannert, has settled her claims against Defendant CarMax Auto Superstores, Inc., and is no longer involved in this litigation.

Aug. 20, 2007) (the West-Cox case); Howard Adams et al. v. Action Ford Mercury, Inc. et al., Case No. 2007-CP-02-1232 (Complaint filed in Aiken County on Sept. 4, 2007) (the Adams case).

II. PLAINTIFFS' MOTION TO VOLUNTARILY DISMISS CERTAIN DEFENDANTS

The majority of Defendants apparently have consented to Plaintiffs' Rule 41(a) motion to dismiss. Some Defendants have opposed this motion. I find that granting Plaintiffs' Rule 41(a) motion to dismiss serves judicial economy and is in accord with Rule 1, SCRCF, and thus, Plaintiffs' motion is granted. All Defendants in this case are hereby dismissed without prejudice pursuant to Rule 41(a)(2), SCRCF, except the following:

1. Heather Herron v. Land Rover of Columbia;
2. Natalie Armstrong v. Galeana Chrysler Jeep, Inc.;
3. Michael Ritz v. Taylor Investments, Inc. d/b/a Taylor Toyota, Inc.;
4. Julie Freeman v. J.L.H. Investments, d/b/a Hendrick Honda of Easley;²
5. Christine Watts v. Sonic Automotive 2752 Laurens Rd., Greenville, Inc. d/b/a Century BMW;
6. Michael Blease v. Dick Dyer & Associates, Inc.; and
7. Michael Watts v. Toyota of Greenville, Inc.

Defendants, including those which have consented to Plaintiffs' Rule 41(a) motion to dismiss and those which have not, have moved or reserved any and all rights they may have to seek the payment of their attorney's fees and costs by Plaintiffs. Defendants also have reserved any and all rights they may have with regard to any applicable statute of limitations if Plaintiffs

² The First Amended Complaint incorrectly asserts that Ms. Freeman purchased a vehicle from Rick Hendrick Honda Cars Co.

should refile this lawsuit against them. I express no opinion on these motions or issues and reserve ruling on them until a later date. Before I rule on such motions, the parties will be allowed to prepare memoranda and affidavits in support of or opposition to the motions, and present their arguments at a hearing.

III. DEFENDANTS' MOTIONS TO RECONSIDER

I grant Defendants' motions to reconsider in part and modify my earlier ruling on the issue of a Plaintiff's standing to sue Dealers with whom he or she did not transact any business. I deny Defendants' motions to reconsider in part, reaffirming my earlier rulings on the issues of the applicability of Rule 23, SCRPC. I reserve any rulings on the issues of improper joinder and venue until a later time.

A. STANDARD FOR DECIDING MOTION TO DISMISS

DRE #4
A trial judge may dismiss a claim when the defendant demonstrates the plaintiff's failure to state facts sufficient to constitute a cause of action in the pleadings filed with the court. Rule 12(b)(6), SCRPC. When considering the motion to dismiss for failure to state a cause of action, the trial court must base its ruling solely upon the allegations made on the face of the complaint. Baird v. Charleston County, 333 S.C. 519, 511 S.E.2d 69 (1999). If the facts and inferences drawn from the facts alleged in the complaint would entitle the plaintiff to relief on any theory, then the grant of a motion to dismiss for failure to state a cause of action is improper. Brown v. Leverette, 291 S.C. 364, 353 S.E.2d 697 (1987). When it is determined that a plaintiff does not have standing to prosecute, the court must dismiss the action. Brock v. Bennett, 313 S.C. 513, 519, 443 S.E.2d 409, 413 (Ct. App. 1994).

B. STANDING

In my Order filed August 1, 2007, denying Defendants' motions to dismiss, I ruled that the First Amended Complaint sufficiently pled facts supporting standing of the Plaintiffs to proceed under the three causes of action in the First Amended Complaint, and that at this stage of the proceeding, there were sufficient allegations of civil conspiracy in the First Amended Complaint to avoid dismissal. I now reconsider and clarify my ruling on the issue of standing, reversing it to a limited extent.

Defendants' motion to dismiss is granted with regard to a named Plaintiff's claims against "no-sale Defendants," i.e., Defendants with which a named Plaintiff did not transact any business. Otherwise, Defendants' motion to dismiss on this ground is denied.

 In short, I conclude that a named Plaintiff has standing to pursue all three causes of action, on behalf of himself or others, against the Defendant from which that particular Plaintiff purchased a vehicle. However, a named Plaintiff does not have standing to sue, on behalf of himself or others, any Defendant with which he did not transact any business. A named Plaintiff may later gain standing to sue Defendants with which a named Plaintiff did not transact any business by presenting evidence sufficient to create a genuine issue of material fact that particular Defendants conspired on the charging of the closing fee with the Defendant from which the named Plaintiff purchased a vehicle.

Standing is a "fundamental requirement for instituting an action," without which "[n]o justiciable controversy is presented." Brock v. Bennett, 313 S.C. 513, 519, 443 S.E.2d 409, 412-13 (Ct. App. 1994). As a result, upon determining a plaintiff has no standing to prosecute a cause of action, the court must dismiss the action. Id.

To have standing, a party must prove all elements that constitute the "irreducible constitutional minimum of standing":

First, the plaintiff must have suffered an injury in fact – an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical. Second, there must be a causal connection between the injury and the conduct complained of – the injury has to be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court. Third, it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.

Sea Pines Assn. for the Protection of Wildlife, Inc. v. S.C. Dept. of Nat. Resources, 345 S.C. 594, 601, 550 S.E.2d 287, 291 (2001) (internal quotes and ellipses omitted). An injury in fact is a particularized harm that affects the plaintiff in a personal and individual way. Id. at 602, 550 S.E.2d at 292. Plaintiffs bear the burden of demonstrating each of the three elements. Sea Pines, 345 S.C. at 601, 550 S.E.2d at 291.

A plaintiff may not sue a defendant with whom he or she has had no dealings because the law precludes a plaintiff from suing a defendant "unless the plaintiff has suffered an injury at the hands of the defendant." Gardner v. S.C. Dept. of Revenue, 353 S.C. 1, 23 n.14, 577 S.E.2d 190, 201 n.14 (2003). In Blum v. Yaretsky, 457 U.S. 991 (1982), the United States Supreme Court explained that

[i]t is not enough that the conduct of which the plaintiff complains will injure *someone*. The complaining party must also show that he is within the class of persons who will be concretely affected. Nor does a plaintiff who has been subject to injurious conduct of one kind possess by virtue of that injury the necessary stake in litigating conduct of another kind, although similar, to which he has not been subject.

Id. at 999 (emphasis in original).

In the present case, when considering solely the allegations made on the face of the First Amended Complaint, each named Plaintiff has sustained no injury from any of the Dealers with which he or she did not conduct any business, and he or she is not in immediate danger of a

direct injury from any of these Dealers. A named Plaintiff cannot establish standing because there simply is no causal connection between the injury alleged (a closing fee illegally charged by a Dealer that sold a vehicle to an individual Plaintiff) and the challenged actions of the other Dealers (which did not sell a vehicle to Plaintiff). The injury suffered by each named Plaintiff is fairly traceable to the challenged action of only the Dealer from which he or she bought a car, not every other Dealer in the state. A decision in the named Plaintiff's favor would not redress the injuries allegedly suffered by people who bought vehicles from other, unrelated Dealers. Furthermore, each named Plaintiff has a personal stake in an action only against the Dealer with which he or she did transact business. The mere fact that other Dealers may charge a closing fee simply does not give Plaintiffs standing to sue every Dealer in the state that charges such a fee.

Accordingly, a named Plaintiff does not have standing to sue, on behalf of himself or others, any Defendant from which a Plaintiff did not purchase a vehicle or transact any business. Stated conversely, a named Plaintiff who alleges he or she has been charged an illegal motor vehicle closing fee has standing to sue, on behalf of himself or others, only the Defendant which sold a vehicle to that particular Plaintiff. As explained further in Section E below, a named Plaintiff may gain standing to sue other Defendants with which he or she did not transact any business if that Plaintiff, during discovery, obtains evidence sufficient to raise a genuine issue of material fact on whether certain Defendants engaged in a civil conspiracy with regard to the charging of a closing fee.

2. Impact of S.C. Code Ann. § 56-15-110(2) on standing

South Carolina Code Ann. § 56-15-110(2) (2006) does not confer standing for Plaintiffs to sue Dealers with which they did not conduct any business. Under § 56-15-110(1), "any person who shall be injured in his business or property by reason of anything forbidden in this

chapter may sue therefor [sic] in the court of common pleas." (Emphasis added.) This subsection simply gives an injured person a right to sue a Dealer with which he or she did business for damages, but in no way indicates that person may sue every other Dealer in South Carolina. To be liable under this provision, a Dealer must have participated in wrongdoing against a Plaintiff who bought a vehicle from that Dealer. Jackson v. Speed, 326 S.C. 289, 302, 486 S.E.2d 750, 756 (1997); Rowe v. Hyatt, 321 S.C. 366, 468 S.E.2d 649 (1996). The named Plaintiffs were not injured in their person or property by dealers with which they did no business. Therefore, Plaintiffs have no claim under § 56-15-110(1) against those Dealers with which they did no business.

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This ruling is consistent with the South Carolina Supreme Court's decision in Gardner v. S.C. Dept. of Revenue, 353 S.C. 1, 577 S.E.2d 190 (2003), in which the plaintiffs brought an action for violations of the South Carolina Debt Setoff Act and, like the Plaintiffs in this case, they sued defendants with which they had not conducted any business. The plaintiffs alleged that public agencies which collected debts by seizing an individual's state income tax refund under the Debt Setoff Act had failed to comply with the Act's notice provisions. The plaintiffs sued defendant class members that had *not* collected debts from them, but had collected debts from other persons using the Act. The Supreme Court held that the plaintiffs could not sue persons who did *not* collect debts from them and at whose hands they had suffered no injury. Gardner, 353 S.C. at 23 n.14, 577 S.E.2d at 201 n.14.

3. Impact of civil conspiracy claim on standing

The mere assertion of a civil conspiracy cause of action does not confer standing on Plaintiffs to sue Dealers with which they did not transact business. Any use of the conspiracy

allegation to circumvent standing requirements would involve applying the "juridical links doctrine."

The South Carolina Supreme Court has expressly rejected the "juridical links" doctrine, finding that it runs counter to previous decisions that a plaintiff may not sue a defendant unless the plaintiff has suffered an injury at the hands of the defendant. Gardner, 353 S.C. at 23 n.14, 577 S.E.2d at 201 n.14; Edisto Fleets, Inc. v. S.C. Tax Commn., 256 S.C. 350, 182 S.E.2d 713 (1971) (plaintiff cannot maintain a class action where record indicates he was not directly harmed by defendant's actions); Furman Univ. v. Livingston, 244 S.C. 200, 136 S.E.2d 254, 256 (1964) (only a taxpayer directly affected by erroneously paying taxes has a right to seek a refund).

Given the Supreme Court's unconditional rejection of the juridical links doctrine, Plaintiffs cannot now rely on a conspiracy allegation to circumvent the standing requirements. Plaintiffs therefore lack standing at this time to bring any cause of action against Dealers with which they did not transact any business.

4. Impact of declaratory judgment action on standing

The mere assertion of a declaratory judgment action does not confer standing on Plaintiffs to sue Dealers with which they did not transact business.

The Declaratory Judgment Act provides:

[a]ny person interested under a deed, will, written contract or other writings constituting a contract or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.

S.C. Code Ann § 15-53-30 (2006). Despite the Act's "broad language, it has limits." Sunset Cay, LLC v. City of Folly Beach, 357 S.C. 414, 423, 593 S.E.2d 462, 466 (2004). An

adjudication that "would not settle the legal rights of the parties would only be advisory in nature and, therefore, would be beyond the intended purpose and scope of [the Act.]" Id.

To state a cause of action under the Declaratory Judgment Act, a party "must demonstrate a justiciable controversy." Id. A justiciable controversy exists "when a concrete issue is present, there is a definite assertion of legal rights and a positive legal duty which is denied by the adverse party." Graham v. State Farm Mutual Ins. Co., 319 S.C. 69, 71, 459 S.E.2d 844, 845 (1995). Additionally, in declaratory judgment actions "[t]he interest of the parties . . . to the subject matter of the controversy must be more than merely general. It must be a substantial, direct, and legally protected present interest in the relief sought." Quinn v. City of Columbia 303 S.C. 405, 407-408, 401 S.E.2d 165, 167 (1991) (holding that subdivision residents lacked standing under the Declaratory Judgment Act to challenge the city's annexation of the subdivision because the residents did not own real property in the subdivision and, therefore, had no "legally protected present interest").

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Because there was no transaction or interaction between the named Plaintiffs and Dealers with which they did no business, Plaintiffs' legal interest with respect to such dealerships is neither concrete nor legally protected and any declaratory judgment would be merely advisory in nature. Plaintiffs' declaratory judgment cause of action is, therefore, an impermissible basis to establish standing against a Dealer with which they did not transact any business.

5. Impact of public interest exception

To establish public interest standing, the reported cases indicate that a government entity or public actor must be a defendant. See e.g. Davis v. Richland County Council, 372 S.C. 497, 642 S.E.2d 740 (2007) (holding county recreation commission members had public interest standing in suit against county regarding the constitutionality of an act changing the authority to

appoint commission members, and citing several cases involving government entities as the defendant). In this case, there is no dispute with governmental entities, public officials, or public bodies. Instead, the lawsuit is an action by private individual plaintiffs against private corporate defendants. Given the well-established general principles on standing outlined above, I find that the public interest exception in this case should not be applied to allow a named Plaintiff to sue Defendants with which that Plaintiff did not transact any business.

C. APPLICABILITY OF RULE 23

Defendants assert that the First Amended Complaint should be dismissed because Plaintiffs have failed to plead the requirements of Rule 23, SCRCPP, or, in the alternative, Plaintiffs must be required to plead and prove the requirements of Rule 23 during the liability or litigation phase of this case.

 In my Order filed August 1, 2007, denying Defendants' motions to dismiss, I ruled that South Carolina Code Ann. § 56-15-110(2) (2006) creates a substantial or substantive right. I further found that Act No. 100 of 1985, 1985 S.C. Acts 277, which enacted the South Carolina Rules of Civil Procedure, did not apply to or affect substantive rights. The 1985 Act did not repeal Section 56-15-110(2). Therefore, Plaintiffs are not required to plead and prove the requirements pertaining to class actions contained in Rule 23, SCRCPP.

I have considered Defendants' arguments to reconsider my ruling regarding Rule 23, SCRCPP. I reaffirm my ruling as set forth in my Order filed August 1, 2007 and deny Defendants' motions to dismiss and to reconsider my earlier ruling on this ground. Plaintiffs are not required to plead and prove the requirements pertaining to class actions contained in Rule 23 SCRCPP during the liability or litigation phase of this case.

D. IMPROPER JOINDER AND VENUE

Defendants contend that the First Amended Complaint should be dismissed against all Defendant dealerships on the ground of improper joinder pursuant to Rules 12(b)(6) and 20(a), SCRCF. Defendants assert that Plaintiffs should be required to refile their Complaints individually in the county of proper venue, i.e., where a given Defendant has its principal place of business. In my Order filed August 1, 2007, denying Defendants' motions to dismiss, I did not explicitly rule on Defendants' motions relating to improper joinder and venue.

I have considered the parties' arguments on this issue, including the arguments made in the various memoranda and hearings listed above. These motions in this case now pertain only to seven Plaintiffs and seven Defendants, given my decision to grant Plaintiffs' motion to voluntarily dismiss all no-sale Defendants in the First Amended Complaint. Accordingly, I will refrain from ruling on these issues until after discovery is completed. Defendants may refile or renew their motions related to dismiss for improper venue and improper joinder at that time.

E. CIVIL CONSPIRACY CLAIM

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Defendants assert that Plaintiffs have failed to adequately plead their civil conspiracy claim and so this claim should be dismissed from the First Amended Complaint in its entirety. In my Order filed August 1, 2007, I rejected Defendants' arguments and ruled that Plaintiffs have pleaded a civil conspiracy claim sufficiently to survive a motion to dismiss under Rule 12(b)(6), SCRCF. I reaffirm that ruling, but clarify its extent with regard to Defendants with which the named Plaintiffs did not transact business.

As explained in Section III(B)(3) above, a named Plaintiff may not rely on the mere assertion of an adequately pleaded civil conspiracy claim to obtain standing against no-sale Defendants, i.e., Dealers with which a given Plaintiff did not transact any business. However,

each named Plaintiff has standing to bring and has adequately pleaded in the First Amended Complaint a civil conspiracy claim against the Defendant from which that Plaintiff purchased a vehicle.

If Plaintiffs obtain sufficient evidence during the discovery process to create a genuine issue of material fact on the existence of a civil conspiracy among certain Defendants, then a named Plaintiff at that point would gain standing to sue, on behalf of himself or others, those particular Defendants which allegedly conspired on the charging of a closing fee with the Defendant from which the named Plaintiff purchased a vehicle. The named Plaintiff would not gain standing to sue every other Defendant in the state with which he or she did not transact any business, but only those allegedly involved in a conspiracy with the Defendant from which the Plaintiff did purchase a vehicle. If Plaintiffs do not obtain sufficient evidence of a civil conspiracy, dismissal of this claim pursuant to a summary judgment motion may be appropriate. Defendants may file summary judgment motions related to dismissal of the civil conspiracy claim after discovery is completed and before trial begins. I express no opinion on the validity of any civil conspiracy claim or whether dismissal of the claim ultimately may be appropriate.

F. ARBITRATION AND OTHER GROUNDS FOR DISMISSAL

Numerous Defendants have filed various motions related to arbitration agreements, including motions to dismiss the Complaint for lack of jurisdiction or to compel arbitration based on arbitration clauses found in buyer's orders or invoices and other documents related to the sale or financing of a vehicle. At the hearing on November 30, 2007, I heard arguments from Plaintiff Christine Watts and Defendant Sonic Automotive 2752 Laurens Rd., Greenville, Inc. d/b/a Century BMW, related to the arbitration agreement allegedly signed by Ms. Watts when she purchased a vehicle. I allowed those parties more time to conduct additional discovery,

including depositions, pertaining solely to issues related to the arbitration agreement. No ruling has been issued on the arbitration motion in Ms. Watts' case.

No other arbitration motions from any parties have been heard by the Court. As I previously have stated or ruled at various hearings, no party has waived any substantive or procedural rights or arguments relating to arbitration agreements, including the right to move to compel arbitration. See Green Tree Fin. Corp. v. Bazzle, 539 U.S. 444 (2003). Defendants have been careful throughout this litigation to preserve all rights related to the enforcement of arbitration agreements, as acknowledged on several occasions by Plaintiffs and this Court.

Furthermore, certain Defendants have asserted numerous other arguments and grounds for dismissal in various motions to dismiss and other pleadings filed in response to the Complaint. These other issues have not yet been considered by the Court and are expressly reserved for later review and consideration.

G. DISCOVERY

Discovery has been stayed while the parties and the Court addressed the preliminary issues contained in this Order. Discovery may proceed in this case after the filing of this Order.

IT IS SO ORDERED.



Doyet A. Early, III
Judge of the Second Judicial Circuit

January 31, 2008

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable Doyet A. Early, Circuit Court Judge

RECEIVED

OCT 16 2008

SC Court of Appeals

Circuit Court Case No.: 2006-CP-02-1230

Court of Appeals Docket No.: 03-27371

Heather Herron, Natalie Armstrong, Michael Ritz, Julie Freeman, Christine Watts, Michael Blease and Michael Watts, individually and for the benefit of all car buyers whom paid "administrative fees" as described below to Defendants, ... Respondents,

v.

Century BMW d/b/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, Inc.; and Toyota of Greenville, Inc., ... Defendants,

of whom Century BMW d/b/a Sonic Automotive is the Appellant.

PROOF OF SERVICE

I, Margarita Sosa, an employee with the law firm of Lewis & Babcock, L.L.P., attorneys for the Respondents, do hereby certify that I have served **Respondent Christine Watts's Return to Appellant Century BMW d/b/a Sonic Automotive's Motion and Memorandum for an Expedited Review** upon opposing counsel in this action by mailing a copies thereof by United States Mail, postage prepaid, on October 16, 2008 to the following addresses:

J. Gregory Studemyer
Attorney at Law
P.O. Box 12201
Columbia, South Carolina 29211

James Y. Becker
R. David Profitt
Haynesworth Sinkler Boyd, P.A.
1201 Main Street, 22nd Floor
Columbia, South Carolina 29201

Harvey G. Sanders, Jr.
Leatherwood Walker Todd & Mann, PC
The Leatherwood Plaza
300 East McBee Avenue, Suite 500
Greenville, South Carolina 29601

Columbia, South Carolina

October 16, 2008

Clay Walker
Walker & Reibold
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Steve W. Hamm
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Margarita Sosa

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STREET ADDRESS:
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October 16, 2008

VIA HAND DELIVERY

The Honorable Kenneth A. Richstad
Clerk of Court
South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

RECEIVED

OCT 16 2008

SC Court of Appeals

RE: *Heather Herron, et al. v. Century BMW d/b/a Sonic Automotive, et al.*
C/A No.: 2006-CP-02-1230
Our file Number: 06-551

Dear Mr. Richstad:

Enclosed for filing please find the original and six copies of Respondent Christine Watts's Return to Appellant Century BMW d/b/a Sonic Automotive's Motion and Memorandum for an Expedited Review in the above-referenced matter, along with Proof of Service. An additional copy of each is enclosed to be clocked and returned to our office via our courier.

By copy of this letter, I am serving opposing counsel with copies of same.

With highest regards, I remain

Sincerely,

LEWIS & BABCOCK, LLP



Margarita Sosa
Legal Assistant

:mas

Enclosures

cc: Michael E. Spears, Esquire (via mail)
Richard A. Harpootlian, Esquire (via mail)
Gedney M. Howe, III, Esquire (via mail)
Steve Hamm, Esquire (via mail)
C. Jo Anne Wessinger Hill, Esquire (via mail)
James Y. Becker, Esquire (via mail)
R. David Profitt, Esquire (via mail)
Harvey G. Sanders, Jr., Esquire (via mail)

H. Clayton Walker, Jr., Esquire (*via mail*)
J. Gregory Studemeyer, Esquire (*via mail*)