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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

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Volume II

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STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

Heather Herron, Natalie Armstrong, Michael
Ritz, Julie Freeman, Christine Watts, Alison
Dannert, Michael Blease, Michael Watts,
Individually and for the Benefit of All Car
Buyers Whom Paid "Administrative Fees" as
Described below to Defendants

Plaintiffs,

vs.

Century BMW a/k/a Sonic Automotive; Dick
Dyer & Associates, Inc.; Galeana Chrysler
Plymouth, Inc. a/k/a Galeana Chrysler Jeep,
Inc.; J.L.H. Investments, LP a/k/a 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.

Defendants.

) IN THE COURT OF COMMON PLEAS

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

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**PLAINTIFF CHRISTINE WATTS'S
SECOND SUPPLEMENTAL
MEMORANDUM IN OPPOSITION
TO DEFENDANT CENTURY
BMW'S MOTION TO COMPEL
ARBITRATION**

Plaintiff Christine Watts submits this Second Supplemental Memorandum in Opposition to Defendant Century BMW's Motion to Compel Arbitration.¹

BACKGROUND

This motion was argued on November 30, 2007. At the hearing, the Court gave the parties the option to take depositions concerning the arbitration agreement. The parties took these depositions on January 29, 2008 and January 30, 2008. Copies of the depositions are attached as Exhibits A, B, and C.

¹This is the third memorandum submitted by Plaintiff addressing this motion. Plaintiff previously submitted Plaintiffs' Memorandum in Opposition to Motions to Dismiss on March 9, 2007; and Plaintiff Christine Watts's Supplemental Memorandum in Opposition to Century BMW's Motion to Compel Arbitration on November 28, 2007.

FACTS

Plaintiffs Christine Watts's and Michael Watts's recollections of the events surrounding the execution of the arbitration agreement are undisputed. Defendant Century BMW was unable to produce any witnesses with knowledge of the Watts transaction.²

On January 25, 2005, Plaintiff Christine Watts, a twenty-four year old girl, and her father, Michael Watts, a garage door salesman, purchased a car from Defendant Century BMW.³ The vehicle was a graduation present for Ms. Watts.⁴ 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.⁵

After the parties agreed to a price for the car, Century BMW's F&I manager took Ms. Watts and her father into a small cubicle to sign paperwork.⁶ Century BMW refers to this process as "rolling out the paper."⁷

The Wattses say they were presented with a big packet of documents containing flags indicating where the Wattses were supposed to sign.⁸ Century BMW's General Manager

²Exhibit B, 30(b)(6) Deposition of Century BMW, p. 10, ll. 7-22; p. 13, ll. 12-16; and p. 17, ll. 15-19.

³Exhibit A, Deposition of Michael Watts, p. 17, l. 15 - p. 18, l. 8; Exhibit E, Drivers License; and Exhibit D, Affidavit of Christine Watts, ¶ 2.

⁴Exhibit A, Deposition of Michael Watts, p. 23, ll. 11-14.

⁵Exhibit C, Deposition of Christine Watts, p. 59, ll. 11-20.

⁶Exhibit A, Deposition of Michael Watts, p. 40, ll. 21-25; p. 49, ll. 9-21. Exhibit B, 30(b)(6) Deposition of Century BMW, p. 18, ll. 15-18; p. 18, ll. 23-25. Exhibit C, Deposition of Christine Watts, p. 39, ll. 3-14.

⁷Exhibit B, 30(b)(6) Deposition of Century BMW, p. 18, ll. 15-18 and p. 18, ll. 23-25.

⁸Exhibit A, Deposition of Michael Watts, p. 53, ll. 10-20; Exhibit C, Deposition of Christine Watts, p. 51, l. 2 - p. 52, l. 17.

testified that it was the F&I manager's custom to present individual documents and point to the place on the documents that needed to be signed and say "sign here."⁹

The Wattses signed at least eight different documents.¹⁰ Multiple copies of some of the documents were signed by the Wattses.¹¹ Three of the eight documents were required to be signed by law.¹²

The arbitration agreement at issue in this motion was one of the documents included in the packet.¹³ This arbitration agreement is a form contract drafted by Century BMW.¹⁴

The Wattses say there was no discussion with the F&I manager about the arbitration agreement.¹⁵ 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 it's "a document providing a remedy for the customer without having to go to court."¹⁶ The General Manager testified as follows:

Q: Can you sit here and tell me what this form contains?

A: I'm not an expert, but I can tell you that this is a document providing remedy for

⁹Exhibit B, 30(b)(6) Deposition of Century BMW, p. 22, l. 14 - p. 23, l. 1.

¹⁰Exhibit F, copies of documents provided by Century BMW signed by the Wattses.

¹¹Exhibit C, Deposition of Christine Watts, p. 46, ll. 9-11.

¹²Exhibit B, 30(b)(6) Deposition of Century BMW, p. 59, ll. 1-16; p. 60, ll. 10-19; p. 66, ll. 13-18; p. 67, l. 21 - p. 68, l. 2. *See also* Exhibit A, Deposition of Michael Watts, p. 51, ll. 7-13.

¹³Exhibit B, 30(b)(6) Deposition of Century BMW, p. 15, ll. 7-17.

¹⁴Exhibit B, 30(b)(6) Deposition of Century BMW, p. 37, ll. 7-14.

¹⁵Exhibit C, Deposition of Christine Watts, p. 47, ll. 12-15.

¹⁶Exhibit B, 30(b)(6) Deposition of Century BMW, p. 16, l. 8 to p. 17, 10.

- the customer without having to go to court.
- Q. If you were to explain it, that's what you would say?
- A. Yes, sir.
- Q. Is there anything else you'd tell them other than it's a remedy for the customer and you don't have to go to court?
- ...
- A. No, sir, I would tell them nothing else.
- Q. Okay. And is that what you expect your employees to tell the -- the people?
- A. They're more informed than I.
- Q. Well, is that what you expect them to tell them, at least that?
- A. At least that.
- Q. Okay. Is there anything else you expect to tell -- them to tell them?
- A. No, sir.¹⁷

Anyone would sign the arbitration agreement if given the misleading explanation touted by Century BMW's General Manager.

The Wattses were led to believe that they had to sign all of the documents in the packet in order to get the car. Michael Watts testified as follows:

- Q. And I take it, from what you've said, you didn't object to signing the document at the time.
- A. I didn't know I didn't have to.¹⁸

The Wattses signed the arbitration agreement because they thought they had to sign it to get the car. Christine Watts stated:

¹⁷Id.

¹⁸Exhibit A, Deposition of Michael Watts, p. 54, ll. 10-12.

- Q. Okay. Let's go to Number 14 [arbitration agreement]. Okay? Was CBM-14 passed to you?
- A. I'm sure that it was in the packet.
- Q. Okay. Is that your signature?
- A. That is correct.
- Q. Did you know what you were signing?
- A. No, I did not.
- Q. Why did you sign it?
- A. I thought I had to to buy the car.¹⁹

The fact that the arbitration agreement was presented on a take-it or leave-it basis is further supported by the fact that Century BMW's General Manager, with 32 years of experience, could only name one customer whom was allowed to purchase a car without signing the arbitration agreement.²⁰ The General Manager stated:

- Q. And since 2005 or -- 5, since this agreement here, how many of those cars did anybody refuse to sign an arbitration agreement on?
- A. I don't know that number, sir.
- Q. Do you know of one?
- A. Yes, sir.
- Q. You do?
- A. Yes, sir.
- Q. Who was that?
- A. Brad Martin.
- Q. And who is Brad Martin?
- A. Our attorney.
- Q. Oh. Okay. Now, give me one more.
- A. I cannot give you another name.²¹

Century BMW sells over 1,200 cars a year and the General Manager can only name one person, an attorney in the car cases, as a customer whom was allowed to purchase a car without signing

¹⁹Exhibit C, Deposition of Christine Watts, p. 50, ll. 10-18.

²⁰Exhibit B, 30(b)(6) Deposition of Century BMW, p.45, ll. 10-12 (32 years experience); p. 31, ll. 1-14.

²¹Exhibit B, 30(b)(6) Deposition of Century BMW, p. 31, ll. 1-14.

the arbitration agreement. This shows the arbitration agreement is presented as mandatory.

There was no doubt in Ms. Watts's mind that she had to sign all of the documents to get the car. Ms. Watts testified as follows:

Q. Okay. Okay. Were you of the opinion you had to buy -- that you had to sign the documents where presented with the flags in order to get the car, or not?

A. Yes.

Q. Okay. Any doubt in your mind about that?

A. No.²²

Q. Why did you think you had to sign any or all of these documents in order to get the car?

A. The way it was presented, I just thought I had to sign everything.²³

ARGUMENT

- A. **This Court Should Follow the South Carolina Supreme Court in Simpson v. MSA of Myrtle Beach, 373 S.C. 14, 644 S.E.2d 663 (S.C.2007) and Hold the Arbitration Agreement to be Unenforceable**

The South Carolina Supreme Court in Simpson v. MSA of Myrtle Beach, 373 S.C. 14, 644 S.E.2d 663 (S.C.2007), found a similar form contract in an automobile transaction to be unconscionable and unenforceable. The facts in this case mirror those in Simpson. Included below is a chart comparing the significant facts in Simpson to the facts in this case.

<u>Simpson Significant Facts</u>	<u>Facts in This Case</u>
The Defendant used a form contract. 644 S.E.2d at 669.	The contract here is a form contract. Exhibit B, 30(b)(6) Deposition of Century BMW, p. 37, ll. 7-14.

²²Exhibit C, Deposition of Christine Watts, p. 58, ll. 6-17.

²³Exhibit C, Deposition of Christine Watts, p. 51, ll. 2-6.

Vehicle was a necessity because it was for plaintiff's primary source of transportation. Id. at 670.	The vehicle here is also a necessity because it was to be Christine Watts's primary source of transportation and was needed to get back and forth from work. Exhibit D, Affidavit of Christine Watts, ¶ 3; Exhibit C, Deposition of Christine Watts, p. 59, ll. 11-20.
The plaintiff did not understand the implications of arbitration. Id. at 670.	The Wattses had no understanding of arbitration. Exhibit A, Deposition of Michael Watts, p. 22, ll. 19-21; Exhibit C, Deposition of Christine Watts, p. 20, ll. 3-6; Exhibit D, Affidavit of Christine Watts, ¶ 7.
The plaintiff did not have a lawyer present when she signed the arbitration agreement. Id. at 670.	The Wattses did not have a lawyer present when they signed the arbitration agreement. Exhibit C, Deposition of Christine Watts, p. 51, ll. 7-9; Exhibit D, Affidavit of Christine Watts, ¶ 8.
The agreement was hastily presented for plaintiff's signature. Id. at 670.	The agreement was hastily presented for the Wattses' signatures. Exhibit D, Affidavit of Christine Watts, ¶ 4.
The agreement purported to take away statutory rights under the Dealers Act. Id. at 671.	The Century BMW arbitration agreement attempts to take away statutory rights to bring a group action and obtain a group injunctive relief under the Dealers Act. See S.C. Code Ann. §56-15-110(2).
The agreement contained text in small font. Id. at 670.	The text of the arbitration agreement here is in less than 8 point font. Exhibit D, Affidavit of Christine Watts, Exhibit B, arbitration agreement.
The agreement was drafted by a corporate entity who was a superior party. Id. at 670.	The agreement was drafted by Sonic Automotive, a multi million dollar corporation. Exhibit B, 30(b)(6) Deposition of Century BMW, p. 37, ll. 7-14. Michael Watts sells garage doors and at the time Ms. Watts signed the agreement she was a 24 year old student. Exhibit A, Deposition of Michael Watts, p. 17, l. 15 - p. 18, l. 4; Exhibit E. Drivers License. Clearly, Century BMW was the superior party.

The agreement purported to take away rights otherwise available by law. Id. at 670.	The arbitration agreement here attempts to take away statutory rights to bring a group action and obtain a group injunctive relief which are provided in the Dealers Act and otherwise available by law.
The plaintiff believed the agreement was presented on a take-it or leave-it basis. Id. at 669.	The Wattses were led to believe the arbitration agreement was presented on a take-it or leave-it basis and that they had to sign it to get the car. Exhibit A, Deposition of Michael Watts, p. 54, ll. 10-12; Exhibit C, Deposition of Christine Watts, p. 46, ll. 18-22; p. 50, ll. 10-18; p. 51, ll. 2-6; and p. 58, ll. -17; Exhibit D, Affidavit of Christine Watts, ¶ 5.

As shown in the above chart, the facts in this case are just like the facts in Simpson.

Therefore, the Court should follow Simpson and find the Century BMW arbitration agreement to be unconscionable and unenforceable.

B. The Fact here are Similar to Those Emphasized by Courts Striking Down Similar Arbitration Agreements in Other Jurisdictions.

There is an emerging trend of cases striking down attempts by corporations to use arbitration agreements as devices to take away consumers' ability to bring actions on behalf of a group. Since this motion was argued, two more courts have found similar arbitration agreements purporting to take away the right to bring suit on behalf of a group to be unconscionable and unenforceable. Tillman v. Commercial Credit Loans, Inc., 655 S.E.2d 362 (N.C.2008) and Woods v. OC Financial Services, Inc. dba Quik Cash, (Order and Judgement Missouri Circuit Court filed December 31, 2007). Copies of these opinions are attached as Exhibit G.

Included below is a chart showing that the facts found to be significant by the North Carolina Supreme Court in Tillman v. Commercial Credit Loans, Inc., 655 S.E.2d 362

(N.C.2008) are also present in this case.

<u>Tillman Significant Facts</u>	<u>Facts in This Case</u>
There were no negotiations or opportunity to negotiate the clause. 655 S.E.2d at 365.	There was no discussion of the arbitration agreement here. Exhibit C, Deposition of Christine Watts, p. 47, ll. 12-15. Instead, the F&I manager's practice was to simply point and say "sign here." Exhibit B, 30(b)(6) Deposition of Century BMW, p. 22, ll. 14 - p. 23, l. 1.
The defendant drafted the arbitration agreement. Id. at 365.	The Defendant here also drafted the arbitration agreement. Exhibit B, 30(b)(6) Deposition of Century BMW, p. 37, ll. 7-14.
The case involved complex litigation that would be expensive and time consuming. Id. at 368.	This case has been designated as complex by this Court and has been ongoing since August 2006.
AAA average price of arbitrators was \$1,225 per day. 655 S.E.2d at 367.	The subject arbitration agreement is also under the AAA rules and requires the parties to pay arbitrators.
Loan officer told plaintiffs where to sign. Id. at 367.	In this case, the documents were in a packet with flags indicating where to sign and the F&I manager's practice was to point and say "sign here." Exhibit B, 30(b)(6) Deposition of Century BMW, p. 22, l. 14 - p. 23, l. 1; Exhibit C, Deposition of Christine Watts, p. 51, ll. 2-17; p. 58, ll. 6-7
In Court proceedings, you do not pay for the judge but in arbitration you have to pay for the arbitrator. Id. at 371.	The AAA rules referenced in the arbitration agreement here require the parties to pay for the arbitrators.
The plaintiffs were rushed through the signing of documents. Id. at 370.	The agreement here was "hastily" presented for Ms. Watts's signature. Exhibit D, Affidavit of Christine Watts, ¶ 4.

A Missouri court in Woods v. QC Financial Services, Inc. dba Quik Cash, (Order and Judgement Missouri Circuit Court filed on December 31, 2007) also emphasized facts that are present in this case. Included below is a chart comparing these facts.

Woods Significant Facts	Facts in This Case
The plaintiff was pursuing a statutory right to bring a class action separate from procedural class action and thus the agreement was taking away statutory rights. Opinion, p. 14.	The Plaintiff here is pursuing a statutory right to bring suit on behalf of a group under the Dealers Act. See S.C. Code Ann. §56-15-110(2).
Arbitration removed incentive to Defendant to comply with law because there would be no binding precedent. Opinion, p. 3.	In this case, an arbitration award will not be binding legal precedent.
The defendant admitted the agreement was a form contract. Opinion, p. 8.	The Defendant here admits that the arbitration agreement is a form contract. Exhibit B; 30(b)(6) Deposition of Century BMW, p. 37, ll. 7-14.
There were over 1,300 words in the agreement shrunk to fit on one page in 8 point font. Opinion, p. 9.	The arbitration agreement here is one page with over 1,100 words in less than 8 point font. See Exhibit D, Affidavit of Christine Watts, Exhibit B, Arbitration Agreement.
The President of the defendant was not knowledgeable about how the arbitration clause worked. Opinion, p. 9.	The General Manager and the F&I manager here are not knowledgeable about how the clause works. Exhibit B, 30(b)(6) Deposition of Century BMW, p. 24, l. 18 - p. 25, l. 6.
The arbitration provided for confidentiality and prevented others from learning of wrongdoing. Opinion, p. 11-12.	The arbitration agreement here references the AAA rules which provide for confidentiality. Exhibit D, Affidavit of Christine Watts, Exhibit B, Arbitration Agreement.
The defendant admitted it does not notify other customers when a claim is filed against the company and does not intend to do so in the future. Opinion, p. 11.	The General Manager, in this case, when asked if Defendant would notify customers of arbitration claims, frowned and stated that it would not be a good business practice to notify other customers of claims. Exhibit B, 30(b)(6) Deposition of Century BMW, p. 48, ll. 8-19.
The defendant could not articulate the differences between going to court and pursuing claims in arbitration and admitted he knew little about either. Opinion, pp. 15.	The General Manager here admitted he did not know much about arbitration or the rules governing arbitration. Exhibit B, 30(b)(6) Deposition of Century BMW, p. 24, l. 18 - p. 25, l. 6.

The defendant had thousands of customers and never negotiated the clause. Opinion, pp. 8-9.	Century BMW sells 1200 cars annually, has used the arbitration agreement since at least 2002, and the General Manager can only recall the name of one purchaser who was allowed to buy a car without signing the arbitration agreement. Exhibit B, 30(b)(6) Deposition of Century BMW, p. 30, ll. 9-25; p. 49, ll. 20-23; p. 31, ll. 1-19.
The arbitration agreement, when typed in 12 point font and double spaced, was over 6 pages long. Opinion, p. 9.	The arbitration agreement here, when typed in 12 point font and double spaced, is over 5 pages long. Exhibit H, retyped version of the agreement.

C. The Facts Here Are Even Worse than in the above Cases.

The Wattses were presented a packet of documents containing multiple documents which were required to be signed by law. Within that packet there were flags indicating where the Wattses were supposed to sign. The F&I Manager pointed and told the Wattses where to sign the documents. There was nothing telling the Wattses that the arbitration agreement, unlike the documents required to be signed by law, was not mandatory. Clearly, the Wattses were led to believe that they were required to sign the arbitration agreement just like they were required to sign the other documents required to be signed by law.

Furthermore, the Watts stated that there was no discussion of the arbitration agreement.²⁴ 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 it's "a document providing a remedy for the customer without having to go to court."²⁵ This statement is misleading because the arbitration agreement does not give a remedy but instead takes away remedies and statutory rights. The Century BMW explanation is further evidence showing that arbitration agreement should not be enforced.

²⁴Exhibit C, Deposition of Christine Watts, p. 47, ll. 12-15.

²⁵Tab B, 30(b)(6) Deposition of Century BMW, p. 16, l. 8 to p. 17, 10.

D. The Court Should Not Enforce the Arbitration Agreement Because There Was No Meeting Of the Minds Between the Parties.

"South Carolina common law requires that, in order to have a valid and enforceable contract, there must be a meeting of the minds between the parties with regard to *all* essential and material terms of the agreement." Patricia Grand Hotel, LLC v. MacGuire Enterprises, Inc., 643 S.E.2d 692, 694 (S.C.App.,2007). There was no meeting of the minds here because none of the signatories to the arbitration agreement understood what they were signing.

Neither of the Wattses had ever participated in an arbitration nor had any understanding of what arbitration was. Christine Watts testified as follows:

Q. At the time you were in Century BMW buying the Z-4, did you have an understanding what arbitration is?

A. No.²⁶

Q. Okay. Up until today, have you ever participated in arbitration in any capacity, as a witness or a party or anything like that?

A. No.²⁷

Michael Watts testified as follows:

Q. Do you have an understanding of what arbitration is?

A. No, sir.²⁸

Q. I think you just answered this, but have you ever participated in an arbitration, either as a witness or a party?

A. No, sir.²⁹

Similarly, Century BMW's General Manager testified as to his and the F&I manager's lack of knowledge:

²⁶Tab C, Deposition of Christine Watts, p. 20, ll. 3-6.

²⁷Tab C, Deposition of Christine Watts, p. 20, ll. 15-18.

²⁸Tab A, Deposition of Michael Watts, p. 22, ll. 19-21.

²⁹Tab A, Deposition of Michael Watts, p. 23, ll. 7-10.

Q. Okay. Does Mr. Courtney James know anymore about how arbitration works than you, or would you say you're better?

MR. BLACK: It's Corey James.

MR. LEWIS: Corey James. Mr. James.

A. I would say neither one of us would be involved in the process or actually been through the process.

Q. Or know anything about it?

A. Not much.

Q. Or what the rules are or what you have to do; do you know any of that?

A. No, sir.³⁰

None of the parties whom signed the arbitration agreement understood what they were signing. Accordingly, there was no meeting of the minds as to what was allegedly being agreed to and no contract was formed. Therefore, the arbitration agreement should not be enforced.

D. The Arbitration Agreement Is Unconscionable.

The arbitration agreement purports to take away statutory rights that are designed to protect consumers. As stated by the South Carolina Supreme Court in Simpson, there are strong public policy reasons behind the enactment of the Dealers Act and the Dealers Act's purpose is to "punish acts that adversely affect the public's interest." Simpson, 644 SE2d at 671. The Century BMW arbitration agreement's attempt to prohibit group actions and group injunctive relief would take away important remedies in S.C. Code Ann. §56-15-110(2) that are designed to protect the public. This is contrary to the purposes behind the Dealers Act and therefore unconscionable.

The arbitration agreement is so one-sided that even Century BMW's own lawyer, Brad Martin, refused to sign it when he purchased a vehicle.³¹ Mr. Martin is the only customer that the General Manager could name in over 6,000 transactions that was ever allowed to purchase a car without signing the arbitration agreement.³² If the agreement is so bad that Mr. Martin will not

³⁰Tab B. 30(b)(6) Deposition of Century BMW, p. 24, l. 18 - p. 25, l. 6.

³¹Tab B, 30(b)(6) Deposition of Century BMW, p. 31, ll. 1-19.

³²Tab B, 30(b)(6) Deposition of Century BMW, p. 30, ll. 9-25; p. 49, ll. 20-23; p. 31, ll.

sign it, the Court should not enforce it against Ms. Watts.³³

CONCLUSION

For the reasons stated at oral argument, in Plaintiffs Memorandum in Opposition to Motions to Dismiss, Plaintiff Christine Watt's Supplemental Memorandum in Opposition to Century BMW's Motion to Compel Arbitration, and the reasons stated above, Defendant Century BMW's Motion to Compel Arbitration should be denied.

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³³The South Carolina Supreme Court has stated that it would not enforce the type of class action waiver at issue in this case. "[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 adhesion contract." Bazzle v. Green Tree Financial Corporation, 351 S.C. 244, 569, S.E.2d 349 (2002) (*Rev'd on other grounds*).

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Attorneys for the Plaintiffs

February 18, 2008

Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Margarita Sosa, secretary for the law firm of Lewis & Babcock, L.L.P., hereby certify that I have served a copy of Plaintiff Christine Watts's Second Supplemental Memorandum in Opposition to Defendant Century BMW's Motion to Compel Arbitration 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:

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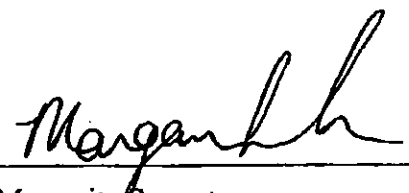
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Margarita Sosa

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF AIKEN

HERRON, et al.,

Case No.

Plaintiffs,

2006-CP-02-1230

vs.

DICK DYER & ASSOCIATES, INC., et al,

Defendants.

DEPOSITION OF: MICHAEL WATTS

DATE: January 29, 2008

TIME: 9:08 a.m.

LOCATION: LEATHERWOOD WALKER TODD & MANN, P.C.
300 East McBee Avenue, Suite 500
Greenville, South Carolina

TAKEN BY: Counsel for Defendant,
CENTURY BMW

REPORTED BY: KATHY P. TAYLOR,
Registered Professional Reporter

Computer-Aided Transcription By:

A. WILLIAM ROBERTS, JR. & ASSOCIATES

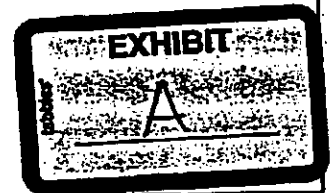
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STIPULATION

1 It is stipulated by and between Counsel
 2 that this deposition is being taken in accordance
 3 with the South Carolina Rules of Civil Procedure,
 4 Rule 30; that all objections as to Notice of this
 5 deposition are hereby waived, that all objections
 6 except as to form are reserved until the time of
 7 trial; and that the deponent does not waive reading
 8 and signing of this deposition
 9

MICHAEL WATTS,

being first duly sworn, testified as follows:

EXAMINATION

BY MR. BLACK:

Q. Good morning, Mr. Watts. Could you state
 your name and address for the record.

A. Michael M. Watts, 210 Providence Square,
 Greenville, South Carolina 29615.

Q. And, Mr. Watts, my name is Dennis Black.
 I'm from a law firm called Williams & Connolly. And
 do you understand I represent Century BMW in this
 case?

A. Correct.

Q. Okay. The other counsel at the table, just
 so you know, also represent others, either Century

Page 3

Page 5

1 ATTORNEYS FOR DEFENDANT,
 2 TOYOTA OF GREENVILLE:

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11 CHRYSLER JEEP, INC., et al.;
 12 HAYNSWORTH SINKLER BOYD, P.A.
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ALSO PRESENT:

MELANIE BLEASE, Paralegal

(Index at rear of transcript)

1 BMW or other defendants in the case. And you have
 2 your counsel here?

A. Yes.

Q. Okay. Have you ever had your deposition
 taken before?

A. One time.

Q. And when was that?

A. About 20 years ago.

Q. And was that in a business dispute, a
 personal dispute?

A. It was a workers' comp dispute.

Q. Just to give you a little refresher course
 after 20 years, I'll be asking a series of questions
 today. Hopefully you'll be answering them. If you
 can try to answer the questions aloud and with
 words, because the court reporter can't take down
 nods and shakes and shrugs.

A. Okay.

Q. Is that acceptable?

A. It's - yes.

Q. And try to avoid saying uh-huh or huh-uh in
 response to my questions, because they look very
 similar on the transcript, and it will be hard to
 decipher later. Is that -

A. Yes, sir.

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1 Q. If you don't understand any of my
2 questions, please ask me to clarify or explain any
3 problem you have with the question. And if you have
4 a problem or need clarification, please direct your
5 request for clarification to me and not to your
6 counsel.

7 A. Yes, sir.

8 Q. Is that okay?

9 A. (Witness nods head.)

10 Q. And under the rules, just so you know,
11 you're not allowed to talk to your counsel about
12 this deposition or the case from now until when we
13 conclude the deposition, even if we take a break.
14 Is that acceptable?

15 A. Yes, sir.

16 Q. And if -- this isn't an endurance contest,
17 so if at any time you need to take a break for any
18 reason, feel free to ask, and we'll take a break.

19 A. Yes, sir.

20 Q. Okay. What did you do to prepare for your
21 deposition today?

22 A. I met with counsel on Sunday night. I got
23 the time and place where we were going to meet, and
24 we briefly looked at the paperwork.

25 Q. And what -- when you say the paperwork,

Page 7

1 what paperwork was that?

2 A. The sale paperwork. The information for
3 the bill of sale when we bought the car.

4 Q. How many documents would you say you looked
5 at?

6 A. 20. Approximately 20.

7 Q. And without getting into the substance of
8 what was said, did you have a chance to discuss
9 those documents with your counsel?

10 A. Briefly.

11 Q. Had you seen all the documents you were
12 shown before?

13 A. No, sir.

14 Q. Did it include -- I sent over last week to
15 your counsel a -- the dealership's file on the
16 transaction. Were those the documents you reviewed?

17 A. Yes, sir.

18 Q. Okay. And did you review any of them
19 outside the presence of your counsel?

20 A. No, sir.

21 Q. Okay. So to the extent you had discussions
22 about the documents, it was only with your counsel?

23 A. Yes, sir.

24 Q. How long was your meeting on Sunday night
25 with your counsel?

Page 8

1 A. Approximately 30, 35 minutes.

2 Q. And where did it take place?

3 A. Took place at my wife's office. Land
4 America.

5 Q. And there's Christine Watts that's also a
6 plaintiff in this case. Is that your daughter?

7 A. Yes, sir.

8 Q. And have you talked with her about the case
9 or your transaction in preparation for the
10 deposition?

11 A. Yes, sir.

12 Q. Uh-huh. And when was that?

13 A. Sunday night when we met.

14 Q. Okay. Was -- was she present for your
15 meeting with counsel?

16 A. Yes, sir.

17 Q. Was anyone else present?

18 A. Melanie Blessie.

19 Q. And is that the young lady sitting over
20 here?

21 A. Yes, sir.

22 Q. Is she also a plaintiff in the case --

23 A. No, sir.

24 Q. -- do you know? No? The -- anyone else?

25 A. No, sir.

Page 9

1 Q. Did you have any discussions with your
2 daughter, Christine Watts, outside the presence of
3 your counsel about the transaction or this case?

4 A. Yes, sir.

5 Q. Oh, okay. And when was that?

6 A. Sunday night, on the way home.

7 Q. All right. And what did you discuss with
8 her on the way home?

9 A. We discussed primarily the taking of a
10 deposition, what it involved and, you know, you
11 would be asking me questions. And I was trying to
12 rehash the deposition process.

13 Q. Uh-huh.

14 A. And --

15 Q. And has Christine had her deposition taken
16 before?

17 A. No, sir.

18 Q. Did you dis- -- rehash any of the details
19 of the negotiation of the car deal or the
20 transaction at Century BMW in this conversation
21 outside the presence of your counsel?

22 A. Yes, sir.

23 Q. And tell me about that. What was said on
24 that subject?

25 A. We discussed -- I could not remember what

Page 10

Page 12

1 we bought the car for, the purchase of the car,
2 because it was primarily for her as a graduation
3 present. And all the steps.

4 Q. And by all the steps, you mean all the
5 steps —

6 A. All the steps in the process, trying to
7 review the purchase of the car.

8 Q. And did the two of you refresh each other's
9 recollections as to what went on?

10 A. She told me how much money we paid for the
11 car. We were talk- — I couldn't even remember the
12 purchase price.

13 Q. Uh-huh. Did she refresh your recollection
14 about any other details of the transaction?

15 A. No. It was pretty much the conversation
16 was towards the purchase price and how we financed
17 the car.

18 Q. Was there anything that she didn't remember
19 that you were able to refresh her recollection
20 about?

21 A. I'm thinking of the conversation, because
22 it was brief. She just mentioned that on the last
23 page, the — the commission statement on the car,
24 you know, how much profit was made on the car.

25 Q. And I take it that was something you didn't

1 A. Yeah.

2 Q. Okay. And prior to Sunday night, within
3 the last couple of months, have you had any
4 discussions with your daughter about the case or the
5 deposition?

6 A. We have not really talked about it.

7 Q. Does she live at the same address as you?

8 A. No, sir.

9 Q. I'd like to talk a little about your
10 educational background. Could you describe any
11 education you've had since high school?

12 A. I graduated the University of South
13 Carolina with a major in journalism.

14 Q. And what year did you graduate?

15 A. '78.

16 Q. And that's the University of South Carolina
17 in Columbia?

18 A. Columbia.

19 Q. And was that a bachelor's degree?

20 A. Yes, sir.

21 Q. And since getting your bachelor's degree in
22 1978, have you done any further education?

23 A. No, sir.

24 Q. Could you — starting with when you
25 graduated from University of South Carolina, could

Page 11

Page 13

1 know until —

2 A. I had no idea. That's not my business.

3 Q. And the dealership didn't provide you with
4 that information at the time of the transaction?

5 A. No, sir.

6 Q. Okay. And what did she have to say on that
7 subject?

8 A. That was — they did pretty good.

9 Q. Did you have any other discussions about
10 the transaction or the case in this ride home with
11 your daughter on Sunday night?

12 A. The only other thing that I can remember
13 was that I told her I couldn't remember some of the
14 paperwork that we had looked at.

15 Q. And that was some of the paperwork you had
16 had the opportunity to discuss with counsel earlier
17 in the evening?

18 A. Yes, sir.

19 Q. Okay. And since that drive home Sunday
20 night, have you talked to her any further about the
21 case or the transaction?

22 A. The only thing that we talked about was
23 last night, that we both were nervous about the
24 deposition.

25 Q. No need to be nervous.

1 you just — what was your first job after college?

2 A. First job was working for Wallace Business
3 Forms as a salesman. Oh, I worked for J.M. Fields
4 as an appliance manager prior to Wallace Business
5 Forms, while I was looking for a full-time job.

6 Q. Okay. And J.M. Fields is what type of
7 business?

8 A. It was a retail store, similar to like a
9 Sears. They're out of business now.

10 Q. Okay. And your job was with respect to
11 appliances?

12 A. I was selling appliances.

13 Q. Okay. And was that selling appliances to
14 consumers rather than businesses?

15 A. Consumers.

16 Q. Did you also sell like extended warranties
17 and the like?

18 A. No, sir.

19 Q. And then you went to work for Wallace
20 Business Forms?

21 A. Correct.

22 Q. And what was your position there?

23 A. Sales rep.

24 Q. And what was the business of Wallace
25 Business Forms?

1 A. They designed and sold computer forms to
2 companies.
3 Q. And by computer forms, that would be what
4 type of forms?
5 A. Continuous custom-made business forms, such
6 as invoices.
7 Q. And how long did you remain in the position
8 as a sales rep for them?
9 A. Approximately two years.
10 Q. So up to about 1987?
11 A. Yes, sir.
12 Q. And what was your next job position?
13 A. I worked for Spartan Express. They're a
14 transportation company. As a sales rep
15 Q. And what would you have been selling?
16 A. Transportation services.
17 Q. Is that like trucking or --
18 A. Trucking.
19 Q. And how long did you remain in that
20 position?
21 A. Approximately two, two and a half years.
22 Q. So we're up to about 1983ish?
23 A. Give or take, yes, sir.
24 Q. And what was your next job position?
25 A. I went to work for AAA Cooper

1 Transportation, trucking company, sales rep.
2 Q. And were you again selling trucking
3 services?
4 A. Yes, sir.
5 Q. And how long were you in that position?
6 A. I was in that position for four to five
7 years.
8 Q. So we're up to 1988ish?
9 A. Yeah.
10 Q. And then what did you do?
11 A. I moved to Columbia with AAA Cooper. I was
12 still working for AAA Cooper.
13 Q. Oh, okay. And when you moved to Columbia,
14 did you take on a different position?
15 A. I was primarily in sales for the first
16 year. It was a new territory.
17 Q. And you said for the first year. Did
18 you -- did you change positions after a year?
19 A. They opened a terminal, and I became
20 terminal manager.
21 Q. And that was about 1989?
22 A. Yes, sir. Approximately, you know.
23 Q. What were your job responsibilities as
24 terminal manager?
25 A. To hire employees.

1 Q. Did you also manage them --
2 A. I mean --
3 Q. -- once you hired them?
4 A. I managed the employees. I was responsible
5 for the entire operation.
6 Q. And how many employees were you responsible
7 for at the terminal?
8 A. 45.
9 Q. And how long did you remain in the position
10 as terminal manager?
11 A. Until nineteen-ninety. -- 1989.
12 Approximately.
13 Q. And what did you -- what position did you
14 take on in 1999?
15 A. Sales manager for environmental
16 accessories.
17 Q. And what type of environmental accessories
18 are you referring to?
19 A. Environmental accessories, we sold -- we
20 were a broker, and we sold services to industry for
21 handling their non-haz and hazardous materials.
22 Q. And how long were you in that position?
23 A. To 2004. Approximately.
24 Q. Okay. And what was your next position?
25 A. I went to work for W.W. Grainger.

1 Q. And what business are they in?
2 A. Industrial sales.
3 Q. And what was your position with W.W.
4 Grainger?
5 A. Government sales.
6 Q. And what would you have been selling?
7 A. Nuts, bolts. Industrial maintenance
8 supplies.
9 Q. And I thought I had heard you say before
10 that you still work for AAA Cooper today.
11 A. No, sir.
12 Q. Okay. I misheard. How long were you
13 with -- or are you still with W.W. Grainger?
14 A. No, sir.
15 Q. Okay. What was your next position?
16 A. Next position, I left W.W. Grainger, and I
17 presently work for Bill Rite Corporation.
18 Q. Bill Rite?
19 A. Bill Rite. Yeah.
20 Q. And how do you spell Bill Rite?
21 A. B-I-L-L-T, R-I-T-E.
22 Q. Two words?
23 A. Two words.
24 Q. And what was your first position with Bill
25 Rite?

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1 A. I'm a sales rep, and manager in Greenville.
 2 Q. And what is the business of Bilt Rite?
 3 A. I call on contractors and sell garage
 4 doors.
 5 Q. And is that garage doors for residential?
 6 A. Residential.
 7 Q. And that's your position today?
 8 A. Correct.
 9 Q. Aside from working for Bilt Rite, do you do
 10 any other work?
 11 A. I teach fly fishing.
 12 Q. And where do you teach that?
 13 A. Clemson University.
 14 Q. And how long have you done that?
 15 A. Two weeks.
 16 Q. Aside from your recent two-week stint
 17 teaching fly fishing, have you ever taught any
 18 courses before?
 19 A. Not besides fly fishing.
 20 Q. Okay. But you've taught fly fishing
 21 before?
 22 A. I've taught fly fishing classes.
 23 Q. And what department is fly fishing in at
 24 Clemson?
 25 A. Leisure Skills.

Page 19

1 Q. And I think you said you're married?
 2 A. Yes, sir.
 3 Q. And your wife's name is Phyllis?
 4 A. Correct.
 5 Q. And is she employed?
 6 A. She is employed with Land America.
 7 Q. And what does she do?
 8 A. She's a branch manager.
 9 Q. And what business is Land America in?
 10 A. Title insurance.
 11 Q. How did you first come to meet the lawyers
 12 who are representing you in this case?
 13 A. Melanie Blease was my daughter's roommate
 14 at the College of Charleston.
 15 Q. And Ms. Blease is, I understand, a
 16 paralegal for the Plaintiff's law firm?
 17 A. Yes, sir.
 18 Q. So did your introduction to the lawyers
 19 come through your daughter?
 20 A. Yes, sir.
 21 Q. And as you understand it, your daughter's
 22 introduction to the lawyers came through Ms. Blease?
 23 A. Correct.
 24 Q. When was the first time you purchased an
 25 automobile?

Page 20

1 A. In high school.
 2 Q. And how many automobiles have you purchased
 3 in your life?
 4 A. Approximately 10, 12.
 5 Q. And have those all been from automobile
 6 dealerships?
 7 A. Yes.
 8 Q. And in this 10 to 12 car purchases you've
 9 made in your life, did you negotiate the price in
 10 each of them?
 11 A. Yes, sir.
 12 Q. And did you always realize when you were
 13 buying the car that, you know, the price is
 14 negotiable at a car dealership?
 15 A. I try to make it negotiable.
 16 Q. Have you ever been — have you ever had an
 17 automobile transaction which the dealership refused
 18 to negotiate on the price?
 19 A. They refused up to a point.
 20 Q. In other words, the negotiations reached a
 21 point where they said, we won't take a penny less.
 22 A. Correct.
 23 Q. But up to that point, they negotiated.
 24 A. Correct.
 25 Q. And then you had the choice as to whether

Page 21

1 you were going to buy the car or not.
 2 A. Yes, sir.
 3 Q. In connection with — putting aside your
 4 transaction at Century BMW, is the transaction that
 5 brings us here today the only time you've ever had a
 6 deal with Century BMW?
 7 A. Yes, sir.
 8 Q. Okay. Prior to Century BMW, had you ever
 9 signed an arbitration agreement in connection with a
 10 car purchase?
 11 A. I do not remember.
 12 Q. Did you, also, in the relatively recent
 13 past, buy a car at Toyota of Greenville?
 14 A. Yes, sir.
 15 Q. And do you know if there was an arbitration
 16 agreement included with that transaction?
 17 A. No, sir.
 18 Q. You don't know or —
 19 A. I don't remember. I —
 20 Q. Okay. Prior to your transaction at Century
 21 BMW, had you ever signed an arbitration agreement in
 22 any context?
 23 A. I don't believe I have.
 24 Q. Have any of your employers ever asked you
 25 to sign an arbitration agreement?

1 A. I don't remember. I don't think so.
 2 Q. Okay. When you were the terminal
 3 manager for -- was it AAA Cooper?
 4 A. Yes, sir.
 5 Q. -- did they have arbitration agreements
 6 with their employees; do you know?
 7 A. No, sir.
 8 Q. In any of your various sales representative
 9 jobs -- where I assume you entered into contracts
 10 with people to sell them products; is that --
 11 A. Not -- there were very few contracts. It
 12 was more on a purchase order basis.
 13 Q. Were there ever arbitration agreements
 14 involved in those deals, to your knowledge?
 15 A. No, sir.
 16 Q. Have you ever been asked to sign an
 17 arbitration agreement and refused to do so?
 18 A. No, sir.
 19 Q. Do you have an understanding of what
 20 arbitration is?
 21 A. No, sir.
 22 Q. Do you understand it's another way of
 23 resolving a dispute other than going to court?
 24 A. I've kind of got -- I've got that idea,
 25 yes, sir.

1 Q. But beyond that very basic idea, you don't
 2 know the details of it?
 3 A. I've never been involved, no, sir.
 4 Q. So I take it you have no either good or bad
 5 impressions of the process.
 6 A. No, sir.
 7 Q. I think you just answered this, but have
 8 you ever participated in an arbitration, either as a
 9 witness or a party?
 10 A. No, sir.
 11 Q. I think you testified the vehicle you
 12 purchased at Century BMW was a graduation present
 13 for your daughter?
 14 A. Yes, sir.
 15 Q. To the extent there was a search for a
 16 vehicle to purchase for your daughter, who conducted
 17 it primarily, was it you or her?
 18 A. She did.
 19 Q. And what, briefly, do you understand she
 20 did in that process?
 21 A. Looked on the internet, told her friends,
 22 asked her friends, and just looked at body styles in
 23 the internet.
 24 Q. Were you specifically looking for a used
 25 vehicle?

1 A. No, sir.
 2 Q. Were you specifically looking in a certain
 3 price range?
 4 A. She wanted a convertible.
 5 Q. And did you pretty much leave the search
 6 for the convertible to her?
 7 A. Yes, sir.
 8 Q. Okay. And did you understand in the market
 9 for used vehicles, there are a number of different
 10 places you can buy a used vehicle from?
 11 A. Yes, sir.
 12 Q. You understand that you don't even have to
 13 go to a car dealership; you can buy it from a
 14 private individual?
 15 A. Correct.
 16 Q. And there are ads in the newspaper you can
 17 look to for vehicles?
 18 A. Yes, sir.
 19 Q. There are internet sites, like Craig's List
 20 and others, that -- where people post cars they're
 21 selling?
 22 A. Yes, sir.
 23 Q. Specialized publications like -- in D.C.,
 24 it's called Auto Trader, but where they have nothing
 25 but car ads in them?

1 A. Yes, sir.
 2 Q. You can also go to now car dealerships.
 3 A. Yes, sir.
 4 Q. And I take it there are a number of now car
 5 dealerships in the Greenville area?
 6 A. Yes, sir.
 7 Q. So you weren't limited to going to Century
 8 BMW by any --
 9 A. No, sir.
 10 Q. Also, are you familiar with used car
 11 dealerships like CarMax?
 12 A. Yes, sir.
 13 Q. And do you know where -- did you go to any
 14 other dealerships in the search for a graduation
 15 present?
 16 A. Reluctantly.
 17 Q. Okay. How many dealerships did you visit?
 18 A. Two.
 19 Q. And is that two in addition to Century BMW
 20 or two --
 21 A. Yes.
 22 Q. Okay. What were the other two?
 23 A. Fairway Ford and CarMax.
 24 Q. And did you do anything other than look at
 25 cars at either of those dealerships?

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1 A. We made an offer.
 2 Q. At both?
 3 A. No, sir. At Fairway Ford.
 4 Q. And is Fairway Ford here in the Greenville
 5 area?
 6 A. Yes, sir.
 7 Q. And do you remember what type of vehicle
 8 you made an offer on?
 9 A. Ford Mustang.
 10 Q. I take it that it was a convertible?
 11 A. It was a convertible.
 12 Q. And did you engage in price negotiation
 13 back and forth?
 14 A. Yes, sir.
 15 Q. And I take it you didn't buy the car.
 16 A. No, sir.
 17 Q. And why was that?
 18 A. We had -- I'm going -- we had -- I had
 19 talked to a gentleman at a Greenwood Ford dealership
 20 first on a car, told him what my daughter was
 21 looking for. And I do not remember how I engaged in
 22 conversation with him. And he found one, and he was
 23 negot -- we were negotiating price. And my
 24 daughter had gone by Fairway Ford and driven the
 25 car. And they came up with a less -- a cheaper

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1 price, the dealership in Greenwood, then we could
 2 have bought it at Fairway Ford. And then when they
 3 found out my daughter had driven the car, they
 4 wouldn't sell it to me, so I walked.
 5 Q. They said --
 6 A. It --
 7 Q. Okay. You engaged in price negotiations
 8 with the Greenwood dealership?
 9 A. Yes, sir.
 10 Q. And when they found out you had test driven
 11 a car at a different dealership, they wouldn't sell
 12 you a vehicle at their dealership; is that --
 13 A. Pretty much, in a nutshell.
 14 Q. Did they give you a reason for that?
 15 A. Pretty -- they were trying to protect the
 16 other dealership, Fairway Ford.
 17 Q. Did they co-own or --
 18 A. I don't know, I -- you know, I walked.
 19 Q. Okay.
 20 A. I didn't get into any of the specifics. I
 21 just -- I left.
 22 Q. And did you -- had you engaged in any price
 23 negotiations at Fairway Ford?
 24 A. I hadn't, I --
 25 Q. So how did you know the deal was cheaper at

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1 the Greenwood dealership?
 2 A. I went on the internet and was just looking
 3 at cars. And naturally, I got tagged from the
 4 dealership in Greenwood when -- in my search.
 5 Q. Okay. So you gave him contact
 6 information, and they called you?
 7 A. Yes, sir.
 8 Q. How long did you spend doing research on
 9 the internet?
 10 A. Very little.
 11 Q. Had you ever been to Century BMW before you
 12 bought the car?
 13 A. We had test driven a car there.
 14 Q. And was that in connection with the same
 15 search, or was it a prior vehicle?
 16 A. No, sir, it was a prior vehicle.
 17 Q. Okay. And when was that?
 18 A. Six months or a year prior to buying the
 19 vehicle.
 20 Q. So was that in connection with the search
 21 for the car you ended up buying at Toyota of
 22 Greenville?
 23 A. No, sir.
 24 Q. For whom were you looking for a car when
 25 you test drove the car at Century BMW six months

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1 ago?
 2 A. Nobody. My daughter wanted to test drive
 3 the four-door convertible, so we did.
 4 Q. Did you engage in any price negotiations
 5 the six months earlier?
 6 A. No, sir.
 7 Q. And was that a new or used vehicle she --
 8 A. It was --
 9 Q. -- wanted to test drive?
 10 A. It was new.
 11 Q. When you came to Century BMW in connection
 12 with the purchase of the 2004 Z4, had your daughter
 13 already been there?
 14 A. No, sir.
 15 Q. Did you come together?
 16 A. Yes, sir.
 17 Q. Okay. And when you came, did you already
 18 have a car in mind?
 19 A. No, sir.
 20 Q. Once you got to the dealership, did you
 21 walk around the lot and look at a lot of different
 22 cars?
 23 A. Yes, sir.
 24 Q. Okay. Tell me about that. How many cars
 25 did you look at?

1 A. I don't remember. We didn't test drive --
 2 I don't remember if we test drove any besides the
 3 Z4.
 4 Q. And did you walk around the lot on your
 5 own, or were you accompanied by someone else other
 6 than your daughter?
 7 A. We were accompanied by a salesperson.
 8 Q. Okay. Was that a male or a female?
 9 A. Female.
 10 Q. Do you remember her name?
 11 A. No, sir.
 12 Q. And did she describe the various cars to
 13 you?
 14 A. Yes, sir.
 15 Q. Did you like her?
 16 A. She was nice.
 17 Q. Okay. So I take it she didn't put undue
 18 pressure on you as you were touring the lot?
 19 A. No, sir.
 20 Q. Okay. How did you come to -- I think you
 21 said you test drove the Z4.
 22 A. Correct.
 23 Q. Did you test drive it, or your daughter, or
 24 both?
 25 A. We both test drove it.

1 Q. And did the salesperson accompany you?
 2 A. I think she -- if I -- I think she
 3 accompanied my daughter, and I think my daughter and
 4 I drove it.
 5 Q. After test driving the vehicle, did you
 6 determine you wanted to buy it?
 7 A. I let my daughter make the decision.
 8 Q. Okay. Did she express an interest in
 9 purchasing the car?
 10 A. Yes, sir.
 11 Q. Okay. Did she like the car?
 12 A. Yes, sir.
 13 Q. And at that point, did you engage in any
 14 price negotiations with anyone at the dealership?
 15 A. Not right then. We went back and talked
 16 about it.
 17 Q. Okay. So you test drove the car and
 18 decided you liked it, and left.
 19 A. Correct.
 20 Q. Okay. And why did you leave rather than
 21 stick around and negotiate the purchase right then?
 22 A. We wanted to think about it, talk about it,
 23 and I wanted to call the credit union and check on
 24 financing.
 25 Q. And how long after you test drove the car

1 was it before you returned to negotiate the deal?
 2 A. Probably -- I think -- I can't remember.
 3 It was within a day.
 4 Q. Were you aware that the dealership would
 5 likely offer you financing on the vehicle?
 6 A. Yes, sir.
 7 Q. But you preferred to finance it elsewhere?
 8 A. Yes, sir.
 9 Q. So I take it you understood you didn't have
 10 to enter into a financing agreement with the car
 11 dealership in order to purchase the car.
 12 A. Yes, sir.
 13 Q. Is it your general practice to finance car
 14 purchases through your own credit union --
 15 A. Yes, sir.
 16 Q. -- rather than the dealership?
 17 A. Yes, sir.
 18 Q. Have you ever financed the terms of a --
 19 have you ever financed a car through the car
 20 dealership?
 21 A. Yes, sir.
 22 Q. And did you engage in negotiations on the
 23 terms of the financing?
 24 A. No, sir.
 25 Q. You realized you were free to ask for a

1 lower interest rate than what they offered you, I
 2 take it.
 3 A. I figured they would offer me the lowest.
 4 I didn't know that their finance rate would be
 5 negotiable.
 6 Q. But in any event, you determined you were
 7 going to get financing away from Century BMW for
 8 this transaction.
 9 A. Right.
 10 Q. When you came back to the dealership to
 11 negotiate the purchase, who did you meet with?
 12 A. The saleslady.
 13 Q. And was it the same saleslady you dealt
 14 with previously?
 15 A. Yes, sir.
 16 Q. And when you came back, did you come back
 17 alone or with your daughter?
 18 A. We negotiated via telephone.
 19 Q. Okay. So you didn't come into the
 20 dealership?
 21 A. I did not come -- I called, and we
 22 negotiated over the telephone.
 23 Q. Okay.
 24 A. And then once the price was agreed upon, we
 25 went from there.

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1 Q. And is the reason you dealt with them by
2 phone, was it because you felt more comfortable
3 being at home rather than being at the dealership
4 with the employees?
5 A. You know, I don't know why we did it from
6 the house.
7 Q. Who was on the phone when you were
8 negotiating the price?
9 A. The saleslady and I.
10 Q. Okay. Was Christine on an extension, or
11 was it just you and the salesperson?
12 A. It was just me and the salesperson.
13 Q. Okay. Who called --
14 A. Christine was in the room.
15 Q. Okay. So she may have overheard -- I take
16 it the salesperson wasn't on a speakerphone in your
17 house.
18 A. No, sir.
19 Q. Okay. So Christine may have overheard your
20 side of the conversation, but she wouldn't have
21 heard the other side?
22 A. Correct.
23 Q. Okay. Who initiated the phone call?
24 A. I did.
25 Q. Okay. And did you ask to speak to the

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1 A. Correct.
2 Q. And what did she say? Do you remember what
3 your initial offer was?
4 A. No, sir.
5 Q. Was it, I take it, less than you ended up
6 paying?
7 A. More than likely.
8 Q. But you don't recall?
9 A. I do not remember.
10 Q. Okay. And did you have -- when you made
11 the call, did you have a bottom-line figure in mind
12 that you wouldn't pay more than?
13 A. Yes, sir.
14 Q. Do you remember what that was?
15 A. I'm feeling my brain. 30 -- it was 31, 32,
16 somewhere right in there.
17 Q. Okay.
18 A. I do not remember exactly.
19 Q. And you know -- you know that if this
20 dealership, for whatever reason, didn't offer terms
21 that you were comfortable with, you could hang up
22 the phone, and you weren't under any obligation to
23 purchase the vehicle from them; is that fair?
24 A. That's fair.
25 Q. Okay. And that would include terms other

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1 saleslady?
2 A. Yes, sir.
3 Q. And did -- when you called, did you tell
4 her you were interested in getting the Z4?
5 A. Yes, sir.
6 Q. And did you make an offer on the vehicle?
7 A. Yes, sir.
8 Q. Had there been a -- any sort of price on
9 the car?
10 A. Yes, sir. I don't remember what it was.
11 Q. Okay. Do you remember how it was posted on
12 the car? Was it written in shoe polish, or was it
13 on some sort of sticker?
14 A. I don't remember.
15 Q. Okay. And had you discussed that price at
16 all with the salesperson when you were back at the
17 dealership?
18 A. No, sir.
19 Q. So you called -- I think her name is
20 Elizabeth Courtney, does that ring a bell?
21 A. Sounds familiar.
22 Q. Well, whoever it was, you called --
23 A. Yes.
24 Q. -- the salesperson, and you made an initial
25 offer.

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1 than the price, such as if they refused to offer you
2 a warranty on the car, you could hang up the phone
3 and not have to deal with them, is that fair?
4 A. Yes, sir.
5 Q. Okay. Do you recall what Ms. Courtney's
6 response was to your offer?
7 A. There was negotiation. I don't remember
8 the interaction.
9 Q. Was it all in one phone call or multiple
10 phone calls?
11 A. No, sir, there were multiple phone calls.
12 Q. Okay. After you made your offer, did she
13 say, I'd have to get back with you and call you
14 back?
15 A. All I remember is there were multiple phone
16 calls back and forth.
17 Q. Okay. And did all of this take place in
18 one day?
19 A. Yes, sir.
20 Q. Okay. Do you generally recall over what
21 time period, how many hours or --
22 A. It was late afternoon.
23 Q. Was it a weekend?
24 A. It was a Friday afternoon.
25 Q. And did you talk with anyone other than

1 Ms. Courtney?
 2 A. No, sir.
 3 Q. And eventually in this back and forth phone
 4 calls, did you reach an agreement on price?
 5 A. Yes, sir.
 6 Q. And then did you come into the dealership
 7 to finalize the paperwork?
 8 A. After I did my credit up and got my
 9 financing in order.
 10 Q. From the credit union?
 11 A. Correct.
 12 Q. So did you come into the dealership with a
 13 cashier's check from the credit union?
 14 A. I came in with some paperwork that they
 15 needed to fill out, and the credit union verified
 16 the funds would be sent to them.
 17 Q. The credit union --
 18 A. Verified the funds would be sent.
 19 Q. So you didn't have a check?
 20 A. I did not have a check.
 21 Q. And I assume you signed a promissory note
 22 or financing agreement with the credit union?
 23 A. Yes, sir.
 24 Q. Do you maintain -- still have a copy of
 25 that?

1 A. Probably so.
 2 Q. Are you still making payments on it?
 3 A. She is, yes, sir.
 4 Q. So your daughter is making the payments?
 5 A. Yes, sir.
 6 Q. Who was the -- were you the borrower on the
 7 financing agreement, or were both of you, or how was
 8 that arranged?
 9 A. She co-signed with me.
 10 Q. Okay. Do you recall whether -- did you
 11 enter into any other agreements with the credit
 12 union? Did they offer you any sort of service
 13 agreement on the car or anything like that?
 14 A. No, sir.
 15 Q. Did the financing agreement that you signed
 16 with the credit union contain any arbitration
 17 clause?
 18 A. I do not know.
 19 Q. Did you check with the dealership as to
 20 whether they could give you a better interest rate
 21 than the credit union was giving you?
 22 A. I like my credit union, and past
 23 experience, their rates have always been very, very
 24 competitive.
 25 Q. When you came into the dealership with your

1 paperwork from the credit union, did you engage in
 2 any further negotiations with Ms. Courtney, or had
 3 that been resolved at that point?
 4 A. It had been resolved, to the best of my
 5 knowledge.
 6 Q. And was your daughter with you?
 7 A. Yes, sir.
 8 Q. And was this -- how many days after the
 9 back and forth on the phone was this, or was it the
 10 same day?
 11 A. I think we came in like Monday, Tuesday of
 12 the following week. I can't remember exactly.
 13 Q. And do you recall whether -- how many
 14 dealership employees did you deal with when you came
 15 into the dealership on the following Monday or
 16 Tuesday, do you recall?
 17 A. One. There was the finance and insurance
 18 guy.
 19 Q. Okay. Did you -- was Ms. Courtney there?
 20 A. I don't remember.
 21 Q. Okay. So you -- as best you recall, the --
 22 you went back and dealt with the F and I manager?
 23 A. Yes, sir.
 24 Q. And was that a male or a female?
 25 A. Male.

1 Q. Do you remember his name?
 2 A. No, sir.
 3 Q. Did that gentleman attempt to sell you any
 4 further products beyond the car?
 5 A. Yes, sir.
 6 Q. Did he attempt to sell you a number of
 7 products beyond the car?
 8 A. I think so.
 9 Q. Let me show you a document I'll have marked
 10 as Michael Watts Exhibit 1. It's actually a
 11 collection of documents.
 12 (Defendant's Exhibit 1, Dealership
 13 transaction documents, was marked for
 14 identification.)
 15 BY MR. BLACK:
 16 Q. And Watts Exhibit 1 is Bates Numbered CBM
 17 501 through 45. And if you could thumb through that
 18 exhibit, Mr. Watts, can you confirm that those are
 19 the documents you were shown Sunday night?
 20 A. Yes, sir.
 21 Q. If you could turn to the second page of the
 22 Exhibit, which is CBM-00002. Five 0's. Do you
 23 see -- and this is a document entitled Century BMW
 24 Menu of Investment Enhancements. Do you see that?
 25 A. Yes.

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1 Q. And is that your signature down at the
2 bottom right-hand corner?
3 A. Yes, sir.
4 Q. And were you shown this document by the F
5 and I manager?
6 A. Yes, sir.
7 Q. Does the name Corey James ring a bell as to
8 the name of the F and I manager?
9 A. I don't remember, sir.
10 Q. And did Mr. James go through this document
11 with you?
12 A. I don't remember.
13 Q. Do you -- you said you recalled him trying
14 to sell you some products. Do you recall him trying
15 to sell you a service contract/extended warranty?
16 A. We wanted that, yes, sir.
17 Q. You wanted an extended warranty?
18 A. Yes, sir.
19 Q. Did you purchase one?
20 A. Yes, sir.
21 Q. Did you purchase it from the dealership?
22 A. Yes, sir.
23 Q. Okay. You sure?
24 A. I thought we did.
25 Q. If you turn to the next page, you see the

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1 car was still covered by the BMW warranty?
2 A. We bought -- excuse me. We bought the
3 extended warranty after the car was -- came out of
4 warranty. I knew we had an extended warranty.
5 Q. Okay.
6 A. I apologize there.
7 Q. So in the -- when Mr. James or the F and I
8 manager went through the products with you, you
9 didn't buy an extended warranty on the day you
10 purchased the car?
11 A. Correct.
12 Q. But you did buy an extended warranty
13 sometime thereafter.
14 A. Yes, sir.
15 Q. And from -- did you buy it from the
16 dealership?
17 A. Yes, sir.
18 Q. Okay. But at the time of your sale, you
19 turned him down on buying it.
20 A. Yes, sir.
21 Q. Okay. So I take it you knew it wasn't a
22 requirement of purchasing a vehicle at Century BMW
23 that you enter into a service agreement with the
24 dealership.
25 A. Correct.

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1 Q. Did he also try and sell you this tire and
2 wheel guaranty that's referenced on the form?
3 A. That's the one I remember.
4 Q. Okay.
5 A. Yes, sir.
6 Q. And you didn't purchase that?
7 A. No.
8 Q. Okay. Did he try and sell you this
9 upgraded maintenance agreement referenced here in
10 the middle column, the top?
11 A. I don't think -- the upgraded maintenance
12 agreement, he discussed it, and it's the one we came
13 back and bought later.
14 Q. Okay. And I notice here that someone has
15 scratched through the 1695 and written 1395 by hand.
16 Do you see that?
17 A. Yes, sir.
18 Q. And in trying to convince you to purchase
19 this item, did he offer to lower the price from what
20 was on the menu?
21 A. He must have.
22 Q. So I take it you understood that these
23 various items, the price was negotiable on them?
24 A. No, sir, not really.
25 Q. But you did understand that it wasn't a

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1 requirement of purchasing a vehicle that you enter
2 into any of these agreements referenced on the form.
3 A. Yes, sir.
4 Q. And down at the bottom of the page, is that
5 your handwriting that says, declined coverage, or is
6 that the F and I manager's?
7 A. That's the F and I manager.
8 Q. And you signed next to that?
9 A. Yes, sir.
10 Q. Do you recall how long after you purchased
11 the car you came in to buy the service agreement?
12 A. It was before the 50,000-mile warranty ran
13 out.
14 Q. So it was some number of months after you
15 purchased the car?
16 A. A good number of months, yes, sir.
17 Q. How long do you recall him pitching these
18 products to you for?
19 A. I can't remember how long.
20 MR. BLACK: Can we take a break?
21 MR. THOMAS: Yeah, I was about to ask.
22 (A recess transpired.)
23 BY MR. BLACK:
24 Q. You mentioned that your daughter was
25 roommates with Ms. Blease. That was in college?

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1 A. Yes, sir. 2 Q. And did your daughter graduate from college 3 in 2005? 4 A. Christy graduated in 2004, I believe. 5 Q. Okay. So it was the year -- it was a year 6 after she graduated that you purchased the car? 7 A. She graduated -- she finished -- she stayed 8 down there and finished her master's, so maybe it 9 was 2005. 10 Q. Okay. And had she been rooming with 11 Ms. Blease up until she got her master's degree? 12 A. Yes, sir. 13 Q. Was she -- 14 A. Up to a point. She -- I don't exactly 15 remember. I think her last year, she lived by 16 herself. 17 Q. So as you understood it, she had been a 18 roommate of Ms. Blease up to sometime in -- when did 19 she stop being Ms. Blease's roommate, as you 20 understand it? 21 A. Christy had roommates, and the biggest 22 thing I remember is having to move her all the time. 23 Okay? I think Christy roomed with Melanie Blease 24 2003, 2002, somewhere like that. 25 Q. And did they remain friends after they	1 Q. If you turn to Page 000005, do you see 2 that's an Affidavit and Notification of Sale of 3 Motor Vehicle? 4 A. Yes, sir. 5 Q. And do you see that there's a certification 6 that the odometer, at the time you purchased the 7 vehicle, read 15,514? 8 A. Yes, sir. 9 Q. So I take it if the car was approaching 10 50,000 miles at time you bought the service 11 agreement, it was a significant period of time after 12 you purchased the car. 13 A. Yes, sir. 14 Q. And someone had put approaching 30,000 15 miles on the car in the interim? 16 A. Yes, sir. 17 Q. So I take it it was over a year after you 18 bought the car? 19 A. Yes, sir. 20 Q. So it was after this litigation was filed. 21 A. Before the litigation was filed. 22 Q. Well, you bought the car in June of '05; is 23 that right? 24 A. Yeah. 25 Q. And this litigation was filed in August of
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1 stopped being roommates? 2 A. Yes. 3 Q. And are they still friends? 4 A. As far as I know, yes. 5 Q. And do you know if Ms. Blease -- do you 6 know when she graduated, if she's graduated? 7 A. No, sir. 8 Q. Okay. Do you know, while she was at school 9 with your daughter, was she working for the law firm 10 at the same time? 11 A. I don't think so. I know Melanie has 12 always held jobs, but I don't know where she was 13 working. 14 Q. Okay. So she may have been working for the 15 law firm; you don't know one way or the other? 16 A. I don't know. 17 Q. Okay. You said you purchased the service 18 agreement after you purchased the car. 19 A. Right. 20 Q. And I think you said you purchased it 21 before the car hit the 50,000-mile mark? 22 A. Correct. 23 Q. At the time you purchased it, was the car 24 approaching the 50,000-mile mark? 25 A. Yes, sir.	1 '06? 2 A. Okay. It had to have been. I'm not good 3 on dates. I apologize. I don't -- I am not good on 4 dates, trying to time line everything. 5 Q. Okay. It -- but would you agree that it's 6 likely you bought the service agreement after you -- 7 after the litigation was filed? 8 A. Yes, sir. 9 Q. When you met with the F and I manager, 10 where in the dealership did you meet with him? 11 A. In his office. 12 Q. And was that a cubicle-type office off the 13 showroom floor? 14 A. Yes, sir. 15 Q. And did you meet with him alone, or was 16 Christine with you? 17 A. Christine was with me. 18 Q. And was she there the whole time? 19 A. With the F and I manager? 20 Q. Yes. 21 A. Yes, sir. 22 Q. And do you recall how much time elapsed 23 from the moment you walked into the F and I office 24 until you left? 25 A. I do not remember.

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1 Q. Was it over an hour?
 2 A. I tried to keep it as short as possible.
 3 Q. Okay.
 4 A. So I don't -- I don't remember.
 5 Q. You wanted to get in and out as quickly as
 6 possible?
 7 A. Correct. Yes, sir.
 8 Q. So was it likely less than an hour?
 9 A. Yes, sir.
 10 Q. And what was your impression of the F and I
 11 manager? Was he a nice guy?
 12 A. He seemed like an all right guy.
 13 Q. He didn't put any undue pressure on you?
 14 A. No, sir.
 15 Q. And to the extent he tried to sell you
 16 things, you didn't buy them, at least at the time.
 17 A. Correct.
 18 Q. Did you sign some documents while you were
 19 in the F and I office?
 20 A. Yes, sir.
 21 Q. Do you know how many?
 22 A. No, sir.
 23 Q. Do you have an estimate of how many?
 24 A. Five, six.
 25 Q. So it wasn't some huge stack of documents

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1 Q. And the -- at the bottom of the page, have
 2 you signed the document?
 3 A. Yes, sir.
 4 Q. And right -- right above you, where your
 5 signature is, do you see in bold, all caps, it says:
 6 By signing below, the parties acknowledge that they
 7 have read and agreed to the terms of this
 8 arbitration agreement?
 9 A. Yes, sir.
 10 Q. And do you agree with me that that's easy
 11 to read?
 12 A. Correct.
 13 Q. And immediately above that, there are a
 14 number of bullet points that are also in all caps?
 15 A. Yes, sir.
 16 Q. And that's in perfectly readable type?
 17 A. Yes, sir.
 18 Q. And, in fact, the entire document, while
 19 the other type on the page may be somewhat smaller,
 20 none of it is difficult to read if one wanted to?
 21 A. Correct.
 22 Q. I think we said that's your signature in
 23 the bottom left-hand corner in the top signature
 24 line?
 25 A. Yes, sir.

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1 you had to sign; it was just a handful.
 2 A. There were copies and stuff. That's all I
 3 can remember.
 4 Q. Okay. But you don't remember having to
 5 trudge through some enormous stack of documents?
 6 A. Not a huge stack of documents.
 7 Q. And were the documents such things as
 8 transferring title to the vehicle and the like?
 9 A. Yes, sir.
 10 Q. And those documents, you understood, were
 11 required by law?
 12 A. Yeah, they were all -- all the documents
 13 were right there together.
 14 Q. And the documents you were given to sign,
 15 did Mr. James do anything to prevent you from
 16 reading them?
 17 A. No, sir.
 18 Q. And if you'd turn to Page -- the page that
 19 ends in 14. And do you see that that's a document
 20 that is titled, in all caps and bold print at the
 21 top, Arbitration Agreement?
 22 A. Yes, sir.
 23 Q. And would you agree with me that the
 24 heading of the document is easy to read?
 25 A. Yes, sir.

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1 Q. And is that your daughter's signature below
 2 that?
 3 A. Yes, sir.
 4 Q. And that's the -- Mr. James' signature to
 5 your right?
 6 A. I would assume so, yes, sir.
 7 Q. And this document was presented to you at
 8 the dealership when you were meeting with Mr. James?
 9 A. Yes, sir.
 10 Q. What, if anything, did Mr. James say to you
 11 when he presented you with this document?
 12 A. I don't remember if he said anything.
 13 Q. Did you see, when he handed you this, that
 14 it said arbitration agreement at the top?
 15 A. I did not really pay it any attention,
 16 because they weren't doing any financing for me. We
 17 were eager to get the car.
 18 Q. So you were here to just get out of there.
 19 A. Yes, sir. All the papers were together,
 20 and he handed me all the papers.
 21 Q. Okay. But he didn't do anything to prevent
 22 you from reading what he handed to you.
 23 A. No, sir.
 24 Q. Do you recall one way or another whether
 25 you did read it?

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1 A. I did not read it, no, sir.
 2 Q. Did you glance your way down and at least
 3 read the things in all caps?
 4 A. I don't even remember signing it. Because
 5 all the papers were together.
 6 Q. So I take it you don't remember him telling
 7 you that you had to sign this document in order to
 8 purchase the vehicle?
 9 A. No, sir.
 10 Q. And I take it, from what you've said, you
 11 didn't object to signing the document at the time.
 12 A. I didn't know I didn't have to.
 13 Q. But you didn't say, I don't want to sign
 14 this, to Mr. James; is that fair?
 15 A. No, I did not say that.
 16 Q. Okay.
 17 A. No, sir.
 18 Q. And you didn't raise any complaint about
 19 the document at the time?
 20 A. No, sir.
 21 Q. And you didn't ask any questions about
 22 whether it was required that you sign the document?
 23 A. No, sir.
 24 Q. And I take it the same -- all of those
 25 questions, same is true of your daughter?

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1 A. My wife.
 2 Q. And what other car was there?
 3 A. I'm trying to think what I was driving.
 4 Because I've had so many company cars over the
 5 years, and they change those out so much that --
 6 Q. Who drove the vehicle you purchased at
 7 Toyota of Greenville?
 8 A. I did.
 9 Q. Okay.
 10 A. I'm trying to remember the dates, if I had
 11 that car or not at that particular time, or if I had
 12 a company car. I think I had the Toyota.
 13 Q. Okay. Was Christine driving a car prior to
 14 the --
 15 A. Christy had a Montero Sport.
 16 Q. That's a Mitsubishi?
 17 A. Correct.
 18 Q. And how long had she been driving that car?
 19 A. Three years. Four years.
 20 Q. And was that car still in working order at
 21 the time of the Century BMW --
 22 A. Yes, sir.
 23 Q. -- transaction?
 24 A. Yes, sir.
 25 Q. Okay. So aside from wanting a nice -- I

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1 A. Yes, sir.
 2 Q. Okay. She didn't ask any questions about
 3 the document?
 4 A. No, sir. She wanted the keys.
 5 Q. Okay. The credit union you financed the
 6 transaction through, what was the name of the credit
 7 union?
 8 A. Carolina Collegiate Federal Credit Union.
 9 Q. Did you finance the purchase at Toyota of
 10 Greenville through the same credit union?
 11 A. Yes, sir.
 12 MR. BLACK: Can we take a break?
 13 MR. THOMAS: Yeah.
 14 (A recess transpired.)
 15 BY MR. BLACK:
 16 Q. At the time of your purchase from Century
 17 BMW, how many cars did you and your wife and your
 18 daughter collectively own?
 19 A. We owned -- we bought this car. We owned
 20 two.
 21 Q. Two in addition to this car?
 22 A. Yes, sir.
 23 Q. Okay. And what cars are those?
 24 A. One was a Honda
 25 Q. And who primarily drove the Honda?

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1 realize it's a used vehicle, but a nice new vehicle,
 2 she wasn't under any pressure to replace her car
 3 because she didn't have a working car at the time.
 4 A. Correct.
 5 Q. And you didn't trade that car in.
 6 A. No, sir.
 7 Q. What did -- what did you do with that
 8 Montero Sport?
 9 A. Sold it to an individual.
 10 Q. Okay. And you did that through the
 11 Internet or something?
 12 A. Through a little car lot.
 13 Q. And would you agree that if all that you
 14 needed was transportation around town, while that
 15 might be necessary here in South Carolina, there's
 16 no necessity of buying a luxury BMW automobile?
 17 A. For just transportation, I agree.
 18 MR. BLACK: That's all I have.
 19 THE WITNESS: Okay.
 20 MR. THOMAS: I don't have anything.
 21 MR. BLACK: Okay.
 22 (The deposition was concluded at 10:38
 23 a.m.)
 24
 25

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SIGNATURE OF DEPONENT

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

PAGE	LINE	CHANGE	REASON

MICHAEL WATTS DATE

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CERTIFICATE OF REPORTER

I, Kathy P. Taylor, Registered Professional Reporter and Notary Public for the State of South Carolina at large, do hereby certify that the foregoing transcript is a true, accurate and complete record.

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

WITNESS MY HAND, I have hereunto
affixed my official seal this 31st day of
January, 2008, at Greenville County, South Carolina.

KATHY P. TAYLOR
REGISTERED PROFESSIONAL REPORTER
MY COMMISSION EXPIRES
JUNE 13, 2017

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF AIKEN

HERRON, et al.,

Plaintiffs,

Case No.

2006-CP-02-1230

vs.

DICK DYER & ASSOCIATES, INC., et al,

Defendants.

DEPOSITION OF: JOHN ROBERT BISHOP

DATE: January 30, 2008

TIME: 10:07 a.m.

LOCATION: LEATHERWOOD WALKER TODD & MANN, P.C.
300 East McBee Avenue, Suite 500
Greenville, South Carolina

TAKEN BY: Counsel for Defendant,
CENTURY BMW

REPORTED BY: KATHY P. TAYLOR,
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1 STIPULATION
2 It is stipulated by and among Counsel
3 that this deposition is being taken in accordance
4 with the South Carolina Rules of Civil Procedure,
5 Rule 30; that all objections as to Notice of this
6 deposition are hereby waived; that all objections
7 except as to form are reserved until the time of
8 trial; and that the deponent does not waive reading
9 and signing of this deposition.
10
11 JOHN ROBERT BISHOP,
12 Being first duly sworn, testified as follows:
13 EXAMINATION
14 BY MR. LEWIS:
15 Q. And you're Mr. Bishop, they tell me.
16 A. Yes, sir.
17 Q. Well, I'm required to tell you a couple of
18 things. Have you had your deposition taken before?
19 A. No, sir.
20 Q. Okay. Well, then, listen up. So when you
21 give an answer, they're going to write it down, and
22 so you've got to make sure you understand my
23 question.
24 A. Yes.
25 Q. So if you don't understand it, you ask me

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1 to explain it or whatever, and I will try to make 2 sure that it's an understandable question. Is that 3 fair? 4 A. Yes, sir. 5 Q. Now, if I cut you off, because I get 6 excited, you say, I'm not finished, and I will let 7 you finish. Or if I'm -- if I'm making you mad, you 8 say, I'm making you -- you're making me mad, and 9 I'll try to change the way I'm doing things so I 10 don't make you mad. Does that make sense? 11 A. Yes, sir. 12 Q. Now, you're going to give answers to 13 questions that I give, and she's going to take them 14 down. You don't get to ask me questions, thank 15 goodness. So just understand that. 16 Now, have you been explained about reading 17 and signing your deposition? 18 A. No, sir. 19 Q. Okay. You have the right to read your 20 deposition and make corrections to it, like the 21 spelling of your name or the spelling of somebody 22 else's name. You don't get to change yeses to nos, 23 but, you know, so you can read and sign it to make 24 sure that it's what you think you said. But that's 25 up to you whether you want to do that, and you can	1 Q. And what's your full name? 2 A. My name is Bobby Bishop. Bobby is a 3 nickname. John Robert Bishop is my legal name. 4 Q. And where do you live? 5 A. I live in Simpsonville, South Carolina. 6 Q. Do you know a Mr. Hawkins that lives in 7 that town? 8 A. Don Hawkins? 9 Q. Bill Hawkins. 10 A. No, sir. 11 Q. Okay. Now, what do you do? 12 A. I'm the general manager at Century BMW. 13 Q. General manager. Okay. Have you -- you 14 know you've been designated as the person that's 15 most knowledgeable about certain items that we asked 16 that the Century BMW produce; do you understand 17 that? 18 A. Yes, sir. 19 Q. And I'm going to show you Exhibit Number 1, 20 which is our Notice. 21 (Plaintiff's Exhibit Number 1, Notice of 22 Deposition, was marked for identification.) 23 BY MR. LEWIS: 24 Q. And this is the Notice. If you would turn 25 to Page 2, you will see the areas that we're
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1 ask your lawyer if he would like you to do that. 2 And you need to tell her at the end of the 3 deposition so she can get you the deposition copy 4 and you make whatever corrections you want. 5 MR. BLACK: He will read and sign, but I 6 object to your instructions to the extent it 7 misstates the law and what changes he can make, but 8 go ahead. 9 MR. LEWIS: You ob- -- I'm sorry. You were 10 talking -- 11 MR. BLACK: Object to what you instructed 12 the witness. 13 MR. LEWIS: You were talking to the table. 14 If you'll talk to me, I'll be able to hear you. 15 MR. BLACK: I said I object to your 16 instruction to the witness to the extent it 17 misstates the law as to what changes you can make in 18 your deposition. 19 MR. LEWIS: That's fine. I just don't 20 think you can change yeses to nos; but if you think 21 so, that's fine with me. If you want to do that, 22 that's okay with me, too. 23 Now, you ready? 24 THE WITNESS: Ready. 25 BY MR. LEWIS:	1 interested in. Do you see the person or persons 2 most knowledgeable regarding A, B, C, and D? 3 A. Yes, sir. 4 Q. Which one are you -- have you been 5 identified to address? 6 A. A, B, C, and D. 7 Q. So you're the only one that's here. 8 A. Yes, sir. 9 Q. So you've been designated for all of them. 10 A. Yes, sir. 11 Q. Had you seen those I -- topics before? 12 A. Yes, sir. 13 Q. Who is the person second-most knowledgeable 14 for each of those items? 15 MR. BLACK: Object to the form. You can 16 answer. 17 THE WITNESS: I'm sorry? 18 MR. BLACK: I said objection to form. You 19 can answer. 20 THE WITNESS: Oh. 21 BY MR. LEWIS: 22 Q. He'll say that a lot, object to the form, 23 but that just means that you get to answer, and he's 24 just putting it on the record. 25 A. Okay.

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1 Q. It doesn't allow you not to do it or 2 anything. 3 A. Corey James. 4 Q. Corey James? And he would be the same -- 5 he would be for all of them, like you? 6 A. Yes, sir. 7 Q. Okay. Now, have you talked to anybody 8 about each of these topics? 9 A. Yes, sir. 10 Q. Who? 11 A. Corey James and Elizabeth Courtney. 12 Q. And why did you talk to Elizabeth Courtney? 13 A. She was the salesperson. 14 Q. And when you talked to Corey James and 15 Eliz- Corey James, did you talk to him with any 16 documents, or was it just talking to him? 17 A. Just talking. 18 Q. And what did you talk about? 19 A. I asked him if he remembered this deal, the 20 Watts deal. 21 Q. And did he remember? 22 A. Specifically, he did not. 23 Q. And so did you then stop talking? 24 A. I mean, if he didn't remember the deal, I 25 asked him what his procedures were at that time.	1 Q. You know that now, don't you? 2 A. Yes, sir. 3 Q. Because someone -- were you at the 4 deposition yesterday? 5 A. No, sir. 6 Q. So someone talked to you about the 7 deposition. 8 A. Yes, sir. 9 Q. And they told you that the buyer said that 10 there was a stack and that there were flags on them. 11 A. Yes, sir. 12 Q. And then when you went to Corey James, was 13 that before or after you had that -- knew that 14 yesterday they talked to -- they said that there was 15 flags on the documents? Did you talk to Corey James 16 about his procedure before or after? 17 A. I talked to him before -- 18 Q. Yeah. 19 A. -- and after. 20 Q. Okay. When did you bring up the flags to 21 him? 22 A. This morning. 23 Q. And you asked him if that was true? 24 A. Yes, sir. 25 Q. And he said no?
Page 11	Page 13
1 Q. And what did he tell you his procedures 2 were at that time? 3 A. You -- I'm talking about the way he rolls 4 off the paper. Which is a car term; you know that. 5 Q. What? 6 A. Rolls off the paper. He presents the 7 paper. 8 Q. Yeah. How does he roll off the paper? 9 A. He presents it one piece at a time to the 10 customer. 11 Q. That's what he said? 12 A. Yes, sir. 13 Q. And did he tell you that he presented them 14 in a stack with little flags on them? 15 A. No, sir. 16 Q. Does he ever mention he put flags on them? 17 A. He said he did not put flags on them. 18 Q. Oh. So we have a difference of opinion 19 between the buyer and the seller. 20 MR. BLACK: Object to the form of the 21 question. 22 A. Apparently. 23 BY MR. LEWIS: 24 Q. Apparently? 25 A. Apparently.	1 A. Yes, sir. 2 Q. Before that, you didn't ask him? 3 A. No, sir. 4 Q. No, sir, you -- that's a hard answer. 5 Before that you did not ask him; is that correct? 6 A. I did not ask him before. 7 Q. Okay. Did he tell you he ever used flags? 8 A. He stated that he never used flags. 9 Q. Never used flags. Okay. With any 10 customer? 11 A. That's what he stated, sir. 12 Q. All right. Good. All right. Now, did 13 you -- what else -- okay. Before yesterday, before 14 yesterday, what else did Mr. Corey James say? 15 A. Basically he stated he didn't remember this 16 deal at all. 17 Q. Okay. What did he say about his 18 procedures -- 19 A. I -- 20 Q. -- other than he presented them, what did 21 you say, a document at a time? 22 A. Yes, sir, that's exactly what he said. 23 Q. Anything else? 24 A. No, sir. 25 Q. Did he say what he said to the -- to the

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1 people? 2 A. He doesn't remember them, sir. 3 Q. Does he say what he generally -- is there 4 some procedure where they have a specific spiel, you 5 know, like -- you've heard spiels before. You know 6 that. 7 A. He would -- his procedure was to present 8 each piece of paper and put his finger where they 9 needed to be signed -- 10 Q. Okay. 11 A. -- Individually. 12 Q. All right. And did he say anything about 13 the pages, or just point to them? 14 A. He would explain the pages and point to the 15 signature. 16 Q. Did he say he explained the pages? 17 A. Yes, sir. 18 Q. Did he say that before yesterday or after 19 yesterday? 20 A. He said that before yesterday. 21 Q. Okay. Anything else did he say besides 22 pointing where to sign and explained the paper? 23 A. No, sir. 24 Q. Anything else? 25 A. No, sir.	1 Q. And there's no procedure that you tell them 2 what to explain? 3 A. We practice full disclosure. 4 Q. Well, what do you disclose? What do you 5 tell them to disclose about this? 6 A. We tell them to go over the form and tell 7 them exactly what it contains. 8 Q. Well, what? What does this form contain? 9 Can you sit here and tell me what this form 10 contains? 11 A. I'm not an expert, but I can tell you that 12 this is a document providing remedy for the customer 13 without having to go to court. 14 Q. Is that what you tell them when you 15 explain -- 16 A. Yes, sir. 17 Q. If you were to explain it, that's what you 18 would say? 19 A. Yes, sir. 20 Q. Is there anything else you'd tell them, 21 other than it's a remedy for the customer and you 22 don't have to go to court? 23 MR. BLACK: Object to the form. You can 24 answer. 25 A. No, sir, I would tell them nothing else.
Page 15	Page 17
1 Q. Okay. Now, we'll get to the -- 2 MR. LEWIS: Where's the arbitration 3 agreement? 4 (Plaintiff's Exhibit Number 2, Arbitration 5 Agreement, was marked for identification.) 6 BY MR. LEWIS: 7 Q. You understand that Exhibit Number 2 is the 8 arbitration agreement that -- in this deal, as you 9 call it. 10 A. Yes, sir. 11 Q. And it's -- and this is one of the pieces 12 of paper that had been rolled out? 13 A. Yes, sir. 14 Q. And this is one of the papers, according to 15 Mr. James, that he would have pointed at and told 16 them where to -- that they should sign that. 17 A. Yes, sir. 18 Q. And what did Mr. James say he explained 19 about this document, Exhibit Number 2? 20 A. I did not ask him what he explained with 21 the documents. 22 Q. You didn't? 23 A. No, sir. 24 Q. So you don't know? 25 A. No, sir.	1 BY MR. LEWIS: 2 Q. Okay. And is that what you expect your 3 employees to tell the -- the people? 4 A. They're more informed than I. 5 Q. Well, is that what you expect them to tell 6 them, at least that? 7 A. At least that. 8 Q. Okay. Is there anything else you expect to 9 tell -- them to tell them? 10 A. No, sir. 11 Q. All right. Anything else you talked to 12 Mr. -- did we cover everything you talked to 13 Mr. James about? 14 A. Yes, sir. 15 Q. Now, what did you talk to Ms. Courtney 16 about? 17 A. I talked to her about the deal itself. 18 Q. Did she remember the deal? 19 A. She did not. 20 Q. What did she say about the papers that were 21 rolled out? 22 A. We talked about the arbitration and the -- 23 I mean, she -- she basically doesn't handle any of 24 that paperwork as far as the arbitration and stuff 25 would go, so she had no knowledge of what the Watts

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1 said in the office, the F and I office, or nothing.
2 Q. Well, what is she? She - I thought she
3 was the salesman.
4 A. Yes, sir, she is the salesperson, but all
5 these transactions are conducted in the F and I
6 office.
7 Q. So the salesperson doesn't do any of the
8 roll out of papers.
9 A. No, sir.
10 Q. So she just tries to sell the car, and then
11 when she says okay, there's a point in the sales
12 process, I got to get them into the guy that rolls
13 out the paper.
14 A. Yes, sir, exactly right.
15 Q. And when is it you get to go - you have to
16 go in to roll out the paper? How long and where in
17 the process does that happen?
18 A. At the very end.
19 MR. BLACK: Object to the form.
20 BY MR. LEWIS:
21 Q. Huh?
22 A. At the very end of the process.
23 Q. So you've already negotiated a price at
24 that time?
25 A. Yes, sir.

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1 Q. And then you roll - you go in, and they
2 roll out the paper.
3 A. Yes, sir.
4 Q. And all - Ms. Courtney doesn't explain any
5 of the papers to the people; that would be in
6 Mr. James' area.
7 A. Correct.
8 Q. Is Mr. James the one that explains it to
9 all the customers, or are there more people that
10 work for or under Mr. James?
11 A. At that time, Corey was our only F and I
12 manager.
13 Q. The what?
14 A. He was the only F and I manager, so he -
15 Q. F and I?
16 A. Yes, sir, finance and income manager.
17 Q. Okay. And so he was the one that rolled
18 out the paper.
19 A. Yes, sir.
20 Q. And - and you talked to Elizabeth
21 Courtney, and did you talk to her both before and
22 after yesterday?
23 A. I have no reason to talk to her this
24 morning.
25 Q. Okay. And so you talked to her before, and

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1 she doesn't remember this deal, and she doesn't do
2 any of the paper.
3 A. Yes, sir.
4 Q. So she has nothing to do with this
5 arbitration at all.
6 A. No, sir.
7 Q. Does she know what an arbitration agreement
8 is? Is she ever schooled on it?
9 MR. BLACK: Object to the form.
10 A. As far as general knowledge, she does know
11 about it.
12 BY MR. LEWIS:
13 Q. Well, does she mention it, or do you tell
14 her that she's supposed to tell the customer?
15 A. She's not supposed to tell the customer.
16 She has no reason to tell the customer.
17 Q. So she is specifically not to tell the
18 customer about the arbitration?
19 A. Not specifically not. She has no reason to
20 discuss it.
21 Q. So you don't tell her to bring it up?
22 A. No, sir.
23 Q. Okay. When Mr. Courtney James has that
24 piece of paper, the arbitration agreement, and he -
25 you say he presents it to the customer.

Page 21

1 MR. BLACK: It's Corey James.
2 MR. LEWIS: What?
3 MR. BLACK: It's Corey James. Courtney is
4 the last name of the salesperson.
5 MR. LEWIS: Corey?
6 MR. BLACK: Corey.
7 MR. LEWIS: Okay. Every time I said
8 Courtney, I meant Corey.
9 MR. BLACK: I think you said Corey every
10 time except that last time.
11 MR. LEWIS: Well, I appreciate you helping
12 me out there.
13 MR. BLACK: No problem.
14 BY MR. LEWIS:
15 Q. Okay. Mr. James. How about that?
16 Mr. James, when he does the papers - we've already
17 talked about that. He does the arbitration paper.
18 Does he tell them that they don't have to sign it?
19 A. No, sir.
20 Q. Does he - when he points and tells them to
21 sign here, does he say, this is where you have to
22 sign?
23 A. No, sir.
24 Q. What does he say?
25 A. To my knowledge, he says nothing.

Page 22	Page 24
1 Q. So he just -- he says what we said he said 2 about the agreement, and then he puts his little 3 finger down there, and that's supposed to indicate 4 that they sign, and he doesn't say anything. 5 MR. BLACK: Object to the form. 6 BY MR. LEWIS: 7 Q. Is that right? 8 A. I don't understand exactly what you're 9 asking me here. 10 Q. Well, we told -- we already went over what 11 he told -- what the minimum was he had to tell 12 people, what you said. 13 A. Correct. 14 Q. All right. And you said that he points to 15 where they sign. 16 A. Yes, sir. 17 Q. I want to know what he says when he points 18 to where they're -- he -- they sign. Does he say, 19 you have to sign here, sign here, or you don't have 20 to sign, but we want you to sign? What does he say? 21 A. I don't know his exact verbiage. 22 Q. Well, what did you all tell him to say? 23 A. Sign here. 24 Q. Okay. But he doesn't tell them they don't 25 have to sign.	1 A. Yes, sir. Faster. 2 Q. It's faster, you say? 3 A. Yes, sir. 4 Q. And it's secret. Did you know that? 5 A. No, sir. 6 Q. You didn't know that? 7 A. No, sir. 8 Q. Do you know what the rules of the 9 arbitration agreement are? 10 A. As pertaining to -- 11 Q. How -- the process. 12 A. Vaguely. 13 Q. How you do it. Vaguely? 14 A. Yes, sir. 15 Q. Well, what are your vague understanding? 16 Now, what's your job; you're the general manager? 17 A. Yes, sir. 18 Q. Okay. Does Mr. Courtney James know anymore 19 about how arbitration works than you, or would you 20 say you're better? 21 MR. BLACK: It's Corey James. 22 MR. LEWIS: Corey James. Mr. James. 23 A. I would say neither one of us would be 24 involved in the process or actually been through the 25 process.
Page 23	Page 25
1 A. No, sir. 2 Q. What if they won't sign? 3 A. Then we still sell them the car. 4 Q. But you don't tell them? 5 A. No, sir. 6 Q. Now, how many people have refused to sign 7 the arbitration agreement? 8 A. I can't tell you an exact number. 9 Q. Have there been any? 10 A. Yes, sir. 11 Q. Do you keep a count of them? 12 A. No, sir. 13 Q. Do you flag the deal differently? 14 A. No, sir. 15 Q. You just go right on through, and if it's 16 signed, it's okay, and if it's not signed, it's 17 okay. 18 A. Yes, sir. 19 Q. Why do you want them to sign it? 20 A. I think it's good for the customer. 21 Q. You do? Why do you think it's good for the 22 customer? 23 A. It's just, to me, a better way of settling 24 differences. 25 Q. Than what, court?	1 BY MR. LEWIS: 2 Q. Or know anything about it? 3 A. Not much. 4 Q. Or what the rules are or what you have to 5 do; do you know any of that? 6 A. No, sir. 7 Q. Do you know who has to pay for arbitration? 8 A. I understand that we pay a large percentage 9 of it going in. 10 Q. Who -- who told you that? 11 A. It's in here. 12 Q. Did you know that before yesterday? 13 A. Yes, sir. 14 Q. Did you know it before a week ago? 15 A. Yes, sir. 16 Q. You just -- did you always tell the 17 customer that? 18 A. No, sir. 19 Q. Now, you say a large percentage; what's the 20 percentage difference you pay? 21 A. I think we pay up to \$1500 to start it out, 22 and then at some point we'll assume a lot more 23 responsibility. 24 Q. Does the customer have to pay any? 25 A. I can't answer that.

1 Q. You don't know?
 2 A. No.
 3 Q. Do you know how you choose an arbitrator?
 4 A. No, sir.
 5 Q. Did you talk to anybody other than
 6 Mr. James and Ms. - Elizabeth about the deposition
 7 other than the lawyer?
 8 A. No, sir.
 9 Q. We - that agreement, Exhibit Number -
 10 that's before you, it's Exhibit Number 2, how long
 11 has that been the arbitration agreement for your
 12 company?
 13 A. That actual version, I cannot answer to
 14 that.
 15 Q. Okay. Was it - how - is it the same
 16 version that it is now?
 17 A. From 2005 until now?
 18 Q. Uh-huh.
 19 A. I would - I couldn't tell you.
 20 Q. Well, and how far back from 6/25/05 was
 21 this agreement being used?
 22 A. That actual agreement, I don't know. It
 23 has evolved over the years.
 24 Q. Well, who would know?
 25 A. Sonic Automotive.

1 Q. Sonic Automotive?
 2 A. Yes, sir.
 3 Q. It's hard to talk to Sonic Automotive. Is
 4 there somebody in particular?
 5 A. Richard O'Connor.
 6 Q. Richard O'Connor?
 7 A. Yes, sir.
 8 Q. Who is Richard O'Connor?
 9 A. The national F and I director.
 10 Q. The F and I director?
 11 A. Yes, sir, national.
 12 Q. Well, we have a national F and I director,
 13 and that's who Mr. James would be under.
 14 A. Yes, sir.
 15 Q. Does it come - is he under you, or is he
 16 under this - what's his name?
 17 MR. BLACK: I assume you're - I don't mean
 18 to - I assume you're asking back in 2005?
 19 MR. LEWIS: Well, I'll ask - if you want
 20 me to, I'll ask in 2005.
 21 A. In 2005, Corey would have worked directly
 22 for me, and he also would have worked for Richard
 23 O'Connor indirectly.
 24 BY MR. LEWIS:
 25 Q. Is that different now?

1 A. No, sir.
 2 MR. BLACK: Mr. James doesn't work at the
 3 dealership anymore, which is why I made the
 4 objection, but -
 5 BY MR. LEWIS:
 6 Q. Where is Mr. James?
 7 A. I understand yesterday he left the company,
 8 so I have no idea where he is now.
 9 Q. He left the company yesterday?
 10 A. Or I heard it yesterday that he left the
 11 company.
 12 Q. Where does - where do you work?
 13 A. I work for Century BMW in Greenville.
 14 Q. And where does this Corey - this guy named
 15 Mr. James work?
 16 A. His last position was in a Sonic store in
 17 Charlotte, North Carolina.
 18 Q. And when it - when - in 6/25/05, he was
 19 in your store?
 20 A. Yes, sir.
 21 Q. And he was moved from your store up to
 22 someplace in Charlotte?
 23 A. Yes, sir.
 24 Q. And he left Charlotte yesterday?
 25 A. I heard that he left Charlotte yesterday.

1 I don't know exactly what day he left.
 2 Q. I thought you talked to him after the
 3 deposition.
 4 A. I didn't ask him.
 5 Q. Wait a minute. I got to understand this.
 6 You called him after the deposition, right?
 7 A. Yes, sir.
 8 Q. And - but you didn't ask him where he
 9 worked?
 10 A. No, sir.
 11 Q. Did you know at the time he didn't work for
 12 Sonic?
 13 A. Yes, sir. This morning.
 14 Q. And - but you called him. Where did you
 15 call him?
 16 A. I called him on his cell phone.
 17 Q. And you didn't say, hey, where are you
 18 working now or what are you doing?
 19 A. No, sir.
 20 Q. Why wouldn't you - that's just befuddling
 21 to me. That's just - you just didn't care.
 22 A. No, sir.
 23 Q. You didn't care.
 24 A. No, sir.
 25 Q. You don't like that guy?

Page 30	Page 32
1 A. I like him, but I don't care where he's 2 working. 3 Q. Huh. Where is his cell phone number? 4 A. It's in my car. 5 Q. Your car? 6 A. Yes, sir. 7 Q. Would you mind giving us that? 8 A. (704)577 - wait a minute. 9 MR. BLACK: Let me consult with co-counsel. 10 A. I may. I may. 11 (A discussion was had off the record and 12 out of the hearing of the court reporter.) 13 MR. BLACK: Go ahead. 14 BY MR. LEWIS: 15 Q. 705 what? 16 A. 704. 17 Q. Oh, okay. 18 A. (704)577-5935. 19 Q. Okay. How many cars per year does BMW 20 sell? 21 A. Approximately - 22 MR. BLACK: BMW? 23 BY MR. LEWIS: 24 Q. Century. 25 A. Approximately 1200.	1 does he send down a - is there some kind of booklet 2 that they send down or a manual that they send down 3 telling everybody how to go through the rolling of 4 paper, how you do it, what you do, what they're for, 5 is there some I could go get it? 6 A. No, sir, it's all done in training classes. 7 Q. In training classes where? 8 A. Various places. Atlanta, Charlotte. 9 Q. Is all the training the same? 10 A. Yes, sir. 11 Q. So you would think, then, just logically, 12 that there is somewhere there is a training manual. 13 A. I don't have one in my possession. 14 Q. I know you don't, but - 15 A. I don't know of one. 16 Q. Well, how - when they go up there, do they 17 have little - you know, this is the age of 18 PowerPoint. Do you have little PowerPoints and they 19 show a form and they tell about it? Have you ever 20 been to these - 21 A. I've never been to a session for F and I. 22 Q. You never have? 23 A. No, sir. 24 Q. So I guess the person that would know that 25 would be Mr. O'Connor?
Page 31	Page 33
1 Q. And since 2005 or - 5, since this 2 agreement here, how many of those cars did anybody 3 refuse to sign an arbitration agreement on? 4 A. I don't know that number, sir. 5 Q. Do you know of one? 6 A. Yes, sir. 7 Q. You do? 8 A. Yes, sir. 9 Q. Who was that? 10 A. Brad Martin. 11 Q. And who is Brad Martin? 12 A. Our attorney. 13 Q. Oh. Okay. Now, give me one more. 14 A. I cannot give you another name. 15 Q. Okay. Thank you. Is it - the fact that 16 you use arbitration agreements is something that 17 Sonic, above you, makes that decision; it's not the 18 decision of your store? 19 A. That's correct. 20 Q. Huh? 21 A. That's correct. 22 Q. So there's some higher-up, this - what was 23 his name, Mr. - 24 A. O'Connor. 25 Q. Yeah, Richard O'Connor. And his - now,	1 A. Yes, sir. 2 Q. And where is he located? 3 A. Charlotte, North Carolina. 4 Q. Where? 5 A. It's Sonic headquarters. 6415 Idlewild is 6 the address. 7 Q. You're pretty good on this stuff, 8 remembering stuff. How old are you? 9 A. Do I have to answer that? 51. 10 Q. Pretty good for 51. So Sonic - Sonic, 11 this - what do you call the headquarters, Sonic? 12 A. Yes, sir. 13 Q. Okay. Sonic, they make the decision to use 14 the arbitration agreement. 15 A. Yes, sir. 16 Q. And you don't know why they made that 17 decision. 18 A. No, sir. 19 Q. And you don't know what was the 20 considerations in that. 21 A. No, sir. 22 Q. And as far as you know, there is nothing in 23 your dealership that says that or gives an 24 explanation or tells Mr. James how to conduct his 25 rolling of paper.

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1 MR. BLACK: Object to the form.
2 A. You're talking about a written document
3 that explains it?
4 BY MR. LEWIS:
5 Q. Uh-huh.
6 A. No, sir.
7 Q. Or -- or any kind of guidelines for him,
8 how does he do it.
9 A. No, sir.
10 Q. How does he know -- there's a packet of
11 documents, isn't there?
12 A. Yes, sir.
13 Q. And for every -- say, oh, this is what we
14 call it, a packet, or you roll out this packet.
15 Right?
16 A. Yes, sir.
17 Q. And the packets are the same for all sales.
18 A. No, sir.
19 Q. What's the difference?
20 A. Well, there's different kinds of contracts
21 for different kinds of deals, lease versus retail.
22 Q. All right.
23 A. The basic paperwork would be the same.
24 Q. Okay.
25 A. But there would be different retail and

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1 lease contracts.
2 Q. Other than the retail versus lease, would
3 the rest of it be the same?
4 A. Yes, sir.
5 Q. Would the arbitration agreement be the
6 same?
7 A. Yes, sir.
8 Q. Now, so we know that there is a packet for
9 a lease or a sale. Let's suppose it's a sale. This
10 packet, do you keep the little packets together,
11 like he grabs a packet, or does he have to go
12 through and grab every one of them? How does it
13 work?
14 A. Each individual. They're not stored as a
15 packet.
16 Q. They're not. So he pulls them, each one of
17 them, as individually.
18 A. Yes, sir.
19 Q. And then he goes and he sits down with the
20 customer.
21 A. Yes, sir.
22 Q. And according to your testimony, he shows
23 it to them individually, and he points and does not
24 use flags.
25 A. Yes, sir.

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1 Q. And you don't know what he says or what
2 explanations he makes.
3 A. No, sir.
4 Q. But you gave me the one that you would make
5 and what you would expect to be the minimum.
6 A. Yes, sir.
7 Q. So if I ask you about the agreement, who
8 made the decision to do something like the
9 class-action waiver, you wouldn't know anything
10 about that, would you?
11 A. No, sir.
12 Q. You don't even know what a class-action
13 waiver is.
14 A. Yes, sir.
15 Q. What is it?
16 A. You agree not to file a class-action
17 lawsuit.
18 Q. Well, do you think that's to the customer's
19 advantage? You said you thought this was to his
20 advantage. Is that -- is that one to the advantage
21 of the customer?
22 A. I really don't know, sir.
23 Q. Well, isn't it to the advantage of you?
24 A. No, sir.
25 Q. It's not to the advantage of the company?

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1 A. I wouldn't think so.
2 Q. Well, why is it in there?
3 A. I have no idea.
4 Q. Have you talked to anybody about Exhibit
5 Number 2?
6 A. No, sir.
7 Q. I take it that it's a form contract, the
8 arbitration. I mean, it's a form document.
9 A. Yes, sir.
10 Q. And you all drafted the form, right?
11 A. Sonic Automotive drafted the form.
12 Q. Oh, the high-ups sent it down to you and
13 said, use this.
14 A. Yes, sir.
15 Q. Do you know anything about the negotiations
16 for buying this particular deal or going through
17 with this deal?
18 A. No, sir.
19 Q. Do you know how it happened?
20 A. No, sir.
21 Q. Do you know if it was -- if there was any
22 telephone conversations or it was all in store, how
23 many visits there were; do you know anything about
24 it?
25 A. No, sir.

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1 Q. If I show you this, would you know this was
2 the packet for this deal?
3 A. Yes, sir.
4 MR. LEWIS: Would you mark it? That's
5 pretty good.
6 (Plaintiff's Exhibit Number 3, Dealership
7 transaction documents, was marked for
8 identification.)
9 BY MR. LEWIS:
10 Q. So if I look at Exhibit Number 3, that's
11 the packet for this deal, which was a sale of the
12 car, that would be the same packet that any sale
13 would have.
14 MR. BLACK: Object to the form. You can
15 answer.
16 A. Yes, sir.
17 BY MR. LEWIS:
18 Q. Turn to the last page there. It has the
19 number on it of 04039. Do you see that down at
20 the -- at the --
21 A. Oh, yes, sir.
22 Q. I want to make sure we're looking at -- we
23 were looking at Exhibit Number 3.
24 MR. HAMM: Mr. Lewis, repeat the number you
25 just referenced.

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1 MR. LEWIS: 4039.
2 MR. BLACK: It appears they added a number
3 to the document in addition to our number. Page
4 CBM-0000045.
5 MR. HAMM: Okay. Thank you.
6 BY MR. LEWIS:
7 Q. You see that packet?
8 A. Yes, sir.
9 Q. Just out of curiosity, turn to the front
10 page. Did Brad Martin sign that front page?
11 A. No, sir.
12 Q. Huh?
13 A. No, sir.
14 Q. And did -- did Brad Martin agree to pay the
15 document fee?
16 MR. BLACK: Object to the form of the
17 question. I'll instruct him not to answer. That
18 goes beyond the --
19 MR. LEWIS: Not to answer. Okay. That's
20 fine.
21 BY MR. LEWIS:
22 Q. Did -- did -- he didn't sign that. Is
23 there any other places he didn't sign?
24 A. When you're referring to Brad Martin,
25 are -- we're talking about the Watts, correct?

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1 Because I don't have the Martin deal in front of me.
2 I can't --
3 Q. You said Mr. Martin didn't sign an
4 arbitration agreement. You told me that.
5 A. Yes, sir.
6 Q. And I'm asking did he sign the front page,
7 the privacy notice, the front page, did he sign that
8 page of his packet?
9 A. I can't tell you that. I'm sorry. I
10 misunderstood. I cannot tell you.
11 Q. You remember the arbitration, but you don't
12 remember this.
13 A. Yes, sir.
14 Q. But we could pull his packet and find out
15 what he did, right?
16 A. Yes, sir.
17 Q. Okay. Because you have his packet
18 somewhere.
19 A. Yes, sir.
20 Q. What does it say on arbitration -- the
21 arbitration agreement in his packet, or is it just
22 blank? You don't know.
23 A. (Witness shakes head.)
24 Q. Is that right?
25 A. I don't know.

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1 Q. All right. Let's look at that last page.
2 It's got the All Cars Checklist. Right?
3 A. Yes, sir.
4 Q. And down there it says, Arbitration
5 Agreement.
6 A. Yes, sir.
7 Q. That's on every deal.
8 A. Yes, sir.
9 Q. And it's a check. Either you check it or
10 you don't, right?
11 A. Yes, sir.
12 Q. Is this just a reminder to Mr. James, or
13 where does this -- this document go after it's
14 completed?
15 A. This -- this document here is something we
16 haven't used in a while. This is a checklist for
17 the F and I manager, Corey James, to make sure that
18 he's got everything in this package so it will go
19 upstairs to the accounting department.
20 Q. Okay. Where -- so this form, this one,
21 04039, isn't used anymore.
22 A. Not this version, no, sir.
23 Q. Is there another version?
24 A. On the back of the deal jacket.
25 Q. On the back of the deal jacket.

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1 A. Yes, sir. 2 Q. Well, that explains a lot to me. What is a 3 deal jacket? 4 A. That's where all these documents would be 5 placed. 6 Q. Does that just mean a folder? 7 A. Yes, sir. It's a pre- -- 8 Q. It's -- huh? 9 A. It's a pre-printed folder with this 10 checklist and some other checklists. 11 Q. On the -- on the back of it. 12 A. Yes, sir. 13 Q. So when you put all this in the folder, 14 they want to make sure they have all this in it. 15 A. Yes, sir. 16 Q. And then this folder is kept in your 17 dealership. 18 A. Yes, sir. 19 Q. Is this checklist sent anywhere or it just 20 sits there in -- on the folder? 21 A. In the folder. 22 Q. In the folder? 23 A. Yes, sir. 24 Q. It's not sent anywhere? 25 A. No, sir.	1 Q. They just look? 2 A. Yes, sir. 3 Q. So this checklist, they just say, huh-uh, 4 not signed. 5 A. It wouldn't state not signed. 6 Q. Well, it's blank. 7 A. Blank. 8 Q. And then they -- they wouldn't do anything. 9 A. No, sir. 10 Q. You don't know anything about how the 11 arbitration agreement was presented to the Watts, 12 other than you -- you say that Mr. James said it was 13 each piece of paper was given to them, and he 14 pointed to where to sign; that's all you know about 15 the presentation of the arbitration agreement. 16 A. That is correct. 17 Q. You don't know anything that was said, 18 anything else but that. 19 A. No, sir. 20 Q. And you're the man most knowledgeable. Do 21 you have a record of how many arbitrations that you 22 have -- you have gone through with reference to the 23 arbitration agreement? 24 A. I'm sorry. I didn't understand. 25 Q. You have an arbitration agreement there.
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1 Q. Well, who reviews to see if the checklist 2 is in there and properly done? 3 A. Corey would. Corey James. 4 Q. Corey James would look at it? 5 A. Yes, sir. 6 Q. Well, he's the one that did it. 7 A. Yes, sir. 8 Q. So he'd look at the checklist that he did 9 to see that everything in the checklist was done. 10 A. Yes, sir. 11 Q. Does anybody else look at it? 12 A. Accounting probably. 13 Q. Probably accounting. So this -- this -- 14 what do you call it, the deal folder would be sent 15 to accounting? 16 A. Yes, sir. 17 Q. And they check it over, too, to see that 18 all these things are in here. 19 A. Yes, sir. 20 Q. Now, what -- what are they instructed to do 21 if the -- with Mr. Martin when he didn't sign the 22 arbitration agreement? What do they do then? 23 A. Nothing. 24 Q. Nothing? 25 A. Nothing.	1 A. Yes, sir. 2 Q. It requires arbitration, you say. 3 A. Yes, sir. 4 Q. Has anybody ever arbitrated with you? 5 A. I have one now. 6 Q. One. Is that the only one you can 7 remember? 8 A. That's the only one that I've ever heard 9 of. 10 Q. Well, how long have you been with this 11 company? 12 A. 32 years. 13 Q. That's pretty good. So in 32 years, you 14 haven't ever heard of another one except the one you 15 have now. 16 A. Right. 17 Q. What's the one you have now? 18 A. I can't remember the guy's name. It's 19 Turner. 20 Q. What's he mad about? 21 A. A paint defect on his car. 22 Q. What kind of car was it? 23 A. It's a BMW. 24 Q. BMW. Did Mr. James leave on his own, or 25 was he fired, or do you know?

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1 MR. BLACK: Object. Leave from where?
 2 MR. LEWIS: He left from --
 3 MR. BLACK: From Century BMW?
 4 MR. LEWIS: He was up in -- he just told
 5 me.
 6 MR. BLACK: In Charlotte? Okay.
 7 BY MR. LEWIS:
 8 Q. Charlotte.
 9 A. Mr. James left on a mutual agreement.
 10 Corey's family was living in Charlotte. He was
 11 having to live in Greenville, and he needed to go
 12 back to Charlotte to his family.
 13 MR. BLACK: That's why -- he's asking --
 14 he's answering why he left Century BMW.
 15 MR. LEWIS: I understand that. I'm not too
 16 bad. I can listen.
 17 BY MR. LEWIS:
 18 Q. All right. Do you know why he left Sonic
 19 in Charlotte?
 20 A. No, sir.
 21 Q. You don't know if he was fired or he left
 22 on his own?
 23 A. No, sir.
 24 Q. All you know is he wanted to leave your
 25 company to go back to Charlotte because that's where

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1 his family was.
 2 A. Yes, sir.
 3 Q. Well, did he come from Charlotte?
 4 A. Yes, sir.
 5 Q. Did he come from Sonic of Charlotte?
 6 MR. BLACK: Object to the form.
 7 A. I really don't remember where Corey -- what
 8 his other job was before us. I really don't
 9 remember.
 10 BY MR. LEWIS:
 11 Q. This claim you have in arbitration, what --
 12 where is it in the process?
 13 A. It's just in beginning stages.
 14 Q. Someone just said they want -- they want to
 15 make a claim?
 16 A. Yes, sir.
 17 Q. Did they sue you first, or did they just go
 18 into arbitration?
 19 A. They sued us, and then it went into
 20 arbitration.
 21 Q. Who was the -- who is the lawyers involved;
 22 do you know?
 23 A. Brad Martin.
 24 Q. Brad Martin again, huh? He's the lawyer
 25 for you, or he's suing you?

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1 A. No, he's the lawyer for us.
 2 Q. And who is the other guy?
 3 A. I really don't remember his name, sir.
 4 Q. And it's up here in Greenville?
 5 A. Yes, sir.
 6 Q. And it's over a BMW.
 7 A. Yes, sir.
 8 Q. Have you told anybody else about this
 9 claim, this arbitration claim, other than me here
 10 today?
 11 A. I'm sure quite a few of my employees know
 12 about it.
 13 Q. Well, how about people out -- all your --
 14 any customers or anything?
 15 A. No, sir.
 16 Q. You don't tell that?
 17 A. No, sir.
 18 Q. You're frowning. Why are you frowning?
 19 A. That wouldn't be a good business practice.
 20 Q. Wouldn't be a good business -- okay. And
 21 you don't know how you choose an arbitrator under
 22 your arbitration agreement.
 23 A. No, sir.
 24 Q. You don't know anything about that.
 25 A. I understand there's a board or a -- a

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1 panel that you call, and they assign them or
 2 whatever. But that's to the -- my extent of the
 3 understanding.
 4 MR. BLACK: Cam, are you getting to a point
 5 where we can take a break soon?
 6 MR. LEWIS: Sure, we can take a break now.
 7 MR. BLACK: Okay.
 8 (A recess transpired.)
 9 BY MR. LEWIS:
 10 Q. You've been with this company, I think you
 11 said 32 years.
 12 A. Yes, sir.
 13 Q. And that company is what -- which company?
 14 A. Century BMW.
 15 Q. All right. How -- did Sonic always own
 16 Century BMW?
 17 A. No, sir.
 18 Q. When did they buy them out?
 19 A. 1998.
 20 Q. Okay. Now, how long have arbitration
 21 agreements been -- been used?
 22 A. I became general manager in 2002, and they
 23 were in effect then.
 24 Q. How about before that?
 25 A. I can't answer to that, sir.

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1 Q. What were you before?
2 A. I was parts and service director.
3 Q. So as parts and service director, you
4 didn't ever know what was in the packet?
5 A. No, sir.
6 Q. And in the -- you being appointed as the
7 man most knowledgeable about the arbitration
8 agreement, you never looked back in the history to
9 see when it became any arbitration?
10 A. No, sir.
11 Q. Now, when did Mr. James leave you, that is,
12 Century BMW?
13 A. To the best of my recollection, it was
14 early 2006.
15 Q. Now, you said he left on mutual terms or
16 something like that.
17 A. Mutual agreement.
18 Q. What does that mean?
19 A. I decided and he decided that this wasn't
20 the place for him to be at this time.
21 Q. Okay. Would it be fair to say you weren't
22 happy with his work?
23 A. I was happy with his work.
24 Q. Well, then why -- why wasn't it good for
25 him to be here?

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1 A. He was continuously late, but his work was
2 very good.
3 Q. Okay. Now we got it. So he was late, but
4 a good worker after he was late.
5 A. Yes, sir.
6 Q. Now, late, that means he just didn't come
7 in five minutes, that would be real late.
8 A. No, sir. Five minutes, in my book, is
9 late.
10 Q. Well, you're one of these people.
11 A. Yes, sir.
12 Q. You want them on time.
13 A. Yes, sir.
14 Q. So how -- how late would he be?
15 A. Five to ten minutes.
16 Q. And he would be five to ten minutes late
17 over -- and how often?
18 A. At the end of his employment, it became
19 more regular. Maybe twice a week, three times a
20 week.
21 Q. And that just irritated you.
22 A. Yes, sir.
23 Q. And he was the -- is it finance and income
24 or is it finance and insurance, F and I?
25 A. I've always called it finance and income.

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1 Q. You have?
2 A. Yes, sir.
3 Q. And you don't know whether it's finance and
4 income or finance and insurance?
5 A. I've always called it finance and income.
6 Q. Okay. Fine. And so with him coming in
7 five, ten minutes late two times, three times a
8 week, you decided maybe it would be better if he
9 would go somewhere else?
10 A. He needed to go home.
11 Q. He needed to go home. And you made that
12 decision he needed to go home?
13 A. And he agreed.
14 Q. Okay. And did you get him a job then up
15 there at Sonic?
16 A. No, sir.
17 Q. Where did he go when he went to Charlotte?
18 A. He went to Sonic when he went to Charlotte,
19 but I did not get him the job.
20 Q. You didn't get him the job?
21 A. No, sir.
22 Q. Well, how did he get a job back at Sonic
23 when he left Sonic?
24 MR. BLACK: Object to the form.
25 A. I could only guess to that.

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1 BY MR. LEWIS:
2 Q. Well, guess at it.
3 MR. BLACK: Object to having the witness
4 guess.
5 A. Networking.
6 BY MR. LEWIS:
7 Q. Networking.
8 A. Yes, sir.
9 Q. What was his job in Charlotte?
10 A. Previously?
11 Q. No, when he left you.
12 A. F and I. He took the same job in Charlotte
13 that he left me.
14 Q. And went to another dealership?
15 A. Yes, sir.
16 Q. What was the dealership?
17 A. Arnold Palmer Cadillac.
18 Q. Arnold Palmer Cadillac. And that's a Sonic
19 dealership?
20 A. Yes, sir.
21 Q. And he was doing the same thing?
22 A. Yes, sir.
23 Q. Was he the only one in that dealership like
24 he was in this dealership?
25 A. I don't know if he was the only one in that

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1 store or not. 2 Q. Okay. Do you have a new guy? 3 A. Yes, sir. 4 Q. What's his name? 5 A. Rodney McCauly. 6 Q. And where is he from? 7 A. He is from the Greenville area. 8 Q. So he just -- did he come out of a Sonic 9 store, or did he -- 10 A. No, sir. 11 Q. You just went and found him? 12 A. I just went and found him. 13 Q. Did you know him? 14 A. No, I didn't personally. 15 Q. Who did? 16 A. His former employer recommended him. 17 Q. Who was that? 18 A. James Brockman. 19 Q. And what -- what's he? 20 A. He's a car dealer. 21 Q. And what dealer is that? 22 A. Kia. 23 Q. The -- we talked about that class-action 24 waiver in that agreement, Exhibit Number 2. Do you 25 remember that?	1 Q. And how do you order them? Do you order 2 them by some -- is there like -- you know, sometimes 3 they say this is Form Number 686. Is there -- at 4 the bottom, do you see -- looking at Exhibit Number 5 3, do you see that? 6 A. Yes, sir. 7 Q. Do you see the long one, the first long one 8 that comes out? It's called the Full Disclosure 9 Customer Worksheet. Do you see that? It's the 10 first one. 11 A. Yes, sir. 12 Q. And down at the bottom, it has a Form 13 814WS. 14 A. Yes, sir. 15 Q. You know what, if anything, that means? 16 A. That's the Austin Business Forms form 17 number for this. 18 Q. Who is Austin Business Forms? 19 A. That's the supplier of this form. 20 Q. And so who makes -- they just -- they print 21 them up? 22 A. Yes, sir. 23 Q. Where is this Austin Business Form place? 24 A. I have no idea. 25 Q. How do you know about it?
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1 A. Yes, sir. 2 Q. Do you know when it was put in or -- 3 A. No, sir. 4 Q. You just know that it's in there now? 5 A. I know that it's in there now. 6 Q. And you couldn't tell me if it was in 7 there -- and we know it was in there when -- 8 6/25/05. 9 A. Yes, sir. 10 Q. And it's been in there ever since. 11 A. Yes, sir. 12 Q. But we don't know how long before 6/25/05 13 it was put in. 14 A. No, sir. 15 Q. As a general manager, you don't -- do 16 they -- how many of those stacks of these -- each of 17 these pieces of paper in the packet, Exhibit 18 Number 3, how many do they send you at a time, or do 19 you run them off a Xerox? 20 MR. BLACK: Object to the form. 21 A. We order them. The exact quantity, I have 22 no idea, in each package. 23 BY MR. LEWIS: 24 Q. So you order them. 25 A. Yes, sir.	1 A. It's one of our recommended vendors. 2 Q. So how do they know -- is this a worksheet 3 that -- that Sonic tells you to use? 4 A. Yes, sir. 5 Q. And Sonic says that they got this form we 6 want you to use. 7 A. Yes, sir. 8 Q. And you buy it from them. 9 A. Yes, sir. 10 Q. I notice on the Arbitration Agreement, I 11 don't see any form numbers. 12 MR. BLACK: Is there a question? 13 BY MR. LEWIS: 14 Q. Do you see that? 15 A. Yes, sir. 16 Q. Well, how do you order it? 17 A. It's probably -- well, I can't attest to 18 that, what I -- how you order it. I don't order the 19 supplies. 20 Q. Well, it doesn't have a form number. How 21 do you know what to ask for? 22 A. Probably by title. 23 Q. Now by title. So you order by title. 24 A. If it doesn't have a form -- a form number, 25 you would order it by title.

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1 Q. And where do you order the Arbitration
2 Agreements from?
3 A. All of our ordering is done online through
4 Sonic.
5 Q. Through Sonic?
6 A. Yes, sir.
7 Q. Is there something you bring up? What kind
8 of screen do you bring up; what's it called?
9 MR. BLACK: Object to the form.
10 BY MR. LEWIS:
11 Q. Form order?
12 A. The exact system name is PECOS. P-E-C-O-S.
13 Q. And when you bring up PECOS, what does it
14 tell you?
15 A. It gives you the list of forms.
16 Q. Oh, and you just can order like that.
17 A. Yes, sir.
18 Q. And the -- the form list, you see -- let's
19 go back to that last page again on Exhibit Number 3.
20 Are the All Cars Checklist, are those all forms?
21 A. You're talking about each individual --
22 Q. Yeah.
23 A. -- area? Some of them are forms. Some of
24 them are information.
25 Q. Okay. Well, let's look at the packet then.

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1 Look at the packet. Start with the first number,
2 and that's 3995. Do you see that?
3 A. Yes, sir.
4 Q. Is that a form?
5 A. Yes, sir.
6 Q. And do you order that?
7 A. Yes, sir.
8 Q. Is that a required form by law, or just a
9 required form by Sonic?
10 MR. BLACK: Object to the form. You can
11 answer if you know.
12 A. This is a privacy notice. It is required
13 by Sonic and probably required by law.
14 BY MR. LEWIS:
15 Q. All right.
16 A. It is required by law.
17 Q. And the next one is -- is this a form that
18 you order?
19 A. No, sir. This is automatically printed out
20 at the time the purchase is made, depending on what
21 coverage the customer decides to or not to take.
22 Q. And that's 3996.
23 A. Yes, sir.
24 Q. All right. Let's look at 3997. Is that a
25 form?

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1 A. Yes, sir.
2 Q. Is that a form that's required by law?
3 A. Yes, sir.
4 Q. And you order those from that same place?
5 A. Yes, sir.
6 Q. Okay. Look at 3998. That's not a form, is
7 it?
8 A. I have no idea what that is. A fax
9 confirmation.
10 Q. Okay. Look at 3999. That's -- is that a
11 form?
12 A. Yes, sir.
13 Q. Is that one you order from the same place?
14 A. This one may not be. This one may be from
15 the State of South Carolina.
16 Q. Okay. Is it a required form?
17 A. Yes, sir.
18 Q. By law?
19 A. Yes, sir.
20 Q. The next one is a vehicle history report,
21 4000.
22 A. This is computer-generated from BMW.
23 Q. Okay. How about 4001, is that part of the
24 same report, or no?
25 A. This is -- this is where we shipped a lien

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1 off to someone.
2 Q. Okay. But that's not --
3 A. That's not a form, no.
4 Q. Okay. How about 4002?
5 A. This is a form.
6 Q. Is this a -- required by law?
7 A. This is an agreement to provide insurance.
8 Q. An agreement with who?
9 A. The customer and their insurance company.
10 Q. Okay. Do you -- is that something that you
11 require?
12 A. We do require it.
13 Q. But is it -- so this is a form of Sonic,
14 not a -- a form by law.
15 MR. BLACK: Object to the form.
16 A. This is a form by Sonic.
17 BY MR. LEWIS:
18 Q. Okay. And you order it?
19 A. Yes, sir.
20 Q. All right. How about 4003?
21 A. This is a computer-generated.
22 Q. At your dealership?
23 A. Yes, sir. This is built into our computer
24 system, so this is the way it prints.
25 Q. All Sonic dealerships have the same

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1 computer system? 2 A. Yes, sir, now we do. 3 Q. What is it called? 4 A. ADP. 5 Q. ADP. And 4004 would be another 6 ADP-generated? 7 A. Yeah, the next three forms are the same 8 form. 9 Q. Okay. How about -- how about now we're 10 looking at 4007. We already talked about it. 11 A. Yes, sir. 12 Q. Now, is this form, when it comes, this full 13 disclosure customer worksheet, is it long like this, 14 or is it the same size of those other papers? 15 A. This form was long in 2005, and they 16 changed it between 2005 and 2008. It's shorter now. 17 Q. It fits in to be like the other ones. 18 A. Yes, sir. 19 Q. But it was long back then. 20 A. Yes, sir. 21 Q. Now, the next one is 4008, which is Exhibit 22 Number, I believe, 2, as well as part of the packet. 23 A. Yes, sir. 24 Q. And it's long. 25 A. Yes, sir.	1 Q. Okay. Car invoice. Now, this one here, 2 looking at 4009, this is a car invoice to who? Who 3 is it an invoice to? 4 A. This one's an invoice to the Watts. 5 Q. And what does it tell you, that this is 6 what they paid, 32,000? 7 A. Yes, sir. Yes, sir. 8 Q. And the 32,000 is made up of 31,375, plus 9 299.50, plus 300, plus 25? 10 A. If that adds up to 32,000, yes, sir. 11 Q. Well, okay. What is total time price? 12 A. Oh, that would be if you financed it. 13 Q. If I financed it, it would be less? 14 A. It would be more, because of two lines 15 above you would add your finance charge in. 16 Q. I'm con- -- I'm very confused. It has in 17 here, number -- total time price. What is that? 18 31,700.50. 19 A. I don't -- what's that, 31 -- 20 MR. BLACK: Let me just object that I think 21 we've strayed beyond the topic in the Notice. 22 MR. LEWIS: Okay. 23 MR. BLACK: I'm giving you some leeway. 24 The witness wasn't -- didn't come in prepared to 25 analyze each of these forms in detail.
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1 Q. Was it long at that time, or was it -- 2 A. Yes, sir. 3 Q. -- short? 4 A. Yes, sir. 5 Q. It was long. 6 A. Long. 7 MR. BLACK: And by long, you mean on 8 legal-size paper? 9 BY MR. LEWIS: 10 Q. Is this -- looking at it, is this the size 11 of the document, the original document? 12 A. Yes, sir. 13 Q. Do you know how many words are in this 14 document? 15 A. No, sir. 16 Q. Would you believe me there was 1100? 17 A. Yes, sir. 18 Q. And the next one, 4009, is a -- 19 A. Ordered form. 20 Q. A what? 21 A. Ordered form. 22 Q. Ordered. And it's -- but it's not required 23 by law? 24 A. Car invoice may be required by law; I'm not 25 sure of that.	1 BY MR. LEWIS: 2 Q. Okay. So you don't know what that is 3 today. 4 A. Without a calculator and sitting down and 5 figuring it out, probably not. 6 Q. Okay. 7 A. But I just don't know right this moment. 8 Q. Okay. 4010, is that -- what is that? 9 A. It's an ordered form. 10 Q. And ordered, we mean ordered from Sonic? 11 A. Yes, sir. 12 Q. And is it required by law? 13 A. No, sir. 14 Q. The same as 4011? 15 A. Yes, sir. 16 Q. And 4012 is something that was generated on 17 your computer? 18 A. Yes, sir. 19 Q. And 4013, I don't know what that is. That 20 must be something that's stamped on the back of 21 something. It doesn't matter. 22 A. I have no clue. 23 Q. And then you have pictures with people on 24 them and an insurance card. 25 A. Yes, sir.

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1 Q. And then you have another picture of a
2 pretty lady. Do you see that of one?
3 A. Yes, sir.
4 Q. All right. That's 4015.
5 A. I saw that.
6 Q. 4016, that must come off of a computer?
7 A. Yes, sir.
8 Q. 4017, what is that?
9 A. This is computer-generated, to do the tag
10 work for the car.
11 Q. Okay. And 4018 is a --
12 A. A copy of a check.
13 Q. Okay. 4019, that's -- is that a form?
14 A. Yes, sir, that's an ordered form.
15 Q. Okay. And it's not required by law?
16 MR. BLACK: Object to the form.
17 A. The Retail Buyer's Order is required by
18 law.
19 BY MR. LEWIS:
20 Q. Okay. Required by law. Now, if I -- and
21 is this form ordered?
22 A. Yes, sir. Yes, sir.
23 Q. And everything that's not written on it
24 would -- that is -- that is, it looks typed, that
25 would be on the ordered form?

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1 A. Yes, sir.
2 Q. So every ordered form on BM -- from Sonic
3 will have the processing fee there?
4 MR. BLACK: Objection. And I'll instruct
5 you not to answer. That goes well beyond the
6 Deposition Notice to the merits of the case.
7 MR. LEWIS: You shouldn't have given me the
8 form.
9 BY MR. LEWIS:
10 Q. The next one, 4020?
11 A. This is sent to us by BMW.
12 Q. Is it required by law?
13 MR. BLACK: Object to the form. Go ahead.
14 A. I have no idea.
15 BY MR. LEWIS:
16 Q. How about 4021?
17 A. Continuation.
18 Q. All right. And then the certificate of
19 title, we know what that is, 4022. 4023 is a what?
20 A. The back of the title.
21 Q. Okay. 4024, what is that?
22 A. That is a Form 400. This comes from the
23 State of South Carolina.
24 Q. Is that required --
25 A. Yes, sir.

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1 Q. -- by law?
2 A. Yes, sir. It's required.
3 Q. And is 4025 required by the law?
4 A. Yes, sir. That's the back of Form 400.
5 Q. Okay. 4026 is an internal form?
6 A. Yes, sir.
7 Q. And is this check requested, is that
8 something that comes from Sonic, or is that just
9 y'all's form?
10 A. This form comes -- all our forms that are
11 pre-printed come from Sonic.
12 Q. So this one comes from Sonic, too.
13 A. Right, yes.
14 Q. But it's not required by law?
15 A. No, sir.
16 Q. Same with 4027?
17 A. Yes, sir.
18 Q. 4028?
19 A. This is a BMW computer printout.
20 Q. Okay. 4029?
21 A. Same.
22 Q. 4030?
23 A. Yes, sir. Same thing.
24 Q. 4031?
25 A. Same thing.

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1 Q. Now, that's required by law, isn't it?
2 A. The odometer statement?
3 Q. Yeah.
4 A. This one is sent to BMW.
5 Q. But there is an odometer statement --
6 A. Yes, sir.
7 Q. -- required by law?
8 A. Yes, sir, there is.
9 Q. But this is not it?
10 A. No, sir.
11 Q. Okay. 4032.
12 A. That's a pre-printed form from Sonic.
13 Q. Is that required by law?
14 A. No, sir.
15 Q. And 4033?
16 A. Computer-generated, in-house form.
17 Q. 4034?
18 A. Computer-generated, in-house.
19 Q. 4035?
20 A. The same.
21 Q. 40 -- I don't see it. It's cut off. It's
22 CBM-0000042.
23 A. Right. This is a computer-generated, a
24 copy of the one we just went over that was
25 handwritten.

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1 Q. Oh, that is a copy of that one he wouldn't
2 let me ask you about.
3 A. Yes, sir.
4 Q. And this is -- the next one is 4037. Those
5 are government forms?
6 A. These are county tax papers.
7 Q. And 4038?
8 A. That's a copy of a fax.
9 Q. And 4039 is that checklist we've already
10 gone over.
11 A. Yes, sir.
12 Q. And this is essentially what a packet would
13 look like for anybody that bought a car.
14 A. Yes, sir.
15 MR. BLACK: Object to the form of the
16 question.
17 BY MR. LEWIS:
18 Q. Now, if you had a -- if you were going to
19 finance the car through you, would there be a
20 finance packet, too, or would this packet, Exhibit
21 Number 3, be bigger?
22 A. Exhibit 3 would be bigger.
23 Q. Was it -- and if you were going to lease a
24 car, there would be just different documents that
25 would support a lease, but it would be essentially

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1 the same documents otherwise?
2 A. Yes, sir.
3 Q. Do you know -- we went through each of the
4 documents in Exhibit Number 3. Do you know what the
5 purchasers in this case were told about each of
6 those documents?
7 A. No, sir.
8 Q. Do you -- what is the requirement you have
9 on your F and I guy to explain each of the
10 documents; does he have a requirement?
11 A. Yes, sir.
12 Q. And he's supposed to explain each one of
13 them?
14 A. Yes, sir.
15 Q. And how long -- how long does that take?
16 A. Oh, it could take, depending if the
17 customer had any questions on each one, it could
18 take five, ten minutes a form --
19 Q. Is that what --
20 A. -- if they had questions.
21 Q. Well, what does it take normally? You've
22 been in the business. Y'all sell 1200 cars a year.
23 How long does it take to explain this packet? One
24 guy, 1200 people.
25 MR. BLACK: Object to the form. The packet

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1 contains a lot of documents that don't go to the
2 customer.
3 MR. LEWIS: Okay.
4 BY MR. LEWIS:
5 Q. Pick up Exhibit Number 3. And I want you
6 to look through it and tell me each document that
7 the customer is explained.
8 A. The privacy notice, the first one.
9 Q. All right.
10 A. The second one, which is the --
11 Q. Give me the numbers of them at the bottom.
12 A. Okay. Okay. The first one is 3995.
13 Q. Uh-huh.
14 A. 3996.
15 Q. Uh-huh.
16 A. 3997 is explained on the sales floor. This
17 is a --
18 Q. Sales floor?
19 A. Yes, this is a document that's actually
20 posted in the window of the car.
21 Q. So that document is for the salesman to
22 explain.
23 A. It's -- yes, sir.
24 Q. But the F and I guy doesn't say anything
25 about it?

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1 A. He will go over it again.
2 Q. He will go over it again.
3 A. I'm going to skip 3998; because -- 3999
4 would be reviewed in the F and I office.
5 Q. Reviewed. Do they explain it to them or do
6 they just review it? Do they have a requirement to
7 explain it?
8 A. Well, yes, they would explain it. There's
9 nothing but the sale-of-a-motor-vehicle form.
10 Q. Okay.
11 A. 4002 would be explained and ask the
12 customer for information specifically on this form.
13 Q. Okay.
14 A. Skipping ahead, 4008.
15 Q. Yeah. We've already talked about that one.
16 A. 4010.
17 Q. Uh-huh.
18 A. The printed version of 4019, the one we
19 couldn't find the number on.
20 Q. 4019?
21 MR. BLACK: I think the printed version
22 was --
23 MR. LEWIS: Okay.
24 MR. BLACK: The printed version is CBM --
25 BY MR. LEWIS:

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1 Q. 4019 is gone through. 2 A. Yes, sir. 3 MR. BLACK: Well, he said the printed 4 version. 5 A. The printed version. 6 BY MR. LEWIS: 7 Q. Yeah. Yeah. I don't understand the 8 printed version. 4019 is printed. 9 A. The computer printed one, the one we could 10 not find the -- the number on at the end. 11 MR. BLACK: It's CBM-000042. It's the one 12 that your number got knocked off the bottom of. 13 MR. LEWIS: 40 what -- 14 MR. BLACK: Four 0's, and then 42. 15 MR. LEWIS: 42. 16 BY MR. LEWIS: 17 Q. Okay. It's got them all typed. 18 A. Yes, sir. 19 Q. What do they do -- both of them are signed. 20 Why do they go through one and then type one? 21 A. The -- the handwritten one is generated out 22 on the sales floor with the sales manager. 23 Q. Oh, the sales manager. 24 A. Yes, sir. 25 Q. And so there's a new person that's been	1 A. Yes, sir. 2 Q. And should be exactly the same, except 3 one's typed and one isn't. 4 A. Yes, sir. 5 Q. Well, why do you do that? 6 MR. BLACK: Object to the form. 7 A. Why do you do the first one, the 8 handwritten one? 9 BY MR. LEWIS: 10 Q. No, why do you take one and get it all 11 filled in in handwriting, and then take the time to 12 type it -- type it and get it on a different -- the 13 same form typed? 14 A. To make sure there's no mistakes. 15 Q. To make sure there's no mistakes? 16 A. Yes, sir. 17 Q. There's more likely to be a mistake if you 18 go from a handwritten one to a typed one. 19 MR. BLACK: Object to the form. 20 A. These two have to match. 21 BY MR. LEWIS: 22 Q. Oh, they have to match. I gotcha. And who 23 determines they match? 24 A. The account -- I mean, the F and I office, 25 Corey James.
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1 Involved here. We had -- I thought it went direct 2 from Mrs. Elizabeth to Mr. James. It doesn't? 3 There's somebody in between? 4 A. The salesperson will confer with the sales 5 manager to get his signature, approval to sell the 6 car. 7 Q. So the -- I got -- I got to understand 8 something. So this Exhibit Number -- Exhibit 9 Number -- hold on -- 3, 4019 -- 10 A. Yes, sir. 11 Q. -- that's done on the floor. 12 A. Yes, sir. 13 Q. Now, is the sales manager's signature on 14 that document? 15 A. Yes, sir. 16 Q. And so they sit down there, and this is 17 negotiated, and then the sales manager signs it. 18 A. Right. 19 Q. Okay. And then where does it go? 20 A. Then the salesperson takes it to Corey 21 James at that time. 22 Q. And Corey James then types up Exhibit 23 Number -- the one that doesn't have that cut off. 24 A. That is correct. 25 Q. CBM-000042.	1 Q. Now, who is -- the bottom signature, who is 2 that? 3 MR. BLACK: There are a number of 4 signatures. Which are you asking him about? 5 BY MR. LEWIS: 6 Q. On 000042. Mine is cut off a little bit. 7 What's the bottom signature; is that Corey James? 8 A. Are you talking about where it says, this 9 agreement, the very last -- 10 Q. Yeah. 11 A. That would -- it's cut off, but it looks 12 like Corey. 13 Q. Okay. And then it says, disclaimer of 14 warranties, purchaser's signature. The purchaser's 15 signature is not there, right? Am I right? 16 A. You're talking on new vehicle disclaimer 17 warranties? 18 Q. Yeah. 19 A. They didn't buy a new vehicle. 20 Q. So you have to sign either one of those? 21 A. Yes, sir. 22 Q. Okay. And Corey James is the officer of 23 the company that signed this. 24 A. Yes, sir. 25 Q. And he is also the -- is that his signature

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1 on the 4019? Whose signature is that? 2 A. I haven't seen this signature in a long 3 time, but I would assume it's Jeff Novak. 4 Q. And what is he? 5 A. He was the used car manager. 6 Q. So the used car manager agreed to it, and 7 Corey James agreed to it on a different form. 8 A. Yes, sir. 9 Q. Once they -- the used car manager agreed to 10 it, it's over with then, isn't it? Does Corey James 11 have the right then to not do it? 12 MR. BLACK: Object to the form. 13 A. Corey does not have the right to stop the 14 deal. 15 BY MR. LEWIS: 16 Q. So why -- so he approved it, but he doesn't 17 have the right to not approve it? 18 A. He would not sign it if it did not match 19 up. 20 Q. But all he would be able to do is match it 21 up, because once it's signed, as shown on 4019, then 22 you have to sell the car. 23 MR. BLACK: Object to the form. 24 A. Sold -- 4019, we agreed to sell the car for 25 this amount.	1 claims court part of it. 2 Q. Does -- do you know if that's something 3 they explain to people, or do you know? You don't 4 know? 5 A. I don't know. 6 Q. Okay. We've got the packet that we showed 7 before you, Exhibit Number 3. Okay. Our client 8 said there were more documents than this, than 9 shown, some other documents than shown in this 10 packet. Do you know what they could have been? 11 MR. BLACK: Objection. Mischaracterizes 12 the testimony. 13 BY MR. LEWIS: 14 Q. Well, could there have been more documents 15 given to the Watts than are in this packet? 16 MR. BLACK: Okay. Form, speculation. 17 A. I mean, other than owner's manuals? 18 BY MR. LEWIS: 19 Q. Yeah. 20 A. There could be owner's manuals. 21 Q. Anything else? 22 A. There should be other -- no more legal 23 documents, no. 24 Q. You know anything about what's been called 25 the Dealer Act, the act that allows people to bring
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1 BY MR. LEWIS: 2 Q. Right. And that's it. 3 A. The manager. 4 Q. Right. 5 A. Corey would have the right, if there was 6 something that did not add up correctly, to go back 7 to Jeff and say, there's something wrong here, I'm 8 not going to sign it until you get it straightened 9 out. 10 Q. And Jeff would have to go straighten it 11 out. 12 A. Yes, sir. 13 Q. And that could even mean having -- making 14 them pay more money? 15 MR. BLACK: Object to the form. 16 A. Not above what they originally agreed to. 17 BY MR. LEWIS: 18 Q. Okay. Now, this arbitration agreement 19 says -- has some provision in there about small 20 claims court. Do you understand that, or do you 21 know anything about that? 22 A. I don't know anything about the small 23 claims court. 24 Q. You what? 25 A. I don't know anything about the small	1 suits against dealers for not doing -- for fraud and 2 so forth? 3 A. No, sir. 4 Q. Have you ever read anything on it? 5 A. No, sir. 6 Q. Now, I want to ask you one more little set 7 of questions. And what I want to know is you 8 mentioned to me that there may be a training or -- 9 and the training might lead us to what is taught to 10 F and I people. Where would we go to find that? 11 MR. BLACK: Object to the form. 12 A. To find the training schedule? 13 BY MR. LEWIS: 14 Q. To find out what -- how they train people. 15 What is -- 16 A. Richard O'Connor. 17 Q. And he would have the training? 18 A. Yes, sir. 19 Q. And he's up in the offices in -- 20 A. Charlotte. 21 Q. -- Charlotte. And what -- and it's called 22 Sonic, the Sonic offices? 23 A. It's Sonic Automotive. 24 Q. Okay. In Charlotte? 25 A. Yes, sir.

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1 MR. LEWIS: Excuse me just a minute. 2 MR. BLACK: Break? 3 MR. LEWIS: I hope that we can leave you. 4 (A recess transpired.) 5 MR. LEWIS: Thank you, Mr. Bishop. 6 THE WITNESS: Thank you. 7 EXAMINATION 8 BY MR. BLACK: 9 Q. Mr. Bishop, my name is Dennis Black. I'm 10 from the law firm called Williams and Connolly. You 11 understand I represent Century BMW? 12 A. Yes, sir. 13 Q. Mr. Lewis asked you a bunch of questions 14 about what he termed "the packet" this morning, and 15 I think it's marked in front of you as Exhibit 3. 16 Do you recall those questions? 17 A. Yes, sir. 18 Q. Are there a number of documents in what he 19 called the packet that are not shown to the customer 20 at the time of the deal? 21 A. There's quite a few in there that wouldn't 22 be shown to the customer. 23 Q. So what's -- what you've got in front of 24 you as Exhibit 3 is not a stack of documents all of 25 which are given to the customer in the F and I	1 Q. How about 4009? 2 A. 4009 would go to the customer. 3 Q. 4012? 4 A. Would not. 5 Q. 4013? 6 A. Would not. 7 Q. 4014 came from the customer? 8 A. Yes, sir. 9 Q. Same for 4015? 10 A. Yes, sir. 11 Q. How about 4016? 12 A. That would not go to the customer. 13 Q. 4017? 14 A. Would not. 15 Q. 4018? 16 A. No, sir. 17 Q. 4020? 18 A. No, sir. 19 Q. 21? 20 A. No, sir. 21 Q. How about 22, does that go to the customer, 22 4022? 23 A. Yes. They paid cash for it; they would get 24 this title. 25 Q. Okay. 4026?
Page 83	Page 85
1 office. 2 A. That's correct. 3 Q. Let's go through and give some examples of 4 that. Would the -- and you skipped over -- when you 5 were asked about documents that were explained to 6 the customer, you skipped over a number of documents 7 in the deal jacket, right? 8 A. Correct. Those would be documents the 9 customer wouldn't see. 10 Q. Okay. Let's look at CBM -- well, let me 11 use his numbers since he did. If you turn to 12 Document Number 4000, the vehicle history report. 13 A. That wouldn't be to the customer. 14 Q. And 4001, where you were paying off the 15 lien on the trade-in? 16 A. That wouldn't be to the customer. 17 Q. If you go to the 4003. 18 A. No. 19 Q. And by no, you mean that doesn't go to the 20 customer? 21 A. Would not go to the customer. 22 Q. 4004? 23 A. It's a copy of 4003, and 4005 and 4006 is 24 all copies of the same document. They would not go 25 to the customer.	1 A. No, sir. 2 Q. 4027? 3 A. Would not go. 4 Q. 4028? 5 A. Would not go. 6 Q. 4029? 7 A. No. 8 Q. 4030? 9 A. No. 10 Q. 4031? 11 A. No, sir. 12 Q. 4032? 13 A. No, sir. 14 Q. 4033? 15 A. No, sir. 16 Q. 4034? 17 A. No, sir. 18 Q. 4035? 19 A. No, sir. 20 Q. 4038 is a fax from the customer sometime 21 after the transaction? 22 A. Yes, sir. 23 Q. So that wouldn't have been explained to the 24 customer during the transaction. 25 A. No, sir.

Page 86	Page 88
1 Q. And the checklist at 4039, that doesn't go 2 to the customer, does it? 3 A. No, sir. 4 Q. Did Century BMW have an official policy of 5 whether you would sell a vehicle to a customer who 6 refused to sign the arbitration agreement? 7 MR. LEWIS: Object to the form. 8 A. If a customer objected to signing the 9 arbitration form, we would still sell them the car. 10 BY MR. BLACK: 11 Q. You -- you testified that you -- that the F 12 and I managers were not trained to volunteer to the 13 customer that you don't have to sign this 14 arbitration agreement. Do you recall that? 15 A. Correct. The F and I manager was not 16 obligated to explain that they did not have to sign 17 the arbitration agreement. 18 Q. Were they trained to tell the customer, you 19 are required to sign this arbitration agreement? 20 A. No, sir. 21 Q. If the customer asked, am I required to 22 sign this arbitration agreement as a condition of 23 buying the car, what was Century BMW's policy for -- 24 MR. LEWIS: I object to the form. 25 A. The customer --	1 sold a car by Century BMW? 2 MR. LEWIS: Object to the form. 3 BY MR. BLACK: 4 Q. You can answer. 5 A. Yes, sir. 6 Q. You mentioned earlier that you're only 7 aware of one arbitration that's been filed since 8 you've been general manager? 9 A. Yes, sir. 10 Q. How many lawsuits are you aware of that 11 have been filed against Century BMW since you've 12 been general manager? 13 A. Actually, there was two. 14 Q. And does that include this one? 15 A. Yes, sir. 16 Q. So this one and one other. 17 A. Yes, sir. 18 Q. And was the one other the one that went to 19 arbitration? 20 A. The other one, I cannot recall. I did not 21 go to court. I believe it was dismissed between the 22 two lawyers. 23 Q. Okay. So there's the Turner case that went 24 to arbitration. There's the one other one. 25 A. Right.
Page 87	Page 89
1 BY MR. BLACK: 2 Q. Let me ask the question. What was Century 3 BMW's policy about whether they would sell a car to 4 someone who objected to signing the arbitration 5 agreement? 6 A. We would still sell the car. 7 Q. You testified that you could only remember 8 the name of one person who had refused to sign the 9 arbitration agreement and, nevertheless, bought a 10 car. Are you aware that there are other customers 11 whose names you don't remember who similarly refused 12 to sign the arbitration agreement and you, 13 nevertheless, sold them the car? 14 A. Yes. 15 MR. LEWIS: Object to the form. 16 BY MR. BLACK: 17 Q. And are there other customers other than 18 the one person whose name you remembered who refused 19 to sign the arbitration agreement and -- 20 MR. LEWIS: Object to the form. 21 BY MR. BLACK: 22 Q. Let me finish my question. Are there 23 people other than the person whose name you 24 mentioned that you are aware of who refused to sign 25 the arbitration agreement and, nevertheless, were	1 Q. And then there's this lawsuit. 2 A. Yes. 3 Q. And that's the only litigation you're aware 4 of? 5 A. That's the only litigation I've been 6 involved in since 2002. And before that, I was not 7 involved in any. 8 MR. BLACK: Nothing further. 9 EXAMINATION 10 BY MR. LEWIS: 11 Q. You mentioned you remember some other 12 customers that you couldn't remember on the 13 arbitration agreement? 14 A. I remember other cus- -- customers not 15 signing. I do not remember their names. 16 Q. Do you remember whether it was one, two, 17 three, four? 18 A. Exact number, I couldn't tell you, sir. 19 Q. You couldn't tell me anything about it. 20 You just remembered somewhere -- 21 A. Yes, sir. 22 Q. -- just in your head somewhere. 23 A. Yes, sir. 24 MR. LEWIS: Nothing further. 25 (The deposition was concluded at 11:58 p.m.)

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF AIKEN

HERRON, et al.,

Case No.

Plaintiffs,

2006-CP-02-1230

vs.

DICK DYER & ASSOCIATES, INC., et al,

Defendants.

DEPOSITION OF: CHRISTINE WATTS

DATE: January 29, 2008

TIME: 5:15 p.m.

LOCATION: LEATHERWOOD WALKER TODD & MANN, P.C.
300 East McBee Avenue, Suite 500
Greenville, South Carolina

TAKEN BY: Counsel for Defendant,
CENTURY BMW

REPORTED BY: KATHY P. TAYLOR,
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Page 4

STIPULATION

It is stipulated by and between Counsel:

that this deposition is being taken in accordance

with the South Carolina Rules of Civil Procedure,

Rule 30, that all objections as to Notice of this

deposition are hereby waived; that all objections

except as to form are reserved until the time of

trial; and that the deponent does not waive reading

and signing of this deposition.

.

CHRISTINE WATTS.

being first duly sworn, testified as follows:

EXAMINATION

BY MR. BLACK:

Q. Good evening, Ms. Watts. Could you state
your name and your address for the record, please.

A. Christine Watts. And my address is 3729

Horwick, H-A-R-W-I-C-K, Place, Charlotte, North

Carolina 28211.

Q. And we haven't met before, but my name is

Dennis Black. I'm an attorney from a law firm

called Williams & Connolly. And you understand I

represent Century BMW and some other car dealerships

in this dispute?

A. Okay. Yes, I do.

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Q. Okay. And the other people sitting here
also represent -- at least on this side of the
table -- also represent Century BMW, until you get
to the guy at the end, who represents some other
dealerships. And I take it you know your own
counsel.

A. Yes, sir.

Q. (Pointing) And he represents some car
dealerships, too.

A. Okay.

Q. So just so you know who everyone is.

Have you ever had your deposition taken
before?

A. I have not.

Q. Okay. Let me give you a couple of ground
rules. I'll be asking a bunch of questions.Hopefully you'll be answering them. Try to answer
them aloud and with words.

A. Okay.

Q. Because the court reporter here is trying
to take everything down, and she can't take downgestures and nods and shakes and shrugs. Is that
acceptable?

A. Yes.

Q. And if you say -- if you nod or shake your

1 head, one of us may say, is that a yes or is that a
2 no.
3 A. Okay.
4 Q. We're not trying to be rude; we're just
5 trying to keep a clear record.
6 (Ms. Chapman entered the deposition.)
7 BY MR. BLACK:
8 Q. The -- also try and avoid uh-huh and
9 huh-uh, because they look garbled on the transcript.
10 A. Yes.
11 Q. If you could try and let me finish my
12 questions before you jump in with your answers, that
13 will help keep a clean record, also, and I'll try
14 and give you the same courtesy of letting you finish
15 your answers before I jump in with another question.
16 Is that acceptable?
17 A. Yes.
18 Q. If I ask any garbled questions, as I'm
19 prone to do from time to time, please, if you don't
20 understand it, ask me to rephrase the question or
21 tell me that you don't understand it. And the rules
22 here in South Carolina require you to direct any
23 requests for clarification to me and not to your own
24 counsel. Is that acceptable?
25 A. Yes, I understand.

1 Q. And the rules also require that you not
2 talk with your counsel about the deposition or the
3 case while we're going on with the deposition. Is
4 that acceptable?
5 A. I understand.
6 Q. Okay. What, if anything, did you do to
7 prepare for your deposition?
8 A. I had a meeting with my lawyers.
9 Q. Okay. And who was present for that
10 meeting?
11 A. Melanie and Brady.
12 Q. Anyone else?
13 A. My father, Mike Watts.
14 Q. Was that Friday -- Sunday night?
15 A. Yes.
16 Q. And how long approximately did the meeting
17 last?
18 A. Maybe an hour.
19 Q. The -- and then as you were driving home
20 from the meeting, did you have a chance to have a
21 further discussion with your father about the
22 deposition?
23 A. We did not talk about that on the way home.
24 Q. Since you -- since Sunday night, have you
25 talked to anyone else in preparation for your

1 deposition?
2 A. I talked to Melanie and Brady before I came
3 today.
4 Q. Okay. Did you have a chance to talk to
5 your father after he was finished with his
6 deposition today?
7 A. Yes.
8 Q. And when was that?
9 A. Maybe lunchtime.
10 Q. Okay. And was it in person or on the
11 phone?
12 A. It was just on the phone.
13 Q. Okay. And who called who?
14 A. I called my father to ask him how long it
15 would take.
16 Q. All right. And what did he tell you?
17 A. Two hours.
18 Q. Okay. Hopefully, since we got some
19 information from him this morning, we won't have to
20 repeat it with you, and we'll be even quicker. Did
21 he tell you anything about the questions that were
22 asked at the deposition?
23 A. No, he did not.
24 Q. Aside from the length of the deposition,
25 did you have any other discussions about the

1 deposition with him?
2 A. No.
3 Q. Other than Melanie and your father today,
4 did you -- have you talked to anyone else in
5 preparation for your deposition?
6 A. Just my boss, that I had to go to the
7 deposition.
8 Q. Okay. Could you describe for us your
9 educational background since high school?
10 A. I have a bachelor's and a master's degree
11 in accounting.
12 Q. And what year did you get your bachelor's?
13 A. '03, 2003.
14 Q. And from what school?
15 A. College of Charleston.
16 Q. And from what school did you get your
17 master's?
18 A. College of Charleston.
19 Q. And what year was that?
20 A. 2005.
21 Q. And you said that was in accounting?
22 A. Accounting.
23 Q. And any subspecialty or -- in accounting?
24 A. No.
25 Q. Since getting your master's in 2005, have

Page 10

1 you pursued any other studies?
 2 A. Please rephrase.
 3 Q. Since -- have you done any further
 4 schooling since 2005, when you got your master's?
 5 A. Only accounting-related.
 6 Q. So you're continuing to study accounting?
 7 A. Yes, sir.
 8 Q. Okay. Are you going for a Ph.D. or --
 9 A. No, I -- you have to do it for -- to get a
 10 CPA.
 11 Q. Okay. And have you received -- do you have
 12 a CPA?
 13 A. No.
 14 Q. What's the stages in getting a CPA?
 15 A. I can sit for the CPA, but I have to have a
 16 certain number of hours before -- accounting
 17 experience before I can actually get my license.
 18 Q. Okay. And how far along in that process
 19 are you?
 20 A. Getting pretty close.
 21 Q. Okay. So have you scheduled to take the
 22 exam?
 23 A. I have not. I filled out the application.
 24 Q. The -- where have you -- did you work at
 25 all when you were at the College of Charleston?

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1 A. I did not work at College of Charleston.
 2 Q. Okay. And is that true through your
 3 master's degree?
 4 A. Between my undergraduate and graduate, I
 5 had an internship with PriceWaterhouseCoopers.
 6 Q. And where was that?
 7 A. In Spartanburg, South Carolina.
 8 Q. And what was involved in the internship?
 9 A. Audit work.
 10 Q. So that would have been in 2003?
 11 A. 2004.
 12 Q. And then while you were -- how long did it
 13 take to get a master's degree?
 14 A. Just one year.
 15 Q. Okay. And were you working while you were
 16 studying for your master's?
 17 A. I was not.
 18 Q. Okay. The -- we learned from your father
 19 this morning that -- I'm sorry, I forgot Melanie's
 20 last name -- you're Melanie's former roommate?
 21 A. Yes, I am.
 22 Q. And what is Melanie's last name?
 23 A. Blease.
 24 Q. What?
 25 A. Blease.

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1 Q. Blease. And when were you Melanie's
 2 roommate?
 3 A. Undergraduate, 2002 and -3.
 4 Q. And not thereafter?
 5 A. Not thereafter.
 6 Q. Okay. Have you remained friends with
 7 Melanie thereafter?
 8 A. Yes, I have.
 9 Q. Up until today?
 10 A. Yes.
 11 Q. Since you got your -- what month did you
 12 get your master's in 2005?
 13 A. August.
 14 Q. August. And since you got your master's,
 15 have you become employed?
 16 A. Yes. I worked for PriceWaterhouseCoopers
 17 until June of this year.
 18 Q. June of last year?
 19 A. This -- yeah, last year.
 20 Q. And so when did you start with
 21 PriceWaterhouseCoopers?
 22 A. 2005.
 23 Q. Immediately upon graduating in August?
 24 A. In -- September 1st.
 25 Q. And what position did you take?

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1 A. Audit associate.
 2 Q. And what were your job responsibilities?
 3 A. Handling client relationships, performing
 4 audits of all types of nature.
 5 Q. Were you focused in any particular industry
 6 or business?
 7 A. Manufacturing.
 8 Q. And were you an audit associate throughout
 9 your tenure at PriceWaterhouseCoopers?
 10 A. I was.
 11 Q. Okay. And you -- you left in June of 2007?
 12 A. Yes.
 13 Q. And did you take another position in June
 14 of 2007?
 15 A. I started July 1st with Dixon Hughes.
 16 Q. And what is Dixon Hughes?
 17 A. It is a regional accounting firm.
 18 Q. And is that in Charlotte, North Carolina?
 19 A. Yes, sir.
 20 Q. And what position did you take in July
 21 of 2007 with Dixon Hughes?
 22 A. Audit associate.
 23 Q. And do you focus on any type of business or
 24 industry?
 25 A. Manufacturing and non-profit.

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1 Q. And do you remain an audit associate today?
 2 A. I do.
 3 Q. Does PriceWaterhouseCoopers have its
 4 employees sign arbitration agreements when they
 5 become employed?
 6 A. Not to my knowledge. no.
 7 Q. Do you know if you signed an arbitration
 8 agreement with PriceWaterhouseCoopers?
 9 A. Not that I'm aware of, no.
 10 Q. Same question for Dixon Hughes; do they
 11 have you sign an arbitration agreement?
 12 A. No.
 13 Q. Your father told us this morning you were
 14 introduced to the lawyers that are now representing
 15 you through your friend, Melanie.
 16 A. That is correct.
 17 Q. Do you recall when you first talked to
 18 Melanie about this case?
 19 A. I do not remember.
 20 Q. Do you know how long it was in advance of
 21 the case being filed?
 22 A. I do not know.
 23 Q. In your discussions with Melanie prior to
 24 your retaining counsel, did the subject of your
 25 having signed an arbitration agreement with Century

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1 Q. Prior to owning that - driving that
 2 vehicle, had you ever been present when anyone
 3 purchased a car from a car dealership?
 4 A. No.
 5 Q. After the Ford Ranger, what was the next
 6 vehicle you were the primary driver of?
 7 A. Toyota Celica.
 8 Q. And how many years later was that?
 9 A. One year.
 10 Q. And did your family own that car before you
 11 became the primary driver?
 12 A. No.
 13 Q. Was it purchased for you?
 14 A. Yes.
 15 Q. Was it a new or used vehicle?
 16 A. Used.
 17 Q. Used. Who paid for it?
 18 A. My parents, Mike and Phyllis Watts.
 19 Q. Were you involved in choosing it?
 20 A. Yes.
 21 Q. Was it purchased at a car dealership?
 22 A. Yes.
 23 Q. Do you remember which one?
 24 A. No.
 25 Q. Were you present when the car was

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1 BMW come up?
 2 A. No.
 3 Q. In your conversations with anyone other
 4 than counsel and their staff prior to your - the
 5 lawsuit being filed, did you discuss the fact that
 6 you had signed an arbitration agreement with Century
 7 BMW?
 8 A. No.
 9 Q. How many vehicles have you been the primary
 10 driver of in your life?
 11 A. Four.
 12 Q. And what was the first one?
 13 A. Ford Ranger.
 14 Q. And when did you become the primary driver
 15 of that vehicle?
 16 A. When I was 15.
 17 Q. So that would be what, approximately what
 18 year?
 19 A. '85.
 20 Q. And did your family own that vehicle before
 21 you became the primary driver of it?
 22 A. Yes.
 23 Q. Okay. Were you present when the vehicle
 24 was purchased?
 25 A. No.

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1 purchased?
 2 A. No.
 3 Q. Did your - who was - who was primarily
 4 involved in the back and forth with the dealership
 5 on the purchase?
 6 A. My father, Mike Watts.
 7 Q. And did he negotiate the price of the
 8 vehicle?
 9 A. I have no idea.
 10 Q. Okay. So you weren't there at all.
 11 A. No, sir.
 12 Q. Okay. What was the next vehicle that you
 13 became the -
 14 A. Ford Mustang.
 15 Q. And when was that?
 16 A. A year after the Celica.
 17 Q. So now you're 17?
 18 A. Uh-huh.
 19 Q. Okay. And did you own that - was that
 20 vehicle owned by your family prior to you becoming
 21 primary driver?
 22 A. No.
 23 Q. What happened to the Celica?
 24 A. I just didn't like it.
 25 Q. Okay. So it was - so the Ford Mustang was

Pages 14 to 17

Page 18

1 purchased from a car dealership?
 2 A. Yes.
 3 Q. And were you present when it was purchased?
 4 A. Yes.
 5 Q. And did you take part in any negotiations?
 6 A. No.
 7 Q. Did your father?
 8 A. Yes.
 9 Q. And did he -- were you present when he
 10 negotiated the price of the vehicle?
 11 A. Yes.
 12 Q. Okay. How long -- how long did that take,
 13 if you recall?
 14 A. I don't remember.
 15 Q. Were you a co-owner of any of the vehicles
 16 we've discussed so far --
 17 A. No.
 18 Q. -- the Ranger, the Celica, or the Mustang?
 19 So they were all in your father's name, and
 20 mother's, maybe?
 21 A. Yes.
 22 Q. So I take it you didn't sign any paperwork
 23 associated with those vehicles?
 24 A. No.
 25 Q. How long did you -- were you the primary

Page 20

1 reason?
 2 A. No.
 3 Q. At the time you were in Century BMW buying
 4 the Z-4, did you have an understanding what
 5 arbitration is?
 6 A. No.
 7 Q. So I take it at the time, you didn't have a
 8 view whether it was a good thing or a bad thing.
 9 A. No.
 10 Q. No, I'm -- no, I'm wrong, or no, you didn't
 11 have a view?
 12 A. No, I didn't have a view of -- I didn't
 13 really know what it was, so no, I didn't have a view
 14 of it.
 15 Q. Okay. Up until today, have you ever
 16 participated in arbitration in any capacity, as a
 17 witness or a party or anything like that?
 18 A. No.
 19 Q. So I take it you've had no bad experiences
 20 with arbitration.
 21 A. No.
 22 Q. As I understand it, the Z-4 was a
 23 graduation present of sorts for you.
 24 A. Yes.
 25 Q. And you were the person that primarily did

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1 driver of the Mustang?
 2 A. Three years.
 3 Q. And is that when you got the Montero?
 4 A. Yes.
 5 Q. The -- was the Montero purchased at a car
 6 dealership?
 7 A. No.
 8 Q. Okay. Where was the Montero purchased
 9 from?
 10 A. A family friend.
 11 Q. And who purchased it?
 12 A. Mike Watts.
 13 Q. And what did you do with the Mustang?
 14 A. Sold it.
 15 Q. Just in a private sale?
 16 A. Private sale.
 17 Q. And you were the primary driver of the
 18 Montero up until you got the Z-4?
 19 A. Yes.
 20 Q. Aside from the transaction at Century BMW
 21 when you purchased the Z-4, had you ever signed an
 22 arbitration agreement before?
 23 A. No.
 24 Q. Had you ever before been requested to sign
 25 an arbitration agreement and refused for whatever

Page 21

1 the research in looking for a car before you
 2 purchased it; is that true?
 3 A. That's correct.
 4 Q. Can you describe for us what types of
 5 things you did -- how long did the process of
 6 looking for a car take from beginning to end?
 7 A. Can you rephrase? Like truly looking, or
 8 just kind of researching?
 9 Q. Well, when did you first start researching?
 10 A. Two months beforehand.
 11 Q. And about six months before you had come
 12 into Century BMW and test driven a car?
 13 A. Yes.
 14 Q. Were you looking to buy a car at the time?
 15 A. No, not really.
 16 Q. So was it more in the -- and I don't mean
 17 this disparagingly, but was it more in the nature of
 18 a joyride test drive than as part of a serious
 19 looking for a car?
 20 A. Well, I knew I would eventually, once I
 21 graduated, so I guess it was a joyride.
 22 Q. Okay.
 23 A. Just kind of checking out things.
 24 Q. What type of car did you test drive?
 25 A. 3 Series.

Page 22

1 Q. And you said you started researching a
2 couple of months before the actual purchase. What
3 did you do to start researching?
4 A. I looked at safety, insurance rates, what I
5 think the taxes would be. That's all.
6 Q. Did you start looking at different types of
7 models and makes of cars?
8 A. I did.
9 Q. And in what way did you do that?
10 A. Internet.
11 Q. And were there any particular sites you
12 looked at at the -- on the internet?
13 A. Probably Kelley Blue Book. Probably the
14 individual car websites, like manufacturer websites
15 type things.
16 Q. Did you look at all in purchasing a car
17 from a private individual as opposed to a car
18 dealership?
19 A. No.
20 Q. You know from at least your own past
21 experience that one option was you didn't have to go
22 to a car dealership at all, you could just buy it
23 from some individual that was looking to sell their
24 car, is that --
25 A. Yes.

Page 23

1 Q. How much before you purchased the Z-4 did
2 you actually go into a car dealership to look at
3 cars for the first time during this particular
4 search?
5 A. Maybe a month or two. Maybe a month or
6 two.
7 Q. And do you recall how many different car
8 dealerships you visited in the month or two prior to
9 coming into Century BMW?
10 A. Two.
11 Q. And what were they?
12 A. Ford in Greenville. I don't know --
13 Q. Is that Fairway Ford?
14 A. You might be correct.
15 Q. Over on Laurens Road?
16 A. Yes, sir.
17 Q. Okay. And did you test drive a Mustang
18 there?
19 A. Yes.
20 Q. And was that a new Mustang?
21 A. Yes, it was.
22 Q. And what other dealership did you go into?
23 A. Century BMW.
24 Q. So only one dealership other than Century
25 BMW?

Page 24

1 A. Yes.
2 Q. Did you visit a Ford dealership in
3 Greenwood?
4 A. Greenwood? Not that I remember.
5 Q. Were you aware of your father visiting
6 another Ford dealership about buying a -- possibly
7 buying a Mustang for you?
8 A. I don't remember.
9 Q. Had you -- prior to coming into the Century
10 BMW, had you talked to any other car dealerships by
11 phone or e-mailed back and forth with them or
12 anything?
13 A. No, I had not.
14 Q. Putting aside the test drive of whatever --
15 do you remember what car you test drove six months
16 before?
17 A. 3 Series.
18 Q. Oh, that's right. I already asked you
19 that. How long before you actually purchased the
20 car at Century BMW did you come into the dealership
21 during your search for a vehicle?
22 A. Can you please rephrase that question?
23 Q. Yes. Your father said that you -- your
24 first visit to Century BMW in connection with your
25 search was not the day you purchased the vehicle, is

Page 25

1 that right?
2 A. That is correct.
3 Q. Okay. How many days or weeks before you
4 actually purchased the vehicle did you first come
5 into Century BMW in connection with this search?
6 A. Can I just -- are you saying when I went
7 and test drove the one that I bought, how long
8 before I went in and purchased?
9 Q. Yes.
10 A. Three or four days.
11 Q. And on your first visit to the dealership,
12 did you go alone, or were you accompanied by anyone?
13 A. My father was with me, Mike Watts.
14 Q. And anyone else?
15 A. No.
16 Q. And when you got to the dealership, did you
17 know what car you wanted -- were interested in when
18 you first got there, or did you look around and
19 compare the various vehicles?
20 A. When I test drove or when I bought?
21 Q. When you came in three or four days before
22 you bought.
23 A. I was just looking around.
24 Q. Okay. And did you and your father look
25 around on your own, or were you accompanied by

Pages 22 to 25

Page 26

1 anyone from the dealership, or a little of both?

2 A. I don't -- I really don't remember.

3 Q. Okay. Do you remember at all having any

4 interactions with a salesperson that day?

5 A. No, I don't remember.

6 Q. Okay. Did you -- have you heard of a woman

7 called Elizabeth Courtney?

8 A. Yes.

9 Q. And who is Elizabeth Courtney?

10 A. She's the one we actually -- the day we

11 purchased it, we talked to.

12 Q. Okay. Do you recall whether you had any

13 conversations with her on the -- when you visited

14 three or four days before you purchased it?

15 A. I think we did, yes.

16 Q. Okay. And what, if anything, do you recall

17 about your conversations with her three or four days

18 before you purchased the car?

19 A. I don't remember.

20 Q. Who primarily interacted with her in that

21 visit, was it you or your father?

22 A. My father.

23 Q. And did you overhear whatever they were

24 saying, or were you off looking at cars while they

25 were talking?

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1 34,000-something was on there?

2 A. Something like that.

3 Q. Was it also written in the windshield or

4 anything like that?

5 A. Not that I remember.

6 Q. While you were at the dealership that day,

7 did you have any discussions with Ms. Courtney or

8 any other Century BMW employees about how much you

9 could buy the vehicle for?

10 A. No. That was later on the telephone.

11 Q. Okay. Did you understand when you were in

12 the dealership that the price was negotiable?

13 A. Yes.

14 Q. So you knew whatever that 34 figure was was

15 not a take-it-or-leave-it number?

16 A. Yes.

17 Q. Do you recall any discussions you had with

18 anyone from Century BMW during that visit that day?

19 A. No, I do not.

20 Q. Okay. Do you know whether your father had

21 any such discussions about pricing that day?

22 A. I do not know.

23 Q. And you left the dealership that day

24 without purchasing the car, right?

25 A. That is correct.

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1 A. I was looking at cars.

2 Q. Did you test drive one or more vehicles

3 during that visit?

4 A. I test drove the vehicle I bought.

5 Q. Okay. So -- and no other?

6 A. No other.

7 Q. When you test drove the vehicle, was anyone

8 with you in the car?

9 A. My father.

10 Q. Was the salesperson in the car?

11 A. It's a two-seater, so no.

12 Q. Did your father test drive the car?

13 A. I don't remember.

14 Q. Do you recall one way or the other whether

15 there was any pricing information about the vehicle

16 on the vehicle?

17 A. Yes.

18 Q. And what do you recall about that?

19 A. I remember it was around 31 -- about

20 32,000.

21 Q. And how was that displayed? Was that

22 displayed somewhere on or in the vehicle?

23 A. It was 34. Sorry. Yes, it had a big

24 sticker.

25 Q. Okay. And your recollection is the number

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1 Q. Why?

2 A. We wanted to -- I needed to look at my

3 budget and talk to our -- the finance people that we

4 work with and see what rate I could get and how much

5 I could get from them for the loan.

6 Q. Were you aware that Century BMW would

7 normally offer you financing for a purchase of a

8 vehicle there?

9 A. Yes.

10 Q. But you knew you didn't have to take

11 Century BMW's financing if you didn't want to; is

12 that fair?

13 A. That is correct.

14 Q. So you understood it wasn't a requirement

15 buying a vehicle at Century BMW that you enter into

16 a financing agreement with them.

17 A. That is correct.

18 Q. Did you ever ask, at any time, anyone from

19 Century BMW whether they could give you a better

20 rate than you were getting from your credit union?

21 A. No.

22 Q. You said you -- did you always intend to

23 finance with the credit union from the moment you

24 got to the dealership?

25 A. That is correct.

1 Q. Did you personally have any discussions
2 with the credit union about the terms of financing,
3 or did your father do that?
4 A. That would be my father.
5 Q. And was that done by phone?
6 A. That is correct.
7 Q. Were you present?
8 A. No, I was not.
9 Q. Did you sign any paperwork with the credit
10 union before coming back to Century BMW?
11 A. I did not. No.
12 Q. Do you know if your father did?
13 A. I have no idea.
14 Q. Did you visit the credit union in person
15 before coming back to Century BMW?
16 A. No, I did not.
17 Q. Do you know if your father did?
18 A. I have no idea.
19 Q. Okay. Before you came back to Century BMW,
20 had you already agreed on a bottom-line price for
21 the vehicle with Century BMW?
22 A. Yes.
23 Q. And how did that occur?
24 A. Via telephone.
25 Q. Okay. And who was it that dealt with

1 Century BMW by telephone?
2 A. My father, Mike Watts.
3 Q. And who -- who initiated the telephone
4 calls; did your father call them first?
5 A. That is correct.
6 Q. And had you had a -- prior to your father
7 calling Century BMW, had you discussed with your
8 father what your goal was in terms of a price for
9 the vehicle?
10 A. Yes.
11 Q. And do you recall what your goal was?
12 A. 31,000.
13 Q. 31,000?
14 A. That's correct.
15 Q. And was that after all taxes and whatever
16 else, or was it --
17 A. That's correct.
18 Q. Had you discussed with your father what
19 your worst-case scenario was so far as the cost of
20 the vehicle?
21 A. Yes, I did.
22 Q. And was that different than what your goal
23 was?
24 A. That is correct.
25 Q. Okay. And what was -- do you recall what

1 your bottom-line break point was?
2 A. 32,000, and it had to include the
3 maintenance warranty.
4 Q. Did you know one way or the other whether
5 the vehicle was still covered by the BMW warranty
6 that covers a new car?
7 A. I do not remember.
8 Q. This car was a 2004?
9 A. That is correct.
10 Q. And you were buying it in 2005; is that
11 right?
12 A. That's correct.
13 Q. The -- were you present when your father
14 was having telephone calls with someone at Century
15 BMW to discuss pricing?
16 A. Yes, I was.
17 Q. Do you -- was there one call or a number of
18 calls?
19 A. A number of calls.
20 Q. Do you recall how many approximately?
21 A. At least two.
22 Q. Do you know -- do you know one way or the
23 other who he was talking to?
24 A. Elizabeth Courtney.
25 Q. And do you know who made the first offer?

1 A. My father.
2 Q. And do you remember what it was?
3 A. No, I do not.
4 Q. Do you remember what the dealership's
5 response was?
6 A. No, I do not.
7 Q. Do you remember anything other than what
8 the final agreed figure was?
9 A. No, that's all I remember.
10 Q. Okay. And what was the final agreed
11 figure?
12 A. 32,000.
13 Q. And do you recall what day that was that --
14 was it the day after you were in the dealership or
15 the day before you came back to the dealership, or
16 can you place in time where it was?
17 A. I don't remember. I know that it was over
18 a weekend, and the credit union was closed, like a
19 Sunday. So there was some lapse of time. I don't
20 remember exactly.
21 Q. And after your father reached an agreement
22 on the price with Ms. Courtney -- do you know if he
23 talked to anyone else in the process?
24 A. On the telephone? Not that -- I do not
25 know

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1 Q. After he agreed upon the price, did you
2 then return to Century BMW in person?
3 A. That's correct.
4 Q. And did you know if anyone visited the
5 credit union in between those two events?
6 A. I do not know.
7 Q. Okay. Did you bring any paperwork to the
8 credit union from Century BMW?
9 A. I do not know.
10 Q. And what day of the week did you purchase
11 the vehicle; do you recall?
12 A. I do not know.
13 Q. When you went back to Century BMW, did you
14 go back alone or with anyone else?
15 A. With my father and mother.
16 Q. Okay.
17 A. Phyllis and Mike Watts.
18 Q. Okay. And your mother is Phyllis Watts?
19 A. That's correct.
20 Q. So this time, all three of you were
21 present?
22 A. That's correct.
23 Q. And did you all three pretty much stay
24 together during the time you were there?
25 A. No. My mother looked at cars.

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1 Q. Okay. So you -- you and your father dealt
2 with the transaction, and your mother --
3 A. That's correct.
4 Q. -- went to see if you could purchase yet
5 another vehicle?
6 A. That is correct.
7 Q. When you -- do you remember who you -- what
8 Century BMW employee you first dealt with on your
9 return visit to the dealership?
10 A. Elizabeth Courtney.
11 Q. Okay. And when you came in, did she come
12 and greet you?
13 A. That's correct.
14 Q. And did you have a discussion with
15 Ms. Courtney?
16 A. That's correct.
17 Q. And what do you recall about that?
18 A. We briefly discussed how excited I was
19 about the car, and that was about -- finished
20 looking at seeing the price, and that was about it.
21 Q. Did -- do you recall whether Ms. Courtney
22 had you sign any document or documents?
23 A. We may have signed the price with her, and
24 then we ended up talking to a different guy for the
25 rest of it.

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1 Q. Do you recall that there was a handwritten
2 document that you -- a pre-printed, with numbers
3 written in by hand, that you signed?
4 A. Pre-printed?
5 Q. A pre-printed buyer's order, but whereas
6 the final contract would have all the numbers
7 typewritten, this was a handwritten?
8 A. Can you tell me what -- did it say anything
9 particular other than the price?
10 MR. BLACK: Can you put in front of her the
11 Exhibit 1 that was marked this morning?
12 A. (Viewing document.) I don't remember
13 signing this.
14 BY MR. BLACK:
15 Q. Okay. Exhibit 1 is a collection of
16 documents. I'll represent to you it's the
17 dealership's file on your transaction.
18 A. Okay.
19 Q. If you turn to the page -- you see there
20 are little numbers that have been printed in the
21 bottom right-hand corner. If you could turn to Page
22 CBM-0000025.
23 A. 00, what did you say?
24 Q. 25.
25 MR. THOMAS: Have you got an extra copy?

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1 MR. BLACK: Yeah. I'm sure the answer is
2 yes. I have one more.
3 MR. THOMAS: That's for my illustrious
4 co-counsel there. Thank you.
5 A. Retail Buyer's Order?
6 BY MR. BLACK:
7 Q. Yes.
8 A. Okay.
9 Q. And you see that the information in all the
10 boxes has been filled out by hand on that form.
11 A. I see that, yes.
12 Q. And it totals out to the price you
13 testified before, about 32,000?
14 A. Yes.
15 Q. And do you know if -- who -- is that your
16 signature at the bottom of the page where it says,
17 co-buyer?
18 A. Yes.
19 Q. And do you recall who gave you this
20 document to sign?
21 A. I do not remember.
22 Q. Did -- was there any further discussion
23 with Ms. Courtney about the terms of the sale, any
24 terms of the sale?
25 A. Not that I remember.

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1 Q. Okay. And she then introduced you to
2 another person at the dealership?
3 A. That is correct.
4 Q. And do you recall what his name was?
5 A. Corey, maybe. I know he's the finance --
6 he was the finance guy.
7 Q. And Ms. -- Ms. Courtney, was she always
8 professional in her dealings with you?
9 A. Yes, she was.
10 Q. Always nice?
11 A. Very much so.
12 Q. Didn't put any undue pressure on you?
13 A. No.
14 Q. The same for Corey?
15 A. He was -- what do you mean?
16 Q. Did he -- was he a nice person to you,
17 behaved professionally?
18 A. He did.
19 Q. Okay. Did he -- didn't put any undue
20 pressure on you?
21 A. About the warranty a little bit, yes.
22 Q. Okay. So he tried to sell you a warranty?
23 A. That's correct.
24 Q. Okay. We'll get to that. The -- and what
25 did you understand Corey's position was at the

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1 Q. Is that a yes?
2 A. That's -- yes.
3 Q. And your father's signature appears at the
4 bottom of that page in the right?
5 A. That's correct.
6 Q. And do you recall Corey going through this
7 menu with you, trying to sell you the various
8 products listed?
9 A. Yes.
10 Q. And how long did that process take, if you
11 recall?
12 A. Maybe 30 minutes.
13 Q. Okay. And that's 30 minutes of him trying
14 to sell you products as opposed to 30 minutes being
15 in the office altogether?
16 A. I think so.
17 Q. Okay.
18 A. Yes.
19 Q. And were you eager to get out of the
20 office?
21 A. Yes.
22 Q. You wanted to go drive your car?
23 A. That's correct.
24 Q. The -- notwithstanding whatever aggressive
25 sales techniques Corey used, you declined to buy any

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1 dealership?
2 A. I didn't understand his position.
3 Q. Okay. Where did you meet with Corey?
4 A. In his office.
5 Q. And was that in a little cubicle-like
6 office of the dealer showroom?
7 A. That's correct.
8 Q. And who was present?
9 A. Him, me, and my father.
10 Q. And as between you and your father, who did
11 most of the talking with Corey?
12 A. My father.
13 Q. Okay. Did you do any talking?
14 A. No.
15 Q. The -- I think you told us Corey tried to
16 sell you a warranty.
17 A. That's correct.
18 Q. And did he also try to sell you a number of
19 other products?
20 A. Yes, that's correct.
21 Q. And let me ask you to turn to Page CBM,
22 five zeros, and then a 2, so the second page of the
23 document. Do you see that's a document entitled
24 Century BMW Menu of Investment Enhancements?
25 A. Uh-huh

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1 of these agreements, is that fair?
2 A. That is not correct. We did buy one of the
3 maintenance agreements.
4 Q. Did you buy it while you were buying the
5 car?
6 A. Yes.
7 Q. Okay. So if your father testified that you
8 didn't buy it until the car was approaching
9 50,000 miles, would he be incorrect?
10 A. No, that was correct. It was included --
11 I'm sorry -- in the initial -- we upgraded it after
12 50,000 miles.
13 Q. Okay. Do you remember when that was?
14 A. April, May of this year.
15 Q. Okay. So about eight months after you sued
16 the dealership?
17 A. That's correct.
18 Q. And you bought it --
19 A. I guess.
20 Q. And you bought it from the dealership?
21 A. That's correct.
22 Q. And the warranty you're referring to, if
23 you turn to the next page, the third page of the
24 document, do you see that it indicates that it's
25 still under the factory warranty?

Pages 38 to 41

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1 A. Yes.
 2 Q. So it was when that -- when the factory
 3 warranty was about to expire is when you, what you
 4 said, upgraded to the extended service plan.
 5 A. That's correct.
 6 Q. Okay. But at the time you were in the
 7 dealership after hearing the 30-minute pitch from
 8 Corey, you declined to purchase any of the things he
 9 tried to sell you, is that right?
 10 A. That's correct.
 11 Q. So you knew that it wasn't a requirement of
 12 buying the vehicle at Century BMW that you enter
 13 into any of these agreements?
 14 A. That's correct.
 15 Q. Okay. And none of them were offered on a
 16 take-it-or-leave-it basis, that you can't get the
 17 car unless you get this.
 18 A. That's correct.
 19 Q. Once Corey got done trying to sell you
 20 investment enhancements, what was the next thing
 21 that happened? Was that the first thing you did
 22 when you came back to the -- his office?
 23 A. He did that while we were signing our
 24 papers.
 25 Q. Okay. So he did what while you were

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1 Q. It takes you 30 seconds to sign your name?
 2 A. Sometimes.
 3 Q. So if you spent ten minutes signing your
 4 name and it took you 30 seconds a time, you must
 5 have signed your name about 20 times.
 6 A. That may be correct.
 7 Q. What?
 8 A. That could be correct.
 9 Q. Okay. And if it was 15 minutes, then it
 10 could be about -- it could be, if it took you 30
 11 seconds a time, 30 times you signed your name.
 12 A. That could be correct.
 13 Q. Okay. Did you -- I forget what you
 14 answered. Did you review the documents you were
 15 being asked to sign?
 16 A. Nothing but the price.
 17 Q. Okay. Did Mr. -- did Corey do anything to
 18 prevent you from reviewing the documents?
 19 A. No.
 20 MR. BLACK: I'm going to take a break.
 21 THE WITNESS: Okay.
 22 (A recess transpired.)
 23 BY MR. BLACK:
 24 Q. Ms. Watts, could you get Exhibit 1 back in
 25 front of you. And could I ask you to thumb through

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1 signing your papers?
 2 A. Was selling us the warranties while we were
 3 signing all our documents.
 4 Q. Okay. How many documents do you recall
 5 signing?
 6 A. I have no idea.
 7 Q. More than 30?
 8 A. I have -- I do not remember.
 9 Q. 20?
 10 A. I have no idea.
 11 Q. How long did it take to sign -- sign your
 12 names as many times as you signed it?
 13 A. Me? Probably ten minutes.
 14 Q. Ten minutes, so you were --
 15 A. Ten, 15 minutes.
 16 Q. So it's your testimony for ten or 15
 17 minutes, you were signing your name over and over
 18 again to documents?
 19 A. That's correct.
 20 Q. And were you reading the documents as you
 21 signed them?
 22 A. No.
 23 Q. How long does it take you to sign your
 24 name?
 25 A. Maybe half a minute.

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1 the entire exhibit and identify for me each of the
 2 pages in the exhibit in which your signature
 3 appears?
 4 A. Would you like me to do it along and along,
 5 or --
 6 Q. Yeah. How about, what's the first page on
 7 which your signature appears?
 8 A. Number 1.
 9 Q. Okay. What's the next page on which your
 10 signature appears?
 11 A. 5.
 12 Q. Okay. What's the next page on which your
 13 signature appears?
 14 A. 14.
 15 Q. Okay. We're up to three. What's the next
 16 page on which your signature appears?
 17 A. Technically, 21.
 18 Q. 21 is --
 19 A. That's my driver's license.
 20 Q. -- was your driver's license. You didn't
 21 sign that at the dealership, right?
 22 A. No.
 23 Q. Okay. So why don't we ignore 21. And what
 24 is the next page on which your signature appears?
 25 A. 25.

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1 Q. We're up to four. And what's the next page
2 after 25 on which your signature appears?
3 A. 31.
4 Q. And the next page? We're up to five.
5 A. 42.
6 Q. Up to six. Is there any other page on
7 which your signature appears?
8 A. No.
9 Q. So if these are the documents from the
10 transaction file, you signed your name six times?
11 A. Some of them I signed more than once.
12 Q. Okay. So six -- how many -- did you count
13 how many you signed more than once?
14 A. No, I did not.
15 Q. Okay. So you signed six separate
16 documents.
17 A. Uh-huh.
18 Q. Okay. Did you object to signing any of the
19 documents that you were given to sign while you were
20 in the dealership?
21 A. Of course not. I just wanted the car,
22 so --
23 Q. Okay. But you -- whether or not you wanted
24 the car, did you voice any objection to signing any
25 of the documents you were given?

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1 A. No.
2 Q. Okay. Did you ask any questions about any
3 of the documents you were given?
4 A. No.
5 Q. Did you voice any complaints about any of
6 the documents you were given?
7 A. No.
8 Q. Am I correct that the -- as you were
9 thumbing through the documents you signed, one of
10 them was an arbitration agreement?
11 A. That's correct.
12 Q. And am I correct that to your recollection,
13 nothing at all was said orally about that
14 arbitration agreement in the office with Carey?
15 A. That is correct.
16 Q. Okay. So no one said to you that you were
17 required to sign that document in order to get the
18 vehicle, is that fair to say?
19 A. That's correct.
20 MR. BLACK: That's all I have.
21 MR. THOMAS: Can we take a quick break?
22 (A recess transpired.)
23 EXAMINATION
24 BY MR. SPEARS:
25 Q. Christine, I'm Mike Spears. When is the

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1 first time you and I have met?
2 A. Today, before I got here.
3 Q. Okay. Did we talk about the case at all
4 that you recall?
5 A. No.
6 Q. Okay. Let me show you a copy of
7 Plaintiff's (sic) Exhibit 1, which is allegedly the
8 dealer's file with the documents from your
9 transaction. Do you remember which documents were
10 gone over during your deposition by Mr. Black when
11 he asked you which documents you signed and what was
12 told to you about it? I'm not asking you every
13 document you signed. But he asked you which
14 documents you thought you had to sign.
15 MR. BLACK: Objection. I didn't ask that.
16 MR. SPEARS: Okay.
17 BY MR. SPEARS:
18 Q. Which documents do you -- you certainly
19 signed the document of CBM-5, did you not?
20 A. That is correct.
21 Q. Okay. As we sit here today, do you know
22 what it is?
23 A. No.
24 Q. Do you -- did you know what it was when you
25 bought the car?

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1 A. No.
2 Q. Okay. Why did you sign it?
3 A. I thought I had to to get the car.
4 Q. Okay. Do you publish your personal
5 information on Facebook on the internet?
6 A. On Facebook? No, I do not.
7 Q. Okay. Are you in the habit of giving out
8 personal information write-n-tell to anybody?
9 A. No.
10 Q. Have you ever been cautioned by anyone not
11 to do that for whatever reason?
12 A. Yes, I have.
13 Q. Okay. Look at CBM-1. Did you sign that?
14 A. Yes.
15 Q. Okay. Did you know what it was when you
16 signed it?
17 A. No.
18 Q. Okay. Did you realize by signing CBM-1,
19 that you were being given notice to tell you how
20 they were going to use your non-public -- personal
21 information about you, and that they could release
22 it to market service providers amongst affiliates of
23 BMW Century -- and to other third parties, we may
24 share all private information about you as a
25 consumer, customer, or former customer with other

Pages 46 to 49

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1 non-affiliated parties as permitted by law. Did you
2 see that?
3 A. No, I did not. I did not read it.
4 Q. Okay. Did you know you were doing that
5 when you signed it?
6 A. No, I did not.
7 Q. Okay. Is it your habit to release personal
8 information to anyone?
9 A. Not usually.
10 Q. Okay. Let's go to Number 14. Okay? Was
11 CBM-14 passed to you?
12 A. I'm sure that it was in the packet.
13 Q. Okay. Is that your signature?
14 A. That is correct.
15 Q. Did you know what you were signing?
16 A. No, I did not.
17 Q. Why did you sign it?
18 A. I thought I had to to buy the car.
19 Q. Okay. In what way was any implication
20 given or any mood left with you that it was a
21 document necessary for you to buy the car?
22 MR. BLACK: Object to the form of the
23 question.
24 BY MR. SPEARS:
25 Q. Go ahead.

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1 A. Can you please repeat it?
2 Q. Certainly. Why did you think you had to
3 sign any or all of these documents in order to get
4 the car?
5 A. The way it was presented, I just thought I
6 had to sign everything.
7 Q. Okay. Now, were you in a small little
8 outside with Corey and your dad and yourself?
9 A. That is correct.
10 Q. All right. Was there a machine in there
11 that printed out these documents, and one by one
12 they were passed across the table to you?
13 A. I just remember a big packet.
14 Q. A big packet. Okay. Were the documents
15 removed from the packet by someone in the room, or
16 were they just clipped together like we kind of have
17 them clipped together right now?
18 A. That is how I remember it.
19 Q. Okay. What were you told about the packet?
20 Was it passed to you?
21 A. It was passed to me.
22 Q. Okay. And were you merely to look at it,
23 or were you told to do anything with the packet?
24 A. To basically sign. They had the little
25 bags.

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1 Q. All right. That's my point. How did you
2 know which pages to turn to to sign them?
3 A. Flags.
4 Q. I've got a little sticky, a little red
5 sticky, on this particular page. Were there little
6 flags similar to this?
7 A. That is correct.
8 Q. And were you told that you needed to sign
9 on every page with the flags?
10 A. Yes.
11 Q. Did you turn to that page and sign it?
12 A. That is correct.
13 Q. Did you read it before you signed it?
14 A. No.
15 Q. Okay. And did you know what any or all of
16 those pages meant as you signed them?
17 A. No.
18 Q. Okay. Now, let me ask you if you would
19 look with me at CBM-25. And CBM-25 has a purchase
20 price of what written in hand?
21 A. 32,980.
22 Q. Did you agree to that? Is that what you --
23 was that your breaking -- your break point, 32,980?
24 A. I --
25 MR. BLACK: Object to the form of the

Page 53

1 question.
2 BY MR. SPEARS:
3 Q. Go ahead.
4 A. I agreed to 32.
5 Q. Okay. Is that number higher than 32?
6 A. That's correct.
7 Q. Did you in any way agree to pay that
8 number?
9 A. No.
10 Q. Okay. The next says: Additional options.
11 And it has \$1604.50. Now, what can --
12 MR. BLACK: I apologize. What page are you
13 on?
14 MR. SPEARS: CBM-25.
15 BY MR. SPEARS:
16 Q. \$1,604.50. Does that appear, as you look
17 at it, to be a -- is there a minus in front of that?
18 A. No, there's not.
19 Q. Does that -- does that appear -- I mean,
20 you're an accounting master's graduate. Does that
21 appear to be in addition to 32,980, without looking
22 at the numbers below it?
23 A. It appears to be.
24 MR. BLACK: Object to the form of the
25 question.

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1 BY MR. SPEARS:
 2 Q. Okay. Does it in any way appear to be
 3 something that's going to be subtracted from that as
 4 an additional option?
 5 A. No, it doesn't.
 6 Q. Okay. Can you buy an option that you're
 7 familiar with from a car company where it will
 8 depreciate the cost of the car?
 9 A. No, I do not.
 10 Q. Okay. Yet does the total number show that
 11 1604.50 has been subtracted from 32,980?
 12 A. That's correct.
 13 Q. Did you know what in the world that's for?
 14 A. No, I do not.
 15 Q. Did you know then?
 16 A. No, I did not.
 17 Q. Okay. Then sales tax is put down in the
 18 amount of what?
 19 A. 300.
 20 Q. And then a transfer of license is put down
 21 in the amount of what?
 22 A. 25.
 23 Q. And then pre-printed on here is a charge,
 24 and what's that for?
 25 A. I have no idea.

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1 was.
 2 BY MR. SPEARS:
 3 Q. Okay. If I went through the rest of these
 4 documents where your sig- signature appears on 31
 5 and 42, did you have any idea what you were signing?
 6 A. No, I did not.
 7 Q. Okay. On Page 42, CBM-42, okay, what's the
 8 total price shown there?
 9 A. 32,000.
 10 Q. Okay. Did you know what this is?
 11 A. No, I did not.
 12 Q. Okay. As you read it today, what does it
 13 say?
 14 A. Retail Buyer's Order.
 15 Q. Okay. Do you see anywhere on here - have
 16 you read it, by the way, word for word?
 17 A. No, I have not.
 18 Q. Okay. Have you - do you see or did you
 19 see - well, if you've never read it, you wouldn't
 20 know whether the Retail Buyer's Order references any
 21 other document or not, would you?
 22 MR. THOMAS: Object to the form of the
 23 question.
 24 A. I would not.
 25 BY MR. SPEARS:

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1 Q. What does it say?
 2 MR. BLACK: Let me just object that this
 3 has extended beyond what the scope of what the Court
 4 allowed this deposition for. And it's your client,
 5 so you can ask whatever you want, but the -
 6 MR. SPEARS: It's for arbitration. I'm
 7 getting to -
 8 MR. BLACK: I don't think it is for
 9 arbitration, but go on.
 10 BY MR. SPEARS:
 11 Q. What does it say it's for?
 12 A. Recording and processing fees.
 13 Q. Okay. And what did the total end up being?
 14 A. 32,000.
 15 Q. So somehow or another it ended up being
 16 exactly what your break point was?
 17 A. That's correct.
 18 Q. Okay. Did you sign that document?
 19 A. Yes, I did.
 20 Q. Okay. Did you think 1604 was being added
 21 to or subtracted from your car, or did you have any
 22 idea about that number?
 23 A. I didn't have -
 24 MR. BLACK: Object to the form
 25 A. I didn't have any idea what that number

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1 Q. Okay. Okay. Now, you were not required to
 2 sign it in any regard, but do you have any idea what
 3 CBM-45 concerns?
 4 A. Just a checklist.
 5 Q. Okay.
 6 A. Everything we had to sign.
 7 Q. It's a check -
 8 MR. BLACK: Excuse me. Could you - could
 9 you read back that answer?
 10 THE COURT REPORTER: I missed that last
 11 part where he interrupted.
 12 MR. BLACK: Did you get the checklist of -
 13 THE COURT REPORTER: Just a checklist.
 14 MR. BLACK: And did you get what she said
 15 after that?
 16 THE COURT REPORTER: I did not. That's
 17 what I missed.
 18 A. - of everything we had to sign.
 19 BY MR. SPEARS:
 20 Q. Okay. Now, you didn't sign this checklist,
 21 did you?
 22 A. No.
 23 Q. Okay. And have you looked over it since
 24 the time that the lawsuit was brought?
 25 A. Yes.

Pages 54 to 57

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1 Q. Okay. Are there things here that are not
2 checked off with checks?
3 A. Yes.
4 Q. Okay. Did you finance the car through BMW?
5 A. No.
6 Q. Okay. Okay. Were you of the opinion you
7 had to buy -- that you had to sign the documents
8 where presented with the flags in order to get the
9 car, or not?
10 MR. BLACK: Object to the form of the
11 question.
12 A. Yes.
13 BY MR. SPEARS:
14 Q. Okay. Any doubt in your mind about that?
15 MR. BLACK: Object to the form of the
16 question.
17 A. No.
18 BY MR. SPEARS:
19 Q. As to that being your opinion at the time?
20 A. There's no doubt in my mind.
21 Q. Okay. And how far in your education
22 process had you gone when you bought this car?
23 A. I had not completed my master's degree.
24 Q. Okay.
25 A. I was within a month or two.

1 A. That's correct.
2 Q. It was in fine working order?
3 A. Yes.
4 Q. So you could have continued to drive that
5 car to work; would that be fair to say?
6 A. Yes. It just had a lot of mileage.
7 Q. Okay. You didn't need to buy a convertible
8 BMW Z-4 luxury automobile to get to and from work,
9 fair?
10 A. Fair.
11 Q. Your job is an auditor?
12 A. That's correct.
13 Q. And as an auditor, you spend a lot of time
14 reviewing documents; is that fair to say?
15 A. Yes.
16 Q. And you spend a lot of time with numbers;
17 is that fair to say?
18 A. That's correct.
19 Q. And it's important when you're reviewing
20 documents as an auditor that you do so carefully,
21 right?
22 A. Yes.
23 Q. And you're trained in reviewing documents
24 carefully as an auditor.
25 A. Yes.

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1 Q. So would it be fair to say you had a
2 baccalaureate and were at the end of your master's?
3 A. That's correct.
4 Q. Okay. And you had been the primary driver
5 of four previous vehicles?
6 A. That's correct.
7 MR. SPEARS: Okay. Give us a second.
8 (A discussion was had off the record and
9 out of the hearing of the court reporter.)
10 BY MR. SPEARS:
11 Q. Why did you need this car? What were you
12 going to utilize it for?
13 A. Work purposes.
14 Q. Okay. Did you need a way to and from work?
15 A. I did.
16 Q. Was this going to be your primary source of
17 transportation?
18 A. It was.
19 Q. Okay. Did you need the car?
20 A. I needed a car.
21 MR. SPEARS: Okay. That's all I have.
22 EXAMINATION
23 BY MR. BLACK:
24 Q. You were driving a Mitsubishi Montero at
25 the time?

1 Q. And at the time you purchased this
2 automobile, you were a couple of months from a
3 master's degree in accounting; is that fair?
4 A. That's correct.
5 Q. So you have some facility with numbers; is
6 that fair to say?
7 A. Yes.
8 Q. Okay. Look at CBM-000001, which was one of
9 the documents that Mr. Spears discussed with you.
10 Do you recall that?
11 A. I do.
12 Q. And he read you some language about sharing
13 private information with other third-party
14 affiliates and the like; do you recall that?
15 A. Yes.
16 Q. Would you agree with me that as he read the
17 language, there was nothing unclear about the
18 language?
19 A. That is correct.
20 Q. You understood what the language meant when
21 he read it to you?
22 A. Yes.
23 Q. And had you read it at the dealership on
24 that day, you would have understood it then?
25 A. Yes.

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1 Q. A number of the documents in Exhibit 1 were
2 never shown to you while you were at Century BMW,
3 true?
4 A. That's correct.
5 Q. For example, there are documents in the
6 stack that include the commission vouchers for the
7 salesperson?
8 A. That's correct.
9 Q. And so it would not be accurate to say that
10 this stack of documents was presented to you in the
11 F and I office at Century BMW, true?
12 A. That is correct.
13 Q. And, in fact, a stack of documents that
14 actually contained your signature would be a stack
15 six documents high, right?
16 A. That is correct.
17 Q. Let me ask you to turn to Page CBM-0025.
18 Mr. Spears called your attention to the 32,980
19 number at the top. Do you see that?
20 A. Yes.
21 Q. Can you subtract in your head for me
22 1604.50 from 32,980?
23 A. Yes, I can.
24 Q. Does it come to \$31,375.50?
25 A. Yes.

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1 Q. So, in fact, the 1604.50 is being
2 subtracted from the 32,980 on this form, fair?
3 A. That's correct.
4 Q. And the numbers then total out to add up to
5 the bottom-line figure you agreed to, 32,000, right?
6 A. That is correct.
7 Q. Let me ask you to turn to Page 45. Is it
8 fair to say the checklist on Page 45 includes many
9 more documents than you actually signed?
10 A. That is correct.
11 MR. BLACK: I have nothing further.
12 EXAMINATION
13 BY MR. SPEARS:
14 Q. Okay. Just to follow up on the questions
15 that you were asked you in reply, on CBM-1, you were
16 asked whether or not if you had read it at the time,
17 you would be able to understand it?
18 A. That's correct.
19 Q. You indicated that you could if you had
20 read it?
21 A. Uh-huh.
22 Q. If you had read it and understood it and
23 knew that you didn't have to sign it in order to get
24 the car, would you have signed it?
25 A. No.

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1 Q. Okay. If you thought you had to get it --
2 had to sign it in order to get the car, would you
3 have signed it?
4 MR. BLACK: Object to the form of the
5 question.
6 A. Yes.
7 BY MR. SPEARS:
8 Q. Okay. Would the same be true of the other
9 documents you signed?
10 A. That is correct.
11 Q. Okay. Now, out of the packet that was
12 presented to you, were there documents in the packet
13 that your father signed that you did not sign?
14 A. That is correct.
15 Q. But they were in the packet, though?
16 A. That's correct.
17 Q. Okay. Were there documents in the packet
18 that you didn't have to sign at all?
19 A. Yes.
20 Q. Okay. So can we say that the packet itself
21 merely had six documents in them, all requiring your
22 signature, or did it have more than that?
23 A. It had more than that.
24 MR. SPEARS: All right. That's all I have.
25 MR. BLACK: Do you have the transcript up

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1 on the page?
2 THE COURT REPORTER: Uh-huh. What are
3 you looking for?
4 MR. BLACK: Go on back a few questions.
5 (Viewing transcript on the computer
6 screen.)
7 MR. BLACK: Oh, I remember. I have no
8 questions. Thank you. Can we stipulate that the
9 exhibit is the same as this morning?
10 MR. THOMAS: Yes. Not a problem.
11 (Defendant's Exhibit Number 1, Dealership
12 transaction documents, was previously marked for
13 identification.)
14 (The deposition was concluded at 6:44 p.m.)
15
16
17
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19
20
21
22
23
24
25

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WITNESS/EXAMINATION

CHRISTINE WATTS

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REQUESTED INFORMATION INDEX

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(No information was requested.)

EXHIBITS

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I, Kathy P. Taylor, Registered Professional Reporter and Notary Public for the State of South Carolina at large, do hereby certify that the foregoing transcript is a true, accurate and complete record.

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

WITNESS MY HAND, I have hereunto
affixed my official seal this 31st day of
January, 2008, at Greenville County, South Carolina.

KATHY P. TAYLOR
REGISTERED PROFESSIONAL REPORTER
MY COMMISSION EXPIRES
JUNE 13, 2017

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

HEATHER HERRON, ET. AL.

Plaintiffs,

vs.

CARMAX AUTO SUPERSTORES, INC. ET.
AL.

Defendants.

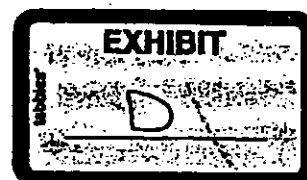
) IN THE COURT OF COMMON PLEAS

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

) AFFIDAVIT OF CHRISTINE
) WATTS

PERSONALLY APPEARED before me, Christine Watts, being duly sworn, deposes and states that:

1. I am a named Plaintiff in this action and am competent to testify to the matters stated herein.
2. On June 25, 2005 I purchased a 2004 BMW from Defendant Sonic Automotive, Inc. d/b/a Century BMW. A copy of my Retail Buyer's Order is attached as Exhibit A.
3. The 2004 BMW was purchased to be and is my primary source of transportation.
4. I was hastily given other paperwork which the dealership required me to sign. This paperwork included the "Arbitration Agreement" that is attached as Exhibit B.
5. The "Arbitration Agreement" was not discussed or explained to me and was given to me on a "take it or leave it" basis.
6. I did not participate in the drafting of the "Arbitration Agreement" and had no



voice in the formulation of its terms.

7. At the time of my purchase I did not understand the implications of arbitration or possess the experience necessary to make me aware of the implications of arbitration.
8. I did not have a lawyer present to provide me assistance in the execution of the paperwork required to purchase the 2004 BMW.

Further affiant sayeth not.

SWORN TO AND SUBSCRIBED BEFORE ME)

this ____ day of April 3, 2007)

Cynthia J. Speed)
Notary Public for the State of South Carolina)
My Commission Expires: 12-5-15)

Christine Watts
Christine Watts

EXHIBIT A

02030

09/06/2006 08:39 FAX 86424 J8

LANUAMERICA

4-2885 15:58 FROM: CENTURY BMW SERVICE 8642975929

TO: 18832275683

P.1

CENTURY BMW CENTURY MINI		RETAIL BUYER'S ORDER	
2750 LAURENS ROAD • GREENVILLE, SC 29607 PHONE (864) 234-6437 WWW.CENTURY-BMW.COM • WWW.CENTURY-MINI.COM		Name: <u>Michael M Watts or Christine M. Watts</u> Address: <u>210 Providence Sq. Greenville SC 29615</u> Phone: <u>864-270-7396</u>	
Date: <u>6-25-05</u>	Stock No.: <u>15514</u>	Employer: <u>864-270-7396</u>	
Salesperson: <u>Elizabeth Courtney</u>		Email Address: _____	
PURCHASE	☐ NEW ☐ DEMO ☐ PRE-OWNED ☐ FACTORY CAR	Year: <u>04</u> Make: <u>Bmw</u> Body Type: <u>24</u> Series: <u>24</u>	PRICE: including taxes, license & service charges: <u>32980</u>
	Cylinders: <u>4</u> Serial No.: <u>4U5BT33554L550759</u>	COLOR: Exterior: <u>1</u> Interior: _____	Additional Options: <u>\$1,604.50</u>
	OPTIONS: ☐ PREMIUM PACKAGE ☐ SPORTS PREMIUM PACKAGE ☐ SPORTS PACKAGE ☐ COLD WEATHER PACKAGE ☐ ACTIVITY PACKAGE ☐ CONVENIENCE PACKAGE ☐ MOON ROOF ☐ LEATHER UPHOLST. ☐ PREMIUM SOUND ☐ IN DASH CD ☐ CD CHANGER ☐ HEATED SEATS ☐ ON BOARD COMPUTER ☐ ALLOY WHEELS ☐ CRUISE CONTROL ☐ MANUAL	ENGINE: ☐ TRANSMISSION: ☐ AUTOMATIC ☐ MANUAL	
	Mileage: <u>15514</u>		TOTAL: <u>31375.50</u>
TRADE	Year: _____ Make: _____ Body Type: _____ Series: _____	COLOR: Exterior: _____ Interior: _____	Agreement on Trade-In: _____
	Cylinders: _____ Serial No.: _____		Cash Difference: _____
	Mileage: _____ Options: _____		SC Sales Tax: <u>300</u>
			TOTAL: <u>32000</u>
BALANCE OWED TO: _____ Name & Address: _____		Name & Address: _____	
Phone: _____ Contact: _____		Phone: _____ Contact: _____	
Effective Dates: _____		Effective Dates: _____	
DISBURSEMENT INFORMATION: _____ Company Name: _____		Policy # _____ Effective Dates: _____	
Agent: _____ Phone: _____		Drivers License # _____	
Remarks: _____		Cash on Delivery: _____	
		BALANCE DUE: _____	

READ CAREFULLY: Century BMW / Century Mini agrees to sell and the Buyer(s) agree to purchase the vehicle as above described at the price set forth. The Buyer shall remit full payment of the entire balance due on or before _____. This Buyer's Order constitutes the entire agreement between the parties and may not be changed except by an instrument in writing signed by the party to be charged.

Buyer

Co-Buyer

Must be countersigned by an officer of the Company

☐ USED CAR CONTRACTUAL DISCLOSURE STATEMENT: - "The information you see on the window form (Buyer's Guide) for this vehicle is part of the contract. Information on the window form overrides any contrary provisions in the contract of sale."

NEW VEHICLE

DISCLAIMER OF WARRANTIES: - I have read, understood and accept all provisions of the Manufacturer's Warranty Statement covering this new vehicle that I am purchasing. Furthermore, I understand that all warranties on this vehicle are those of the manufacturer. The seller, Century BMW / Century Mini, hereby expressly disclaims all warranties, either expressed or implied, including any implied warranty of merchantability or fitness for a particular purpose and Century BMW / Century Mini, neither assumes nor authorizes any person to assume for it any liability in connection with the sale of this vehicle. This disclaimer in no way affects the provisions of the manufacturer's warranty.

Purchaser's Signature X _____

This agreement between the undersigned buyer(s) and dealer is incorporated by reference into and is made a part of any separate retail installment or credit sale agreement between the undersigned buyer(s) and dealer ("Retail Financing Agreement"). Notwithstanding anything to the contrary in any other document, if there is a Retail Financing Agreement the undersigned buyer(s) understand and agree that the transaction evidenced by this agreement and the Retail Financing Agreement is contingent upon credit approval by, and assignment of the Retail Financing Agreement to, a third-party financial institution. If the Retail Financing Agreement is not accepted by a third-party financial institution, you must immediately return the vehicle to the dealer, and the entire transaction evidenced by this agreement and the Retail Financing Agreement and this agreement shall be null and void.

Signed _____ (Buyer) Signed _____ (Dealer)
Signed _____ (Buyer)

02031

EXHIBIT B

ARBITRATION AGREEMENT
(All States Except CA)

DATE: 6.25.05

VIN: 4U6AT73354LS92759

In this Arbitration Agreement ("Agreement"), "you" and "your" refers to the customer(s) who sign(s) below. "We", "us", and Dealer refer to the Dealer signing below, and includes the Dealer's employees, agents, and parent and affiliated companies (including, but not limited to, Commerce Acceptance Corporation) and their employees and agents. "Parties" refers to you and us. "Vehicle" refers to the automobile identified by the VIN set forth above. "Claim(s)" includes any and all disputes, claims or controversies between the Parties relating to the Vehicle or arising out of or relating to: (a) the application for and the terms of and enforceability of the sale, lease, or financing of the Vehicle, (b) the purchase or terms of any warranty, service agreement, maintenance plan, paint/undercarriage/interior protection product, anti-theft locking product and warranty, GAP protection, deficiency waiver addendum, or any or other products or insurance, (c) any claims of breach of contract, negligence, misrepresentation, conversion, fraud, or unfair and deceptive trade practices, (d) any claim of a violation of any state or federal statute or regulation, or (e) the Vehicle's condition, warranty, workmanship, servicing, maintenance or repair. All Claims must be brought within the time allowed by the applicable statute(s) of limitation. "Contract(s)" refers to any agreement(s) between you and us regarding the sale, lease, financing, service or maintenance of the Vehicle.

Upon the request of a Party, any and all Claim(s) shall be decided in binding arbitration before the American Arbitration Association (1-800-778-7879/www.adr.org) ("AAA"). The Parties may mutually agree to use another arbitration forum and/or qualified arbitrator. Unless mutually agreed otherwise between the Parties, any arbitration under this Agreement shall be conducted under the commercial arbitration rules of the AAA. To the extent that any Claim is deemed a "consumer dispute", the Parties agree that the fee schedule provided in the rules for consumer disputes of the AAA, if any, will apply. You can get a copy of the rules from the AAA. The arbitration hearing shall be conducted, at your option, in the federal district in which you reside or in which the Vehicle was purchased or leased.

The Parties waive the right to request arbitration for a Claim filed and maintained individually (as opposed to a class action) in your state's small claims court, if any. However, if such a Claim originally brought in small claims court is transferred or removed to a higher state or federal trial court, the Parties reserve their right to request arbitration under this Agreement.

The Parties agree that once one of the Parties has elected to arbitrate, binding arbitration is the exclusive method for resolving any and all Claims. By entering into this Agreement the Parties are waiving their right to a jury trial and their right to bring or participate in any class action or multi-plaintiff or classmate action in court or through arbitration. Until a Party entitled to do so requests arbitration under this Agreement, any party to this Agreement may proceed with all other rights and remedies they may have. Neither you nor we waive our right to request arbitration under this Agreement, even after all Parties have elected to litigate a Claim in court, in the event new Claims are asserted after the initial filing of such litigation in court.

The arbitrator shall be an attorney or retired judge. The arbitrator shall apply and be bound by governing local, state or federal law when making an award, and shall award only those damages or other relief allowed by such governing law. Issues regarding whether a matter is arbitrable shall be made by the arbitrator. The arbitrator shall prepare a written decision stating reasoned findings of fact and conclusions of law. A party may seek entry of a judgment on the award in any court of competent jurisdiction.

If you initiate a Claim for Arbitration under this Agreement, we agree to pay that portion of the AAA's initial filing fee which exceeds the lesser of the court filing fee for the state or federal court located in the jurisdiction in which you reside. If we initiate a Claim for arbitration we will pay the entire initial filing fee. We also agree to pay up to \$1500 of the arbitrator's fees, unless applicable law or the rules of the AAA require otherwise. Unless applicable law or the rules of the AAA require otherwise, the Parties agree to share equally all other costs and fees, including the arbitrator's fees in excess of \$1500. Notwithstanding any other provision of this Agreement, we will also pay any amount of fees or costs that a court or the arbitrator decides we must pay in accordance with applicable law for this Agreement to be enforceable. The arbitrator deciding the Claim(s) shall have the authority to award fees, costs, injunctive or equitable relief in accordance with this Agreement and applicable law. Unless otherwise ordered by the arbitrator in accordance with applicable law or provided otherwise by applicable law, the Parties shall be responsible for the payment of their own attorney's ("") fees.

This Agreement evidences a transaction involving interstate commerce. The Parties acknowledge and agree that the Federal Arbitration Act (9 U.S.C. § 1 et seq.) ("FAA") shall govern any arbitration under this Agreement. The arbitrator's decision shall be final and binding, except for any right of appeal provided by the FAA or the rules of the AAA.

If any part of this Agreement shall be deemed or found unenforceable for any reason, the remainder of the Agreement shall remain enforceable. In the event this Agreement is found void you and we waive our respective rights to a trial by jury, if such waiver is permitted by applicable law.

This Agreement shall survive the repayment of all amounts owed by you with respect to the Vehicle. This Agreement is incorporated into and made a part of all Contract(s) as defined in this Agreement. If there is a separate arbitration agreement in any other Contract, then to the extent this Agreement is inconsistent with any such arbitration agreement this Agreement shall supersede such other arbitration agreement with respect to Claims between you and us, unless otherwise provided by law.

- EITHER YOU OR WE MAY CHOOSE TO HAVE ANY DISPUTE BETWEEN US DECIDED BY ARBITRATION AND NOT IN COURT.
- IF A DISPUTE IS ARBITRATED, YOU AND WE WILL EACH GIVE UP OUR RIGHT TO A TRIAL BY THE COURT OR BY A JURY.
- IF A DISPUTE IS ARBITRATED, YOU WILL GIVE UP YOUR RIGHT TO PARTICIPATE AS A CLASS REPRESENTATIVE OR A CLASS MEMBER ON ANY CLASS CLAIM YOU MAY HAVE AGAINST US, INCLUDING ANY RIGHT TO CLASS ARBITRATION OR ANY CONSOLIDATION OF INDIVIDUAL ARBITRATIONS.
- THE INFORMATION YOU AND WE MAY OBTAIN IN DISCOVERY FROM EACH OTHER IN ARBITRATION IS GENERALLY MORE LIMITED THAN IN A LAWSUIT.
- OTHER RIGHTS THAT YOU AND WE WOULD HAVE IN COURT MAY NOT BE AVAILABLE IN ARBITRATION.
- YOUR AND OUR RIGHTS TO APPEAL OR CHANGE AN ARBITRATION AWARD IN COURT ARE VERY LIMITED.

BY SIGNING BELOW, THE PARTIES ACKNOWLEDGE THAT THEY HAVE READ AND AGREE TO THE TERMS OF THIS ARBITRATION AGREEMENT

Customer: [Signature]

Dealer: [Signature]

Customer: [Signature]

Its: _____

SOUTH CAROLINA UNDER 21 UNTIL
DEPARTMENT OF PUBLIC SAFETY 03-05-2002
DRIVER'S LICENSE

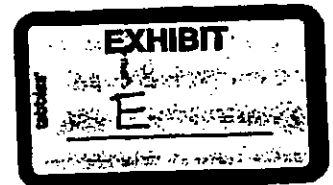
WATTS, CHRISTINE MICHELLE
210 PROVIDENCE SQ.
GREENVILLE SC 296133225

DL#: 007735685
Expires: 03-05-2008

Class: D Hgt: 5-03 Wgt: 110
Sex: F DOB: 03-05-1981
Issued: 03-30-2001 Z3027 M 4



Christine Watts
Restrictions: None



04015

DEALERSHIP NAME CENTURY **PRIVACY NOTICE**

In accordance with federal regulations, we are giving you this notice to tell you how we may use non-public personal information ("Private Information") about you. This notice applies to both current and former customers of the dealership referenced above.

Collection and Use of Private Information

We collect Private Information about you from the following sources:

- Information we receive from you, such as information on applications or other forms, which may include your name, address, social security number and income.
- Information about your transactions with us, our affiliates, or others, such as your account balance and payment history.
- Information we receive from consumer reporting agencies, such as your credit history and creditworthiness.

Disclosure of Private Information

We may disclose Private Information (described above) under the following circumstances:

1) To Market Service Providers

We may disclose all Private Information to companies that perform marketing services for us or to other financial institutions with which we may enter into joint marketing agreements. We may make such disclosures about you as a consumer, customer, or former customer.

2) Among Affiliates

Some of the Private Information described above may consist of information about your history of dealing with us or Affiliates, such as identification information, account history and balances and payment history (which we refer to as "Transaction Information"). We may share Private Information that consists of Transaction Information with our Affiliates. Our Affiliates include other automotive dealerships and financial companies. We do this to provide you with the products and services we and our Affiliates offer.

3) With Other Third Parties

In addition, we may share all Private Information about you as a consumer, customer, or former customer with other non-affiliated third parties, as permitted by law.

Protection of Information

We restrict access to non-public personal information about you to our employees who need this information to provide financial products or services to you. We will strive to maintain physical, electronic, and procedural safeguards that are consistent with federal standards to guard your Private Information.

CUSTOMER ACKNOWLEDGEMENT: I (we) acknowledge that I (we) received a copy of this notice on the date indicated below.

Michael M. Watts
Customer's Signature

Michael M. Watts
Customer's Name (printed)

Christine Watts
Co-customer's signature

Christine Watts
Co-customer's Name (printed)

06/25/05
Date

06/25/05
Date



03995



Century BMW

Menu of Investment Enhancements

WHTS

CLIENT: 0

DATE: 6/25/2005

03996

☐ PLATINUM
 ☐ GOLD
 ☐ SILVER
 ☐ BRONZE

☐ Vehicle Service Contract CPO 72 Months or 100,000 Miles *Protects you from costly mechanical repairs *Rental car coverage, *Towing *Nationwide coverage	☐ Upgraded Maintenance *Extends BMW Scheduled Maintenance from 4 yrs, 60,000 miles to 6 yrs, 100,000 *Includes brakes and rotors \$2995	☐ Etch Pro *Pays up to \$2500 if vehicle is stolen and not recovered *Pays up to \$1000 for partial loss deductible reimbursement \$199
☐ Tire and Wheel Guarantee *Tire replacement *Insures your tires and wheels against road hazard damage *24 Hour roadside assistance *5 year Warranty \$499	☐ Resistant Exterior and Interior Protection Plan *Protects your vehicle's paint against weather induced fading, loss of gloss, bird droppings, tree sap, acid rain, etc. *Protects your interior against permanent staining from food, drink, and oil based stains *5 year Warranty \$559	☐ Invisi-Shield *A defense against stone chips, bugs, and road debris *Lifetime warranty against yellowing, peeling, fading, and cracking *3M Product, computer laser cut specifically for your vehicle \$676
☐ Ding Shield *Prepaid paintless dent repair *Flexible 3, 4, or 5 yr. Terms *Repairs cover up to baseball size dents and dings \$484	☐ Safe Lease *Wear and Tear Protection for leased vehicles *Covers paint damage, light lenses, and upholstery up to \$5,000 *See agreement for details \$750	☐ Easy Care Gap (Cash Only) *Pays due to theft or collision if a total loss *Benefit is up to 160% of MSRP or NADA value *Pays the difference between loan payoff and insurance settlement \$499
☐ TINT *Keeps vehicle cooler *Protects interior and passenger from harmful UV rays *3M product with a Lifetime Warranty \$279		

All products are optional. Understanding I am not required to purchase products to obtain financing. The dealer makes no additional warranty, whether expressed or implied, understanding that I must qualify to secure financing, and each value is subject to approval from financial institutions. I understand that all payments are estimates. This form does not constitute an offer of insurance. Insurance premiums are regulated by state law. The products shown are the ones I have chosen to purchase.

Client Signature

Client Signature

Total Products Purchased \$
 Loan ☐ Lease ☐ Cash ☐
 Payments of \$
 Additional Upfront \$

Delivered Charge

[Signature]



AFFIDAVIT & NOTIFICATION OF
SALE OF MOTOR VEHICLE
(Entire Form Must Be Typed or Printed)

No. 30533158

CENTURY BMW

Personally appeared before me _____
(Seller) (Dealer Retail Tax #)
2750 LAURENS ROAD GREENVILLE, SC 29607

(Address) 25 JUN 05
who being duly sworn, deposes and says that on the _____ day of _____ Yr. _____

he sold the following motor vehicle: Make BMW Model Z4(2.5)
Year 04 Identification (Serial) No. 4USBT33554LS50759

License No. _____ to MICHAEL MILTON WATTS CHRISTINE MICHELLE WATTS
210 PROVIDENCE SQUARE GREENVILLE GREENVILLE SC 29615
(Street) (City) (County) (State) (Zip)

Special Mailing Address

Deponent further states that there are no liens or encumbrances on the said vehicle except as listed below:

Lienholder CARLINA COLLEGIATE CU Amount _____
Address P.O. Box 12309 COLUMBIA SC 29211 Date 25 JUN 2005

I certify that the odometer now reads 15514 (no tenths) miles and to the best of my knowledge that it reflects the actual mileage of the vehicle described below, unless one of the following statements is checked.

☐ (1) I hereby certify that to the best of my knowledge, the odometer reading reflects the amount of mileage in excess of its mechanical limits.

☐ (2) I hereby certify that the odometer reading is NOT the actual mileage. WARNING - ODOMETER DISCREPANCY

Federal law (and State law, if applicable) requires that you state the mileage upon transfer of ownership. Failure to complete or providing a false statement may result in fines and/or imprisonment.

Cony James
(Signature of Seller)

Cony James / CENTURY BMW
(Print Seller's Name)

Michael M. Watts Christine Watts
(Signature of Buyer)

Michael M. Watts Christine Watts
(Print Buyer's Name)

Property Tax Section
Check One:

☒ Purchase License Plate

D. L. Number _____

License Plate Issued _____

____ Transfer License Plate

Christine Watts
Signature of Buyer/If purchasing plates

AGREEMENT TO PROVIDE ACCIDENTAL PHYSICAL DAMAGE INSURANCE

I understand that my instalment contract requires the vehicle be continuously covered with insurance against the risks of fire, theft and collision, and that failure to provide such insurance will give the lien holder the right to declare the entire unpaid balance immediately due and payable. Accordingly, I have arranged for the required insurance through the insurance company shown below and have requested that the policy contains a loss payable endorsement in favor of:

Lienholder:

NAMED INSURED:		FIRST	MIDDLE	LAST
		MICHAEL	M	WATTS
ADDRESS	NUMBER	STREET	CITY	STATE ZIP CODE
	210	PROVIDENCE SQUARE	GREENVILLE	SC 29615
TEL NO.	()	(864)213-8498	DRIVERS LICENSE # 0	

NAMED PURCHASER:		FIRST	MIDDLE	LAST
		MICHAEL	MILTON	WATTS
ADDRESS	NUMBER	STREET	CITY	STATE ZIP CODE
	210	PROVIDENCE SQUARE	GREENVILLE	SC 29615
TEL NO.	()	(864)213-8498		

VEHICLE INSURED:					VEHICLE IDENTIFICATION NUMBER
YEAR	MAKE	BODY	MODEL		
2004	BMW	CV	Z4(2.5)	4USBT33554LS50759	

VEHICLE USE: ☐ Private Passenger, ☐ Commercial Auto and Trailer

Radius of Haul _____ ☐ Public Livery, ☐ All Other

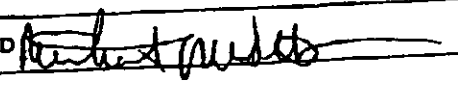
INSURANCE AGENT PLEASE PRINT CLEARLY FULL AND EXACT ADDRESS TO APPEAR IN WINDOW ENVELOPE

NAME	LARRY DIBIASE		
NUMBER AND STREET			
CITY	STATE	ZIP CODE	
AGENT'S TELEPHONE NUMBER	()	8034324545	

INSURANCE CARRIER

NAME	STATE FARM		
POLICY NUMBER	1050595A1040A		
EFFECTIVE DATE	From:	06/01/05	To: 01/10/06
COVERAGE			
☒ Collision \$ 500.00 Deductible Type: ☐ BROAD FORM OR STANDARD ☐ LIMITED (NOT ACCEPTABLE) ☐ Comprehensive \$ _____ Deductible ☐ Fire-Theft			

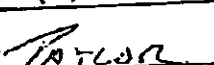
AGENTS COMMENT

NAMED INSURED SIGNS 

06/25/05

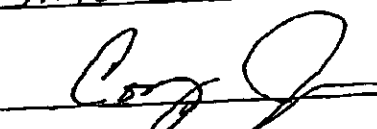
DATE

DEALER CONFIRMATION:

NAME OF PERSON CONTACTED	
TINA	
() AGENCY () INSURANCE CARRIER	DATE 6/27/05
Signed By 	

CENTURY BMW

04002

DEALER SIGNS 

-580-

DEALER

CRM000000

FULL DISCLOSURE CUSTOMER WORKSHEET

Buyer Michael Watts
 Address _____
 City _____
 State _____ Zip _____
 E-Mail _____

Date 6/25/05
 Sales Person Elizabeth Country
 Home Phone 864-213-8498
 Work Phone _____
 Mobile # _____

New ☐ Used ☐

Trade Information

Stock # _____
 Year _____
 Make _____
 Model _____
 Miles _____
 Vin # _____

Year _____
 Make _____
 Model _____
 Miles _____
 Color _____
 Vin # _____
 Payoff _____

	Selling Price	Trade
MSRP _____	<u>\$31,375.00</u>	\$ _____
Destination _____	<u>111</u>	
Subtotal _____		
Additional Equipment _____	<u>32,000.50</u>	

ARBITRATION AGREEMENT

(All States Except CA)

DATE: 6.25.05

VIN: 4458T335546550759

In this Arbitration Agreement ("Agreement"), "you" and "your" refers to the customer(s) who sign(s) below. "We", "us", and Dealer refer to the Dealer signing below, and includes the Dealer's employees, agents, and parent and affiliated companies (including, but not limited to, Cornerstone Acceptance Corporation) and their employees and agents. "Parties" refers to you and us. "Vehicle" refers to the automobile identified by the VIN set forth above. "Claim(s)" includes any and all disputes, claims or controversies between the Parties relating to the Vehicle or arising out of or relating to: (a) the application for and the terms of and enforceability of the sale, lease, or financing of the Vehicle, (b) the purchase or terms of any warranty, service agreement, maintenance plan, paint/undercarriage/interior protection product, anti-theft etching product and warranty, GAP protection, deficiency waiver addendum, or any or other product or insurance, (c) any claims of breach of contract, negligence, misrepresentation, conversion, fraud, or unfair and deceptive trade practices, (d) any claim of a violation of any state or federal statute or regulation, or (e) the Vehicle's condition, warranty, workmanship, servicing, maintenance or repair. All Claims must be brought within the time allowed by the applicable statute(s) of limitation. "Contract(s)" refers to any agreement(s) between you and us regarding the sale, lease, financing, service or maintenance of the Vehicle.

Upon the request of a Party, any and all Claim(s) shall be decided in binding arbitration before the American Arbitration Association (1-800-778-7879/www.adr.org) ("AAA"). The Parties may mutually agree to use another arbitration forum and/or qualified arbitrator. Unless mutually agreed otherwise between the Parties, any arbitration under this Agreement shall be conducted under the commercial arbitration rules of the AAA. To the extent that any Claim is deemed a "consumer dispute", the Parties agree that the fee schedule provided in the rules for consumer disputes of the AAA, if any, will apply. You can get a copy of the rules from the AAA. The arbitration hearing shall be conducted, at your option, in the federal district in which you reside or in which the Vehicle was purchased or leased.

The Parties waive the right to request arbitration for a Claim filed and maintained individually (as opposed to a class action) in your state's small claims court, if any. However, if such a Claim originally brought in small claims court is transferred or removed to a higher state or federal trial court, the Parties reserve their right to request arbitration under this Agreement.

The Parties agree that once one of the Parties has elected to arbitrate, binding arbitration is the exclusive method for resolving any and all Claims. By entering into this Agreement the Parties are waiving their right to a jury trial and their right to bring or participate in any class action or multi-plaintiff or claimant action in court or through arbitration. Until a Party entitled to do so requests arbitration under this agreement, any party to this Agreement may proceed with all other rights and remedies they may have. Neither you nor we waive our right to request arbitration under this Agreement, even after all Parties have elected to litigate a Claim in court, in the event new Claims are asserted after the initial filing of such litigation in court.

The arbitrator shall be an attorney or retired judge. The arbitrator shall apply and be bound by governing local, state or federal law when making an award, and shall award only those damages or other relief allowed by such governing law. Issues regarding whether a matter is arbitrable shall be made by the arbitrator. The arbitrator shall prepare a written decision stating reasoned findings of fact and conclusions of law. A party may seek entry of a judgment on the award in any court of competent jurisdiction.

If you initiate a Claim for Arbitration under this Agreement, we agree to pay that portion of the AAA's initial filing fee which exceeds the lesser of the court filing fee for the state or federal court located in the jurisdiction in which you reside. If we initiate a Claim for arbitration we will pay the entire initial filing fee. We also agree to pay up to \$1500 of the arbitrator's fees, unless applicable law or the rules of the AAA require otherwise. Unless applicable law or the rules of the AAA require otherwise, the Parties agree to share equally all other costs and fees, including the arbitrator's fees in excess of \$1500. Notwithstanding any other provision of this Agreement, we will also pay any amount of fees or costs that a court or the arbitrator decides we must pay in accordance with applicable law for this Agreement to be enforceable. The arbitrator deciding the Claim(s) shall have the authority to award fees, costs, injunctive or equitable relief in accordance with this Agreement and applicable law or provided otherwise by applicable law.

This Agreement evidences a transaction in interstate commerce (9 U.S.C. § 1 et seq.) ("FAA") shall be binding, except for any right of appeal.

If any part of this Agreement shall be unenforceable, in the event this Agreement is held to be enforceable, the entire Agreement shall be enforceable. In the event this Agreement is held to be unenforceable, the entire Agreement shall be unenforceable.

This Agreement shall be signed by both parties and made a part of all contracts for the sale or lease of the Vehicle to the extent this Agreement is enforceable.

EITHER
YOU OR
BY SIGN
Customer
Customer

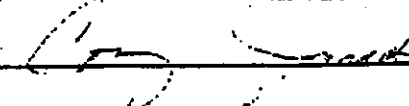
06 / 25 / 2005
Date of Sale

WE OWE ADDITION AND REMOVAL ORDER

Customer's Name MICHAEL MILTON WATTS	Home Phone # (864)213-8498	Work Phone # (864)270-7395	VIN # 4USBT33554LS50759	
Address 210 PROVIDENCE SQUARE GREENVILLE SC 29615	Model of Car Z4(2.5)	License #	Stock # LP6771	Salesperson COURTNEY, EL
			Sales Mgr. NOVAK, JEF	

PRESENT THIS DOCUMENT AT TIME OF SERVICE

		DESCRIPTION	COMPLETED
Add	Remove		
☐	☐	<u>GREAT CENTURY SERVICE</u>	
☐	☐		
☐	☐		
☐	☐		
☐	☐		
☐	☐		
☐	☐		
☐	☐		
☐	☐		
☐	☐		
☐	☐		
☐	☐		
☐	☐		
☐	☐		

AUTHORIZED BY 

INITIAL EACH ITEM

WHITE COPY

Service Department should get immediately and file alphabetically by customer name

YELLOW COPY

Attach to buyer's order for transmittal to General Office for filing in Deal Envelope, or in hold for action file if removal is indicated.

PINK COPY

Attach to buyer's order for transmittal to General Office for permanent file.

GOLDENROD COPY

To be given to the customer for presentation to have work performed. NOTE customer must present copy before work will be done.

Buyer hereby agrees that the above additions and removals are in accordance with the agreement entered into for purchase of the specific vehicle referred to and that he has not purchased or been promised equipment other than listed for future installation. Buyer will bring said vehicle to dealership, upon request, for removals listed; otherwise buyer may be charged for list price of items listed for removal.

X 
Buyer's Signature.

VOID AFTER 30 DAYS FROM DATE OF SALE

04010

**[PAGE
INTENTIONALLY LEFT
BLANK ON SERVICE
COPY]**

06 / 25 / 2005
Date of Sale

WE OWE ADDITION AND REMOVAL ORDER

Customer's Name MICHAEL MILTON WATTS	Home Phone # (864)213-8498	Work Phone # (864)270-7396	VIN # 4USBT33554LS50759
Address 210 PROVIDENCE SQUARE GREENVILLE SC 29615	Model of Car Z4(2.5)	License #	Stock # LP6771
		Salesperson COURTNEY, EL	Sales Mgr. NOVAK, JEF

PRESENT THIS DOCUMENT AT TIME OF SERVICE

			DESCRIPTION	COMPLETED
	Add	Remove		
Alarm	☐	☐	GREAT CENTURY SERVICE	
Stereo/Cass./CD	☐	☐		
Air Conditioner	☐	☐		
Paint Sealant	☐	☐		
Fabric Protection	☐	☐		
	☐	☐		
	☐	☐		
	☐	☐		
	☐	☐		
	☐	☐		
	☐	☐		
	☐	☐		

AUTHORIZED BY *Cory Smith* INITIAL EACH ITEM

WHITE COPY

Service Department should get immediately and file alphabetically by customer name

YELLOW COPY

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[Signature]
Buyer's Signature

VOID AFTER 30 DAYS FROM DATE OF SALE

04011

CBM000017

CENTURYBMW CENTURYMINI

2750 LAURENS ROAD • GREENVILLE, SC 29607
PHONE (864) 234-8437
www.century-bmw.com • www.centurymini.com

RETAIL BUYER'S ORDER

Name Michael M Watts or Christine M. Watts Spouse
Street 210 Providence Sq. Phone 864-213-8498
City Greenville State SC Zip 29615 County _____
Employer _____ Phone 864-270-7396
E-mail Address _____

Date 6-25-05 Stock No. LP 6797

Salesperson Elizabeth Courtney

PURCHASE
☐ NEW ☐ DEMO ☐ PRE-OWNED ☐ FACTORY CAR
Year 04 Make BMW Body Type _____ Series 24
Cylinders _____ Serial No. 4U5BT33554LS50759 COLOR: Exterior GRAY Interior _____
OPTIONS:
☐ PREMIUM PACKAGE ☐ ACTIVITY PACKAGE ☐ PREMIUM SOUND ☐ ON BOARD COMPUTER ☐ ENGINE:
☐ SPORTS PREMIUM PACKAGE ☐ CONVENIENCE PACKAGE ☐ IN DASH CD ☐ ALLOY WHEELS ☐ TRANSMISSION:
☐ SPORTS PACKAGE ☐ MOON ROOF ☐ CD CHANGER ☐ CRUISE CONTROL ☐ AUTOMATIC
☐ COLD WEATHER PACKAGE ☐ LEATHER UPHOLS. ☐ HEATED SEATS ☐ MANUAL

PRICE (including Transportation & Service Charge) 32,980

Additional Options: _____
1,604.50

TRADE
Year _____ Make _____ Body Type _____ Series _____
Cylinders _____ Serial No. _____ COLOR: Exterior _____ Interior _____
Mileage 15514 Options _____

TOTAL: 31,375.50

Allowance on Trade-In _____
Cash Difference _____
SC Sales Tax 300

BALANCE OWED TO: _____ Name & Address: _____
no _____ Contact _____

LIEN: _____ Name & Address: Carolina College Credit Union
P.O. Box 12309
Columbia, SC 29211
Phone 803-257-8474 Contact Stephanie Hugley
Account # 227-5555

Balance Owed on Trade-In _____
Title and License ☐ New ☒ Renew ☐ Temp 25
Recording & Processing Fees \$299.50

Account # _____ Effective Dates _____

Effective Dates _____

TOTAL: 32,000

INSURANCE INFORMATION Company Name State Farm

Policy # 1050595A1040A Effective Dates _____

Service Agreement _____

Agent Larry DiBiase Phone 803-432-4545

Drivers License # _____

Insurance _____

Remarks _____

TOTAL: _____

Cash on Delivery _____

BALANCE DUE: 32,000

READ CAREFULLY: Century BMW / Century Mini agrees to sell and the Buyer(s) agree to purchase the vehicle as above described at the price set forth. The Buyer shall remit full payment of the entire balance due on or before _____. This Buyer's Order constitutes the entire agreement between the parties and may not be changed except by an instrument in writing signed by the party to be charged.

Michael M Watts Buyer Christine M Watts Co-Buyer [Signature] Must be countersigned by an Officer of the Company

☐ USED CAR CONTRACTUAL DISCLOSURE STATEMENT: - The information you see on the window form (Buyer's Guide) for this vehicle is part of the contract. Information on the window form overrides any contrary provisions in the contract of sale. 04019

☐ NEW VEHICLE
DISCLAIMER OF WARRANTIES: - I have read, understand and accept all provisions of the Manufacturer's Warranty Statement. I understand that all warranties on this vehicle are those of the manufacturers. The seller, Century BMW / Century Mini, hereby expressly disclaims any warranties, either expressed or implied, including any implied warranty of merchantability or fitness for a particular purpose and Century BMW / Century Mini, neither its agent nor authorized any person to assume for it any liability in connection with the sale of this vehicle. This disclaimer in no way affects the provisions of the manufacturer's warranties.

This agreement between the undersigned buyer(s) and dealer is incorporated by reference into and is made a part of any separate retail installment or credit sale agreement between the undersigned buyer(s) and dealer (Retail Financing Agreement). Notwithstanding anything to the contrary in any other document, if there is a Retail Financing Agreement the undersigned buyer(s) understand and agree that the transaction evidenced by this document and the Retail Financing Agreement is contingent upon credit approval by, and assignment of the Retail Financing Agreement to, a third-party financial institution. If the Retail Financing Agreement is not accepted by a third-party financial institution, you must immediately renege this agreement and the entire transaction evidenced by this agreement and the Retail Financing Agreement and this agreement shall be null and void.

BMW Financial Service Lease-End Inspection Form

Inspecting Center Name

Century BMW 21470



1. Customer Information

Scansource Inc Account Number 3000374937
Model Z4 roadster 2.5 Year 2004 VIN 4USBT33554LS50759 Maturity Date May 28, 2005
New ☒ Pre-Owned ☐ Related Automotive Finance Product Y ☐ N ☐

2. Body Assessment - Charges for Dings, Dents and Scratches (See diagram on back.)

	Small	Large	Total		Small	Large	Total
Front Bumper			\$	Rear Bumper			\$
Front Hood and Grill			\$	Right Quarter Panel			\$
Left Front Fender			\$	Right Rear Door			\$
Left Front Door			\$	Right Front Door			\$
Left Rear Door			\$	Right Front Fender			\$
Left Quarter Panel			\$	Roof			\$
Deck Lid			\$	Body Assessment Total			\$

- Charge per incident: Small = \$150 Large = \$450
- Maximum charged per panel for New Vehicles (small and large dings, dents and scratches combined) is \$600.
- If vehicle is pre-owned, then Total Body Assessment is 80% of New Vehicle amount assessed.

3. Parts Charges

Yes	No	Subtotal Parts Chg.	Yes	No	Subtotal Parts Chg.
☐	☐	Tires: Five tires with minimum 4/32" (1/8") tread depth measured from lowest depth not on the wear bar (including spare)? If no: see chart on page 2	☐	☐	Fog lamps/lenses free of breaks or cracks? If no: \$120 per occasion (max 2)
☐	☐	Rims: Five rims free of cracks and structural bends (including spare)? If no: see chart on page 2	☐	☐	Tailamps/lenses free of breaks or cracks? If no: \$150 per occasion (max 4)
☐	☐	Windshield free of cracks or stars within wiper sweep and those greater than 1/4" outside wipers sweep? If no: Standard = \$300 Rain Sensor = \$600	☐	☐	Factory CD changer in vehicle? If no: CD changer = \$300
			☐	☐	Minimum 2 master keys? If no: \$100 per master key
			☐	☐	Scheduled Maintenance Performed? If no and vehicle is not covered under a BMW Maintenance Program, then \$150.
					Parts Total: \$

4. Excess Mileage Charge (Completed at time of turn-in.)

A. Current miles 1
B. Miles at Inception (from contract)
C. Miles driven (A. minus B.) 15000
D. Contracted mileage
E. Excess miles (C. minus D.)
(If negative, then no charge)
Total Excess Mileage Charge \$
(E. x \$ 20)

Has the vehicle sustained major damage? By marking "Yes", the customer acknowledges that prior significant repairs have been made to the body/frame of this vehicle. (Significant means either prior accident repairs in which any panels were replaced OR any damage that required the painting of two or more body panels.) Yes ☐ No ☐

Any vehicle with accident damage involving dents, dings or scratches greater than eight (8) inches, any misaligned or broken components, any major mechanical problem, improper repairs, hail damage or a badly damaged interior (multiple burns, rips, or water damage) voids this form. In this case, an independent inspection company must evaluate your vehicle. The inspection form must reflect the condition of the vehicle at turn-in. If turn-in condition is significantly different, a re-inspection/reassessment is required. Both signatures are required for validation. If it is determined that significant prior repairs have been made, the amount of the loyalty benefit from BMW FS will be charged back to the customer.

Customer _____ Inspector *3rd Party* Date _____

6. Federal Odometer Disclosure Statement (Completed at time of turn-in.)

Federal Law requires that you disclose mileage to the Lessor at this time. Failure to comply with this requirement or making an inaccurate or untruthful statement may make liable for civil or criminal penalties, pursuant to the Motor Vehicle Information and Cost Savings Act of 1972 (Pub L. 92-513 as amended by Pub L. 99-570).

ID Number: 4USBT33554LS50759 Account Number: 3000374937 04020
Year: 2004 Make: BMW Model: Z4 roadster 2.5
state the ODOMETER on the vehicle described above reads _____ miles (no tent)

Check one of the following statements:
☐ To the best of my knowledge, the ODOMETER reading reflects ACTUAL VEHICLE MILEAGE.
☐ I am not sure of the actual vehicle mileage.

SECTION 6 - SATISFACTION OF LIEN

SATISFACTION OF FIRST LIEN
THIS IS TO CERTIFY THAT THE LIEN AGAINST THE VEHICLE HAS BEEN FULLY SATISFIED ON:

DATE _____

NAME OF LIEN HOLDER _____

CERTIFIED BY _____

TITLE _____

SATISFACTION OF SECOND LIEN

THIS IS TO CERTIFY THAT THE LIEN AGAINST THE VEHICLE HAS BEEN FULLY SATISFIED ON:

DATE _____

NAME OF LIEN HOLDER _____

CERTIFIED BY _____

TITLE _____

SECTION 7 - SALES TAX EXEMPTION Complete this section if you are entitled to a sales tax exemption.

VEHICLE PURCHASED FROM INDIVIDUALS AND TITLED IN SOUTH CAROLINA ARE SUBJECT TO SALES TAX UNLESS EXEMPT. THE TAX IS 5% OF THE SALES PRICE UP TO A MAXIMUM OF \$300.00. (MOBILE HOMES ARE CALCULATED DIFFERENTLY.)

- ☐ THE VEHICLE WAS TRANSFERRED FROM:
- ☐ MY PARENT ☐ MY SPOUSE ☐ MY CHILD ☐ MY BROTHER/SISTER ☐ MY GRANDPARENT ☐ MY GRANDCHILD
- ☐ THE VEHICLE WAS TRANSFERRED TO ME AS:
- ☐ LEGAL HEIR ☐ BENEFICIARY ☐ DISTRIBUTEE
- ☐ I AM NON-RESIDENT MILITARY PERSONNEL ☐ THE VEHICLE WAS A BONA FIDE GIFT

SECTION 8 - ADDITIONAL INFORMATION

DATE OF PURCHASE 06/25/05	DATE FIRST OPERATED IN S.C. 4/25/2005	ENERGY EFFICIENT MANUFACTURED MOBILE HOME? ☐ YES ☐ NO
NEW OR USED? USED	PRIOR TITLE NUMBER 17076013378853A	PRIOR TITLE STATE SC
THE VEHICLE DESCRIBED ON THIS APPLICATION IS: ☐ REBUILDABLE ☐ NON-REBUILDABLE		
THE VEHICLE SUSTAINED THE FOLLOWING DAMAGE: ☐ COLLISION ☐ FIRE ☐ WATER ☐ STOLEN (RECOVERED) ☐ STOLEN (UNRECOVERED)		
AGENCY REFERENCE NUMBER	Calculate the Salvage Percentage: Predamaged Value _____ Estimate for Repairs _____ Percentage _____	
SALVAGE% _____		

SECTION 9 - SELLER INFORMATION

SELLER OR DEALER NAME CENTURY BMW	SC DEALER/WHOLESALE NUMBER 30219	SC SALES TAX NUMBER 023-6684-89	SALES PRICE 31375.50
ADDRESS 2750 LAURENS ROAD	CITY GREENVILLE	STATE SC	ZIP CODE 29607

SECTION 10 - INSURANCE CERTIFICATION

A VEHICLE MUST BE INSURED WITH LIABILITY INSURANCE COVERAGE WHEN IT IS REGISTERED AND IT MUST REMAIN INSURED WHILE REGISTERED, WHETHER OR NOT IT IS OPERATED, OR THE UNINSURED MOTORIST FEE MUST BE PAID. PENALTIES ARE SEVERE FOR VIOLATION OF THIS REQUIREMENT.

UNDER PENALTIES OF PERJURY, I (WE) DECLARE THAT THIS VEHICLE IS INSURED BY A LIABILITY INSURANCE POLICY ISSUED THROUGH AN INSURANCE COMPANY LICENSED TO DO BUSINESS IN SOUTH CAROLINA AND IT WILL REMAIN INSURED THROUGHOUT THE REGISTRATION PERIOD.

NAME OF INSURANCE COMPANY _____ STATE FARM

SECTION 11 - GIFT OF LIFE TRUST FUND

DO YOU WISH TO DONATE AN ADDITIONAL \$1.00 OR MORE TO THE GIFT OF LIFE TRUST FUND? ☐ YES ☐ NO AMOUNT \$ _____

SECTION 12 - SIGNATURE OF OWNER

UNDER PENALTIES OF PERJURY, I DECLARE THAT I AM THE OWNER OF THIS VEHICLE AND REQUEST THAT A SOUTH CAROLINA CERTIFICATE OF TITLE AND/OR REGISTRATION BE ISSUED. I FURTHER CERTIFY THAT THE INFORMATION ON THIS APPLICATION IS CORRECT TO THE BEST OF MY KNOWLEDGE, THE VEHICLE IS SUBJECT TO THE LIENS NAMED AND NO OTHERS.

SIGNATURE OF OWNER (S) - MUST BE SIGNED IN INK BY OWNER OR AUTHORIZED AGENT (ATTACH POWER OF ATTORNEY IF APPLICABLE) Michael M. White Christy M. White 06/25/05

DISCLOSURE STATEMENT

56-3-240 (SOUTH CAROLINA CODE OF LAWS) - THE DEPARTMENT SHALL OBTAIN THE FEDERAL EMPLOYER IDENTIFICATION NUMBER OR SOCIAL SECURITY NUMBER WHEN A VEHICLE IS REGISTERED WITH A GROSS VEHICLE WEIGHT OF MORE THAN 26,000 POUNDS OR A BUS COMMON CARRIER. THE DRIVER'S PRIVACY PROTECTION ACT OF 1994 (DPPA), 18 USC SECTION 2721-2725 RESTRICT THE DISCLOSURE OF PERSONAL INFORMATION CONTAINED IN OUR RECORDS.

PENALTY FEES

FAILURE TO REGISTER WITHIN 45 DAYS OF THE DATE OF PURCHASE WILL RESULT IN PENALTY FEES IN ADDITION TO REGULAR TITLE AND/OR REGISTRATION FEES. THE LATE PENALTY FEE SCHEDULE IS AS FOLLOWS:

46 - 60 DAYS LATE - \$10.00	61 - 75 DAYS LATE - \$25.00	76 - 135 DAYS LATE - \$50.00	OVER 135 DAYS LATE - \$75.00

THIS SECTION FOR DMV USE ONLY

STAMP VEHICLE BRANDS		04025	
RATED BY <u>mg</u>	TRANSACTION FEES		
OFFICE/OFFICE NUMBER <u>805P11</u>	EXPEDITED FEE <u>2400</u>	WEIGHT INCR. _____	
PLATE NUMBER _____	LICENSE FEE _____	TRANSFER _____	
EXPIRATION DATE _____	UNINSURED FEE <u>588</u>	TITLE _____	
PLATE CLASS <u>LP</u>	USE OR SALES TAX _____	GIFT OF LIFE FUND _____	
SUSPENSE REASON _____	PENALTY _____	TOTAL <u>3700</u>	

CENTURYBMW CENTURYMINI 2750 LAURENS ROAD • GREENVILLE, SC 29607 PHONE (864) 234-6437 www.century-bmw.com • www.centurymini.com		RETAIL BUYER'S ORDER	
		Name: MICHAEL MILTON WATTS CHRISTINE MITCHELLE WATTS Street: 210 PROVIDENCE SQUARE Phone: (864) 213-8498 City: GREENVILLE State: SC Zip: 29615 County: GREENVILLE Date: 25 JUN 05 Exp: 6/7/1 Employer: Phone: (864) 270-7396 Sales Rep: COURTNEY, ELIZABETH E-mail Address:	

PURCHASE	☐ NEW ☐ DEMO Year: 04 Make: BMW Body Type: CV Series: Z4(2.5)		PRICE: (including transportation & Service Charges)	31375.50
	☐ PRE-OWNED ☐ FACTORY CAR		Additional Options:	
	Cylinders: Serial No.: 40S8T33554LS50759 COLOR: Exterior: STL/BLK Interior:			
	OPTIONS: ☐ PREMIUM PACKAGE ☐ ACTIVITY PACKAGE ☐ PREMIUM SOUND ☐ ON BOARD COMPUTER ENGINE: ☐ SPORTS PREMIUM PACKAGE ☐ CONVENIENCE PACKAGE ☐ IN DASH CD ☐ ALLOY WHEELS ☐ TRANSMISSION: ☐ SPORTS PACKAGE ☐ MOON ROOF ☐ CD CHANGER ☐ CRUISE CONTROL ☐ AUTOMATIC ☐ COLD WEATHER PACKAGE ☐ LEATHER UPHOLS. ☐ HEATED SEATS ☐ MANUAL			N.A. N.A. N.A.
TRADE	Mileage: 15514		TOTAL:	31375.50
	Year: Make: Body Type: Series:		Allowance on Trade-In	N.A.
	Cylinders: Serial No.: COLOR: Exterior: / Interior:		Cash Difference	31375.50
	Mileage: Options:		SC Sales Tax	300.00
BALANCE OWED TO: N.A. Name & Address: LIEN: CARLINA COLLEGIATE CU Name & Address: P.O. Box 12309 COLUMBIA SC 29211		Balance Owed on Trade-In	N.A.	
Contact: Phone: 803.251.8474 Contact: STEVEN		Title and License	25.00	
Account #		Recording & Processing Fees	\$299.50	
Effective Dates		TOTAL:	32000.00	
INSURANCE INFORMATION STATE: FL Policy: 4050595A1040 06/01/05 01/10/06		Service Agreement	N.A.	
Agent: LARRY DIBIASE Phone: 803.432.4545 Drivers License #		Insurance		
Remarks: 24 APR 1956 04036		TOTAL:	32000.00	
		Cash on Delivery	32000.00	
		BALANCE DUE:	N.A.	

READ CAREFULLY: Century BMW / Century Mini agrees to sell and the Buyer(s) agree to purchase the vehicle as above described at the price set forth. The Buyer shall remit full payment of the entire balance due on or before _____. This Buyer's Order constitutes the entire agreement between the parties and may not be changed except by an instrument in writing signed by the party to be charged.

Buyer: *Michael Watts* Co-Buyer: *Christine Watts* Must be accepted by an Officer of the Company: *[Signature]*

☐ **USED CAR CONTRACTUAL DISCLOSURE STATEMENT:** - "The information you see on the window form (Buyer's Guide) for this vehicle is part of the contract. Information on the window form overrides any contrary provisions in the contract of sale."

☐ **NEW VEHICLE**
DISCLAIMER OF WARRANTIES: - I have read, understand and accept all provisions of the Manufacturer's Warranty Statement covering this new vehicle that I am purchasing. Furthermore, I understand that all warranties on this vehicle are those of the manufacturers. The seller, Century BMW / Century Mini, hereby expressly disclaims all warranties, either expressed or implied, including any implied warranty of merchantability or fitness for a particular purpose and Century BMW / Century Mini, neither assumes nor authorizes any person to assume for it any liability in connection with the sale of this vehicle. This disclaimer in no way affects the provisions of the manufacturer's warranty.

Purchaser's Signature: *[Signature]* *[Signature]*

This agreement between the undersigned buyer(s) and dealer is incorporated by reference into and is made a part of any separate retail installment or credit sale agreement between the undersigned buyer(s) and dealer ("Retail Financing Agreement"). Notwithstanding anything to the contrary in any other document, if there is a Retail Financing Agreement the undersigned buyer(s) understand and agree that the transaction evidenced by this agreement and the Retail Financing Agreement is contingent upon credit approval by, and assignment of the Retail Financing Agreement to, a third-party financial institution. If the Retail Financing Agreement is not accepted by a third-party financial institution, you must immediately return the vehicle referred to in this agreement, and the entire transaction evidenced by this agreement and the Retail Financing Agreement and this agreement shall be null and void.

Signed: *Michael Watts*

Westlaw.

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H

Tillman v. Commercial Credit Loans, Inc.
N.C., 2008.

Supreme Court of North Carolina.

Fannie Lee TILLMAN and Shirley Richardson, on
behalf of themselves and all others similarly situated

v.

COMMERCIAL CREDIT LOANS, INC.; Commercial Credit Corporation; Citigroup, Inc.; Citicorp, Inc.; Citifinancial, Inc.; and Citifinancial Services, Inc.
No. 360A06.

Jan. 25, 2008.

Background: Mortgagors asserted a class action lawsuit against mortgagees, alleging that mortgagees acted unlawfully in connection with credit life and disability insurance policies sold with their loans. The Superior Court, Vance County, Ronald L. Stephens, J., denied mortgagees' motion to compel arbitration. Mortgagees appealed. The Court of Appeals, 177 N.C.App. 568, 629 S.E.2d 865, reversed and remanded. Mortgagors filed an appeal as of right.

Holdings: The Supreme Court, Timmons-Goodson, J., held that:

(1) evidence was sufficient to establish that the only realistic way for mortgagors to prosecute their claims was to enter into contingency fee agreements;

(2) evidence was sufficient to establish that the arbitration clause in the loans was a standard-form contract of adhesion;

(3) evidence was sufficient to establish the procedural unconscionability of the arbitration clause; and

(4) evidence was sufficient to establish the substantive unconscionability of the arbitration clause.

Court of Appeals reversed.

Edmunds, J., concurred in the result only, and filed opinion, in which Martin, J., joined.

Newby, J., dissented and filed opinion, in which Parker, C.J., joined.

West Headnotes

[1] Appeal and Error 30 ⇨ 1011.1(4)

30 Appeal and Error

30XVI Review

30XVI(1) Questions of Fact, Verdicts, and

Findings

30XVI(1)3 Findings of Court

30k1011 On Conflicting Evidence

30k1011.1 In General

30k1011.1(4) k. Findings Supported by Evidence. Most Cited Cases
Findings of fact made by the trial judge are conclusive on appeal if supported by competent evidence, even if there is evidence to the contrary.

[2] Appeal and Error 30 ⇨ 893(1)

30 Appeal and Error

30XVI Review

30XVI(F) Trial De Novo

30k892 Trial De Novo

30k893 Cases Triable in Appellate Court

30k893(1) k. In General. Most

Cited Cases

Conclusions of law drawn by the trial court from its findings of fact are reviewable de novo on appeal.

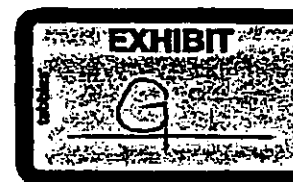
[3] Appeal and Error 30 ⇨ 893(1)

30 Appeal and Error

30XVI Review

30XVI(F) Trial De Novo

30k892 Trial De Novo



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30k893 Cases Triable in Appellate Court
 30k893(1) k. In General. Most

Cited Cases

Because unconscionability is a question of law, the Supreme Court reviews de novo a trial court's conclusion that a term in a contract is unconscionable. (Per Timmons-Goodson, J., with two justices concurring and two justices concurring in the result.)

[4] Alternative Dispute Resolution 25T ⇌ 210

25T Alternative Dispute Resolution

25TII Arbitration

25TII(D) Performance, Breach, Enforcement, and Contest

25Tk204 Remedies and Proceedings for Enforcement in General

25Tk210 k. Evidence. Most Cited Cases
 Evidence was sufficient to establish, in hearing on mortgagees' motion to compel arbitration in mortgagors' class action lawsuit alleging that mortgagees acted unlawfully in connection with credit life and disability insurance policies sold with loans, that because of the limited financial resources of mortgagors and other similarly situated borrowers mortgagors could not afford to hire an attorney to represent them on an hourly basis and that the only realistic way for them prosecute their claims was to enter into contingency fee agreements; both named plaintiffs testified they could not afford to hire an attorney on an hourly basis. (Per Timmons-Goodson, J., with two justices concurring and two justices concurring in the result.)

[5] Alternative Dispute Resolution 25T ⇌ 210

25T Alternative Dispute Resolution

25TII Arbitration

25TII(D) Performance, Breach, Enforcement, and Contest

25Tk204 Remedies and Proceedings for Enforcement in General

25Tk210 k. Evidence. Most Cited Cases
 Evidence was sufficient to establish, in hearing on

mortgagees' motion to compel arbitration in mortgagors' class action lawsuit alleging that mortgagees acted unlawfully in connection with credit life and disability insurance policies sold with loans, that the arbitration clause in the loans was a standard-form contract of adhesion, that borrowers were given no opportunity to negotiate out of the arbitration provision, and that mortgagees would not make a loan if the loan agreement did not include the arbitration provision; mortgagors' general counsel for litigation testified that the mortgagors did not make loans without an arbitration clause. (Per Timmons-Goodson, J., with two justices concurring and two justices concurring in the result.)

[6] Alternative Dispute Resolution 25T ⇌ 210

25T Alternative Dispute Resolution

25TII Arbitration

25TII(D) Performance, Breach, Enforcement, and Contest

25Tk204 Remedies and Proceedings for Enforcement in General

25Tk210 k. Evidence. Most Cited Cases
 Evidence was sufficient to establish, in hearing on mortgagees' motion to compel arbitration in mortgagors' class action lawsuit alleging that mortgagees acted unlawfully in connection with credit life and disability insurance policies sold with loans, that if mortgagors' claims were arbitrated the arbitrators would charge \$500 to \$2,380 per day; assistant vice-president of arbitration association testified to the average compensation rates for arbitrators in North Carolina. (Per Timmons-Goodson, J., with two justices concurring and two justices concurring in the result.)

[7] Alternative Dispute Resolution 25T ⇌ 113

25T Alternative Dispute Resolution

25TII Arbitration

25TII(A) Nature and Form of Proceeding

25Tk113 k. Arbitration Favored; Public Policy. Most Cited Cases
 Arbitration is favored in North Carolina.

[8] Alternative Dispute Resolution 25T ⇌

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134(6)

25T Alternative Dispute Resolution
 25TII Arbitration
 25TII(B) Agreements to Arbitrate
 25Tk131 Requisites and Validity
 25Tk134 Validity
 25Tk134(6) k. Unconscionability.

Most Cited Cases

Equity may require invalidation of an arbitration agreement that is unconscionable. (Per Timmons-Goodson, J., with two justices concurring and two justices concurring in the result.)

[9] Contracts 95 ⇐1

95 Contracts
 95I Requisites and Validity
 95I(A) Nature and Essentials in General
 95k1 k. Nature and Grounds of Contractual Obligation. Most Cited Cases
 A court will find a contract to be unconscionable only when the inequality of the bargain is so manifest as to shock the judgment of a person of common sense, and where the terms are so oppressive that no reasonable person would make them on the one hand, and no honest and fair person would accept them on the other. (Per Timmons-Goodson, J., with two justices concurring and two justices concurring in the result.)

[10] Contracts 95 ⇐1

95 Contracts
 95I Requisites and Validity
 95I(A) Nature and Essentials in General
 95k1 k. Nature and Grounds of Contractual Obligation. Most Cited Cases
 An inquiry into unconscionability of a contract requires that a court consider all the facts and circumstances of a particular case, and if the provisions are then viewed as so one-sided that the contracting party is denied any opportunity for a meaningful choice, the contract should be found unconscionable. (Per Timmons-Goodson, J., with two justices concurring and two justices concurring in the result.)

[11] Contracts 95 ⇐1

95 Contracts
 95I Requisites and Validity
 95I(A) Nature and Essentials in General
 95k1 k. Nature and Grounds of Contractual Obligation. Most Cited Cases

Contracts 95 ⇐328(1)

95 Contracts
 95VI Actions for Breach
 95k328 Defenses
 95k328(1) k. In General. Most Cited Cases
 Unconscionability is an affirmative defense, and the party asserting it has the burden of proof. (Per Timmons-Goodson, J., with two justices concurring and two justices concurring in the result.)

[12] Contracts 95 ⇐1

95 Contracts
 95I Requisites and Validity
 95I(A) Nature and Essentials in General
 95k1 k. Nature and Grounds of Contractual Obligation. Most Cited Cases
 A party asserting that a contract is unconscionable must prove both procedural and substantive unconscionability. (Per Timmons-Goodson, J., with two justices concurring and two justices concurring in the result.)

[13] Contracts 95 ⇐1

95 Contracts
 95I Requisites and Validity
 95I(A) Nature and Essentials in General
 95k1 k. Nature and Grounds of Contractual Obligation. Most Cited Cases
 Unconscionability is ultimately a determination to be made in light of a variety of factors not unifiable into a formula. (Per Timmons-Goodson, J., with two justices concurring and two justices concurring in the result.)

[14] Contracts 95 ⇐1

95 Contracts

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95I Requisites and Validity

95I(A) Nature and Essentials in General

95k1 k. Nature and Grounds of Contractual Obligation. Most Cited Cases

While the presence of both procedural and substantive problems is necessary for an ultimate finding of unconscionability, such a finding may be appropriate when a contract presents pronounced substantive unfairness and a minimal degree of procedural unfairness, or vice versa. (Per Timmons-Goodson, J., with two justices concurring and two justices concurring in the result.)

[15] Alternative Dispute Resolution 25T ⇌ 210

25T Alternative Dispute Resolution

25TII Arbitration

25TII(D) Performance, Breach, Enforcement, and Contest

25Tk204 Remedies and Proceedings for Enforcement in General

25Tk210 k. Evidence. Most Cited Cases

Evidence was sufficient to establish procedural unconscionability of arbitration clause, in hearing on mortgagees' motion to compel arbitration in mortgagees' class action lawsuit alleging mortgagees acted unlawfully in connection with credit life and disability insurance policies sold with loans; named plaintiffs testified that they were rushed through loan closings and that there was no mention of credit insurance or the arbitration clause, mortgagees admitted that they would have refused to make the loans rather than negotiate the terms of the arbitration agreement, and there was evidence that bargaining power was unequal in that plaintiffs were relatively unsophisticated consumers contracting with corporate defendants who drafted the arbitration clause and included it as boilerplate language in all of their loan agreements. (Per Timmons-Goodson, J., with two justices concurring and two justices concurring in the result.)

[16] Alternative Dispute Resolution 25T ⇌ 210

25T Alternative Dispute Resolution

25TII Arbitration

25TII(D) Performance, Breach, Enforcement, and Contest

25Tk204 Remedies and Proceedings for Enforcement in General

25Tk210 k. Evidence. Most Cited Cases

Evidence was sufficient to establish substantive unconscionability of arbitration clause, in hearing on mortgagees' motion to compel arbitration in mortgagees' class action alleging mortgagees acted unlawfully in connection with credit and disability insurance policies sold with loans; mortgagees had exempted collection actions from arbitration, under the clause the loser paid arbitrator's fee if arbitration last over 8 hours, clause prohibited joinder of claims and class actions, and there was evidence that the named plaintiffs lived from paycheck to paycheck, that the only realistic way for plaintiffs and similarly situated class members to afford to dispute the insurance payments was to enter into contingency agreements in a class action, and that no arbitrations had been brought under the clause that mortgagees had included in over 68,000 loan agreements. (Per Timmons-Goodson, J., with two justices concurring and two justices concurring in the result.)

[17] Alternative Dispute Resolution 25T ⇌ 134(6)

25T Alternative Dispute Resolution

25TII Arbitration

25TII(B) Agreements to Arbitrate

25Tk131 Requisites and Validity

25Tk134 Validity

25Tk134(6) k. Unconscionability.

Most Cited Cases

When determining whether an arbitration agreement in a consumer contract is unconscionable, because the underlying concern is whether individuals, upon reading an arbitration agreement, will be deterred from bringing a claim, courts must consider the agreement as drafted. (Per Timmons-Goodson, J., with two justices concurring and two justices concurring in the result.)

[18] Alternative Dispute Resolution 25T ⇌

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25T Alternative Dispute Resolution
 25TII Arbitration
 25TII(B) Agreements to Arbitrate
 25Tk131 Requisites and Validity
 25Tk134 Validity
 25Tk134(6) k. Unconscionability.

Most Cited Cases

A prohibition on joinder of claims and class actions is a factor to be considered in determining whether an arbitration provision is unconscionable. (Per Timmons-Goodson, J., with two justices concurring and two justices concurring in the result.)

*364 Appeal pursuant to N.C.G.S. § 7A-30(2) from the decision of a divided panel of the Court of Appeals, 177 N.C.App. 568, 629 S.E.2d 865 (2006), reversing an order denying defendants' motion to compel arbitration entered on 20 January 2005 by Judge Ronald L. Stephens in Superior Court, Vance County, and remanding for entry of an order granting that motion. Heard in the Supreme Court 13 February 2007.

Jones Martin Parris & Tessener Law Offices, P.L.L.C., by John Alan Jones and G. Christopher Olson, Raleigh, for plaintiff-appellants.
 Moore & Van Allen, PLLC, by Jeffrey M. Young, Morrisville, and Rogers & Hardin LLP, by Richard H. Sinkfield and Christopher J. Willis, Atlanta, GA, for defendant-appellees.

*365 North Carolina Justice Center, by Carlene McNulty, Raleigh, for North Carolina Justice Center, Financial Protection Law Center, and Trial Lawyers for Public Justice, amici curiae.
 Ellis & Winters LLP, by Wendy I. Sexton, Raleigh, for American Financial Services Association, Chamber of Commerce of the United States of America, and Consumer Bankers Association, amici curiae.

The question chiefly presented is whether the arbitration clause contained in the loan agreements that serve as the basis for the instant case is unconscionable. Because the clause is one-sided, prohibits joinder of claims and class actions, and exposes claimants to prohibitively high costs, we hold that

the trial court did not err in concluding as a matter of law that the clause is unconscionable.

TIMMONS-GOODSON, Justice.

I. BACKGROUND

Plaintiffs Fannie Lee Tillman and Shirley Richardson ("plaintiffs") are North Carolina residents who obtained loans from defendant Commercial Credit Loans, Inc. (n/k/a CitiFinancial Services, Inc.). On 22 September 1998, Fannie Lee Tillman obtained a loan for a term of 120 months with a principal amount of \$18,253.68. In connection with the loan, Commercial Credit sold Mrs. Tillman single premium credit life and disability insurance with premiums of \$1,058.80 and \$1,005.95, respectively. On 4 June 1999, Shirley Richardson obtained a loan for a term of 180 months with a principal amount of \$20,935.57. In connection with the loan, Commercial Credit sold Mrs. Richardson single premium credit life, disability, and involuntary unemployment insurance with premiums of \$1,871.54, \$1,109.49, and \$1,227.72, respectively. Plaintiffs' loan principal amounts included their insurance premiums, which were financed over the life of the loan.

Credit life insurance pays off a borrower's loan if the borrower dies; credit disability pays off the loan if the borrower becomes disabled; and credit involuntary unemployment pays the loan if the borrower becomes involuntarily unemployed. The insurance is referred to as single premium because "the borrower is charged the entire insurance premium at the time the underlying loan is originated, with the premium being financed into and over the life of the loan." In July 1999 the North Carolina General Assembly outlawed single premium credit insurance for loans made or entered into on or after 1 July 2000. Act of July 15, 1999, ch. 332, sec. 5, 1999 N.C. Sess. Laws 1202, 1216 (codified at N.C.G.S. § 24-10.2(b) (2005)).

It is undisputed that both plaintiffs have limited financial resources. Mrs. Tillman's weekly after-tax take-home pay is approximately \$258.00. Her hus-

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band is deceased, and as a result, Mrs. Tillman also receives \$285.60 per month in pension benefits and \$1063.00 per month in Social Security benefits. Mrs. Richardson works two jobs where she earns \$12.70 per hour and \$12.00 per hour. For both plaintiffs, their home is their most significant asset.

Plaintiffs' loan agreements contained the standard arbitration clauses that defendants have included in their loan agreements since 12 February 1996. The arbitration clause was drafted by defendants, and plaintiffs were given no opportunity to negotiate regarding the clause. The clause contains the following relevant provisions:

Agreement to Arbitrate Claims. Upon written request by either party that is submitted according to the applicable rules for arbitration, any Claim, except those specified below in this Provision, shall be resolved by binding arbitration in accordance with (i) the Federal Arbitration Act; (ii) the Expedited Procedures of the Commercial Arbitration Rules of the American Arbitration Association ("Administrator"); and (iii) this Provision, unless we both agree in writing to forgo arbitration. The terms of this Provision shall control any inconsistency between the rules of the Administrator and this Provision....

Claims Excluded from Arbitration. The following types of matters will not be arbitrated. This means that neither one of us can require the other to arbitrate:

- *366 • Any action to effect a foreclosure to transfer title to the property being foreclosed; or
- Any matter where all parties seek monetary damages in the aggregate of \$15,000.00 or less in total damages (compensatory and punitive), costs, and fees.

Appeal. Either You or We may appeal the arbitrator's award to a three-arbitrator panel selected through the Administrator, which shall reconsider *de novo* any aspect of the initial award requested by the appealing party. The expedited procedures of the Administrator shall *not* govern any appeal. An appeal will be governed by Rule 25 of the Comprehensive Arbitration Rules and Procedures of

J*A*M*S/Endispute, Inc.

No Class Actions/No Joinder of Parties. You agree that any arbitration proceeding will only consider Your Claims. Claims by or on behalf of other borrowers will not be arbitrated in any proceeding that is considering Your Claims. Similarly, You may not join with other borrowers to bring claims in the same arbitration proceeding, unless all of the borrowers are parties to the same Credit Transaction.

Costs. The cost of any arbitration proceeding shall be divided as follows:

- The party making demand upon the Administrator for arbitration shall pay \$125.00 to the Administrator when the demand is made.
- We will pay to the Administrator all other costs for the arbitration proceeding up to a maximum of one day (eight hours) of hearings.
- All costs of the arbitration proceeding that exceed one day of hearing will be paid by the non-prevailing party.
- In the case of an appeal, the appealing party will pay any costs of initiating an appeal. The non-prevailing party shall pay all costs, fees, and expenses of the appeal proceeding and, if applicable, shall reimburse the prevailing party for the cost of filing an appeal.
- Each party shall pay his/her own attorney, expert, and witness fees and expenses, unless otherwise required by law.

Severability. If the arbitrator or any court determines that one or more terms of this Provision or the arbitration rules are unenforceable, such determination shall not impair or affect the enforceability of the other provisions of this Agreement or the arbitration rules.

In June 2002 plaintiffs commenced this suit FN1 against defendants Commercial Credit Loans, Inc., Commercial Credit Corporation, Citigroup, Inc., CitiFinancial, Inc., CitiFinancial Services, Inc., and Citicorp, Inc.,^{FN2} asserting claims for violations of North Carolina's Unfair and Deceptive Trade Practices Act, N.C.G.S. § 75-1.1, unjust en-

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richment, and breach of the duties of good faith and fair dealing. The claims rest on plaintiffs' contention that they did not want or need single premium credit insurance and that Commercial Credit did not tell them that the insurance was optional. In addition, plaintiffs claim that Commercial Credit was the sole beneficiary of the insurance policies. Plaintiffs' complaint specifically alleges that "Commercial Credit violated North Carolina law by failing to provide Plaintiffs with requisite disclosures regarding the credit insurance sold to them and by charging fees that were deceptive, unfair, duplicative, imposed without adequate commercial justification or disclosure, and in excess of the fees permitted by North Carolina law." Plaintiffs seek money damages based on the amount of *367 credit insurance premiums collected by defendants.

FN1. Plaintiffs filed this suit as a class action, but the record contains no indication that the trial court certified the class.

FN2. Commercial Credit Corp., Citigroup, Inc., CitiFinancial, Inc., and Citicorp, Inc. are corporate parents or affiliates of Commercial Credit Loans, Inc. (n/k/a CitiFinancial Services, Inc.). While Commercial Credit Corp., Citigroup, Inc., CitiFinancial, Inc., and Citicorp, Inc. remain as defendants in the underlying case, for purposes of the issue on appeal before this Court, the term "defendants" will refer only to Commercial Credit Loans, Inc. (n/k/a CitiFinancial Services, Inc.) and CitiFinancial, Inc.

Beginning in May 2003, defendants filed a series of motions to compel arbitration pursuant to the arbitration clause contained in plaintiffs' loan agreements. In an order entered on 20 January 2005, the trial court denied defendants' motion to compel arbitration dated 17 June 2004. The order included the following findings of fact:

9. The Commercial Credit arbitration clause is a standard-form contract of adhesion. The borrower is given no opportunity to negotiate out of the arbitration provision, and CitiFinancial Ser-

vices, Inc. would not make a loan if the loan agreement did not include the arbitration provision. The loan documents, including the arbitration provision at issue, were drafted by Defendant.

10. Since the time CitiFinancial Services, Inc. began including an arbitration clause in its loan agreements, the lender has made more than 68,000 loans in North Carolina. During that time, CitiFinancial Services has pursued lawsuits in civil court against more than 3,700 borrowers in North Carolina, including over 2,000 collection actions and more than 1,700 foreclosure actions. Defendant has been able to pursue claims in civil court by virtue of two exceptions within the arbitration clause, which Defendant drafted, for (1) foreclosure actions and (2) matters in which less than \$15,000.00 in damages, including costs and fees, are sought. The average amount in dispute in matters in which CitiFinancial Services, Inc. pursued legal action against North Carolina borrowers is under \$7,000.00.

11. Since the time CitiFinancial Services, Inc. began including an arbitration provision in its loan agreements, there have been no arbitration proceedings in North Carolina involving CitiFinancial Services, Inc. and any of its borrowers. Since introduction of the arbitration clause, no North Carolina borrower has requested arbitration of any dispute with CitiFinancial Services, Inc., nor has CitiFinancial Services, Inc. demanded arbitration of any dispute involving any North Carolina borrower. The only legal redress sought has been the collection and foreclosure actions pursued in civil court by Defendant against its borrowers.

12. The only persons present at the loan closings involving Plaintiffs Tillman and Richardson were Plaintiffs and a Commercial Credit loan officer. [Mrs.] Tillman and [Mrs.] Richardson were rushed through the loan closings, and the Commercial Credit loan officer indicated where [Mrs.] Tillman and [Mrs.] Richardson were to sign or initial the loan documents. There was no mention of credit insurance or the arbitration clause at the loan closings.

13. The compensation rates for American Arbitration Association ("AAA") arbitrators in North

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Carolina range from \$500.00 to \$2,380.00 per day. The average daily rate of AAA arbitrator compensation in North Carolina is \$1,225.00.

14. Plaintiffs Fannie Lee Tillman and Shirley Richardson entered into contingency fee contracts with the attorneys representing them. The contingency fee contract is typical of such agreements. The contingency fee agreement entered into by Plaintiffs provides that their attorneys will not be entitled to any fee unless there is some monetary recovery obtained on behalf of Plaintiffs, either by way of settlement or verdict. The agreement further provides that the law firm representing Plaintiffs shall advance the costs and expenses incurred in prosecuting the action.

15. Based upon the 1998 North Carolina Bar Association Economic Survey, the most recent survey published, the average hourly rate for attorneys working on litigation matters such as this is between \$150.00-\$250.00 per hour.

16. Based upon the limited financial resources of Plaintiffs and other similarly situated borrowers, they could not afford to hire an attorney to be paid on an hourly basis. The only realistic means by which persons in the position of Plaintiffs can prosecute their claims is by entering into a contingency fee agreement with lawyers willing to advance the costs and expenses of the litigation and with the law firm #368 assuming the risk that there might be no recovery.

17. Plaintiffs asserted claims for relief under Chapter 75 of the North Carolina General Statutes, contending that Defendant[s] sale of single-premium credit insurance in connection with real estate loans constituted an unfair or deceptive trade practice or act in or affecting commerce. Plaintiffs seek damages based upon the amount of premiums charged for those credit insurance products. In most cases, the premium charges for single-premium credit insurance sold by CitiFinancial Services, Inc. were under \$5,000.00 per loan. Plaintiff Fannie Lee Tillman was charged \$2,064.75 in single-premium credit insurance premiums in connection with her September 22, 1998 loan; Plaintiff Shirley Richardson was charged \$4,208.75 for single-premium credit insur-

ance with her June 4, 1999 loan. The relatively modest damages claimed by Plaintiffs make it unlikely that any attorneys would be willing to accept the risks attendant to pursuing claims against one of the nation's largest lenders, even with the prospect of a treble damages award and statutory attorney's fees. It would not be feasible to prosecute the claims of the named Plaintiffs and of putative class members on an individual basis.

18. Defendant's arbitration clause contains features which would deter many consumers from seeking to vindicate their rights. These features include the cost-shifting ("loser pays") provision with respect to the initial arbitration proceeding to the extent it exceeds eight hours, the cost-shifting provision associated with the *de novo* appeal from that initial arbitration proceeding, and the prohibition on joinder of claims and class actions. The prohibition on class actions and the cap of \$15,000.00 on the value of claims that can be pursued outside of the arbitration process designed by Defendant make [] it unlikely that borrowers would be able to retain lawyers willing to pursue litigation against a large commercial entity, such as CitiFinancial Services, Inc.

19. To successfully prosecute a complex case, including a class action such as this one, a law firm would likely need the assistance of expert witnesses. The hourly fees of experts in the fields of economics, lending practices, and credit insurance can range from \$150.00 to \$300.00 per hour, plus expenses. In complex cases, litigation costs and expenses, including deposition costs, travel expenses, and expert witness fees, can easily run into thousands of dollars. The class action mechanism allows persons with relatively small claims to pool their resources and have those litigation expenses and costs shared among all class members. The class action device provides a means by which consumers with modest damages claims can obtain representation by competent counsel with sufficient resources to afford protracted litigation in complex cases.

Ultimately, the trial court denied the motion to compel arbitration based on its conclusion that the arbitration clause contained in plaintiffs' loan

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agreements is unconscionable and unenforceable due to the prohibitively high arbitration costs borrowers might face in pursuing claims through arbitration, the fee-shifting ("loser pays") provisions which expose borrowers to excessive arbitration and appeal costs ..., and because the arbitration clause is excessively one-sided and lacks mutuality in that it preserves access to the courts for the lender while prohibiting joinder of claims and class actions on the part of borrowers and restricts what claims of borrowers can be pursued in civil court.

Defendants appealed, and a divided panel of the Court of Appeals reversed the trial court's order and remanded to the trial court for entry of an order granting defendants' motion to compel arbitration. *Tillman v. Commercial Credit Loans, Inc.*, 177 N.C.App. 568, 629 S.E.2d 865 (2006). The COA majority held that the provisions of the arbitration agreement, "[v]iewed separately or together," do not render it unconscionable. *Id.* at 582, 629 S.E.2d at 875. The dissenting opinion concluded that the trial court's unconscionability finding was supported by the evidence and by North Carolina law, "369*id.* at 595, 629 S.E.2d at 883 (Hunter, J., dissenting), and plaintiffs filed an appeal of right as to that issue.

II. ANALYSIS

[1][2][3] The standard governing our review of this case is that "findings of fact made by the trial judge are conclusive on appeal if supported by competent evidence, even if ... there is evidence to the contrary." *Lumbee River Elec. Membership Corp. v. City of Fayetteville*, 309 N.C. 726, 741, 309 S.E.2d 209, 219 (1983) (citation omitted). "Conclusions of law drawn by the trial court from its findings of fact are reviewable *de novo* on appeal." *Carolina Power & Light Co. v. City of Asheville*, 358 N.C. 512, 517, 597 S.E.2d 717, 721 (2004). Because unconscionability is a question of law, this Court will review *de novo* the trial court's conclusion that the arbitration agreement contained in plaintiffs' loan agreements is unconscionable. See *Rite Color Chem. Co. v. Velvet Textile Co.*, 105

N.C.App. 14, 21, 411 S.E.2d 645, 649 (1992) (citations omitted); 17A Am.Jur.2d *Contracts* § 327 (2004); John N. Hutson, Jr. & Scott A. Miskimon, *North Carolina Contract Law* § 9-14, at 556 (2001).

[4][5][6] In the instant case, many of the trial court's findings are uncontested. Furthermore, after extensive review of the record, we conclude that the eight findings of fact contested by defendant are supported by competent evidence. We review several of the contested findings here. While defendants assign error to finding of fact number sixteen, *supra*, both plaintiffs testified they could not afford to hire an attorney to be paid on an hourly basis. In addition, contested finding of fact number nine, *supra*, is clearly supported by the deposition of Debra Hovatter, CitiFinancial's General Counsel for Litigation, who testified that "[t]he company does not make loans without an arbitration provision." Contested finding of fact number thirteen, *supra*, is supported by the affidavit of AAA Assistant Vice President Gerald Strathmann, who testified regarding the average compensation rates for AAA arbitrators in North Carolina. Based on our review of the record, the trial court's findings of fact are supported by competent evidence and are therefore conclusive.

[7][8][9] We now review the trial court's conclusions of law *de novo*. Arbitration is favored in North Carolina. *Cyclone Roofing Co. v. David M. LaFave Co.*, 312 N.C. 224, 229, 321 S.E.2d 872, 876 (1984). As with any contract, however, "equity may require invalidation of an arbitration agreement that is unconscionable." *Murray v. United Food & Commercial Workers Int'l Union*, 289 F.3d 297, 302 (4th Cir.2002). A court will find a contract to be unconscionable

only when the inequality of the bargain is so manifest as to shock the judgment of a person of common sense, and where the terms are so oppressive that no reasonable person would make them on the one hand, and no honest and fair person would accept them on the other.

[10] *Brenner v. Little Red Sch. House Ltd.*, 302

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N.C. 207, 213, 274 S.E.2d 206, 210 (1981) (citations omitted). An inquiry into unconscionability requires that a court "consider all the facts and circumstances of a particular case," and "[i]f the provisions are then viewed as so one-sided that the contracting party is denied any opportunity for a meaningful choice, the contract should be found unconscionable." *Id.*

[11] The Court of Appeals has held that unconscionability is an affirmative defense, and the party asserting it has the burden of proof. *Rite Color Chem. Co.*, 105 N.C.App. at 20, 411 S.E.2d at 649. We agree. In the instant case, plaintiffs argue that defendants, because they are seeking to compel arbitration, have the burden of showing that the parties agreed to the arbitration provision. In support of this argument, plaintiffs rely on *King v. Owen*, 166 N.C.App. 246, 248, 601 S.E.2d 326, 327 (2004); *Milon v. Duke University*, 145 N.C.App. 609, 617, 551 S.E.2d 561, 566 (2001), *rev'd per curiam*, 355 N.C. 263, 559 S.E.2d 789, *cert. dismissed*, 536 U.S. 979, 123 S.Ct. 14, 153 L.Ed.2d 878 (2002); and *Routh v. Snap-On Tools Corp.*, 108 N.C.App. 268, 272, 423 S.E.2d 791, 794 (1992), but the instant case is distinguishable. Each of those cases involved a dispute about whether an arbitration agreement had been "properly executed." Here, there is no question that plaintiffs signed the agreement. Rather, the question is whether the agreement is unconscionable.

[12] A party asserting that a contract is unconscionable must prove both procedural and substantive unconscionability. See *Martin v. Sheffer*, 102 N.C.App. 802, 805, 403 S.E.2d 555, 557 (1991); see also James J. White & Robert S. Summers, *Uniform Commercial Code* § 4-7, at 315 (5th ed. 2006) [hereinafter White & Summers] ("Most courts take a 'balancing approach' to the unconscionability question, and ... seem to require a certain quantum of procedural, plus a certain quantum of substantive, unconscionability."). While this Court has never explicitly adopted this framework, we conclude that it is supported by the Court's case law and adopt it here. In *Brenner*, for example, this Court determined that a contract between a parent

and a private school was not unconscionable. 302 N.C. at 214, 274 S.E.2d at 211. The Court so held after considering whether there was inequality of bargaining power between the parties, whether plaintiff was "forced to accept defendant's terms," and whether the contract itself "was one that a reasonable person of sound judgment might accept." *Id.* at 213-14, 274 S.E.2d at 211. Thus, the Court considered both the procedural and substantive aspects of the contract at issue.

[13][14] According to *Rite Color Chemical Co.*, procedural unconscionability involves "bargaining naughtiness" in the form of unfair surprise, lack of meaningful choice, and an inequality of bargaining power. 105 N.C.App. at 20, 411 S.E.2d at 648. Substantive unconscionability, on the other hand, refers to harsh, one-sided, and oppressive contract terms. *Id.* at 20, 411 S.E.2d at 648-49. Of course, unconscionability is ultimately "a determination to be made in light of a variety of factors not unifiable into a formula." White & Summers, § 4-3, at 296 (emphasis omitted). Therefore, we note that while the presence of both procedural and substantive problems is necessary for an ultimate finding of unconscionability, such a finding may be appropriate when a contract presents pronounced substantive unfairness and a minimal degree of procedural unfairness, or vice versa. See *Tacoma Boatbuilding Co. v. Delta Fishing Co.*, 28 U.C.C. Rep. Serv. (CBC) 26, 37 n. 20 (W.D. Wash. 1980) ("[T]he substantive/procedural analysis is more of a sliding scale than a true dichotomy. The harsher the clause, the less 'bargaining naughtiness' that is required to establish unconscionability.").

We conclude that, taken together, the oppressive and one-sided substantive provisions of the arbitration clause at issue in the instant case and the inequality of bargaining power between the parties render the arbitration clause in plaintiffs' loan agreements unconscionable.

A. PROCEDURAL UNCONSCIONABILITY

[15] In the instant case, the trial court did not

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Vasquez-Lopez v. Beneficial Oregon, Inc., 210 Or.App. 553, 574, 152 P.3d 940, 952 (2007) (concluding that a cost-sharing provision in an arbitration clause was "sufficiently onerous to act as a deterrent to [the] plaintiffs' vindication of their claim").

Bradford also rightly notes that the cost of arbitration must be compared with the cost of litigation. *Id.* at 556. As demonstrated above, paying for arbitrators is a significant cost that is simply not faced in filing a lawsuit in court. See *Vasquez-Lopez*, 210 Or.App. at 574, 152 P.3d at 952 ("regardless of whether filing fees are relatively equal in court and arbitration, the fact remains that most of the cost involved in an arbitration will be the arbitrator's fees; in court, by contrast, neither party has to pay for the judge"). The trial court also found that

[t]he only realistic means by which persons in the position of Plaintiffs can prosecute their claims is by entering into a contingency fee agreement with lawyers willing to advance the costs and expenses of the litigation and with the law firm assuming the risk that there might be no recovery.

Because plaintiffs' damage amounts are so low (under \$4,500 each), the trial court found that it is "unlikely that any attorneys would be willing to accept the risks attendant to pursuing [these] claims." The likelihood that an attorney would take a case controlled by the arbitration clause at issue here is even *372 less because the arbitration clause prohibits the joinder of claims and class actions. Therefore, neither attorneys nor plaintiffs are able to share the risks attendant to pursuing this litigation.

Bradford finally instructs that in order to find unenforceability due to excessive costs, the cost differential between litigation and arbitration must be so great that it deters individuals from bringing claims under the arbitration clause. *Id.* at 556. Evidence in the record indicates that no arbitrations have been brought under the clause that defendant has included in over 68,000 loan agreements in North Carolina. Based on this evidence and the

above analysis, it appears that the combination of the loser pays provision, the *de novo* appeal process, and the prohibition on joinder of claims and class actions creates a barrier to pursuing arbitration that is substantially greater than that present in the context of litigation. We agree with the trial court that "[d]efendant's arbitration clause contains features which would deter many consumers from seeking to vindicate their rights."

[17] Defendants argue that the costs analysis is irrelevant because the terms of the arbitration agreement have been superceded by AAA's Consumer Rules, which became effective on 1 March 2002. More specifically, defendants state that they are "willing to arbitrate [plaintiffs'] claims under [these rules]." This argument is unpersuasive. First, the arbitration clause itself provides that "[t]he terms of this Provision shall control any inconsistency between the rules of the [AAA] and this Provision." Second, this Court, the Fourth Circuit, and other courts have held that it is inappropriate to rewrite an illegal or unconscionable contract. See *Morrison v. Circuit City Stores, Inc.*, 317 F.3d 646, 676 (6th Cir.2003) ("In considering the ability of plaintiffs to pay arbitration costs under an arbitration agreement, reviewing courts should not consider after-the-fact offers by employers to pay the plaintiffs share of the arbitration costs where the agreement itself provides that the plaintiff is liable, at least potentially, for arbitration fees and costs."); *Murray*, 289 F.3d at 304 ("The arbitration agreement is unenforceable as written and [the union] may not rewrite the arbitration clause and adhere to unwritten standards on a case-by-case basis in order to claim that it is an acceptable one."); *Kinkel v. Cingular Wireless, LLC*, 223 Ill.2d 1, 13-14, 306 Ill.Dec. 157, 857 N.E.2d 250, 259 (2006) ("[A] defendant's after-the-fact offer to pay the costs of arbitration should not be allowed to preclude consideration of whether the original arbitration clause is unconscionable."); *Whittaker Gen. Med. Corp. v. Daniel*, 324 N.C. 523, 528, 379 S.E.2d 824, 828 (1989) ("The courts will not rewrite a contract if it is too broad but will simply not enforce it."). We agree with the Sixth Circuit's observation that because the underlying concern is whether individu-

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als, upon reading an arbitration agreement, will be deterred from bringing a claim, courts must consider the agreement as drafted. See *Morrison*, 317 F.3d at 676-77.

The second concern plaintiffs raise is the one-sidedness of the arbitration clause contained in their loan agreements. In *Brenner*, this Court held that when "the provisions [of a contract] are ... viewed as so one-sided that the contracting party is denied any opportunity for a meaningful choice, the contract should be found unconscionable." 302 N.C. at 213, 274 S.E.2d at 210.

In the instant case, the clause excepts from arbitration foreclosure actions and actions in which the total damages, costs, and fees do not exceed \$15,000. Plaintiffs argue that the arbitration clause preserves defendants' ability to pursue its claims in court while denying plaintiffs that same option. Evidence in the record indicates that since 1996, defendants have brought over 2,000 collection actions with an average "payoff" of under \$7,000. In addition, it appears that defendants have not initiated arbitration in North Carolina. In other words, every time defendants have taken legal action against a borrower, they have managed to avoid application of the arbitration clause. This arbitration clause is not as egregious as some that specifically carve out an exception for the corporate drafter of the clause to pursue collection actions in court. See, e.g., *373 *Arnold v. United Cos. Lending Corp.*, 204 W.Va. 229, 233, 235-37, 511 S.E.2d 854, 858, 860-62 (1998). Practically speaking, however, the exceptions appear to be designed far more for the benefit of defendants than for plaintiffs. The one-sidedness of the clause therefore contributes to our overall conclusion that it is unconscionable.

[18] Plaintiffs finally argue that the arbitration clause is unconscionable because it prohibits joinder of claims and class actions. Plaintiffs correctly note that an increasing number of courts have found class action waivers in arbitration clauses substantively unconscionable. See, e.g., *Scott v. Cingular Wireless*, 160 Wash.2d 843, 850-51, 161 P.3d 1000, 1004 (2007) (citing such cases from sixteen juris-

dictions). Taken alone, such a prohibition may be insufficient to render an arbitration agreement unenforceable, see, e.g., *Adkins v. Labor Ready, Inc.*, 303 F.3d 496, 503 (4th Cir.2002), but *Brenner* instructs that an unconscionability analysis must consider all of the facts and circumstances of a particular case, 302 N.C. at 213, 274 S.E.2d at 211. Therefore, the trial court correctly concluded that a prohibition on joinder of claims and class actions "is a factor to be considered in determining whether an arbitration provision is unconscionable." *Accord Kristian v. Comcast Corp.*, 446 F.3d 25, 53-61 (1st Cir.2006); *Ting v. AT&T*, 319 F.3d 1126, 1150 (9th Cir.2003), cert. denied, 540 U.S. 811, 124 S.Ct. 53, 157 L.Ed.2d 24 (2003); *Leonard v. Terminix Int'l Co.*, 854 So.2d 529, passim (Ala.2002) (per curiam); *State ex rel. Dunlap v. Berger*, 211 W.Va. 549, 562-64, 567 S.E.2d 265, 278-80, cert. denied, 537 U.S. 1087, 123 S.Ct. 695, 154 L.Ed.2d 631 (2002).

In the instant case, the prohibition on joinder of claims and class actions affects the unconscionability analysis in two specific ways. First, the prohibition contributes to the financial inaccessibility of the arbitral forum as established by this arbitration clause because it deters potential plaintiffs from bringing and attorneys from taking cases with low damage amounts in the face of large costs that cannot be shared with other plaintiffs. Second, the prohibition contributes to the one-sidedness of the clause because the right to join claims and pursue class actions would benefit only borrowers. See, e.g., *Szetela v. Discover Bank*, 97 Cal.App.4th 1094, 1101, 118 Cal.Rptr.2d 862, 867 (2002), cert. denied, 537 U.S. 1226, 123 S.Ct. 1258, 154 L.Ed.2d 1087 (2003); *Vasquez-Lopez*, 210 Or.App. at 569, 152 P.3d at 949-50 (quoting Anatole France's observation in *The Red Lily* that "the majestic equality of the laws forbid[s] rich and poor alike to sleep under the bridges, to beg in the streets, and to steal their bread" and noting that "[a]lthough the arbitration rider with majestic equality forbids lenders as well as borrowers from bringing class actions, the likelihood of the lender seeking to do so against its own customers is as likely as the rich seeking to sleep under bridges.").

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In conclusion, we hold that the provisions of the arbitration clause, taken together, render it substantively unconscionable because the provisions do not provide plaintiffs with a forum in which they can effectively vindicate their rights. See *Green Tree*, 531 U.S. at 90, 121 S.Ct. 513.

At oral argument, defendants asserted that any provisions of the arbitration clause found to be unconscionable could be stricken because the clause includes a severability provision. Severing the unenforceable provisions of the arbitration clause at issue in the instant case would require the Court to rewrite the entire clause, and we decline to do so here.

Ultimately, based on the facts and circumstances of this case, we hold that the arbitration clause in plaintiffs' loan agreements is unconscionable and therefore unenforceable. The inequality of bargaining power between the parties and the oppressive and one-sided nature of the clause itself lead us to this conclusion. Through the arbitration clause at issue in this case, defendants have not only unilaterally chosen the forum in which they want to resolve disputes, but they have also severely limited plaintiffs' access to the forum of their choice. Defendants argue that finding this clause to be unconscionable would be "hostile to arbitration." We disagree but at the same time reaffirm this Court's previous statements acknowledging the State's strong public policy favoring arbitration. However, this particular arbitration clause simply does not allow for meaningful *374 redress of grievances and therefore, under *Green Tree*, must be held unenforceable.

For the foregoing reasons, the Court of Appeals decision reversing the trial court's order denying defendants' motion to compel is reversed.

REVERSED.

Justice EDMUNDS concurring in the result only.

I concur in the result only and agree that the trial court properly denied defendants' motion to compel arbitration. I write separately because I believe that this Court should apply the totality of the

circumstances test set out in *Brenner v. Little Red School House, Ltd.* 302 N.C. 207, 274 S.E.2d 206 (1981).

In *Brenner*, we considered whether a contract between a noncustodial parent and a private school was unconscionable. *Id.* at 213-14, 274 S.E.2d at 210-11. The contract required the school to enroll the plaintiff's son during the upcoming school year in exchange for payment of a confirmation fee and tuition. *Id.* at 208-09, 274 S.E.2d at 208. The contract further provided that tuition was "payable in advance on the first day of school, no portion refundable." *Id.* at 208, 274 S.E.2d at 208. The plaintiff paid the confirmation fee and tuition as required, but the child's custodial parent refused to allow the child to attend the school. *Id.* at 208-09, 274 S.E.2d at 208. When the defendant denied the plaintiff's subsequent request for a refund, the plaintiff filed suit in district court alleging, in part, unconscionability of the contract. *Id.* at 209, 274 S.E.2d at 208. The trial court granted summary judgment for the plaintiff. *Id.*

On review, we explained that "a court must consider all the facts and circumstances of a particular case" to "determin[e] whether a contract is unconscionable." *Id.* at 213, 274 S.E.2d at 210. If the court, after examining the totality of the circumstances, determines that "the inequality of the bargain is so manifest as to shock the judgment of a person of common sense" and that "the terms are so oppressive that no reasonable person would make them on the one hand" or "accept them on the other," then the court may "refuse to enforce [a] contract on the ground of unconscionability." *Id.* Circumstances this Court considered in *Brenner* included equality of bargaining power, availability of other schools, and reasonableness of the disputed term. *Id.* at 213-14, 274 S.E.2d at 211. We found that "[t]he bargain was one that a reasonable person of sound judgment might accept" and concluded that the contract was "enforceable as written." *Id.* at 214, 274 S.E.2d at 211.

Applying *Brenner* here, I am persuaded that the facts and circumstances found by the trial court es-

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establish that the arbitration clause is unconscionable. Particularly compelling circumstances include the cost-shifting ("loser pays") provision for arbitration proceedings exceeding eight hours, the cost-shifting provision for de novo appeal from the initial arbitration, the prohibitions against joinder of claims and class actions, the \$15,000.00 cap on the value of claims that can be pursued outside of arbitration, and the exclusion of foreclosure claims from arbitration. The cost-shifting provisions are particularly onerous because the trial court found that "compensation rates for American Arbitration Association ("AAA") arbitrators in North Carolina range from \$500.00 to \$2,380.00 per day," that "[t]he average daily rate of AAA arbitrator compensation in North Carolina is \$1,225.00," that "the average hourly rate for attorneys working on litigation matters such as this is between \$150.00-\$250.00 per hour," and that "[t]o successfully prosecute a complex case ... such as this one [] a law firm would likely need the assistance of expert witnesses in the fields of economics, lending practices, and credit insurance" whose rates "can range from \$150.00 to \$300.00 per hour, plus expenses."

Taken together, these circumstances effectively prevented plaintiffs from vindicating their rights under the contract in any forum. At the same time, the exclusionary clause allows defendants to pursue claims against borrowers in superior court. Perhaps the lopsided effect of the arbitration clause is best demonstrated by defendant CitiFinancial Services, Inc.'s (CitiFinancial) 68,000-to-*375 0 record. Since it began including this arbitration clause in its loan agreements, CitiFinancial has made more than 68,000 loans in North Carolina. While no North Carolina borrower has ever requested arbitration of any dispute with CitiFinancial, CitiFinancial has pursued lawsuits in civil court against more than 3,700 borrowers in North Carolina, including more than 2,000 collection actions and 1,700 foreclosures. CitiFinancial has never requested arbitration of any dispute involving a North Carolina borrow- er.

Based on the preceding circumstances found by

the trial court, I would hold that the inequality of the bargain represented by the arbitration clause is so manifest as to shock the judgment of a person of common sense, and that the term is so oppressive that no reasonable person would offer it on the one hand or accept it on the other.

This Court has long held that "findings of fact made by the trial judge are conclusive on appeal if supported by competent evidence, even if ... there is evidence to the contrary." *Lumbee River Elec. Membership Corp. v. City of Fayetteville*, 309 N.C. 726, 741, 309 S.E.2d 209, 219 (1983); see also *Cardwell v. Cardwell*, 64 N.C. 528, 528, 64 N.C. 621, 622 (1870) ("We can no more review the finding of a Judge when it is his province to find facts than we can review the finding of a jury."). The form or manner in which a trial court receives evidence has never controlled the standard of review an appellate court applies to the trial court's findings of fact. See, e.g., *State v. Elliott*, 360 N.C. 400, 417, 628 S.E.2d 735, 747 (applying a deferential standard to the trial court's findings of fact when those findings were based upon a newspaper article), cert. denied, — U.S. —, 127 S.Ct. 505, 166 L.Ed.2d 378 (2006); *Stephenson v. Bartlett*, 357 N.C. 301, 309, 582 S.E.2d 247, 252 (2003) (applying a deferential standard of review to the trial court's findings of fact when those findings were based upon written redistricting plans); *Homebuilders Ass'n of Charlotte, Inc. v. City of Charlotte*, 336 N.C. 37, 47, 442 S.E.2d 45, 52 (1994) (applying a deferential standard of review to the trial court's findings of fact when those findings were based upon uncontradicted affidavits).

We should not hasten to abandon century-old precedent applying a deferential standard of review to a trial court's findings of fact, especially when the issue has not been raised, briefed, or argued by any party.

For the reasons stated above, I concur in the result only.

Justice MARTIN joins in this separate opinion.
 Justice NEWBY dissenting.

I recognize that subprime lenders are under close scrutiny and that our General Assembly decided to outlaw the sale of single premium insurance some time after the execution of the contracts at issue. This case, however, is not about regulating subprime loans. Instead, the Court's decision today implicates bedrock principles of contract law which should not be disturbed in response to policy concerns over a disfavored industry. For the first time in our history, a North Carolina appellate court has found a contract to be unconscionable.

FN3. The "majority" refers to those members of this Court embracing the principal opinion or the concurring opinion. The "principal opinion" refers to the opinion of Justice Timmons-Goodson. The

Because I believe that today's holding is neither compelled by the facts under our state law nor complies with federal law, I respectfully dissent.

The contract in this case provides for a means of alternative dispute resolution, arbitration, which is favored in North Carolina. See, e.g., *Cyclone Roofing Co. v. David M. LaFave Co.*, 312 N.C. 224, 229, 321 S.E.2d 872, 876 (1984). Our state's policy is consistent with "a liberal federal policy favoring arbitration agreements." *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24, 103 S.Ct. 927, 941, 74 L.Ed.2d 765, 785 (1983). The Federal Arbitration Act ("FAA") makes all arbitration agreements "valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2. The purpose of the FAA was "to reverse the longstanding judicial hostility to arbitration agreements ... and to place arbitration agreements upon the same footing as other contracts." *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 24, 111 S.Ct. 1647, 1651, 114 L.Ed.2d 26, 36 (1991); see also *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 626-27, 105 S.Ct. 3346, 3354, 87 L.Ed.2d 444, 455 (1985) ("[W]e are well past the time when judicial suspicion of the desirability of arbitration and of the competence of arbitral tribunals inhibited the development of arbitration as an alternative means of dispute resolution."). "The [FAA] establishes that, as a matter of federal law, any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration, whether the problem at hand is the construction of the contract language itself or an allegation of waiver, delay, or a like defense to arbitrability." *Cone Mem'l Hosp.*, 460 U.S. at 24-25, 103 S.Ct. at 941, 74 L.Ed.2d at 785. Accordingly, the United States Supreme Court has recognized that arbitration can be an appropriate forum for the resolution of federal statutory claims and

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has enforced agreements to arbitrate such claims. See, e.g., *Rodriguez de Quijas v. Shearson/Am. Express, Inc.*, 490 U.S. 477, 109 S.Ct. 1917, 104 L.Ed.2d 526 (1989) (Securities Act of 1933); *Shearson/Am. Express Inc. v. McMahon*, 482 U.S. 220, 107 S.Ct. 2332, 96 L.Ed.2d 185 (1987) (Securities Exchange Act of 1934 and Racketeer Influenced and Corrupt Organizations Act); *Mitsubishi*, 473 U.S. 614, 105 S.Ct. 3346, 87 L.Ed.2d 444 (Sherman Act).

Likewise, in *Burke County Public Schools Board of Education v. Shaver Partnership*, this Court held that agreements to arbitrate disputes arising under any contract involving "substantial interstate activity" are enforceable under the FAA "notwithstanding conflicting state law." 303 N.C. 408, 420, 422, 279 S.E.2d 816, 823, 824 (1981). There, we recognized the benefit of "uniformity" in the enforcement of arbitration agreements in state and federal courts. *Id.* at 422, 279 S.E.2d at 824.

It is important to note the interplay between state and federal law with respect to arbitration agreements: federal law makes an arbitration agreement enforceable except when common law principles, such as unconscionability, make it unenforceable. The common law defense must apply to contracts generally and not arise because the subject is an arbitration agreement. See *Doctor's Assocs. v. Casarotto*, 517 U.S. 681, 687, 116 S.Ct. 1652, 1656, 134 L.Ed.2d 902, 909 (1996) ("Courts may not, however, invalidate arbitration agreements under state laws applicable *only* to arbitration provisions. By enacting § 2, we have several times said, Congress precluded States from singling out arbitration provisions for suspect status...."); *Perry*, 482 U.S. at 493 n. 9, 107 S.Ct. at 2527 n. 9, 96 L.Ed.2d at 437 n. 9 ("A court may not, then, in assessing the rights of litigants to *377 enforce an arbitration agreement, construe that agreement in a manner different from that in which it otherwise construes nonarbitration agreements under state law.").

Because this case is the first time this Court has held a contract unconscionable, and since the ma-

jority agrees that this arbitration agreement is unconscionable because of the collective effect of the arbitration agreement's terms, today's holding creates a preemption issue. The majority finds the agreement unconscionable based on provisions that would only exist in an arbitration agreement. Further, the principal opinion's finding of unconscionability involves a misapplication of a United States Supreme Court test specifically applicable to arbitration costs. See *Green Tree Fin. Corp.-Ala. v. Randolph*, 531 U.S. 79, 89-92, 121 S.Ct. 513, 521-23, 148 L.Ed.2d 373, 382-84 (2000).

In short, the majority concludes this arbitration agreement is unconscionable because it contains provisions common to many arbitration agreements. This result is precisely the one rejected recently by the United States Court of Appeals for the Third Circuit. In *Gay v. CreditInform*, the Third Circuit specifically warned that state court analysis of an arbitration agreement cannot focus on the uniqueness of an arbitration agreement as grounds for unconscionability. 2007 WL 4410362, at *21. Additionally, the Eleventh Circuit has recently upheld an arbitration agreement in the face of challenges similar to those raised in this case, particularly in reference to the class action prohibition and the exceptions to arbitration. See *Jenkins v. First Am. Cash Advance of Ga., LLC*, 400 F.3d 868, 877 (11th Cir.2005), *cert. denied*, 546 U.S. 1214, 126 S.Ct. 1457, 164 L.Ed.2d 132 (2006). These decisions by federal courts of appeals in cases factually analogous to the instant case further underscore the federal preemption issues involved here.

II. STATE LAW

A. General Principles of Contract Law

This Court has emphasized the vital role contracts play in our free society:

"The right to contract is recognized as being within the protection of the Fifth and Fourteenth Amendments to the Constitution of the United States; and protected by state constitutions. It has

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been held that the right to make contracts is embraced in the conception of liberty as guaranteed by the Constitution."

Alford v. Textile Ins. Co., 248 N.C. 224, 227, 103 S.E.2d 8, 10-11 (1958) (internal citations and internal quotation marks omitted) (quoting *Morris v. Holshouser*, 220 N.C. 293, 17 S.E.2d 115 (1941)). Like any freedom, the liberty to contract is coupled with corresponding responsibility: "Liberty to contract carries with it the right to exercise poor judgment as well as good judgment. It is the simple law of contracts that 'as a man consents to bind himself, so shall he be bound.'" *Troilino v. Goodman*, 225 N.C. 406, 414, 35 S.E.2d 277, 283 (1945) (citations omitted).

Equally well settled is the role courts should play in interpreting and enforcing contracts: "There can be no dispute that [a] contract between [private parties] ... there being no mistake or fraud, both being *sui juris*, is a valid and binding one." *Peoples Bank & Tr. Co. v. Mackorell*, 195 N.C. 741, 744, 143 S.E. 518, 520 (1928); see also *id.* at 745, 143 S.E. at 520 (noting further, by way of example, that even " 'though [a] contract was a foolish one, it would hold in law' " (citation omitted)). "The principle is generally conceded, and it is certainly equitable, that when the benefit and the burden of a contract are inseparably connected, both must go together, and liability to the burden is a necessary incident to the right to the benefit. *Qui sentit commodum sentire debet et onus*." *Norfleet v. Cromwell*, 70 N.C. 510, 516, 70 N.C. 634, 641 (1874) (citations omitted).

We have also recognized that the mere fact that one party to a contract is a large, heavily regulated commercial entity does not, per se, destroy the arm's-length nature of the transaction. In considering enforcement of provisions of an insurance policy, we noted:

The insured and the defendant [insurance company] had the legal right to enter into the contract, and the parties are bound by its terms. In the absence of statutory provisions to the contrary, insurance companies have the same right as *378 indi-

viduals to limit their liability and to impose whatever conditions they please, upon their obligations, not inconsistent with public policy; and the courts have no right to add anything to their contracts or to take anything from them.

... We must decide the case, therefore, not by what we may think would have been a wiser and more discreet contract on the part of the plaintiff, if he could have procured such a one, but by what is written in the contract actually made by them. Courts are not at liberty to rewrite contracts for the parties. We are not their guardians, but the interpreters of their words. We must, therefore, determine what they meant by what they have said-what their contract is, and not what it should have been.

Powers v. Travelers Ins. Co., 186 N.C. 336, 337-38, 119 S.E. 481, 481-82 (1923) (internal citations and internal quotation marks omitted). Our jurisprudence counsels us to exercise caution in undertaking any judicial inquiry into the wisdom of a contract's terms, such as the one plaintiffs ask us to do here.

B. Unconscionability Under *Brenner*

On one occasion alone, this Court has addressed the issue of whether a contract should be enforced because of unconscionability. In *Brenner v. Little Red School House, Ltd.*, we recognized that it is only in the exceptional case that a contract will be found unconscionable:

A court will generally refuse to enforce a contract on the ground of unconscionability only when the inequality of the bargain is so manifest as to shock the judgment of a person of common sense, and where the terms are so oppressive that no reasonable person would make them on the one hand, and no honest and fair person would accept them on the other. In determining whether a contract is unconscionable, a court must consider all the facts and circumstances of a particular case. If the provisions are then viewed as so one-sided that the contracting party is denied any opportunity for a meaningful choice, the contract should be found unconscionable.

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302 N.C. 207, 213, 274 S.E.2d 206, 210 (1981) (citations omitted). Applying this rigorous standard, no appellate court in North Carolina has held a contract unenforceable based on unconscionability.

In *Brenner*, the plaintiff sought to recover tuition paid in advance to a private school when his former wife refused to allow the plaintiff's child to attend the school and the child did not attend a single day. *Id.* at 208-09, 274 S.E.2d at 208. Under the terms of the contract between the plaintiff and the school, tuition for the entire school year was "payable in advance on the first day of school, no portion refundable." *Id.* at 208, 274 S.E.2d at 208. Applying the articulated unconscionability test to "all the facts and circumstances" in *Brenner*, we found that there was no inequality of bargaining power because the plaintiff had other choices of schools, *id.* at 213-14, 274 S.E.2d at 210-11, and that the clause making advance tuition payments on the first day of school non-refundable "[was] reasonable when considered in light of the expense to defendant in preparing to educate the child and in reserving a space for him," *id.* at 213-14, 274 S.E.2d at 211.

As the majority correctly notes, plaintiffs have the burden to prove unconscionability since they have raised it as an affirmative defense to enforceability of this contract. *Rite Color Chem. Co. v. Velvet Textile Co.*, 105 N.C.App. 14, 20, 411 S.E.2d 645, 649 (1992).

III. STANDARD OF REVIEW

Preliminarily, I question whether the majority applies the correct standard of review by deferring to the trial court's findings of fact.^{FN4} We apply the deferential "competent evidence" standard to the trial court's findings³⁷⁹ of fact in cases like *Lumbee River Electric Membership Corp. v. City of Fayetteville*, 309 N.C. 726, 309 S.E.2d 209 (1983), relied upon by the majority, when the trial judge sits as jury and takes live evidence. *Id.* at 740-41, 309 S.E.2d at 218-19. However, when as here, the trial court merely hears arguments on a motion and reviews the same cold record we review now, there

is less reason to defer to the trial court as fact finder. For example, we review de novo the trial court's rulings on summary judgment motions, which are argued on a record similar to the one in this case. *Builders Mut. Ins. Co. v. N. Main Constr., Ltd.*, 361 N.C. 85, 88, 637 S.E.2d 528, 530 (2006) (citing *Howerton v. Arai Helmet, Ltd.*, 358 N.C. 440, 470, 597 S.E.2d 674, 693 (2004)). Federal appellate courts apply de novo review to district court denials of motions to compel arbitration. *See, e.g., Gay*, at -; *Safer v. Nelson Fin. Grp., Inc.*, 422 F.3d 289, 293 (5th Cir.2005); *Jenkins*, 400 F.3d at 873; *Kidd v. Equitable Life Assurance Soc'y*, 32 F.3d 516, 518 (11th Cir.1994), *cert. denied*, 522 U.S. 1028, 118 S.Ct. 626, 139 L.Ed.2d 606 (1997). Additionally, a number of federal courts liken the standard of review for a motion to compel arbitration to the standard for a motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure. *See, e.g., Par-Knit Mills Inc. v. Stockbridge Fabrics Co.*, 636 F.2d 51, 54 & n. 9 (3d Cir.1980); *Hughes v. CACI, Inc.-Commercial*, 384 F.Supp.2d 89, 92-93 (D.D.C.2005).^{FN5}

FN4. Despite contentions to the contrary, the parties did brief the standard of review issue. Both parties included "Standard of Review" sections in their briefs to this Court, with plaintiffs arguing that the Court of Appeals majority did not defer adequately to the trial court and defendants arguing that the deference was appropriate. I believe that this adequately preserves the issue for appellate review. Nonetheless, I do not find the standard of review to be dispositive in this case.

FN5. It appears that an intermediate option we could have pursued in this case was remanding to the trial court, where any disputed facts revealed by the record could have been addressed in an evidentiary hearing with the opportunity to test statements through cross-examination; this Court has remanded for such hearings in a variety of contexts. *See, e.g., Stephenson v. Bartlett*, 355 N.C. 354, 381, 562 S.E.2d

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377, 395 (2002) (legislative redistricting); *State v. McHone*, 348 N.C. 254, 259, 499 S.E.2d 761, 764 (1998) (criminal defendant's motion for appropriate relief); *Meiselman v. Meiselman*, 309 N.C. 279, 306, 307 S.E.2d 551, 567 (1983) (minority shareholder suit to dissolve corporation).

However, even applying the competent evidence standard, I conclude that the facts, as found by the trial court, do not support the legal conclusion that this contract is unconscionable.

IV. PROCEDURAL UNCONSCIONABILITY

The principal opinion acknowledges that "procedural unconscionability involves 'bargaining naughtiness' in the form of unfair surprise, lack of meaningful choice, and an inequality of bargaining power." *Rite Color Chem. Co.*, 105 N.C.App. at 20, 411 S.E.2d at 648. Applying this test, it finds the following to be sufficient to establish procedural unconscionability: the closings were rushed and the arbitration clause not mentioned; the terms were non-negotiable; and the parties' relative status, business and consumer, reflected inequality in bargaining power. Quite frankly, these factors exist in most, if not all, consumer contracts.^{FN6}

FN6. In the overall unconscionability analysis, the concurring opinion agrees with the principal opinion in concept, but not terminology. The concurring opinion collapses the procedural and substantive analyses under what it labels as *Brenner's* "totality of the circumstances" test. While not using the term "procedural unconscionability," the concurring opinion's analysis does analyze inequality of bargaining power and the parties' status as business and consumer. In substance, the majority of the members of this Court agree that these factors contribute to a finding of unconscionability.

Under federal case law interpreting the FAA, there is a question regarding this Court's jurisdic-

tion over plaintiffs' argument that the arbitration agreement is a contract of adhesion. As noted by the principal opinion, the trial court did not extensively address the procedural unconscionability question, but did label the arbitration agreement "a standard-form contract of adhesion." More than four decades ago, the United States Supreme Court held that claims challenging the making of an arbitration agreement specifically are distinguishable from those challenging the contract, in which the arbitration agreement is included, generally. *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 403-04, 87 S.Ct. 1801, 1806, 18 L.Ed.2d 1270, 1277 (1967). The former are reviewable by a court, while the latter are for the arbitrator to decide. See *id.* ("[A] federal court may consider only issues relating to the making and performance of *380 the agreement to arbitrate. In so concluding, we not only honor the plain meaning of the [FAA] but also the unmistakably clear congressional purpose that the arbitration procedure, when selected by the parties to a contract, be speedy and not subject to delay and obstruction in the courts."); see also *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 448-49, 126 S.Ct. 1204, 1210, 163 L.Ed.2d 1038, 1045-46 (2006) ("[T]he *Prima Paint* rule permits a court to enforce an arbitration agreement in a contract that the arbitrator later finds to be void.... We reaffirm today that, regardless of whether the challenge is brought in federal or state court, a challenge to the validity of the contract as a whole, and not specifically to the arbitration clause, must go to the arbitrator.").

In this case, neither plaintiffs' arguments nor the majority's analysis regarding procedural unconscionability clearly distinguishes between challenges to the loan agreements and the arbitration agreements contained therein. They emphasize what happened at the loan closing, preparation of the documents by defendants, and the lack of sophistication of these subprime loan applicants. Addressing similar arguments, the United States Court of Appeals for the Eleventh Circuit found that claims regarding the absence of consumer bargaining power, the types of consumers targeted, and the consumers' inability to change the contract terms

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related to allegations that the consumer loan contract as a whole was adhesive, and thus, those claims were to be decided by an arbitrator, not a court. *Jenkins*, 400 F.3d at 877.

However, even under this state's contract law, the arbitration agreement is not procedurally unconscionable. Many of the factors highlighted by the majority were present in *Brenner*, but did not result in the contract being declared unenforceable. In *Brenner*, there was no discussion whether the defendant explained to the plaintiff the no refund policy; there was no indication the policy was negotiable; and presumably the provider of the service drafted the form agreement and held the keys to the schoolhouse. In our analysis of "inequality of bargaining power," we did not focus on who drafted the agreement or whether any of the specific terms were negotiable. *Id.* at 213-14, 274 S.E.2d at 211. Instead, we equated "bargaining power" with choices in the marketplace: "Plaintiff was not forced to accept [the] defendant's terms, for there were other private and public schools available to educate the child." *Id.* at 213, 274 S.E.2d at 211. Unlike compulsory schooling for children, borrowing funds is optional. Plaintiffs had the choice of whether to borrow. Further, although the trial court did not address the availability of loans from other lenders, one can assume other borrowing options existed in the subprime market. Under our controlling precedent, "[t]here was no inequality of bargaining power between the parties" since plaintiffs had other options. *Id.* They were "not forced to accept defendant [s] terms." *Id.*

It is also important to note that the arbitration agreement was not hidden or minimized. As the principal opinion observes, this is not a case questioning "whether an arbitration agreement had been properly executed" and "there is no question that plaintiffs signed the agreement." The arbitration agreement alerted each plaintiff to its significance in a number of ways. Although contained in the loan document, the agreement was set off in a separate box and entitled "ARBITRATION PROVISION," which was bolded, capitalized, and underlined. The provision was introduced by the follow-

ing bold, capitalized font: "READ THE FOLLOWING ARBITRATION PROVISION CAREFULLY. IT LIMITS CERTAIN OF YOUR RIGHTS, INCLUDING YOUR RIGHT TO OBTAIN REDRESS THROUGH COURT ACTION." As the provision comprised a portion of two pages, plaintiffs initialed the page transition. Directly above the borrower's signature line for the arbitration agreement, the following bold, capitalized statement appeared: "READ THE ABOVE ARBITRATION PROVISION CAREFULLY. IT LIMITS CERTAIN OF YOUR RIGHTS, INCLUDING YOUR RIGHT TO OBTAIN REDRESS THROUGH COURT ACTION." Both plaintiffs signed their respective arbitration agreements separately from the signatures required on the loan agreements—a fact that *381 carries considerable legal significance. See *Leonard v. S. Power Co.*, 155 N.C. 10, 14, 70 S.E. 1061, 1063 (1911) ("[T]he law will not relieve one who can read and write from liability upon a written contract, upon the ground that he did not understand the purport of the writing, or that he has made an improvident contract, when he could inform himself and has not done so.").

Defendants took steps to ensure plaintiffs would be aware of the provision by separating the arbitration agreement from other portions of the loan agreement; employing capitalization, bolding, and underlining; and requiring a separate signature. Furthermore, the loan closing was not the last opportunity plaintiffs had to review the documents and decline the loans. Contained within the arbitration provision is the borrower's right to rescind the loan within three business days. Even if plaintiffs were rushed through the closing, they had three business days to read the documents and rescind the loans if desired.

In sum, the majority's analysis criticizes aspects common to all consumer transactions and fails to find the "bargaining naughtiness" required for finding procedural unconscionability.

V. SUBSTANTIVE UNCONSCIONABILITY

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The principal opinion describes substantive unconscionability as pertaining to whether the terms of the contract are harsh, one-sided, and oppressive.^{FN7} See *Rite Color Chem. Co.*, 105 N.C.App. at 20, 411 S.E.2d at 648-49. The majority determines that the arbitration agreement here is substantively unconscionable based on the collective effect of its "prohibitively high" and "onerous" arbitration costs, one-sidedness and lack of mutuality, and prohibition of class actions and joinder of claims. I cannot agree. An arbitration costs provision would not be found in any type of contract except an arbitration agreement. Plaintiffs also challenge the exceptions to arbitration, which again, would only be found in an arbitration provision. Finally, plaintiffs' arguments in this case focus on the class action waiver's interaction with the other two provisions that are unique to arbitration. Thus, the unconscionability analysis in this case not only fails under the exceedingly high substantive standard prescribed by our state case law, but also risks preemption by federal law to the extent it relies on features of the instant agreement that would not be found in contracts generally.

FN7. While not using the term "substantive unconscionability," the concurring opinion criticizes the same arbitration terms as the principal opinion. The concurring opinion proceeds solely under *Brenner*, whereas the principal opinion uses federal case law in its analysis.

To prove substantive unconscionability under *Brenner*, plaintiffs must show that the "inequality of the bargain is so manifest as to shock the judgment" and that the terms of the arbitration agreement "are so oppressive that no reasonable person would make them on the one hand, and no honest and fair person would accept them on the other." 302 N.C. at 213, 274 S.E.2d at 210. In *Brenner*, we evaluated substantive unconscionability, as we had with procedural unconscionability, in the context of the marketplace. We found the school's "no refund" policy was reasonable in light of what the student's parent received in return: preparation for his child's education and a reserved place in the class. *Id.* at

213-14, 274 S.E.2d at 211. In this case, considering all the facts and circumstances, the terms of the arbitration agreement are "reasonable when considered in light of" the overall transaction.^{FN8} See *id.*

FN8. Contracts for the sale of goods governed by North Carolina's Uniform Commercial Code ("UCC") are subject to the doctrine of unconscionability. See N.C.G.S. § 25-2-302 (2007). Although the arbitration agreement here is governed by common law, not the UCC, the UCC's doctrine of unconscionability grew out of the common law. See *Rite Color Chem. Co.*, 105 N.C.App. at 18, 411 S.E.2d at 647-48. The official comment to the statute states:

The basic test is whether, in the light of the general commercial background and the commercial needs of the particular trade or case, the clauses involved are so one-sided as to be unconscionable under the circumstances existing at the time of the making of the contract. [The statute] makes it clear that it is proper for the court to hear evidence upon these questions. *The principle is one of the prevention of oppression and unfair surprise and not of disturbance of allocation of risks because of superior bargaining power.*

N.C.G.S. § 25-2-302 cmt. 1 (emphasis added) (citation omitted). Consistent with *Brenner*, the UCC makes clear that the key inquiry is more about the commercial reasonableness of the contract terms than it is about the relative bargaining positions of the parties.

*382 Generally speaking, the loan agreements executed between plaintiffs and defendants included a common exchange. Plaintiffs, who had impaired credit, received a loan. Defendants received a promise by each plaintiff to pay back the loan under terms that would minimize defendants' risk of loss. These terms, including the interest rate, were less favorable than what was available in the conventional market, but defendants were assuming more risk by lending to plaintiffs based on their lower credit ratings. The terms of each agreement, like many other loan agreements in both the con-

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ventional and subprime markets, included an agreement to arbitrate claims. There is no question in this case whether it was reasonable for defendants to include an agreement to arbitrate in their extension of credit to plaintiffs. Plaintiffs merely challenge certain terms of that agreement: (1) the costs provisions; (2) the enumerated exceptions to arbitration; and (3) the prohibition on class actions and joinder of claims. Taken together or separately, these terms do not render the arbitration provision unconscionable.

A. Arbitration Costs

The focal point of the majority's analysis is the conclusion that the hypothetical arbitration costs, as stated in the agreement, prevent plaintiffs from vindicating their rights. The principal opinion determines that the costs provision of this arbitration agreement presents a prohibited "barrier" under decisions by the United States Supreme Court and the United States Court of Appeals for the Fourth Circuit. However, the record in this case does not establish that the potential costs of arbitration will deter plaintiffs from "effectively vindicating" their claims of more than \$15,000 each.^{FN9} This arbitration fee structure withstands the tests of *Green Tree Financial Corp.-Alabama v. Randolph*, 531 U.S. 79, 121 S.Ct. 513, 148 L.Ed.2d 373 (2000), and *Bradford v. Rockwell Semiconductor Systems, Inc.*, 238 F.3d 549 (4th Cir.2001).

FN9. Neither party has contested the fact that each plaintiff's claim satisfies the \$15,000 threshold triggering the arbitration agreement. The majority focuses on the insurance premiums paid instead of the values of the claims. Both plaintiffs alleged three causes of action seeking compensatory damages, costs, and attorney's fees: (1) unfair and deceptive trade practices ("UDTP") under N.C.G.S. § 75-1.1, (2) unjust enrichment, and (3) breach of duties of good faith and fair dealing. A brief review of the smaller claim, that of Tillman, reveals the value of the claim surpasses the

threshold. Tillman's compensatory damages are the amount she paid for the disputed insurance (\$2,064.75) plus interest at her contract rate from the date the charges began until judgment, which amounts to approximately \$5,000.00. The trebling of the compensatory damages under the UDTP statute meets the \$15,000 threshold, even before adding costs and attorney's fees and other potential recoveries. Richardson, having paid disputed insurance premiums of \$4,208.75, would have a substantially higher claim.

In *Green Tree*, the United States Supreme Court addressed the issue of arbitration costs when the purchaser of a mobile home brought a purported class action against her lenders, asserting violations of the federal Truth in Lending Act for the lenders' alleged failure to disclose certain finance charges. 531 U.S. at 82-83, 121 S.Ct. at 517-18, 148 L.Ed.2d at 378-79. With respect to the plaintiff's challenge to the arbitration agreement, the Supreme Court framed the issue as "whether [the plaintiff's] agreement to arbitrate is unenforceable because it says nothing about the costs of arbitration, and thus fails to provide her protection from potentially substantial costs of pursuing her federal statutory claims in the arbitral forum." *Id.* at 89, 121 S.Ct. at 521, 148 L.Ed.2d at 382. Because of the scant record with respect to arbitration costs in *Green Tree*, the Court found plaintiff had failed to prove the costs were prohibitively expensive. *Id.* at 90-91, 121 S.Ct. at 522, 148 L.Ed.2d at 383-84. The Court concluded that "[t]he 'risk' that [the plaintiff] will be saddled with prohibitive costs is too speculative to justify the invalidation of an arbitration agreement." *Id.* at 91, 121 S.Ct. at 522, 148 L.Ed.2d at 384. Ultimately, *Green Tree* clarified that: *383 (1) costs are "prohibitive" if they preclude effective vindication of rights in the arbitral forum, *id.* at 90, 121 S.Ct. at 522, 148 L.Ed.2d at 383, and (2) a party challenging an arbitration agreement must show "the likelihood of incurring [prohibitive] costs," *id.* at 92, 121 S.Ct. at 522, 148 L.Ed.2d at 384.

In *Bradford*, the United States Court of Ap-

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peals for the Fourth Circuit followed these two directives from *Green Tree* when it considered whether a fee-splitting provision rendered an arbitration agreement unenforceable. 238 F.3d at 552. The plaintiff sought redress for his age discrimination claims simultaneously through arbitration and in federal district court. *Id.* at 551-52. In reviewing the costs issue, the Fourth Circuit stated that part of the key inquiry was whether "the expected cost differential between arbitration and litigation in court ... is so substantial as to deter the bringing of claims." *Id.* at 556. As to the particular case before it, the Fourth Circuit found that the plaintiff had not been deterred from vindicating his rights because he had in fact utilized the arbitral forum. *Id.* at 558.

Initially, I note that defendants argue plaintiffs cannot prove prohibitive costs because the arbitration agreement requires arbitration under the AAA's Consumer Rules enacted subsequent to the execution of plaintiffs' arbitration agreements. Under changes to the rules, if plaintiffs (or any consumers) arbitrate, they will be liable for at most \$375 in arbitration costs. The majority rejects this argument by stating "it is inappropriate to rewrite an illegal contract." ^{FN10} However, this is not a situation in which defendants are attempting to rewrite a contract provision. Rather, to use AAA as mandated by the arbitration agreement, defendants are required to comply with the new rules by paying most of the arbitration fees. As a result, plaintiffs cannot show they will actually incur prohibitive costs. *Green Tree*, 531 U.S. at 92, 121 S.Ct. at 522, 148 L.Ed.2d at 384. Other courts have held that an after-the-fact offer from a defendant "to bear the costs of arbitration that [the plaintiff] is unable to afford" prevented the plaintiff from "demonstrat[ing] that arbitration would be prohibitively expensive." *Anders v. Hometown Mortgage Servs., Inc.*, 346 F.3d 1024, 1029 (11th Cir.2003); see *Large v. Conseco Fin. Servicing Corp.*, 292 F.3d 49, 56 (1st Cir.2002) (holding that "[the defendant's] offer to pay the costs of arbitration and to hold the arbitration in the [plaintiffs'] home state ... mooted the issue of arbitration costs").

FN10. The principal opinion addresses de-

fendants' argument directly. While the concurring opinion is silent, it simply assumes the stated contract terms are the only ones to be considered.

The principal opinion also notes in response to defendants' offer to apply the AAA's Consumer Rules that the arbitration agreement provides that "[t]he terms of this Provision shall control any inconsistency between the rules of [AAA] and this Provision." However, the arbitration agreement contains a severability clause, which should be used to excise this particular sentence. We construe contracts as a whole, give effect to the intent of the parties, and enforce contracts when unenforceable provisions can be severed. See, e.g., *Whittaker Gen. Med. Corp. v. Daniel*, 324 N.C. 523, 528, 379 S.E.2d 824, 828 (1989); *Rose v. Vulcan Materials Co.*, 282 N.C. 643, 658-59, 194 S.E.2d 521, 531-32 (1973); *In re Receivership of Port Pub. Co.*, 231 N.C. 395, 397-98, 57 S.E.2d 366, 367-68 (1950). By severing this sentence, the intent of the contract is effectuated through permitting AAA to conduct the arbitration and thereby allowing AAA's Consumer Rules to apply. See, e.g., *State v. Philip Morris USA, Inc.*, 359 N.C. 763, 773, 618 S.E.2d 219, 225 (2005). I do not believe severing this one sentence amounts to rewriting the entire agreement. See *Whittaker Gen. Med. Corp.*, 324 N.C. at 528, 379 S.E.2d at 828 ("If the contract is separable ... and one part is reasonable, the courts will enforce the reasonable provision."); see also *Vecellio & Grogan, Inc. v. Piedmont Drilling & Blasting, Inc.*, — N.C.App. —, —, 644 S.E.2d 16, 21 ("By striking the offending language [in the indemnification clause] the Court does not rewrite the contract or substitute its own terms in the provision for those of the parties." (citing **384Int'l Paper Co. v. Corporex Constructors, Inc.*, 96 N.C.App. 312, 316, 385 S.E.2d 553, 555 (1989))), *disc. rev. denied*, 361 N.C. 575, 651 S.E.2d 564 (2007).

This Court's refusal to save this arbitration agreement through incorporating the AAA Consumer Rules or applying its severability clause raises the specter of preemption, because it appears we are treating this contract differently from other

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contracts. The FAA, as interpreted by the United States Supreme Court, does not permit this. See *Doctor's Assocs.*, 517 U.S. at 687, 116 S.Ct. at 1656, 134 L.Ed.2d at 909; see also *Kristian v. Comcast Corp.*, 446 F.3d 25, 64-65 (1st Cir.2006) (finding an arbitration agreement's limitation on the recovery of attorney's fees and costs and its class arbitration bar unenforceable in an antitrust case, but severing those provisions so that arbitration could proceed).

Even if the costs provisions were applied as written, plaintiffs have not offered more than speculation that they would incur costs. The written terms of the arbitration provision in this case provide that the costs are shifted to the non-prevailing party under two circumstances: when the initial arbitration proceeding exceeds eight hours and after a de novo appeal. The trial court's findings cited by the principal opinion do not address the likelihood that: (1) plaintiffs' initial arbitration hearings would last more than eight hours; (2) the arbitration of plaintiffs' claims would involve an appeal; or (3) plaintiffs would not prevail. The trial court's finding that "the average daily rate of AAA arbitrator compensation in North Carolina is \$1,225.00" is not probative of whether the costs are prohibitive without corresponding findings that plaintiffs' arbitration would actually last more than eight hours and plaintiffs are likely to lose. Under the arbitration agreement, plaintiffs must pay \$125 to initiate arbitration. In civil court, plaintiffs must pay a \$95 filing fee. N.C.G.S. § 7A-305 (2007). Thus, the initial financial hurdle to use both forums is marked by a difference of only \$30. Because the trial court did not make any findings as to the likely length of plaintiffs' arbitrations or their likelihood of success, it could not fairly determine the costs plaintiffs would incur beyond the filing fee.

The principal opinion correctly states that *Bradford* requires a comparison of the costs of litigation with the costs of arbitration. However, in this case, the trial court did not perform such an analysis. The evidence presented and relied upon by the trial court compares the costs of litigating a class action and arbitrating as an individual. In actuality,

the evidence at issue compares the costs of winning a class action and losing an individual arbitration. Clearly, this is not the proper analysis. The record in this case does not offer proof from which a court can make the correct comparison: the cost to litigate an individual claim in court versus the cost to arbitrate the same claim.

B. Exceptions to Arbitration

The agreement requires arbitration for all actions in which, as here, a claim exceeds \$15,000, except for foreclosure actions. The majority holds this provision unconscionable under *Brenner* because it is "so one-sided that the contracting party is denied any opportunity for a meaningful choice." The majority bases this conclusion on a finding that since 1996, defendants have pursued about 2,000 collection actions in court (of the 68,000 loans made), with an average claim of \$7,000, but have pursued no claims in arbitration. The majority concludes the exceptions were "specifically carve[d] out" for the corporate drafter to avoid arbitration. I do not agree.

The arbitration agreement's exclusion from arbitration of claims under \$15,000 is not manifestly unreasonable; it was not even designed by this lender. As defendants point out, the American Arbitration Association ("AAA"), which would administer any arbitration between these parties, requires that claims under \$15,000 be excluded from arbitration. The \$15,000 threshold for arbitration is not arbitrary or specifically designed to favor defendants. This policy of the third-party administrator is intended to benefit consumers by allowing access to the courts for small claims. See *Jenkins*, 400 F.3d at 879 (noting that a "provision providing access to small claims tribunals was intended to benefit, not injure, consumers"). Here, plaintiffs have the option of pursuing their individual claims in civil court by limiting*385 their damages to \$15,000 each or seeking a larger recovery in arbitration.

Additionally, the arbitration agreement's exclusion of foreclosure actions is not unreasonable be-

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cause our statutes give North Carolina superior courts "exclusive jurisdiction" over any action affecting the title to land located in this state. See N.C.G.S. § 43-1 (2007). Moreover, our foreclosure statutes contain provisions protecting homeowners. E.g., *id.* § 45-21.16 (2007) (outlining specific requirements for notice and hearing prior to sale); *id.* § 45-21.20 (2007) (allowing satisfaction of mortgage after notice and before sale is completed); *id.* § 41-21.34 (2007) (permitting application to enjoin sale on equitable grounds).

C. Prohibition on Class Actions and Joinder of Claims

The majority affirms the trial court's conclusion that the prohibition on class actions and joinder of claims is a factor to consider in the overall unconscionability analysis. The majority reasons that the prohibition hinders access to a tribunal for "cases with low damages" and benefits only the lender. This analysis ignores the facts of this case in which each plaintiff's claim is greater than \$15,000 and arbitration provides an expedient forum for plaintiffs to pursue their remedies.

The principal opinion states that plaintiffs' damages total less than \$4,500, but this amount does not take into account accrued interest and trebling, N.C.G.S. § 75-16 (2007), or that plaintiffs may recover attorney's fees, *id.* § 75-16.1 (2007); see note 7 above. Moreover, the mandatory arbitration provision was only triggered in this case because each plaintiff claims damages in excess of \$15,000. The "modesty" of the damages sought by plaintiffs is doubtful. When federal courts have held arbitration agreements unconscionable based in part on class action prohibitions, the damages at issue were considerably less than those at issue in this case. See, e.g., *Dale v. Comcast Corp.*, 498 F.3d 1216, 1220 (11th Cir.2007) (\$11 per plaintiff); *Ting v. AT&T*, 319 F.3d 1126, 1134 (9th Cir.) (declaratory and injunctive relief), *cert. denied*, 540 U.S. 811, 124 S.Ct. 53, 157 L.Ed.2d 24 (2003); see also *Kristian*, 446 F.3d at 54 (damages which if trebled would range "from a few hundred dollars to

perhaps a few thousand dollars" in a complex anti-trust case); *Leonard v. Terminix Int'l Co.*, 854 So.2d 529, 535 (Ala.2002) (*per curiam*) (less than \$500 per plaintiff); *State ex rel. Dunlap v. Berger*, 211 W.Va. 549, 562, 567 S.E.2d 265, 278 (\$8.46 for one named plaintiff), *cert. denied*, 537 U.S. 1087, 123 S.Ct. 695, 154 L.Ed.2d 631 (2002).

The trial court's conclusion that it would be unlikely that attorneys would be willing to represent plaintiffs in the absence of a class action option, while labeled a factual finding, is essentially a legal argument that has been rejected by federal courts. Federal courts of appeals have concluded that the availability of attorney's fees provides sufficient incentive for attorneys to represent clients raising claims similar to those of plaintiffs in this case. See *Jenkins*, 400 F.3d at 878 (recognizing that the availability of attorney's fees provides plaintiffs with adequate access); *Snowden v. CheckPoint Check Cashing*, 290 F.3d 631, 638 (4th Cir.) (rejecting challenge to a class action waiver based on the plaintiffs' argument that the small amount of individual damages sought would make them unable to obtain legal representation when attorney's fees were available), *cert. denied*, 537 U.S. 1087, 123 S.Ct. 695, 154 L.Ed.2d 631 (2002); *Johnson v. W. Suburban Bank*, 225 F.3d 366, 374 (3d Cir.2000) (finding that class action waivers in arbitration proceedings do not "necessarily choke off the supply of lawyers willing to pursue claims on behalf of debtors"), *cert. denied*, 531 U.S. 1145, 121 S.Ct. 1081, 148 L.Ed.2d 957 (2001); see also *Livingston v. Assocs. Fin., Inc.*, 339 F.3d 553, 559 (7th Cir.2003) (enforcing an arbitration provision specifically prohibiting class action arbitration).

Further, apart from plaintiffs' attorney's own averments, there is no evidence in the record that other attorneys would refuse to take the case of a client seeking more than \$15,000 in damages.^{FN11} Many cases seeking *386 damages lower than those sought here are litigated through our appellate court system. See, e.g., *Wright v. Murray*, — N.C.App. —, —, 651 S.E.2d 913, 914 (2007) (finding no abuse of discretion when trial court ordered \$25,000 in attorney's fees following the jury's award of

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\$7,000 to the plaintiff); *Dysart v. Cummings*, 181 N.C.App. 641, 645, 640 S.E.2d 832, 835 (seeking \$10,500 in damages plus costs and attorney's fees), *aff'd per curiam*, 361 N.C. 580, 650 S.E.2d 593 (2007). While it is uncontested that plaintiffs cannot afford to hire an attorney on an hourly basis, there is nothing in the arbitration agreement itself that precludes an attorney from taking a consumer's case in arbitration on a contingency basis. The very fact that plaintiffs retained counsel on a contingency fee basis in this matter weighs against a finding that representation would be unavailable.

FN11. In several of its findings of fact, the trial court relies on information contained in the affidavit of plaintiffs' attorney. Reliance on the affidavit raises two concerns. First, under Rule 3.7 of the North Carolina Rules of Professional Conduct, "[a] lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness unless: (1) the testimony relates to an uncontested issue; (2) the testimony relates to the nature and value of legal services rendered in the case; or (3) disqualification of the lawyer would work substantial hardship on the client." N.C. St. B. Rev. R. Prof. Conduct 3.7 (Lawyer as Witness), 2007 Ann. R. N.C. 717, 812. In this case, the propriety of plaintiffs' own counsel providing an affidavit concerning not merely "services rendered in [this] case" but also regarding his opinion whether it would be "feasible to pursue claims such as this on an individual basis" is questionable under the rule.

Second, defendants moved to compel discovery on matters related to litigation and arbitration costs. The trial court denied this motion. Subsequently, two days before the hearing on defendants' motion to compel arbitration, plaintiffs' counsel submitted the affidavit at issue addressing the same information counsel had refused to disclose during discovery. Defendants moved to strike this affidavit. The trial court did not rule on the motion to strike, but relied on the affidavit in its findings of fact regarding the costs of litigation. Given this reliance, at a

minimum, defendants should have been given the opportunity to probe the substance of the affidavit.

VI. APPLICATION OF RECENT FEDERAL CASES

The majority upholds the trial court, which concluded that the three provisions taken together made the arbitration agreement unconscionable. Implicit in this conclusion is that none of these provisions standing alone would result in unconscionability. Not only does state law not support the trial court's conclusion, but the majority's approach is inconsistent with federal decisions interpreting the FAA. As illustrated by two recent federal court of appeals cases with similar facts, when reviewing elements of an arbitration agreement that are unique to arbitration agreements, state law must defer to federal principles.

In *Jenkins v. First American Cash Advance of Georgia, LLC*, the Eleventh Circuit considered whether an arbitration agreement between a consumer and a payday lender was unconscionable. 400 F.3d at 870-71. The terms of the agreement were similar to, but more strident than, those found in this case. Costs for arbitration were advanced by the lender only upon a consumer's request, and then the arbitrator had complete discretion to award attorney's fees and costs to the prevailing party, if applicable law allowed. *Id.* at 872. The arbitration agreement contained a small claims exception similar to the one in this case, with one important difference: small claims decisions could be appealed to an arbitrator. *Id.*

The trial court in *Jenkins* found that the agreement was substantively unconscionable because it prohibited class actions and because it lacked mutuality of obligation in that its small claims exception would only benefit the lender. *Id.* at 876. The trial court noted that individually these provisions might be insufficient, but "considered together," they made the arbitration agreement unconscionable. *Id.* The Eleventh Circuit disagreed. As to the class action waiver, even though none of the loans was greater than \$500, *id.* at 871, the appeals court con-

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cluded that the availability of attorney's fees was sufficient incentive for lawyers to represent consumers under the applicable arbitration agreement, *id.* at 878. Further, the court concluded that the class action prohibition would not have the practical effect of immunizing the lenders because the arbitration agreement permitted the consumer to vindicate all of her substantive rights. *Id.* Regarding the exception allowing small claims actions to be brought in a judicial forum, the court noted that this option was equally applicable to both consumer and lender. *Id.* at 879. The court found the *387 exception was intended to benefit, not injure, consumers as part of a larger Consumer Due Process Protocol developed by AAA. *Id.* Moreover, the Eleventh Circuit concluded that the arbitral forum itself does not unfairly favor the lender because the arbitrator was permitted to award the consumer the full range of relief available under the applicable statute. *Id.* at 880.

Likewise, in *Gay v. CreditInform*, the Third Circuit considered whether an arbitration agreement between a consumer and a credit repair services company was unconscionable. 511 F.3d at 374-75. The court's analysis focused on the class action waiver contained in the agreement, *id.* at 392-95, noting the "competing interests" at play: "the promotion of arbitration agreements and the protection of class actions prohibited by such agreements," *id.* at 394. Quoting from an earlier decision, the Third Circuit observed " '[w]hatever the benefits of class actions, the FAA requires piecemeal resolution when necessary to give effect to an arbitration agreement.' " *Id.* (quoting *Johnson*, 225 F.3d at 375 (alteration in original) (citation and internal quotation marks omitted)). The court specifically noted that state court analysis cannot focus on the uniqueness of an arbitration agreement.^{FN12} *Id.* It further found that such "reasoning if applied logically could result in a significant narrowing of the application of the FAA." *Id.* at 395. The Third Circuit in *Gay* concluded: "[O]ur obligation is to honor the intent of Congress and that is what we are doing. If the reach of the FAA is to be confined then Congress and not the courts should be the body to do so." *Id.*

FN12. In *Gay*, the Third Circuit specifically criticized two Pennsylvania state court decisions, one of which involved the same arbitration clause used by defendants in this case. 511 F.3d at 392-95. In *Lytle v. CitiFinancial Services, Inc.*, 2002 PA Super. 327, 810 A.2d 643, the Pennsylvania Superior Court vacated the trial court's order dismissing the plaintiffs' complaint and remanded for the trial court to hold a hearing on whether there existed "a business reality which precluded CitiFinancial from agreeing to be bound by the arbitration provisions." *Id.* at ¶ 44, 810 A.2d at 668. If CitiFinancial were able to prove "a compelling basis for the one-sided arbitration clause," then the trial court was to allow the plaintiffs to offer proof on the issues of costs of arbitration as contrasted to court proceedings and the feasibility of obtaining relief in the absence of a class action mechanism. *Id.* at ¶ 45, 810 A.2d at 668. The Third Circuit specifically stated that *Lytle* violated section 2 of the FAA "[t]o the extent ... that [it held] that the inclusion of a waiver of the right to bring judicial class actions in an arbitration agreement constitutes an unconscionable contract." *Gay*, at 394.

Notably, the Pennsylvania Supreme Court, when reviewing a question on certification from the Third Circuit, disavowed *Lytle's* holding: "While we believe that *Lytle* was well intentioned in its effort to guard against pernicious lending practices, our conclusion here is that it swept too broadly. Under Pennsylvania law, the burden of establishing unconscionability lies with the party seeking to invalidate a contract, including an arbitration agreement...." *Salley v. Option One Mortgage Corp.*, 592 Pa. 323, 347, 925 A.2d 115, 129 (2007).

These cases highlight the important principles implicated by today's decision. *Jenkins*, with its similar facts, supports a conclusion that the instant arbitration agreement's terms do not cross the high bar of unconscionability. *Gay* underscores the difficulty a state court has in attempting to parse an ar-

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bitration agreement's terms under the FAA. Both decisions undercut the majority's conclusion here, which finds an arbitration agreement unconscionable based upon the very terms that make it an arbitration agreement.

VII. CONCLUSION

At its core, this case is about plaintiffs' challenge to an arbitration agreement that substitutes individual arbitration for class action litigation in court. Federal law does not permit plaintiffs to challenge this agreement simply because it designates an alternative forum for dispute resolution. *Scherk v. Alberto-Culver Co.*, 417 U.S. 506, 519, 94 S.Ct. 2449, 2457, 41 L.Ed.2d 270, 280 (1974) (recognizing that arbitration agreements are essentially forum selection clauses).

Further, under this Court's case law, a plaintiff seeking to prove a contract unconscionable must show its terms "shock the judgment of a person of common sense" and "are so oppressive that no reasonable person would make them—on the one hand, and no honest and fair person would accept them on the other." *388 *Brenner*, 302 N.C. at 213, 274 S.E.2d at 210. Since 1996, 68,000 loans were made containing this arbitration provision. Having considered "all the facts and circumstances of [this] particular case," I do not believe the provisions of this agreement are shocking or so oppressive that a reasonable, honest, and fair person would not offer or agree to them. I believe "[t]he bargain was one that a reasonable person of sound judgment might accept." *Id.* at 214, 274 S.E.2d at 211. Beyond that, we are not allowed to inquire "as to whether the contract was good or bad, whether it was wise or foolish." " *Id.* (citation omitted).

Because plaintiffs have failed to prove procedural and substantive unconscionability as required by *Brenner*, I do not believe this case presents the landmark occasion for invalidating a bargain due to unconscionability. Justice Oliver Wendell Holmes warned of cases such as this:

Great cases like hard cases make bad law. For great cases are called great, not by reason of their

real importance in shaping the law of the future, but because of some accident of immediate overwhelming interest which appeals to the feelings and distorts the judgment. These immediate interests exercise a kind of hydraulic pressure which makes what previously was clear seem doubtful, and before which even well settled principles of law will bend.

N. Sec. Co. v. United States, 193 U.S. 197, 400-01, 24 S.Ct. 436, 468, 48 L.Ed. 679, 726 (1904) (Holmes, J., Fuller, C.J., & White & Peckham, JJ., dissenting). I fear that certain "well settled principles of law" have been bent, not to straighten again. Accordingly, I would affirm the Court of Appeals.

Chief Justice PARKER joins in this dissenting opinion.

N.C., 2008.

Tillman v. Commercial Credit Loans, Inc.
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END OF DOCUMENT

FILED

DEC 31 2007 18

JOAN M. GILMER
CIRCUIT CLERK, ST. LOUIS COUNTY

December 31, 2007

y.

Case No. 06-CC-004072-V-CV

Division: 18

ORDER AND JUDGMENT

Before this Court is Defendant's Motion to Dismiss Plaintiff's case and to compel Plaintiff to engage in individual arbitration. Count I of Plaintiff's Petition seeks a declaratory judgment that Defendant's arbitration clause is unconscionable.

Plaintiff filed a Motion to Stay Defendant's Motion to Dismiss, asserting that Missouri law required evidence to determine if the arbitration clause at issue was unconscionable. This Court granted Plaintiff's Motion to Stay and gave the parties six months to conduct discovery. On June 28-29, 2007, Plaintiff and Defendant presented evidence to this Court in a two-day hearing on the record. At the conclusion of the hearing, the Court granted the parties two weeks from the date of the receipt of a transcript of the hearing to file briefs. Both parties filed post trial briefs on September 21, 2007, at which point the Court took the matter under submission.

Defendant is a payday lender doing business as Quik Cash (hereinafter "QC"), and Plaintiff is Dequae Woods. Although this Court will weigh evidence to determine whether or not QC's arbitration clause is unconscionable, the underlying allegations of QC's wrongful conduct, as outlined in Counts II - VII of Plaintiff's petition are taken as true when considering a Motion to Dismiss. In her Petition, Plaintiff has alleged that QC has engaged in a number of violations

of Missouri statutes governing payday lenders, and that Petition seeks class certification on behalf of those similarly situated to Plaintiff.

QC's mandatory arbitration cause included the following language:

(C) YOU ARE WAIVING YOUR RIGHT TO SERVE AS A REPRESENTATIVE, AS A PRIVATE ATTORNEY GENERAL, OR IN ANY OTHER REPRESENTATIVE CAPACITY, AND/OR TO PARTICIPATE AS A MEMBER OF A CLASS OF CLAIMANTS, IN ANY LAWSUIT FILED AGAINST US AND/OR RELATED THIRD PARTIES.

3. Except as provided in paragraph 6 below, all disputes including any Representative Claims against us and/or related third parties shall be resolved by binding arbitration only on an individual basis with you. **THEREFORE, THE ARBITRATOR SHALL NOT CONDUCT CLASS ARBITRATION; THAT IS, THE ARBITRATOR SHALL NOT ALLOW YOU TO SERVE AS A REPRESENTATIVE, AS A PRIVATE ATTORNEY GENERAL, OR IN ANY OTHER REPRESENTATIVE CAPACITY FOR OTHERS IN THE ARBITRATION.**

At the June, 2007 hearing, Plaintiff has specifically challenged the legal effect of QC's arbitration clause, arguing that it is unconscionable. Defendant counters that the arbitration clause at issue is enforceable under Missouri law. Defendant contends that there is a presumption in favor of arbitration and that, because Plaintiff signed loan documents multiple times, she is bound by the contract. Defendant points out that both QC and the Plaintiff gave up the right to go to court, other than to small claims court. Defendant points out that both parties gave up their rights to file class actions, that QC has obligated itself to pay some of the fees associated with arbitration on behalf of the Plaintiff, and that QC would not seek reimbursement of such fees even if claimants lose their claims in arbitration.

Plaintiff asserts that the arbitration clause should be scrutinized under general Missouri contract law. Plaintiff directs this Court to *Whitney v. Alltel*, where the Court held that "[A]n arbitration clause that defeats the prospect of class-action treatment in a setting where the

practical effect affords the defendant immunity is unconscionable." 173 S.W.3d 300, 309 (Mo. App. W.D. 2005). Plaintiff contends that the evidence in this case demonstrates that the QC arbitration clause has immunized QC while preventing Missouri consumers from pursuing their statutory rights. Specifically, Plaintiff asserts that QC's arbitration clause:

1. strips consumers of their specific statutory right to a class action pursuant to §407.025 RSMo;
2. prevents consumers from learning that their rights have been violated (because it eliminates the possibility of class action notices);
3. makes it difficult for individuals to find legal representation due to the small damages associated with individual claims against QC;
4. removes the incentive for individual litigants to pursue their claims in the face of uncertainty and expense of litigating what amount to complex commercial cases;
5. produces gross inefficiencies that destroy the benefits attributed to arbitration;
6. is so one-sided that a court cannot in good faith enforce it as a matter of substantive unconscionability; and
7. removes all incentives for QC to comply with Missouri law because QC's arbitration clause insulates QC from the effects of negative precedent and class actions.

Plaintiff also asserts that there are additional facts in this case weighing in favor of a finding that QC's arbitration clause is unconscionable. Plaintiff notes that QC has filed lawsuits against numerous customers in Missouri, despite the fact that QC's arbitration clause prohibits such activity. Plaintiff also notes that a recent decision by the U.S. District Court located in Arizona, *Cooper v. QC Financial Services, Inc.*, considered the same arbitration clause at issue in this matter, the same Defendant and defense counsel, a similar plaintiff, and a similar legal

standard. The *Cooper* Court struck QC's provisions prohibiting class arbitration and sent that case to the arbitrator with instructions to "determine whether Plaintiff satisfies the requisite criteria for this matter to proceed as a class arbitration." 2007 WL 974100, *21 (D. Ariz).

This Court finds the analysis in *Cooper* to be persuasive. Coupled with the test laid out in *Whimsey* and the similar tests employed by courts throughout the nation, *Cooper* establishes that the arbitration clause at issue impermissibly immunizes QC from the realistic possibility of meaningful legal accountability for alleged illegal activities. This Court holds that it is unconscionable for a business to prohibit consumer class actions when the case involves damages that are relatively small and when the practical result is immunity for the Defendant.

I. DISCUSSION

A. This Court Must Decide the Validity of the Arbitration Clause

Defendant contends that Plaintiff challenged the contract as a whole and that, therefore, the issue of the validity of the contract (and the arbitration clause) is for an arbitrator. Plaintiff asserts its challenge is to the arbitration clause alone.

The law is settled. If a Plaintiff challenges a contract as a whole, asserting that the arbitration clause is invalid because it is contained in a void contract, the question of the validity of the contract, and therefore the arbitration clause, is one for the arbitrator. *Buckeye Check Cashing, Inc. v. Cardegna*, 546 US 440, 445-446 (2006). It is a question for the Court, however, when a Plaintiff challenges an arbitration clause by asserting that the clause fails under general state contract law. *Id.*; see also 9 U.S.C.A. § 2; *Swain v. Auto Servs., Inc.*, 103, 107 (Mo. App. E.D. 2003) (holding that "generally applicable state law contract defenses, such as . . . unconscionability may be used to invalidate arbitration agreements without contravening the FAA").

In this matter, it is clear that Plaintiff's challenge is to the arbitration clause, not the contract as a whole. Plaintiff spent two days discussing the arbitration clause in the June 28-29 hearing, never raising any concerns about the validity of the underlying contract. Similarly, Plaintiff's Petition seeks a declaratory judgment *that the arbitration clause is unconscionable* due to terms contained within that arbitration clause. For example, Plaintiff's first allegation, ¶17, states, "There is a present controversy between Defendant and Plaintiff (and class members) because Defendant has placed an arbitration clause prohibiting class actions in its loan contract and Plaintiff (and class members) contends it is unenforceable and unconscionable under state law."

Because this Court has a duty to consider the validity of an arbitration clause, the proper standard for doing so must be ascertained. Under the Federal Arbitration Act, 9 U.S.C.A. §2 (hereinafter "FAA"), an arbitration clause is enforceable "save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C.A. §2. The United States Supreme Court explained this language in *Perry v. Thomas*, stating that "state law, whether of legislative or judicial origin, is applicable if that law arose to govern issues concerning the validity, revocability, and enforceability of contracts generally. 482 U.S. 483, 492, (1987). This standard requires this Court to treat arbitration clauses just as it would any other contract clause under Missouri law.

B. Unconscionability

If a contract or provision therein is unconscionable, it is unenforceable.

Unconscionability is a general contract law defense. *See generally* 9 U.S.C.A. § 2; *Cardegna*, 546 U.S. 440. There are two types of unconscionability, procedural and substantive. *Bracey v. Monsanto Co.*, 823 S.W.2d 946, 950 (Mo. banc 1992). There is a "balancing between the

substantive and procedural aspects . . . if there exists gross procedural unconscionability then not much is needed by way of substantive unconscionability." *Id.* The same sliding scale will be applied if there is "great substantive unconscionability but little procedural unconscionability." *Id.* Under Missouri law, substantive unconscionability alone may be enough to invalidate offensive clauses. See *Vincent v. Schneider*, 194 S.W.3d 853 (Mo. en banc 2006). In this case, however, this Court finds that the QC contract was both procedurally and substantively unconscionable.

"[A]s with all contracts, courts seek to enforce the reasonable expectations of the parties garnered not only from the words of a standardized form imposed by its proponent, but from the totality of the circumstances surrounding the transaction." *Hartland Computer Leasing Corp v. Insurance Man, Inc.*, 770 S.W.2d 525, 527 (Mo.App. E.D. 1989); see also *Whitney v. Alltel Communications, Inc.*, 173 S.W.3d 300 (Mo. App. W.D. 2005). "Because standardized contracts address the mass of users, the test for 'reasonable expectations' is objective, addressed to the average member of the public who accepts such a contract, not the subjective expectations of an individual adherent." *Swain*, 128 S.W.3d at 107 (quoting *Hartland Computer Leasing Corp.*, 770 S.W.2d at 527-28). "Only such provisions of the standardized form which fail to comport with such reasonable expectations and which are unexpected and unconscionably unfair are held to be unenforceable." *Hartland Computer Leasing Corp.*, 770 S.W.2d at 527; see also *Smith v. Kriska*, 113 S.W.3d 293, 298 (Mo. App. E.D. 2003). The position of QC, that the Court in considering the totality of the circumstances of the transactions to see if the clause is unenforceable is to look only to the totality of the circumstances of the transactions entered into by Plaintiff and only consider the circumstances surrounding Plaintiffs contacts not QC's other

customers. However QC does not cite any authority for this approach. This Court is bound to follow the analysis of Swain infra quoting Hartland infra in determining unconscionability.

1. Procedural Unconscionability

"[P]rocedural unconscionability concerns the contract formation process, and focuses on high pressure exerted on the parties, fine print of the contract, misrepresentation, or unequal bargaining position." *Funding Sys. Leasing Corp. v. King Louie Int'l, Inc.*, 597 S.W.2d 624, 634 (Mo. App. W.D. 1979). "Adhesion contracts usually involve the unequal bargaining power of a large corporation versus an individual and are often presented in pre-printed form contracts." *Swain*, 128 S.W.3d at 107. Adhesion contracts are not necessarily unconscionable. While involving aspects of procedural unconscionability, such contracts "are not 'inherently sinister and automatically unenforceable.'" *Id.* (quoting *Hartland Computer Leasing Corp. v. Insurance Man, Inc.*, 770 S.W.2d 525, 527 (Mo.App. E.D.1989)). Just as it does with substantive unconscionability, a court applies the "reasonable expectations" test to determine if, under the totality of the circumstances, a clause is procedurally unconscionable. *See Whitney*, 173 S.W.3d at 310).

However, a point of contention arises among the parties regarding the applicable perspective from which a court should measure procedural unconscionability. QC contends that this Court should consider Ms. Woods own situation and her subjective understanding of the arbitration clause when considering unconscionability. QC contends that she was not hurried, that she could have left the store at any time, and that she returned to the store and signed a contract to renew an existing payday loan even after she had filed her claim against QC. QC contends that the repeated visits by Plaintiff are grounds for enforcing the clause. QC cites no authority for this type of analysis. It is also clear that a Defendant cannot exculpate itself from

liability unless the language is clear and unambiguous. *Alack v. Vic Tanny Intern. of Missouri, Inc.*, 923 S.W.2d 330, 337-338 (Mo. 1996). Here, because this Court concludes the clause does serve to immunize Defendant, any exculpatory language cannot be enforced against the Plaintiff.

Plaintiff asserts that the proper test is an *objective* one, where this Court should consider the "reasonable expectations of the average consumer." Plaintiff points out that the objective "reasonable expectations" test is the only approach which provides certainty for business and individuals regarding the enforceability of mass-produced contracts. Plaintiff points out that to hold otherwise, to look only to subjective understanding of individual customers, would be to invite individual, potentially conflicting, holdings regarding the same arbitration clause. Although the clause could be enforceable against Ms. Woods, it may well be unenforceable against the next plaintiff to challenge the clause.

This Court notes that Missouri courts and courts from other jurisdictions have consistently held that arbitration clauses are enforceable or unenforceable based upon an objective test and that the courts should not look to the subjective understanding of individual consumers. Further, in Missouri, the appropriate test is not in question. Court have consistently held that "because standardized contracts address the mass of users, the test for 'reasonable expectations' is objective, addressed to the average member of the public who accepts such a contract, not the subjective expectations of an individual adherent." *Swain*, 128 S.W.3d at 107 (quoting *Hariland Computer Leasing Corp.*, 770 S.W.2d at 527-28). Applying this "reasonable expectations" standard, the QC arbitration clause is procedurally unconscionable.

The evidence demonstrates that QC entered into approximately 2.8 million loan transactions involving about 400,000 customers over the last five years. QC admits it has never negotiated its arbitration clause. QC admits that the arbitration clause is a form contract. This

Court disagrees with QC's assertion that the average consumer might have bargaining power comparable to QC. QC is a large, national company that does business with individuals who borrow money at interest rates exceeding 400%. The money is borrowed against the borrower's next paycheck. When a large corporation does business with an individual consumer, there is almost always disparity in bargaining power. In the context of these facts, the disparity is all the more apparent.

QC also asserts that its clause is not in fine print; however, the evidence presented demonstrates otherwise. Plaintiff's expert, Dr. Hochhauser, testified that the clause contained more than 1,300 words made to fit onto one page. The font was approximately "8" and the spacing of the lines were so close that words from adjacent lines touched and an optical scanner was unable to make out the characters. Dr. Hochhauser predicted that people would have a difficult time reading the font and that, even if they could physically read the words, the average consumer was unlikely to be able to process and understand the document.

Evidence from the deposition of Darren Walrod, the corporate representative of QC, demonstrates that he re-read an entire line before noticing that he had re-read it, apparently because of the size and spacing of the font. Mr. Anderson, the president of QC and the individual who decided to implement QC's arbitration clause, demonstrated a general lack of understanding of the clause. Plaintiff also provided this Court with a version of the arbitration clause that is double-spaced, 12 point Times New Roman font. That physically readable version of the clause is six pages long.

Clauses are to be written to communicate information, not conceal it. The QC arbitration fails the test. It is a non-negotiable, take-it-or-leave-it, form contract in fine print. It is presented

to customers who are unlikely to have the ability to understand it. The clause is, considering the totality of the circumstances, procedurally unconscionable.

2. Substantive Unconscionability

Substantive unconscionability deals with an undue harshness in the contract terms themselves. *Whitney*, 173 S.W.3d at 308. Courts in Missouri consider the reasonable expectations of the average consumer when evaluating a form contract and consider the totality of the circumstances when weighing evidence. *Id.* at 309. A review of cases in Missouri and around the country demonstrates that this generally involves considering the real world effects of the clause in question. See e.g. *Muhammad v. Country Bank of Rehoboth Beach*, 912 A.2d 88 (N.J. 2006); *Discover v. Superior Court*, 113 P.3d 1100 (Cal. 2005); *Kinkel v. Cingular Wireless*, 223 Ill.2d 1 (Ill. 2006); and *Scott v. Cingular Wireless*, 161 P.3d 1000 (Wash. 2007).

At the outset, the Court notes that both Plaintiff and Defendant provided this Court with extensive lists of cases considering class waivers. A detailed discussion of each is not necessary. There is a split between courts that hold that class action waivers will not prevent individuals from vindicating their statutory rights and those courts which assert that class action waivers constitute *de facto* immunity clauses for defendants. Although Defendant asserts that Plaintiff's position is the minority view, this is a question of perspective. In the last three years, many State Supreme Courts have struck class waivers. These courts, beginning with the California Supreme Court in *Discover Bank v. California Superior Court* and including the July 2007 decision of *Scott v. Cingular Wireless*, echo reasoning that had some of its earliest roots in *Whitney v. Alltel*.

This Court, like the *Whitney* Court, is persuaded by the line of cases holding the clause is unconscionable:

when the waiver is found in a consumer contract of adhesion in a setting in which disputes between the contracting parties predictably involve small amounts of damages, and when it is alleged that the party with the superior bargaining power has carried out a scheme to deliberately cheat large numbers of consumers out of individually small sums of money

Discover Bank v. Superior Court, 36 Cal.4th 148, 162 (Cal. 2005); *Schwartz v. Alltel Corp.*,

2006-Ohio-3353 ¶ 36, 2006 WL 2243649 (Ohio Ct.App.); Scott, 161 P.3d 1000, 1005. To hold

otherwise would allow a company to continue imposing "its improper and deceptive charges *ad infinitum* since none of its customers would have a practical remedy to bring about a stop to the

conduct." *Whitney*, 173 S.W.3d at 310. As such, this would allow a Missouri company to grant

itself a "get out of jail free card while compromising important consumer rights." *Szetela v.*

Discovery Bank, 97 Cal. App. 4th 1094, 1101 (Cal. App. 4. Dist. 2002).

In this matter, Plaintiff contends that class waiver is unconscionable for a number of reasons. First, Plaintiff asserts that the clause serves as an obstacle which prevents consumers from learning that their rights may have been violated. This line of thinking, that class notice is an important function of class actions, is in line with the reasoning of multiple courts. In

Muhammad, the Court noted:

Moreover, without the availability of a class-action mechanism, many consumer-fraud victims may never realize that they may have been wronged. . . . When they are being charged an excessive interest rate or a penalty for check bouncing, for example, few know or even sense that their rights are being violated. *Muhammad v. County Bank of Rehoboth Beach, Delaware*, 2006 WL 2273448, 9 (N.J. 2006).

In this matter, Plaintiff introduced evidence that QC does not notify its customers of individual claims that are filed and that it does not intend to do so in the future. Plaintiff, via expert Dale Irwin, a consumer attorney, introduced evidence that class notices often serve as the only way that a consumer can learn of violations that are not intuitively sensed by consumers. Given the complexity of payday lending law, consumers are unlikely to be familiar enough with

their legal rights to know whether or not QC has violated the law. Even if it were established in an individual arbitration that QC's actions violated Missouri law, the absence of class notice would keep other victims from learning of the possibility that they, too, were victimized.

Plaintiff also asserts that even if an individual were to learn of a potential violation by QC, it would be difficult for them to find adequate legal representation due to the limited value of the claims. Defendant counters that because an attorney could recover attorney fees under the arbitration clause, there is sufficient incentive for attorneys to take on cases like the Plaintiff's. Defendant's was presented by Defendant in *Cooper*. In *Cooper*, the Court noted that "there is no indication that attorney fees are an adequate substitute for the class action mechanism." *Cooper*, 2007 WL 974100 at 18; *Muhammad*, 2006 WL 2273448 at 7; *Kristian v. Comcast Corp.*, 446 F.3d 25, 59 (1st Cir. 2006).

Evidence in this case points to this same conclusion. Experts Irwin, Brown, Ammann and Rossman, all of whom are experienced consumer attorneys, testified that they do not take cases involving small damages under the assumption that courts will award adequate attorneys' fees. Although the threshold amount for a "small damages" case differed from expert to expert, it seems clear that when a case involves potential damages of less than a few thousand dollars, most attorneys are not willing to take such case on a contingent basis nor will their clients pay hourly rates, which would quickly exceed any potential recovery.

Plaintiff asserts that in the improbable case where a customer learns of a violation and finds representation in a small damages case there is still the possibility that by requiring the customer to engage in individual arbitration there may not be adequate incentive for the litigant to pursue the claim. In *Muhammad*, the court noted "The class-action mechanism also overcomes the problem that small individual recoveries may fail to provide an adequate

incentive for a litigant to investigate a claim or bring suit even if the litigant could secure representation." 2006 WL 2273448 at 9; see also *Leonard v. Terminix*, 854 So.2d 529, 539 (Ala. 2002); *Thibodeau v. Comcast Corp.*, 912 A.2d 874, 885-886 (Pa. Super. 2006).

Plaintiff asserts that any individual litigant would be unlikely to pursue a claim in individual arbitration because, even if QC advanced the basic arbitration fees, the consumers would still have to compensate an attorney, miss work, and undergo all of the normal stresses of a legal claim—things they would not have to do if they were class members of a class action. Plaintiff asserts that the "costs" of arbitration, in terms of money, time and stress, would often exceed the potential recovery. As Mr. Rossman testified in his deposition, one of the primary benefits of a class action is that it spreads these costs among a class, allowing the members of that class to avoid most of the difficulties of a legal action while still obtaining access to justice.

The evidentiary record supports Plaintiff's position that individual attorneys are unlikely to take cases like the Plaintiff's and individual litigants are unlikely to pursue such claims based on the costs involved. Perhaps the most compelling evidence is statistical. QC has dealt with 400,000 customers in Missouri in the last five years and engaged in about 2.8 million transactions, but never had to defend a customer claim in a court of law or in an arbitration. Although QC asserts that this is because it abides by the law and that it effectively resolves customers disputes, the Court is skeptical that this can explain the absolute absence of legal disputes. It is more likely that lack of notice, coupled with the difficulty in finding legal representation and the disincentives for individuals to pursue their claims alone, are the explanations for this absence of legal disputes between QC and its customers.

Plaintiff points out that *Whitney*, in adopting a test first set out by the U.S. Supreme Court, notes that an arbitration clause is measured by whether it would allow claimants to

vindicate their statutory rights in the arbitral forum. 173 S.W. 3d at 311. Plaintiff asserts that in addition to the reasons referenced above, there is a more fundamental reason for holding that QC's arbitration clause is unconscionable. Plaintiff has brought some of its claims under the Missouri Merchandising Practices Act, RSMo. §407.010 *et seq.* (hereinafter "MPA"). The plaintiff argues that the MPA specifically vests consumers with the right to the class mechanism at §407.025.2. Plaintiff argues that this defeats any assertion by Defendant that taking away a class action is taking away a "procedure" and not a right.

A Michigan federal court considered the same argument and held:

Further, even if the waiver of judicial forum was not substantively unconscionable with respect to TILA claims, under the Michigan Consumer Protection Act, the availability of class recovery is explicitly provided for and encouraged by statute. Because the arbitration agreement prohibits the pursuit of class relief, it impermissibly waives a state statutory remedy. *Lozada v. Dale Baker Oldsmobile, Inc.*, 91 F.Supp.2d 1087, 1105 (W.D. Mich. 2000)(internal citations omitted).

In this matter, it is clear the MPA allows class actions to be brought under §407.025.2. This right is in addition to the class action procedure provided by Missouri Rules of Civil Procedure 52.08. By requiring its customers to sign a contract that takes away their rights to pursue their claims via the class mechanism, QC has thwarted the intent of the MPA and Missouri consumer laws. This violates the above-mentioned fundamental tenet that an arbitral forum is valid only when it allows litigants to vindicate their statutory rights.

Plaintiff asserts that QC's prohibition of class arbitrations defeats the very purpose of arbitration by producing gross inefficiencies instead of streamlined procedures. Plaintiff asserts that there is no reason to believe that the purported efficiencies of arbitration would be lost in a class arbitration setting. Plaintiff points out that Defendant asserted (in its answers to interrogatories and subsequent depositions) that the clause was included to promote "efficiency,"

but that Defendant has failed to explain how requiring consumers cases to be resolved one-by-one in separate arbitration, which have no precedential value on future arbitrations, would efficiently resolve the alleged claims of Plaintiff and putative class members.

This Court concurs with Plaintiff's assertion that individual arbitrations are far less efficient than class arbitrations; holding thousands of individual arbitrations rather than a single class arbitration would frustrate the goals of efficiency QC purports to advance. At his deposition, QC's President indicated that he implemented the arbitration clause without consulting anyone besides counsel. He could not articulate the differences between court proceedings and arbitration and he admitted he knew little about either. This testimony conflicts with QC's assertion that the arbitration clause promoted efficiency and lower costs. This Court takes note, as have others, that the only "efficiency" promoted by a class waiver is the reduction in total claims due to the chilling effect on dispute resolution. *See e.g. Muhammad*, 2006 WL 2273448 at 9-10; *Cooper, Vasquez*, 4 Cal. 3d at 809; *Kinkel v Cingular Wireless*, 223 Ill. 2d 1, 37-38 (Ill. 2006); *Sprague v. Household Intern*, 473 F.Supp.2d 966, 973 (W.D. Mo. 2005).

As her sixth point, Plaintiff contends that the QC arbitration clause is entirely one-sided. Plaintiff argues that QC has "given up nothing, but gained absolute immunity." QC counters that it obligated to pay the arbitration fees of Plaintiff and that it, like Plaintiff, has given up its right to class actions and general access to court. Courts have been skeptical of defendants' contentions that they have given up the right to file a class action. In *Sprague v. Household International*, despite the fact that plaintiff was not bringing a class action, the court noted that class waivers were "one-sided in [their] practical effect" and "weigh[ed] heavily in favor of a finding of substantive unconscionability." 473 F.Supp.2d 966, 973 (W.D. Mo. 2005).

In this matter, QC admitted it has never filed a class action. QC has also admitted that it filed lawsuits against its own customers, in courts other than small claims court, in violation of its obligations under the clause it drafted. Although mutuality is not required in Missouri (see *Vincent v. Schneider*, 194 S.W.3d 853, 856 (Mo. banc 2006)), if a clause is so one-sided that it is fundamentally unfair, it cannot be enforced. This one-sidedness is at the heart of unconscionability analysis. Average consumers should not reasonably expect that any contract would require them to A) lose fundamental rights, B) gain nothing, and C) immunize the party with which they are dealing.

For her final point, Plaintiff contends that QC arbitration clause removes all incentives for QC to obey Missouri law by insulating it from class actions. QC asserts that it is effectively regulated by the Missouri Division of Finance and the Attorney General's office, and that it obeys the law because it should. Courts have been skeptical of business altruism as a sufficient deterrent to the temptation to push the boundaries of the law.

[Defendant] has essentially granted itself a license to push the boundaries of good business practices to their furthest limits, fully aware that relatively few, if any, customers will seek legal remedies, and that any remedies obtained will only pertain to that single customer without collateral estoppel effect.

Szetela v. Discovery Bank, 97 Cal. App. 4th 1094, 1101 (Cal. App. 4. Dist. 2002); *see also Scott*, 161 P.3d 1000, 1006; *Cooper*, 2007 WL 974100 at 18 (holding that the QC class waiver "insulates Defendant from the spectre of a ruling which would have precedential effect").

In this matter, there is no evidence that review by the Missouri Attorney General's office or the Division of Finance could remedy all the potential wrongs of Defendant as alleged by Plaintiff. As Mr. Rossman, expert for Plaintiff, testified at his deposition, consumer protection statutes were designed to allow private citizens to enforce the law effectively. If the private

enforcement mechanism is short circuited, there is no indication that public regulation will be a sufficient substitute. For concurring opinions see *Kinkel*, 223 Ill.2d at 27; *Cooper*, 2007 WL 974100 at 18.

This Court agrees with Plaintiff that it is important to have meaningful enforcement of the law via a mechanism that can realistically hold a defendant liable for its actions to all wronged parties, rather than at best a few. The class waiver prevents QC from facing negative decisions.

If a clause immunizes a defendant and paralyzes consumers, it is unconscionable. Here, there is overwhelming evidence this has occurred. In addition to Plaintiff's proof that the clause has stymied all litigation and arbitration, this case contains additional compelling facts for striking the class arbitration waiver, i.e. has violated its own clause by suing its customers, and QC's president is also the president of the Consumer Financial Services Association (hereinafter "CFSA"), a nationwide association of payday lenders which as pointed out by Plaintiff, CFSA hosts speakers who proudly discuss "eliminating class actions through the use of arbitration clauses."

This Court, following the test laid out in *Whitney*, cannot enforce the QC clause as written. The portions of paragraphs 2(c) and 3, which prohibit class arbitrations, are unconscionable and unenforceable.

C. Severability

Under Missouri law, if an offending provision can be removed, and the contract retains meaning, the contract is generally preserved. In *Vincent*, the Missouri Supreme Court struck two provisions of an arbitration clause but preserved the clause itself. 194 S.W.3d 853, 861 (Mo. en banc 2006). The court applied a similar approach in *Swain* when it held that a provision

requiring arbitration in Arkansas was unconscionable but the rest of the clause survived. *Swain*, 128 S.W.3d 108, 109. This is also the route taken by the last two state Supreme Court decisions in which class arbitration waivers declared unconscionable. See *Muhammad*, 189 N.J. at 26; *Kinkel*, 223 Ill.2d at 47. The court in *Cooper* did the same. 2007 WL 974100 at 20.

Striking the class arbitration waiver will allow Plaintiff and Defendant to proceed to the arbitral forum of Plaintiff's choice (as provided in the arbitration agreement) to allow a panel of arbitrators to decide if a class should be certified.

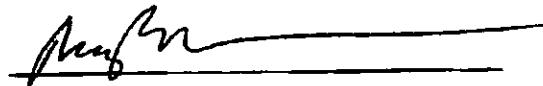
JUDGMENT

The portions of QC's arbitration clauses in paragraphs 2(c) and 3 which prohibit class arbitrations are unconscionable under Missouri law and to that extent the court finds that Count I of Plaintiff's petition seeking a declaratory judgment that those portions of QC's arbitration clause prohibiting class arbitration are unconscionable, is granted

This Court's decision does not reflect hostility for arbitration as a whole but, rather, is a result of the application of general contract laws to the clause at issue.

Although the arbitration clause at issue contains no severability clause, it is appropriate to strike the offending portions and retain the remainder of the arbitration clause. Defendant's Motion To Dismiss Plaintiff's petition is partially granted so that the matter can proceed to arbitration to determine whether Plaintiff satisfies the requisite criteria for this matter to proceed as a class arbitration. Plaintiff's claim is to be sent to the American Arbitration Association (per the Plaintiff's choice, as allowed in the arbitration clause) without any prohibition against class arbitrations. A panel of arbitrators will determine whether a class should be certified and damages awarded, pursuant to Missouri law. Costs taxed against Defendant.

SO ORDERED:

A handwritten signature in dark ink, appearing to read 'Richard C. Bresnahan', is written over a horizontal line.

Richard C. Bresnahan

Judge, Division No.

Entered this 31st day of December, 2007.

Cc: Attorneys of Record

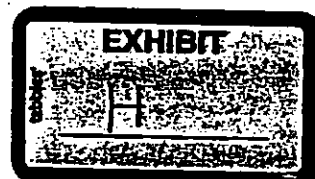
ARBITRATION AGREEMENT
(All States Except CA)

Date: _____

VIN: _____

In this Arbitration Agreement ("Agreement"), "you" and "your" refers to the customer(s) who sign(s) below. "We", "us", and Dealer refer to the Dealer signing below, and included the Dealer's employees, agents, and parent and affiliated companies (including, but not limited to, Cornerstone Acceptance Corporation) and their employees and agents. "Parties" refers to you and us. "Vehicle" refers to the automobile identified by the VIN set forth above. "Claim(s)" includes any and all disputes, claims or controversies between the Parties relating to the Vehicle or arising out of or relating to: (a) the application for and the terms of and enforceability of the sale, lease, or financing of the Vehicle, (b) purchase or terms of any warranty, service agreement, maintenance plan, paint/undercarriage/interior protection product, anti-theft etching product and warranty, GAP protection, deficiency waiver addendum, or any or other product or insurance, © any claims of breach of contract, negligence, misrepresentation, conversion, fraud, or unfair and deceptive trade practices, (d) any claim of a violation of any state or federal statute or regulation, or (e) the Vehicle's condition, warranty, workmanship, servicing, maintenance or repair. All Claims must be brought within the time allowed by the applicable statute(s) of limitation. "Contract(s)" refers to any agreement(s) between you and us regarding the sale, lease, financing, service or maintenance of the Vehicle.

Upon the request of a Party, any and all Claim(s) shall be decided in binding arbitration before the American Arbitration Association (1-800-778-7879/www.adr.org) ("AAA"). The Parties may mutually agree to use another arbitration forum and/or qualified arbitrator. Unless mutually



agreed otherwise between the Parties, any arbitration under this Agreement shall be conducted under the commercial arbitration rules of the AAA. To the extent that any Claim is deemed a "consumer dispute", the Parties agree that the fee schedule provided in the rules for consumer disputes of the AAA, if any, will apply. You can get a copy of the rules from the AAA. The arbitration hearing shall be conducted, at your option, in the federal district in which you reside or in which the Vehicle was purchased or leased.

The Parties waive the right to request arbitration for a Claim filed and maintained individually (as opposed to a class action) in your state's small claims court, if any. However, if such a Claim originally brought in a small claims court is transferred or removed to a higher state or federal trial court, the Parties reserve their right to request arbitration under this Agreement.

The Parties agree that once one of the Parties has elected to arbitrate, binding arbitration is the exclusive method for resolving any and all Claims. By entering into this Agreement the Parties are waiving their right to a jury trial and their right to bring or participate in any class action or multi-plaintiff or claimant action in court through arbitration. Until a Party entitled to do so requests arbitration under this Agreement, any party to this Agreement may proceed with all other rights and remedies they may have. Neither you nor we waive our right to request arbitration under this Agreement, even after all Parties have elected to litigate a Claim in court, in the event new Claims are asserted after the initial filing of such litigation in court.

The arbitrator shall be an attorney or retired judge. The arbitrator shall apply and be bound by governing local, state or federal law when making an award, and shall award only those damages

or other relief allowed by such governing law. Issues regarding whether a matter is arbitrable shall be made by the arbitrator. The arbitrator shall prepare a written decision stating reasoned findings of fact and conclusions of law. A party may seek entry of a judgment on the award in any court of competent jurisdiction.

If you initiate a Claim for Arbitration under this Agreement, we agree to pay that portion of the AAA's initial filing fee which exceeds the lesser of the court filing fee for the state or federal court located in the jurisdiction in which you reside....We also agree to pay up to \$1500 of the arbitrator's fees, unless applicable law of the rules of the AAA require otherwise. Unless applicable law or the rules of the AAA require otherwise, the Parties agree to share equally all other costs and fees, including the arbitrator's fees in excess of \$1500. Notwithstanding any other provision of this Agreement, we will also pay any amount of fees or costs that a court or the arbitrator decided we must pay in accordance with applicable law for this Agreement to be enforceable. The arbitrator deciding the Claim(s) shall have the authority to award fees, costs, injunctive or equitable relief in accordance with this Agreement and applicable law. Unless otherwise ordered by the arbitrator in accordance with applicable law or provided otherwise by applicable law law, the Parties shall be responsible for the payment of their own attorney's(') fees.

This Agreement evidences a transaction involving interstate commerce. The Parties acknowledge and agree that the Federal Arbitration Act (9 U.S.C. § 1 *et seq.*) ("FAA") shall govern any arbitration under this Agreement. The arbitrator's decision shall be final and binding except for any right of appeal provided by the FAA or the rules of the AAA.

If any part of this Agreement shall be deemed or found unenforceable for any reason, the remainder of the Agreement shall remain enforceable. In the event this Agreement is found void you and we waive our respective rights to a trial by jury, if such waiver is permitted by applicable law.

This Agreement shall survive the repayment of all amounts owed by you with respect to the Vehicle. This Agreement is incorporated into and made a part of all Contract(s) as defined in this Agreement. If there is a separate arbitration agreement in any other Contract, then to the extent this Agreement is inconsistent with any such arbitration agreement this Agreement shall supersede such other arbitration agreement with respect to Claims between you and us, Unless otherwise provided by law.

- EITHER YOU OR WE MAY CHOOSE TO HAVE ANY DISPUTE BETWEEN US DECIDED BY ARBITRATION AND NOT IN COURT.
- IF A DISPUTE IS ARBITRATE, YOU AND WE WILL EACH GIVE UP OUR RIGHT TO A TRIAL BY THE COURT OR BY A JURY.
- IF A DISPUTE US ARBITRATED, YOU WILL GIVE UP YOUR RIGHT TO PARTICIPATE AS A CLASS REPRESENTATIVE OR A CLASS MEMBER ON ANY CLASS CLAIM YOU MAY HAVE AGAINST US, INCLUDING ANY RIGHTS TO CLASS ARBITRATION OR ANY CONSOLIDATION OF INDIVIDUAL ARBITRATIONS.

- THE INFORMATION YOU AND WE MAY OBTAIN IN DISCOVERY FROM EACH OTHER IN ARBITRATION IS GENERALLY MORE LIMITED THAN IN A LAWSUIT.
- OTHER RIGHTS THAT YOU AND WE WOULD HAVE IN COURT MAY NOT BE AVAILABLE IN ARBITRATION.
- YOUR AND OUR RIGHTS TO APPEAL OR CHANGE AN ARBITRATION AWARD IN COURT ARE VERY LIMITED.

BY SIGNING BELOW, THE PARTIES ACKNOWLEDGE THAT THEY HAVE READ AND AGREE TO THE TERMS OF THIS ARBITRATION AGREEMENT

Customer: _____

Dealer: _____

Customer: _____

Its: _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)
Heather Herron, et al.,)
)
Plaintiffs,)
)
vs.)
)
Dick Dyer & Associates, Inc., et al.,)
)
Defendants.)

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

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

SECOND REPLY MEMORANDUM IN
SUPPORT OF DEFENDANT CENTURY
BMW'S MOTION TO COMPEL
ARBITRATION

ORIGINAL FILED
FEB 25 2008
AIKEN COUNTY
CLERK OF COURT

**SECOND REPLY MEMORANDUM IN SUPPORT OF CENTURY BMW'S
MOTION TO COMPEL ARBITRATION AND TO DISMISS CLAIMS**

Plaintiff Christine Watts's Second Supplemental Memorandum in Opposition to Century BMW's Motion to Compel Arbitration is telling for what it conveniently omits. It does not mention that (1) the F&I manager never told Michael and Christine that signing the arbitration agreement was required to purchase a car, (2) the F&I manager never pressured them to sign the agreement, (3) they had full opportunity to read the agreement and would have understood it had they read it, (4) the agreement was perfectly readable, (5) they were in a rush to leave the dealership, and (6) Century BMW does not require a customer to sign the arbitration agreement to purchase a vehicle. Moreover, plaintiffs disregard well-established South Carolina law that a party has a duty to read an agreement before signing it. As for the agreement itself, the majority of cases addressing class action waivers in arbitration agreements, including the only two decisions with binding authority on this Court, have found them to be enforceable.

FACTS

Christine Watts's opposition to Century BMW's motion to compel arbitration relies on numerous and substantial distortions of the record, including:

- "The Wattses say they were presented with a big packet of documents containing flags indicating where the Wattses were supposed to sign." Pl.'s Second Supp. Memo. at 2.¹
- "The Wattses were led to believe that they had to sign all of the documents in the packet in order to get the car." Pl.'s Second Supp. Memo. at 4.²
- "[T]he arbitration agreement was presented on a take-it-or-leave-it-basis" Pl.'s Second Supp. Memo. at 5. "[T]he arbitration agreement is presented as mandatory." Pl.'s Second Supp. Memo. at 6.³
- "The vehicle . . . was needed to get back and forth from work." Pl.'s Second Supp. Memo. at 7.⁴
- "The agreement was hastily presented for the Wattses' signatures." Pl.'s Second Supp. Memo. at 7.⁵
- The Plaintiffs can be dismissed as a "twenty-four year old girl" and a "garage door salesman." Pl.'s Second Supp. Memo. at 2.⁶

¹ Michael testified that he was not given a large stack of documents and said nothing about flags. Michael Dep. 51:4-6.

² Michael and Christine rejected numerous additional proposed agreements, including service and financing contracts, and were never told they had to sign the arbitration agreement. Michael Dep. 41:3-45:9, 54:6-9; Christine Dep. 47:12-19.

³ Michael and Christine were never told they had to sign the arbitration agreement. Michael Dep. 54:6-9; Christine Dep. 47:12-19. Century BMW does not require a customer to sign the arbitration agreement to purchase a vehicle and has in fact had customers not sign the arbitration agreement and still purchase vehicles. Michael Dep. 54:6-9; Christine Dep. 47:12-19; Bishop Dep. 22:24-23:10, 86:4-88:5.

⁴ Christine had a perfectly operable vehicle before purchasing the 2004 BMW Z4 convertible in June 2005. Christine Dep. 59:24-60:10.

⁵ It was Christine and Michael who were eager to leave the dealership as quickly as possible and the manager put no pressure on them to sign the documents. Michael Dep. 50:1-14, 53:13-18; Christine Dep. 40:19-23, 46:18-22. Christine's memorandum cites to her affidavit, rather than the deposition transcripts, because the testimony contradicts her affidavit and confirms that any rush to sign was self-imposed. Compare Christine Watts Affid. ¶ 4 with Michael Dep. 50:1-14, 53:13-18; Christine Dep. 40:19-23, 46:18-22.

⁶ Christine is a highly trained auditor with a bachelor's and master's degree in accounting. Christine Dep. 9:10-14:2. Michael is a sales manager with prior experience managing forty-five employees. Michael Dep. 15:19-18:1.

- The General Manager of Century BMW's statement that arbitration is a method to resolve disputes without having to go to court is somehow misleading because it omits that the arbitration agreement waives statutory remedies.⁷

Rather than relying on counsels' competing characterizations of the record, we invite the Court to read in their entirety the relatively short deposition transcripts, which are attached to both supplemental memoranda. Then, the Court can draw its own conclusions.

ARGUMENT

I. Michael and Christine Watts Cannot Avoid Enforcement of The Agreement They Signed By Claiming They Did Not Read It and It Was Never Explained to Them.

The Wattses' fundamental argument that they can avoid the legal consequences of executing agreements by failing to read the agreements before signing them turns nearly a century of South Carolina precedent on its head. In South Carolina, every contracting party has a duty to read an agreement before signing it. *Burwell v. South Carolina Nat'l Bank*, 288 S.C. 34 (1986) (citing *J.B. Colt Co. v. Britt*, 123 S.E. 845 (1924)). Consonant with that duty, a party who is capable of reading an agreement but signs it without reading it is "bound by the terms thereof." *Sims v. Tyler*, 276 S.C. 640 (1981). In other words, a party cannot avoid the effect of an agreement by claiming he did not read it, *Regions Bank v. Schmauch*, 354 S.C. 648 (S.C. Ct. App. 2003), because South Carolina courts will "not protect those who, with full opportunity to do so, will not protect themselves." *Britt*, 123 S.E. at 848.

South Carolina precedent also rejects Christine's attempt to blame Century BMW for her asserted failure to understand the agreement because Century BMW supposedly did not explain

⁷ Arbitration is a method of resolving disputes without having to go to court, and the arbitration agreement waives no statutory or common law remedies. Moreover, whatever the General Manager might hypothetically say to other customers has no relevance to the Wattses, who claim that dealership employees provided no explanation—misleading or otherwise—of the arbitration agreement to them.

the agreement to her. The law imposes no duty "to explain to an individual what he could learn from simply reading the document." See *Citizens & Southern Nat'l Bank v. Lanford*, 313 S.C. 540, 545 (1994); *Regions Bank*, 354 S.C. at 664. As long as a party had the ability and opportunity to read the agreement, he is bound by his signature. See *Sims*, 276 S.C. at 643.

Here, any failure to understand the agreement was caused by the Wattses' failure to read it. Michael testified that the agreement was readily identifiable as an arbitration agreement and perfectly readable. Michael Dep. at 51:14-52:21. They could have read the documents but chose not to because they were in a rush to leave the dealership as quickly as possible. Michael Dep. 50:1-14, 53:13-18; Christine Dep. 40:19-23, 46:18-22. As a result, they are bound by their signatures.

Christine goes a step further by asserting—three years after signing the agreement—that because the Wattses did not read the agreement, there was no meeting of the minds and, therefore, no contract was formed. Pl.'s Supp. Memo. at 12-13. If this argument is accepted, a party would have an enormous incentive not to read any agreement and then at some point after the fact—upon deciding she did not like some of the terms—the party could then void the contract by claiming there was no meeting of the minds. How could consumer or business transactions proceed if parties could later attempt to invalidate agreements by claiming they did not read them? Under Christine's theory, the contract for the purchase of the vehicle itself is void because she claims to have not read that agreement as well. Christine Dep. at 43:20-22.

As long as Michael and Christine had the ability and opportunity to read the arbitration agreement—a fact they do not contest—South Carolina law binds them to their signatures.

II. The *Simpson* Decision is Distinguishable Because Michael and Christine Did Not Lack a Meaningful Choice and the Agreement Did Not Contain Oppressive and One-sided Terms.

Simpson v. MSA of Myrtle Beach, 373 S.C. 15 (2007), does not support invalidating the Wattses' agreement to arbitrate because Michael and Christine had a meaningful choice in signing the agreement and the agreement does not contain any oppressive and one-sided terms. Like the argument that a two-seater German luxury convertible sports car is somehow a "necessity" for Christine, the argument that "the facts in this case mirror those in *Simpson*" must have been written with tongue firmly planted in cheek. Although plaintiffs' counsel had Christine sign an affidavit a week after the *Simpson* decision parroting (virtually verbatim) the language of that decision and claiming that exactly what happened in the *Simpson* case had miraculously happened to her, the depositions demonstrated that the Wattses' transaction was nothing like the *Simpson* transaction.

<i>Simpson</i> Facts	Watts Facts
MEANINGFUL CHOICE	
The clause is a contract of adhesion; "[n]either party disputes that the contract . . . was an adhesion contract." 373 S.C. at 27.	The agreement is not a contract of adhesion; the F&I manager never told Christine and Michael that the arbitration agreement was mandatory. Christine Dep. 47:16-19; Michael Dep. 54:6-9. Century BMW permits customers to buy cars even if they refuse to sign the agreement. Bishop Dep. 22:24-23:10, 86:4-88:5.
The contract was presented on a take-it-or-leave-it basis. <i>Id.</i> at 26-27.	The agreement was not presented on a take-it-or-leave-it basis because the F&I manager never said they had to sign it. Christine Dep. 47:16-19; Michael Dep. 54:6-9.
<i>Simpson</i> "did not possess the business judgment necessary to make her aware of the implications of the arbitration agreement." <i>Id.</i> at 27.	Christine is an auditor, trained to examine documents carefully, with a master's degree in accounting. Christine Dep. 9:10-14:2, 60:11-61:7.
<i>Simpson</i> apparently was unaccompanied during her purchase. <i>Id.</i>	Christine was accompanied by her father, who had purchased twelve vehicles from dealerships in his lifetime. Michael Dep. 16:1-21:2.
The contract was "hastily" presented for her signature. <i>Id.</i>	Christine and Michael were eager to leave the dealership as soon as possible and any haste to sign

	the documents was solely caused by their self-imposed rush. Michael Dep. 50:1-14, 53:13-18; Christine Dep. 40:19-23, 46:18-22.
The vehicle was a necessity. <i>Id.</i>	Christine admits she did not need to buy a luxury convertible and she could have continued driving her Mitsubishi Montero to and from work. Christine Dep. 59:24-60:10.
The clause was inconspicuous; it is written entirely in small print and embedded within fifteen other paragraphs. <i>Id.</i> at 27-28.	The agreement was conspicuous as Michael admits the stand-alone agreement, with portions in all capital letters and bolded, is readily identifiable as an arbitration agreement and is perfectly readable. Michael Watts Dep. 51:14-52:21.
NO OPPRESSIVE AND ONE-SIDED TERMS	
The clause limits statutory remedies, precluding "punitive, exemplary, double, or treble damages." <i>Id.</i> at 28-29.	The agreement does not limit statutory remedies as the arbitrator has the authority to award fees, costs, injunctive and other equitable relief, and any damages allowed under the governing law. Ex. 1 (Watts Arbitration Agreement).
The clause violates the Dealers Act, preventing "Simpson from receiving mandatory statutory remedies to which she may be entitled . . . [under] SCUTPA and [the] Dealers Act." <i>Id.</i> at 29-30.	The agreement does not violate the Dealers Act as the Watts are not prevented from receiving any statutory remedies under the statute. Ex. 1.
The clause does not address attorneys' fees and costs. <i>Id.</i> at 20.	Under the agreement, attorneys' fees and costs are recoverable in accordance with applicable law. Ex. 1.
The clause lacks mutuality of remedy because the dealer is not required to submit certain claims to arbitration, even though the clause mandates arbitration of all customer claims. <i>Id.</i> at 31.	The agreement has mutuality of remedy as either party can demand arbitration of any dispute and no judicial fora are reserved for the Dealer. Ex. 1.
The clause provides no right to forego arbitration. <i>Id.</i> at 20.	The agreement provides a right to forego arbitration by bringing an action in small claims court. Ex. 1.
The filing fees are paid by the party initiating arbitration. <i>Id.</i> at 20.	If a customer initiates the action, the dealer pays any amount in excess of what the customer would have paid to file the case in court. Ex. 1. The agreement is also subject to the AAA rules, which require the dealer to pay any arbitrator's fees over \$125. See Ex. 2 (AAA rules).
The clause designates a mandatory arbitration location. <i>Id.</i> at 20.	The customer decides the locale of the arbitration as the customer can choose between the federal district where she lives or the federal district where she purchased the vehicle. Ex. 1.
The dealer's judicial remedies supersede the consumer's arbitral remedies as certain Dealer remedies are not stayed pending the	A consumer's arbitral remedies are not superseded as all remedies are stayed pending the outcome of arbitration. Ex. 1.

outcome of arbitration. <i>Id</i> at 31-32.	

A. Unlike in *Simpson*, Michael and Christine did not lack a meaningful choice in agreeing to arbitrate.

Christine's argument that she lacked a meaningful choice is premised on a distortion of the record. Christine does not dispute that the agreement was conspicuous. Nor can she and her father plausibly claim that the agreement was "hastily" presented to them as they both admit they were eager to leave the dealership as quickly as possible, so any rush to sign the documents was entirely self-imposed. Of the three remaining circumstances that demonstrated Simpson had no meaningful choice, Christine relies almost exclusively on her claim that the agreement was presented on a take-it-or-leave-it basis, and therefore, constituted a contract of adhesion. *See* Pl.'s Second Supp. Memo. at 11. Christine reaches this unfounded conclusion by avoiding and misconstruing the testimony from the depositions.

The arbitration agreement was *not* presented on a "take it or leave it basis." All three depositions establish that the arbitration agreement was not required to complete the deal. Christine and Michael admit that no one ever told them they were required to sign the arbitration agreement. They point to no statement or affirmative action whatsoever demonstrating that their signatures were required or establishing that Century BMW was unwilling to waive enforcement. Christine's only support appears to be her ambiguous, unsupported allegation that they "were led to believe that they were required to sign the arbitration agreement," without any articulation of how they were led to that belief. The record simply contains no evidence that the agreement was mandatory. Rather, it shows that (1) the F&I manager never said the arbitration agreement was required, (2) neither Michael nor Christine asked any questions about the arbitration agreement, (3) neither Michael nor Christine voiced any objections to the arbitration agreement, (4) Michael

and Christine were eager to leave the dealership as quickly as possible, (5) Century BMW's policy is that the arbitration agreement is not mandatory, and (6) Century BMW has allowed customers not to sign the agreement and still purchase vehicles.

Christine's memorandum also relies on the fact that Century BMW's General Manager could only name one customer who purchased a vehicle without signing an arbitration agreement. Pl.'s Second Supp. Memo. at 5. This is a red herring. Mr. Bishop (Century BMW's General Manager) explained that the dealership handles deals in which a customer does not sign the arbitration agreement no differently than those in which the customer does sign it; the deal is not flagged in any way. Bishop Dep. 23:11-18; 43:20-44:9. Since the General Manager of the dealership is not the dealership employee who interacts with the customer at the time the arbitration agreement is presented to and either accepted or not accepted by the customer, it is hardly surprising that he did not have at his finger tips the names of all of the customers who have declined to sign the arbitration agreement and still purchased vehicles. He testified unequivocally under oath, however, that he knew there were other customers whose names he did not know who have refused to sign the arbitration agreement and still purchased vehicles. *Id.* at 87:10-14.

Even if credited, Christine's testimony that it was her subjective belief that she "had to sign everything" to purchase the car does not advance the ball. All three cases she cites in support of this argument highlight the need for objective evidence, not self-serving subjective beliefs. In *Woods v. QC Fin. Servs., Inc.*, Case No. 06-CC-004072-V-CV, at *8 (Mo. Cir. Ct. Dec. 31, 2007), the court emphasized that "courts should not look to the subjective understanding of individual consumers" but should apply an "objective test." Likewise, in both *Simpson*, 373 S.C. at 27, and *Tillman v. Commercial Credit Loans, Inc.*, 655 S.E.2d 362, 367

(N.C. 2008), the courts relied on defendants' actual policy—that they would not allow the deal to go forward if the party did not agree to the arbitration agreement—in concluding that the arbitration agreement was presented on a take-it-or-leave-it basis. Here, unlike *Woods*, *Simpson*, and *Tillman*, the objective facts demonstrate that the agreement was never presented on a take-it-or-leave-it basis because the manager never told the Wattses the agreement was required and the dealership's policy was not to insist on the agreement if a party refused to sign it.

Therefore, the record objectively demonstrates that the arbitration agreement was not mandatory, and Michael and Christine did not lack a meaningful choice in agreeing to it.

B. Christine's arbitration agreement lacks any of the oppressive terms that the *Simpson* Court found unconscionable.

None of the three provisions found to be unconscionable in *Simpson* is in the Wattses' arbitration agreement. Moreover, although plaintiffs' counsel represents that there are 1100 words in the arbitration agreement, Bishop Dep. at 63:16, in all of those words, plaintiffs' counsel has found only one provision that in their multiple briefs they have contended is unconscionable: the class action waiver. The *Simpson* arbitration clause, however, also contained a class action waiver and the South Carolina Supreme Court did not find it unconscionable. Therefore, this Court should do the same:

- 1. The majority of jurisdictions addressing arbitration agreements with class action waivers—and the only two decisions with binding authority on this Court—have upheld such provisions.**

The Wattses mischaracterize the cases addressing class action waivers. Plaintiffs exalt two decisions into an “emerging trend” and ignore the litany of other cases addressing this issue. Pl.'s Second Supp. Memo at 8-11 (discussing *Tillman* and *Woods*).⁸ The great weight of

⁸ Moreover, these cases are distinguishable. In *Tillman*, for example, the arbitration agreement was mandatory, the customer was rushed to sign the documents, the customer was possibly

authority is that class action waivers are reasonable and enforceable. *See, e.g., Gay v. Creditinform*, 511 F.3d 369 (3rd Cir. Dec. 21, 2007); *Davidson v. Cingular*, 2007 WL 896349, No. 2:06CV00133-WRW (E.D. Ark. 2007); *Snowden v. Checkpoint Check Cashing*, 290 F.3d 631, 638 (4th Cir. 2002); *Jenkins v. First Am. Cash Advance of Ga., LLC*, 400 F.3d 868, 878 (11th Cir. 2005), *cert. denied* 126 S. Ct. 1457 (2006).⁹ That certain litigation devices—including representative actions—may not be available in an arbitration “is part and parcel of arbitration’s ability to offer ‘simplicity, informality, and expedition’ [-] characteristics that generally make arbitration an attractive vehicle for the resolution of low-value claims.” *Iberia Credit Bureau, Inc. v. Cingular Wireless LLC*, 379 F.3d 159, 175 (5th Cir. 2004) (quoting *Gilmer v. Interstate/Johnson Lane Corp.*, 500 US 20, 31 (1991)); *see also Caley v. Gulfstream Aerospace Corp.*, 428 F.3d 1350 (11th Cir. 2005). Indeed, had Christine abided by her agreement to arbitrate, it is almost a certainty that her claim would already have been resolved.

Moreover, the only two decisions with binding authority on this Court that addressed arbitration agreements with class action waivers did not find them unconscionable. As noted above, the arbitration clause in *Simpson* contained a class action waiver but the South Carolina Supreme Court did not find it unconscionable, noting that the arbitration clause “contained a

responsible for the arbitration costs, and there was no mutuality of remedy—none of which is found here.

⁹ *See also Iberia Credit Bureau, Inc. v. Cingular Wireless LLC*, 379 F.3d 159, 175 (5th Cir. 2004) (precluding class arbitration “does not leave the plaintiffs without remedies”); *Livingston v. Assocs. Fin., Inc.*, 339 F.3d 553, 559 (7th Cir. 2003); *Johnson v. W. Suburban Bank*, 225 F.3d 366, 374 (3d Cir. 2000); *Champ v. Siegel Trading Co.*, 55 F.3d 269, 277 (7th Cir. 1995); *Delta Funding Corp. v. Harris*, 189 N.J. 28 (2006); *Edwards v. Blockbuster, Inc.*, 400 F. Supp. 2d 1305, 1309 (E.D. Okla. 2005) (“Such provisions are a common feature of consumer arbitration agreements, and numerous courts have recognized that they are valid and fully enforceable.”); *Rains v. Found. Health Sys. Life & Health*, 23 P.3d 1249, 1253 (Colo. Ct. App. 2001) (“[A]rbitration clauses are not unenforceable simply because they might render a class action unavailable.”).

total of three unconscionable provisions,” none of which included the requirement for individual treatment of claims. *Simpson*, 373 S.C. at 35 n.9. The *Simpson* Court stressed throughout its decision that it would not enforce any provision that “is violative of policy, statutory law, or provisions of the Constitution.” *Id.* at 33. Thus, if the provision precluding the consolidation of claims violated the Dealers Act, the court would have found it unconscionable. But it did not do so, confirming that such provisions are enforceable.

Likewise, the United States Supreme Court’s decision in *Green Tree Financial Corp. v. Bazzle*, 539 U.S. 444 (2003), compels the conclusion that it also views class action waivers as enforceable. There, the Court held that it was for an arbitrator to determine whether the arbitration clause at issue precluded class-wide arbitration. *Id.* at 454. By permitting that arbitrator to decide whether the clause prevented class-wide arbitration, the Supreme Court recognized that class preclusion was permissible; after all, if class preclusion were per se invalid, then the Court would have just said so and not directed the arbitrator to determine whether the agreement allowed for class actions or not. *See also Kinkel v. Cingular*, 857 N.E.2d 250, 262-63 (Ill. 2006) (“The Court’s holding in *Green Tree* . . . suggest[s] that an arbitration agreement expressly waiving the ability to arbitrate class claims is enforceable.”).

Snowden v. Checkpoint Check Cashing, 290 F.3d 631, 638 (4th Cir. 2002), is particularly instructive. There, the United States Court of Appeals for the Fourth Circuit, upon which the *Simpson* Court relied,¹⁰ rejected a similar attack on a class action waiver in the context of a consumer protection statute. The plaintiff, who sued, *inter alia*, under the Maryland Consumer Protection Act, claimed that the waiver violated public policy because it precluded her from attracting legal representation given her modest claim for damages. *Snowden*, 290 F.3d at 638-

¹⁰ *Simpson*, 373 S.C. at 668-69.

39. The Fourth Circuit disagreed. First, it held that because the prevailing party could recover attorneys' fees, the plaintiff had sufficient ability to obtain legal representation. *Id.* at 638. Second, it "rejected as meritless" plaintiff's argument that the agreement violated public policy, holding that such logic failed to place arbitration agreements on equal footing with other contracts. *Id.* at 639. In upholding the class action waiver, the Fourth Circuit emphasized that the "agreement placed no limitations upon the substantive remedies available to Snowden in arbitration." *Id.* As in *Snowden*, the arbitration agreement here is valid and enforceable because Christine can recover attorneys' fees and the agreement places no limitations on the substantive remedies she can recover in arbitration. Ex. 1.¹¹

2. The arbitration agreement does not inhibit a customer's ability to bring a claim against Century BMW.

Christine is able to vindicate her claims under the arbitration agreement inexpensively. Century BMW must pay for nearly all arbitration costs, including any amount of the filing fee in excess of what it would have cost to file in court. Ex. 1. The agreement is also subject to the American Arbitration Association ("AAA") rules, which require the dealership to pay the entire arbitrator's fee in excess of \$125. *See* Ex. 2 (AAA rules). Additionally, under the agreement, attorney fees and costs are recoverable in accordance with the applicable law.¹² Ex. 1.

The agreement also grants Christine the right to forego arbitration entirely. If a customer wants to avoid arbitration, the agreement allows her to do so by bringing a claim in small claims

¹¹ Invalidating Christine's arbitration agreement would thus create a split between state and federal courts in South Carolina.

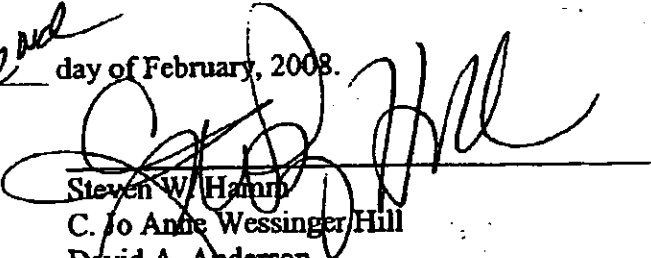
¹² *See Jenkins v. First American Cash Advance of Ga., LLC*, 400 F.3d 868 (11th Cir. 2005) (arbitration agreement permitted consumers to vindicate their statutory rights because it expressly permitted the consumers to recover attorneys' fees and costs); *Snowden*, 290 F.3d at 638.

court. Ex. 1. Thus, a customer can easily and inexpensively pursue a claim against Century BMW.

CONCLUSION

For the reasons set forth above, Century BMW respectfully requests that this Court compel arbitration of Christine Watts's claims against it in accordance with the terms of the arbitration agreement and, accordingly, dismiss those claims currently pending in this Court.

Respectfully submitted, this 22nd day of February, 2008.



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ATTORNEYS FOR CENTURY BMW

February 22, 2008
Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

Heather Herron et al

PLAINTIFFS,

v.

Dick Dyer & Associates, et al,

DEFENDANTS.

) IN THE COURT OF COMMON PLEAS

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

) CERTIFICATE OF SERVICE

C O P Y
ORIGINAL FILED

FEB 25 2008

AIKEN COUNTY
CLERK OF COURT

I, the undersigned, an attorney at the firm of Richardson, Plowden, Carpenter and Robinson, P. A., attorneys for DEFENDANT CENTURY BMW, WHOSE TRUE NAME IS SONIC AUTOMOTIVE 2752 LAURENS RD., GREENVILLE, INC. D/B/A CENTURY BMW ("Century BMW"), do hereby certify that I have served the foregoing SECOND REPLY MEMORANDUM IN SUPPORT OF CENTURY BMW'S MOTION TO COMPEL ARBITRATION AND TO DISMISS CLAIMS on Plaintiffs by causing it to be deposited in a United States Postal Service mailbox a copy of the same, postage prepaid, return address clearly indicated, addressed to the following:

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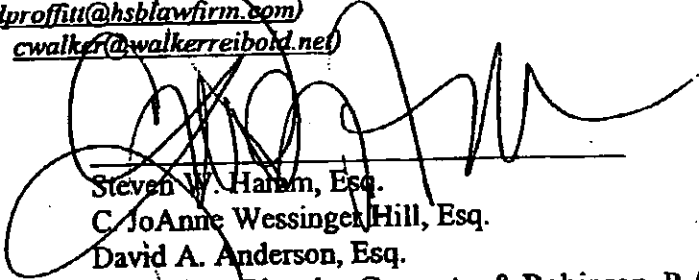
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TRUE NAME IS SONIC AUTOMOTIVE 2752 LAURENS RD.,
GREENVILLE, INC. D/B/A CENTURY BMW

February 22, 2008
Columbia, South Carolina

ARBITRATION AGREEMENT
(All States Except CA)

DATE: 6.25.05

VIN: 4U5BT33554LS50759

In this Arbitration Agreement ("Agreement"), "you" and "your" refers to the customer(s) who sign(s) below. "We", "us", and Dealer refer to the Dealer signing below, and includes the Dealer's employees, agents, and parent and affiliated companies (including, but not limited to, Cornerstone Acceptance Corporation) and their employees and agents. "Parties" refers to you and us. "Vehicle" refers to the automobile identified by the VIN set forth above. "Claim(s)" includes any and all disputes, claims or controversies between the Parties relating to the Vehicle or arising out of or relating to: (a) the application for and the terms of and enforceability of the sale, lease, or financing of the Vehicle, (b) the purchase or terms of any warranty, service agreement, maintenance plan, paint/undercarriage/interior protection product, anti-theft etching product and warranty, GAP protection, deficiency waiver addendum, or any or other product or insurance, (c) any claims of breach of contract, negligence, misrepresentation, conversion, fraud, or unfair and deceptive trade practices, (d) any claim of a violation of any state or federal statute or regulation, or (e) the Vehicle's condition, warranty, workmanship, servicing, maintenance or repair. All Claims must be brought within the time allowed by the applicable statute(s) of limitation. "Contract(s)" refers to any agreement(s) between you and us regarding the sale, lease, financing, service or maintenance of the Vehicle.

Upon the request of a Party, any and all Claim(s) shall be decided in binding arbitration before the American Arbitration Association (1-800-778-7879/www.adr.org) ("AAA"). The Parties may mutually agree to use another arbitration forum and/or qualified arbitrator. Unless mutually agreed otherwise between the Parties, any arbitration under this Agreement shall be conducted under the commercial arbitration rules of the AAA. To the extent that any Claim is deemed a "consumer dispute", the Parties agree that the fee schedule provided in the rules for consumer disputes of the AAA, if any, will apply. You can get a copy of the rules from the AAA. The arbitration hearing shall be conducted, at your option, in the federal district in which you reside or in which the Vehicle was purchased or leased.

The Parties waive the right to request arbitration for a Claim filed and maintained individually (as opposed to a class action) in your state's small claims court, if any. However, if such a Claim originally brought in small claims court is transferred or removed to a higher state or federal trial court, the Parties reserve their right to request arbitration under this Agreement.

The Parties agree that once one of the Parties has elected to arbitrate, binding arbitration is the exclusive method for resolving any and all Claims. By entering into this Agreement the Parties are waiving their right to a jury trial and their right to bring or participate in any class action or multi-plaintiff or claimant action in court or through arbitration. Until a Party entitled to do so requests arbitration under this Agreement, any party to this Agreement may proceed with all other rights and remedies they may have. Neither you nor we waive our right to request arbitration under this Agreement, even after all Parties have elected to litigate a Claim in court, in the event new Claims are asserted after the initial filing of such litigation in court.

The arbitrator shall be an attorney or retired judge. The arbitrator shall apply and be bound by governing local, state or federal law when making an award, and shall award only those damages or other relief allowed by such governing law. Issues regarding whether a matter is arbitrable shall be made by the arbitrator. The arbitrator shall prepare a written decision stating reasoned findings of fact and conclusions of law. A party may seek entry of a judgment on the award in any court of competent jurisdiction.

If you initiate a Claim for Arbitration under this Agreement, we agree to pay that portion of the AAA's initial filing fee which exceeds the lesser of the court filing fee for the state or federal court located in the jurisdiction in which you reside. If we initiate a Claim for arbitration we will pay the entire initial filing fee. We also agree to pay up to \$1500 of the arbitrator's fees, unless applicable law or the rules of the AAA require otherwise. Unless applicable law or the rules of the AAA require otherwise, the Parties agree to share equally all other costs and fees, including the arbitrator's fees in excess of \$1500. Notwithstanding any other provision of this Agreement, we will also pay any amount of fees or costs that a court or the arbitrator decides we must pay in accordance with applicable law for this Agreement to be enforceable. The arbitrator deciding the Claim(s) shall have the authority to award fees, costs, injunctive or equitable relief in accordance with this Agreement or in accordance with applicable law or provided otherwise by applicable law.

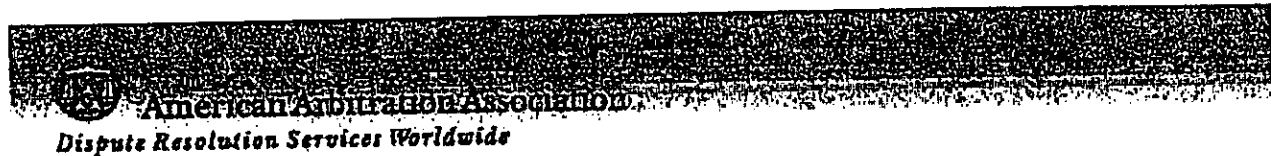
This Agreement evidences a transaction under the Federal Arbitration Act (9 U.S.C. § 1 et seq.) ("FAA") and is binding, except for any right of rescission.

If any part of this Agreement is unenforceable, the entire Agreement shall nevertheless be enforceable. In the event of a dispute, the Parties agree to be bound by the decision of the arbitrator, to the extent permitted by applicable law.

This Agreement is hereby accepted and made a part of the entire agreement between the Customer and the Dealer.

Customer

Customer



Consumer-Related Disputes Supplementary PROCEDURES
Effective September 15, 2005

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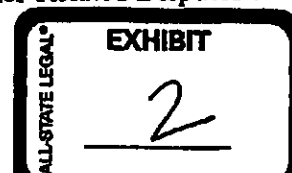
Fees and Deposits to be Paid by the Consumer:

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INTRODUCTION

Millions of consumer purchases take place each year. Occasionally, these transactions lead to disagreements between consumers and businesses. These disputes can be resolved by arbitration. Arbitration is usually faster and cheaper than going to court.

The AAA applies the Supplementary Procedures for Consumer-Related Disputes to arbitration clauses



in agreements between individual consumers and businesses where the business has a standardized, systematic application of arbitration clauses with customers and where the terms and conditions of the purchase of standardized, consumable goods or services are non-negotiable or primarily non-negotiable in most or all of its terms, conditions, features, or choices. The product or service must be for personal or household use. The AAA will have the discretion to apply or not to apply the Supplementary Procedures and the parties will be able to bring any disputes concerning the application or non-application to the attention of the arbitrator. Consumers are not prohibited from seeking relief in a small claims court for disputes or claims within the scope of its jurisdiction, even in consumer arbitration cases filed by the business.

About the AAA

The American Arbitration Association (AAA) is a not-for-profit, private organization. We offer a broad range of conflict management services to businesses, organizations and individuals. We also provide education, training and publications focused on ways of settling disputes out of court.

The AAA's Consumer Rules

The AAA has developed the Supplementary Procedures for Consumer-Related Disputes for consumers and businesses that want to have their disagreements resolved by arbitrators. People throughout the world can make use of our services.

Availability of Mediation

Mediation is also available to help parties resolve their disputes. Mediations are handled under AAA's Commercial Mediation Procedures.

Administrative Fees

The Association charges a fee for its services under these rules. The costs to the consumer and business depend on the size and nature of the claims. A fee schedule is included at the end of this Supplement. In certain cases, fees paid by the consumer are fully refundable if the dispute is settled before the arbitrator takes any action.

Arbitrator's Fees

Arbitrators get paid for the time they spend resolving disputes. The arbitrator's fee depends on the type of proceeding that is used and the time it takes. The parties make deposits as outlined in the fee schedule at the end of this Supplement. Unused deposits are refunded at the end of the case.

GLOSSARY OF TERMS

Claimant

A Claimant is the party who files the claim or starts the arbitration. Either the consumer or the business may be the Claimant.

Respondent

A Respondent is the party against whom the claim is filed. If a Respondent states a claim in arbitration,

it is called a counterclaim. Either the consumer or the business may be the Respondent.

ADR Process

An ADR (Alternative Dispute Resolution) Process is a method of resolving a dispute out of court. Mediation and Arbitration are the most widely used ADR processes.

Arbitration

In arbitration, the parties submit disputes to an impartial person (the arbitrator) for a decision. Each party can present evidence to the arbitrator. Arbitrators do not have to follow the Rules of Evidence used in court.

Arbitrators decide cases with written decisions or "awards." An award is usually binding on the parties. A court may enforce an arbitration award, but the court's review of arbitration awards is limited.

Desk Arbitration

In a Desk Arbitration, the parties submit their arguments and evidence to the arbitrator in writing. The arbitrator then makes an award based only on the documents. No hearing is held.

Telephone Hearing

In a Telephone Hearing, the parties have the opportunity to tell the arbitrator about their case during a conference call. Often this is done after the parties have sent in documents for the arbitrator to review. A Telephone Hearing can be cheaper and easier than an In Person Hearing.

In Person Hearing

During an In Person Hearing, the parties and the arbitrator meet in a conference room or office and the parties present their evidence in a process that is similar to going to court. However, an In Person Hearing is not as formal as going to court.

Mediation

In Mediation, an impartial person (the mediator) helps the parties try to settle their dispute by reaching an agreement together. A mediator's role is to help the parties come to an agreement. A mediator does not arbitrate or decide the outcome.

Neutral

A Neutral is a word that is used to describe someone who is a mediator, arbitrator, or other independent, impartial person selected to serve as the independent third party in an ADR process.

Case Manager

The Case Manager is the AAA's employee assigned to handle the administrative aspects of the case. He or she does not decide the case. He or she only manages the case's administrative steps, such as exchanging documents, matching schedules, and setting up hearings. The Case Manager is the parties' contact point for almost all aspects of the case outside of any hearings.

ADR Agreement

An ADR Agreement is an agreement between a business and a consumer to submit disputes to mediation, arbitration, or other ADR processes.

ADR Program

An ADR Program is any program or service set up or used by a business to resolve disputes out of court.

Independent ADR Institution

An Independent ADR Institution is an organization that provides independent and impartial administration of ADR programs for consumers and businesses. The American Arbitration Association is an Independent ADR Institution.

SUPPLEMENTARY PROCEDURES FOR THE RESOLUTION OF CONSUMER-RELATED DISPUTES

C-1. Agreement of Parties and Applicability

- (a) The Commercial Dispute Resolution Procedures and these Supplementary Procedures for Consumer-Related Disputes shall apply whenever the American Arbitration Association (AAA) or its rules are used in an agreement between a consumer and a business where the business has a standardized, systematic application of arbitration clauses with customers and where the terms and conditions of the purchase of standardized, consumable goods or services are non-negotiable or primarily non-negotiable in most or all of its terms, conditions, features, or choices. The product or service must be for personal or household use. The AAA will have the discretion to apply or not to apply the Supplementary Procedures and the parties will be able to bring any disputes concerning the application or non-application to the attention of the arbitrator. The AAA's most current rules will be used when the arbitration is started. If there is a difference between the Commercial Dispute Resolution Procedures and the Supplementary Procedures, the Supplementary Procedures will be used. The Commercial Dispute Resolution Procedures may be found on our Web site. They may also be obtained from the Case Manager.
- (b) The Expedited Procedures will be used unless there are three arbitrators. In such cases, the Commercial Dispute Resolution Procedures shall apply.
- (c) The AAA may substitute another set of rules, such as the Real Estate or the Wireless Industry Arbitration Rules, for the Commercial Dispute Resolution Procedures in some cases.
- (d) Parties can still take their claims to a small claims court.

C-2. Initiation Under an Arbitration Agreement

- (a) The filing party (the "claimant") must notify the other party (the "respondent"), in writing, that it wishes to arbitrate a dispute. This notification is referred to as the "demand" for arbitration. The demand should:

- briefly explain the dispute,

- ' list the names and addresses of the consumer and the business,
- ' specify the amount of money involved,
- ' state what the claimant wants.

The claimant must also send two copies of the demand to the AAA at the time it sends the demand to the respondent. When sending a demand to the AAA, the claimant must attach a copy of the arbitration agreement from the consumer contract with the business. The claimant must also send the appropriate administrative fees and deposits. A fee schedule can be found in Section C-8 at the end of this Supplement.

- (b) The AAA shall confirm receipt of the demand to the parties.
- (c) The respondent may answer the demand and may also file a counterclaim. The answer must be sent to the AAA within ten calendar days after the AAA acknowledges receipt of claimant's demand. The answer must:
- ' be in writing,
 - ' be sent, in duplicate, to the AAA,
 - ' be sent to the claimant at the same time.
- ' If the respondent has a counterclaim, it must state the nature of the counterclaim, the amount involved, and the remedy sought.
- (d) If no answer is filed within the stated time, the AAA will assume that the respondent denies the claim.
- (e) The respondent must also send the appropriate administrative fees and deposits. A fee schedule can be found in Section C-8 at the end of this Supplement. Payment is due ten calendar days after the AAA acknowledges receipt of claimant's demand.

C-3. Initiation Under a Submission

Where no agreement to arbitrate exists in the contract between the consumer and the business, the parties may agree to arbitrate a dispute. To begin arbitration, the parties must send the AAA a submission agreement. The submission agreement must:

- ' be in writing,
- ' be signed by both parties,
- ' briefly explain the dispute,
- ' list the names and addresses of the consumer and the business,
- ' specify the amount of money involved,

' state the solution sought.

The parties should send two copies of the submission to the AAA. They must also send the administrative fees and deposits. A fee schedule can be found in Section C-8 at the end of this Supplement.

C-4. Appointment of Arbitrator

Immediately after the filing of the submission or the answer, or after the deadline for filing the answer, the AAA will appoint an arbitrator. The parties will have seven calendar days from the time the AAA notifies them, to submit any factual objections to that arbitrator's service.

C-5. Proceedings on Documents ("Desk Arbitration")

Where no claims or counterclaims exceed \$10,000, the dispute shall be resolved by the submission of documents. Any party, however, may ask for a hearing. The arbitrator may also decide that a hearing is necessary.

The arbitrator will establish a fair process for submitting the documents. Documents must be sent to the AAA. These will be forwarded to the arbitrator.

C-6. Expedited Hearing Procedures

A party may request that the arbitrator hold a hearing. This hearing may be by telephone or in person. The hearing may occur even if the other party does not attend. A request for a hearing should be made in writing within ten calendar days after the AAA acknowledges receipt of a claimant's demand for arbitration. Requests received after that date will be allowed at the discretion of the arbitrator.

In a case where any party's claim exceeds \$10,000, the arbitrator will conduct a hearing unless the parties agree not to have one.

Any hearings will be conducted in accordance with the Expedited Procedures of the Commercial Dispute Resolution Procedures. These procedures may be found on our Web site. They may also be obtained from the Case Manager.

C-7. The Award

- (a) Unless the parties agree otherwise, the arbitrator must make his or her award within fourteen calendar days from the date of the closing of the hearing. For Desk Arbitrations, the arbitrator has fourteen calendar days from when the AAA sends the final documents to the arbitrator.
- (b) Awards shall be in writing and shall be executed as required by law.
- (c) In the award, the arbitrator should apply any identified pertinent contract terms, statutes, and legal precedents. The arbitrator may grant any remedy, relief or outcome that the parties could have received in court. The award shall be final and binding. The award is subject to review in accordance with applicable statutes governing arbitration awards.

C-8. Administrative Fees and Arbitrator Fees*

Administrative fees and arbitrator compensation deposits are due from the claimant at the time a case is filed. They are due from the respondent at the time the answer is due. The amounts paid by the consumer and the business are set forth below.

***Pursuant to Section 1284.3 of the California Code of Civil Procedure, consumers with a gross monthly income of less than 300% of the federal poverty guidelines are entitled to a waiver of arbitration fees and costs, exclusive of arbitrator fees. This law applies to all consumer agreements subject to the California Arbitration Act, and to all consumer arbitrations conducted in California. If you believe that you meet these requirements, you must submit to the AAA a declaration under of oath regarding your monthly income and the number of persons in your household. Please contact the AAA's Western Case Management Center at 1-877-528-0879, if you have any questions regarding the waiver of administrative fees. (Effective January 1, 2003)**

Administrative Fees

Administrative fees are based on the size of the claim and counterclaim in a dispute. They are based only on the actual damages and not on any additional damages, such as attorneys' fees or punitive damages. Portions of these fees are refundable pursuant to the Commercial Fee Schedule.

Arbitrator Fees

For cases in which no claim exceeds \$75,000, arbitrators are paid based on the type of proceeding that is used. The parties make deposits as set forth below. Any unused deposits are returned at the end of the case.

**Desk Arbitration or Telephone Hearing \$250 for service on the case
In Person Hearing \$750 per day of hearing**

For cases in which a claim or counterclaim exceeds \$75,000, arbitrators are compensated at the rates set forth on their panel biographies.

Fees and Deposits to be Paid by the Consumer:

If the consumer's claim or counterclaim does not exceed \$10,000, then the consumer is responsible for one-half the arbitrator's fees up to a maximum of \$125. This deposit is used to pay the arbitrator. It is refunded if not used.

If the consumer's claim or counterclaim is greater than \$10,000, but does not exceed \$75,000, then the consumer is responsible for one-half the arbitrator's fees up to a maximum of \$375. This deposit is used to pay the arbitrator. It is refunded if not used.

If the consumer's claim or counterclaim exceeds \$75,000, or if the consumer's claim or counterclaim is non-monetary, then the consumer must pay an Administrative Fee in accordance with the Commercial Fee Schedule. A portion of this fee is refundable pursuant to the Commercial Fee Schedule. The consumer must also deposit one-half of the arbitrator's compensation. This deposit is used to pay the arbitrator. This deposit is refunded if not used. The arbitrator's compensation rate is set forth on the panel biography provided to the parties when the arbitrator is appointed.

Fees and Deposits to be Paid by the Business:

Administrative Fees:

If neither party's claim or counterclaim exceeds \$10,000, the business must pay \$750 and a Case Service Fee of \$200 if a hearing is held. A portion of this fee is refundable pursuant to the Commercial Fee Schedule.

If either party's claim or counterclaim exceeds \$10,000, but does not exceed \$75,000, the business must pay \$950 and a Case Service Fee of \$300 if a hearing is held. A portion of this fee is refundable pursuant to the Commercial Fee Schedule.

If the business's claim or counterclaim exceeds \$75,000 or if the business's claim or counterclaim is non-monetary, the business must pay an Administrative Fee in accordance with the Commercial Fee Schedule. A portion of this fee is refundable pursuant to the Commercial Fee Schedule.

Arbitrator Fees:

The business must pay for all arbitrator compensation deposits beyond those that are the responsibility of the consumer. These deposits are refunded if not used.

If a party fails to pay its fees and share of the administrative fee or the arbitrator compensation deposit, the other party may advance such funds. The arbitrator may assess these costs in the award.

For more information please contact our customer service department at 1-800-778-7879

Rules, forms, procedures and guides are subject to periodic change and updating.

AAA236

- AAA MISSION & PRINCIPLES
- PRIVACY POLICY
- TERMS OF USE
- TECHNICAL RECOMMENDATIONS
- ©2007 AMERICAN ARBITRATION ASSOCIATION. ALL RIGHTS RESERVED

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

Heather Herron, Natalie Armstrong, Michael
Ritz, Julie Freeman, Christine Watts, Alison
Dannert, Michael Blease, Michael Watts,
Individually and for the Benefit of All Car
Buyers Whom Paid "Administrative Fees" as
Described below to Defendants

Plaintiffs,

vs.

Century BMW a/k/a Sonic Automotive; Dick
Dyer & Associates, Inc.; Galeana Chrysler
Plymouth, Inc. a/k/a Galeana Chrysler Jeep,
Inc.; J.L.H. Investments, LP a/k/a 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.

Defendants.

) IN THE COURT OF COMMON PLEAS

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

)
) **PLAINTIFF CHRISTINE WATTS'S**
) **REPLY TO SECOND**
) **SUPPLEMENTAL MEMORANDUM**
) **IN SUPPORT OF DEFENDANT**
) **CENTURY BMW'S MOTION TO**
) **COMPEL ARBITRATION**

Plaintiff Christine Watts submits this Reply to Second Supplemental Memorandum in Support of Defendant Century BMW's Motion to Compel Arbitration. Century BMW's Motion to Compel Arbitration should be denied.

1. The Century BMW Arbitration Agreement Should be Viewed with Considerable Skepticism.

The South Carolina Supreme Court in Simpson v. MSA of Myrtle Beach, Inc., 644 S.E.2d 663 (S.C.,2007) stated that a "contract between a consumer and automobile retailer" should be treated with "'considerable skepticism'" because "'automobiles are a common and necessary adjunct of daily life'" and "'adhesion contracts...are standard in the automobile retail industry.'" Simpson, 644 SE2d at 669-670. The contract here is also an adhesion contract

between a consumer and an automobile retailer and should be treated with considerable skepticism.

The Wattses recitation of the events surrounding the execution of the Century BMW arbitration agreement are undisputed. Century BMW was unable to present any witness who remembered the transaction. Century BMW's General Manager and the 30(b)(6) deponent on this transaction, admitted that nobody from Century BMW remembered this transaction.¹ Accordingly, the Wattses statements and affidavit cannot be disputed.

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." Simpson v. MSA of Myrtle Beach, Inc., 644 S.E.2d 663, 669 (S.C.,2007). The arbitration agreement was is a form contract drafted by Century BMW.²

The arbitration agreement was presented on a take-it-or-leave-it basis. The Wattses testified that they believed they had to sign the arbitration agreement to get the car. Michael Watts testified as follows:

- Q. And I take it, from what you've said, you didn't object to signing the document at the time.
- A. I didn't know I didn't have to.³

Christine Watts stated:

¹Exhibit B, 30(b)(6) Deposition of Century BMW, p. 8, l. 19 to p. 9, l. 12; p. 10, ll. 7-22; p. 13, ll. 12-16; and p. 17, ll. 15-19.

²Exhibit B, 30(b)(6) Deposition of Century BMW, p. 37, ll. 7-14 (form contract drafted by Century BMW)

³Exhibit A, Deposition of Michael Watts, p. 54, ll. 10-12.

- Q. Okay. Let's go to Number 14 [arbitration agreement]. Okay? Was CBM-14 passed to you?
- A. I'm sure that it was in the packet.
- Q. Okay. Is that your signature?
- A. That is correct.
- Q. Did you know what you were signing?
- A. No, I did not.
- Q. Why did you sign it?
- A. I thought I had to to buy the car.⁴

Ms. Watts also stated:

- Q. Why did you think you had to sign any or all of these documents in order to get the car?
- A. The way it was presented, I just thought I had to sign everything.⁵

This Watts testimony is clear and the Watts are the only ones who remember the transaction.

The General Manager stated that the F&I Manager's "practice" was to present the individual documents and point to where the customer was supposed to sign.⁶ The F&I Manager would place his finger on the document and say "sign here." This practice leads to only one conclusion, that signing the document is required in order to purchase a car and that the document was presented on a take-it-or-leave-it basis.

This conclusion is further supported by the fact that in over 6,000 transactions, the only person the General Manager could name who was ever allowed to buy a car without signing the

⁴Exhibit C, Deposition of Christine Watts, p. 50, ll. 10-18.

⁵Exhibit C, Deposition of Christine Watts, p. 51, ll. 2-6.

⁶Exhibit B, 30(b)(6) Deposition of Century BMW, p. 22, l. 14 - p. 23, l. 1.

⁷Exhibit B, 30(b)(6) Deposition of Century BMW, p. 22, l. 1 - p. 23, l. 1.

arbitration agreement was Brad Martin, Esq., a lawyer in this case.⁸ Century BMW sells 1,200 cars annually, has used the arbitration agreement since at least 2002, and the General Manager can only recall the lawyer in this case, whom was allowed to buy a car without signing the arbitration agreement.⁹

Additionally, use of the car is 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.¹⁰ Century BMW in their memorandum argues that the vehicle was not necessity because Christine Watts previously owned a Mitsubishi Montero.¹¹ 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. This Court should follow the Simpson court and find that the car purchased by Ms. Watts was a necessity because, like the car purchased in Simpson, Ms. Watts was purchasing the new car to be her primary source of transportation. Thus, the Century BMW arbitration agreement, like the arbitration agreement in Simpson, should be viewed with considerable skepticism.

⁸Exhibit B, 30(b)(6) Deposition of Century BMW, p. 30, l. 19 to p. 31, l. 14 and p. 49, ll. 20-23.

⁹Id.

¹⁰Exhibit C, Deposition of Christine Watts, p. 59, ll. 11-20.

¹¹Exhibit A, Deposition of Michael Watts, p. 56, ll. 13-19.

2. The Wattses had an Absence of Meaningful Choice in Entering into the Century BMW Arbitration Agreement

The South Carolina Supreme Court in Simpson set forth the following the test for determining whether there was an absence of meaningful choice when entering into an arbitration agreement:

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 the challenged clause; and the conspicuousness of the clause.

Simpson v. MSA of Myrtle Beach, Inc., 644 S.E.2d 663, 669 (S.C.,2007). All of these factors are present in this case.

There is a clear disparity in the parties bargaining power and the relative sophistication between the parties. Century BMW argues that Ms. Watts is an auditor and therefore is a sophisticated party. This argument is misleading. While it is true that now, in 2008, Ms. Watts works as an auditor, what Century BMW fails to clarify for the Court is that in 2005, when the vehicle was purchased, Ms. Watts was a student at the College of Charleston.¹² Michael Watts sells garage doors.¹³ The Plaintiffs were not sophisticated businesses concerns. See Simpson, 644 S.E.2d at ("In determining whether a contract was 'tainted by an absence of meaning choice' courts should take into account...whether the plaintiff is a substantial business concern...").

¹²Exhibit C, Deposition of Christine Watts, p. 9, ll. 16-20; Exhibit B, Deposition of Michael Watts, p. 9, l. 23 to p. 10, l. 3.

¹³Exhibit A, Deposition of Michael Watts, p. 17, l. 15 to p. 18, l. 4.

Century BMW, on the other hand, is owned by Sonic Automotive, Inc., a multi-million dollar corporation that owns dozens of car dealerships.¹⁴ Sonic Automotive, Inc. drafted the agreement and the Wattses did not have an attorney present when they signed the agreement.¹⁵ Clearly, there was a disparity of bargaining power between the parties.

The Century BMW arbitration agreement was inconspicuously placed within a packet of documents that included documents which were required to be signed by law.¹⁶ Plaintiff's uncontradicted testimony that the arbitration agreement was presented to them in a big packet containing flags indicating where the Wattses were supposed to sign supports the Wattses' understanding that they were required to sign the arbitration agreement.¹⁷ Christine Watts testified as follows:

¹⁴See <http://www.sonicautomotive.com>.

¹⁵Exhibit B, 30(b)(6) Deposition of Century BMW, p. 37, ll. 7-14 (form contract drafted by Century BMW) and Exhibit C, Christine Watts, p. 51, ll. 7-9 and Exhibit D, Affidavit of Christine Watts, ¶ 8.

¹⁶Exhibit A, Michael Watts, p. 53, ll. 10-20 (packet of documents); Exhibit C, Deposition of Christine Watts, p. 51, l. 2- p. 52, l. 17 (packet of documents); Exhibit B, 30(b)(6) Deposition of Century BMW, p. 59, ll. 1-16; p. 60, ll. 10-19; p. 66, ll. 13-18; p. 67, l. 21 to p. 68, l. 2 (documents required to be signed by law); See also Exhibit A, Deposition of Michael Watts, p. 51, ll. 7-13 (same).

¹⁷Id

- Q. Okay. Let's go to Number 14 [arbitration agreement]. Okay? Was CBM-14 passed to you?
- A. I'm sure that it was in the packet.
- Q. Okay. Is that your signature?
- A. That is correct.
- Q. Did you know what you were signing?
- A. No, I did not.
- Q. Why did you sign it?
- A. I thought I had to to buy the car.¹⁸

Michael Watts testified as follows:

- Q: So you were here just get out of there.
- A: Yes, sir. All the papers were together, and he handed me all the papers.¹⁹

Additionally, the packet included at least three documents that were required to be signed by law.²⁰ Century BMW inconspicuously placed the arbitration agreement within a packet that included documents that were required to be signed by law and then had its F&I Manager point at each document (whether required to be signed by law or not) and say sign here. This is not a fair bargaining process because it makes it appear that signing all of the documents is mandatory. See Simpson, 644 S.E.2d at 660 ("Absence of meaningful choice...speaks to the fundamental unfairness of the bargaining process in the contract at issue.").

Additionally, there was an element of surprise with the Century BMW agreement because the agreement is not easily understandable. Defendant Century BMW argues that the Wattses should have read and understood the arbitration agreement. This argument fails as even Century

¹⁸Exhibit C, Deposition of Christine Watts, p. 50, ll. 10-18.

¹⁹Exhibit A, Deposition of Michael Watts, p. 53, ll. 18-20.

²⁰Exhibit B, 30(b)(6) Deposition of Century BMW, p. 59, ll.1-16; p. 60, ll. 10-19; p. 66, ll. 13-18; p. 67, l. 21 to p. 68, l. 2 (documents required to be signed by law); See *also* Exhibit A, Deposition of Michael Watts, p. 51, ll. 7-13 (same).

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.

Q. Okay. Does Mr. Courtney James know anymore about how arbitration works than you, or would you say you're better?

MR. BLACK: It's Corey James.

MR. LEWIS: Corey James. Mr. James.

A. I would say neither one of us would be involved in the process or actually been through the process.

Q. Or know anything about it?

A. Not much.

Q. Or what the rules are or what you have to do; do you know any of that?

A. No, sir.²¹

Century BMW's General Manager has thirty-two years worth of experience in the car industry²², 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 understand the agreement.²³ If Century BMW's own people do not understand the agreement, how were the Wattses, whom were in a little cubicle with the F&I Manager²⁴ with his finger pointing on the document²⁵, supposed to understand the agreement? Clearly, there is a "fundamental unfairness" in this bargaining process. See Simpson, 644 S.E.2d at 660 ("Absence of meaningful choice...speaks to the fundamental unfairness of the bargaining

²¹Exhibit A, 30(b)(6) Deposition of Century BMW, p. 24, l. 18 - p. 25, l. 6.

²²Exhibit B, 30(b)(6) Deposition of Century BMW, p.45, ll. 10-12.

²³Exhibit A, 30(b)(6) Deposition of Century BMW, p. 24, l. 18 - p. 25, l. 6.

²⁴Exhibit C, Deposition of Christine Watts, p. 39, ll. 3-14.

²⁵Exhibit A, 30(b)(6) Deposition of Century BMW, p. 22, l. 1 - p. 23, l. 1.

process in the contract at issue.").

Even if the arbitration agreement was easily understood, a point which is denied, the explanation the General Manager would expect to be given to the customers is misleading and unfair. The General Manager testified as follows:

- Q: Can you sit here and tell me what this form contains?
A: I'm not an expert, but I can tell you that this is a document providing remedy for the customer without having to go to court.
Q: If you were to explain it, that's what you would say?
A: Yes, sir.
Q: Is there anything else you'd tell them other than it's a remedy for the customer and you don't have to go to court?
...
A: No, sir, I would tell them nothing else.
Q: Okay. And is that what you expect your employees to tell the -- the people?
A: They're more informed than I.
Q: Well, is that what you expect them to tell them, at least that?
A: At least that.
Q: Okay. Is there anything else you expect to tell -- them to tell them?
A: No, sir.²⁶

The expected Century BMW explanation makes it sound like arbitration is a great deal for the customer. It appears from this explanation that the customer is not giving up anything but instead gaining an extra remedy, the ability to get relief without going to court. This is misleading because the arbitration agreement takes away rights otherwise available by law, including statutory rights under the Dealers Act.

The arbitration agreement is simply a device designed to protect Century BMW by making it economically impracticable for a customer to pursue a claim against Century BMW. The arbitration agreement and its limitation on group relief is contrary to the Dealer's Acts "very purpose of punishing acts that adversely affect the public interest" (Simpson, 644 S.E.2d at 671)

²⁶Exhibit A, 30(b)(6) Deposition of Century BMW, p. 16, l. 9 - p. 17, l. 10.

and therefore should not be enforced. See Simpson, 644 S.E.2d at 671 citing S.C. Code Ann. § 56-15-130 (2006) ("The Dealers Act...specifically provides that "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.").

CONCLUSION

For the reasons stated at oral argument, in Plaintiffs' prior memorandums, and the reasons stated above, Defendant Century BMW's Motion to Compel Arbitration should be denied.

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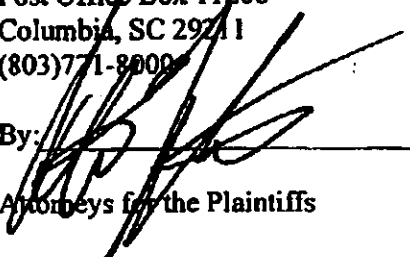
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By: 

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February 22, 2008

Columbia, South Carolina

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF AIKEN

HERRON, et al.,

Case No.

Plaintiffs,

2006-CP-02-1230

vs.

DICK DYER & ASSOCIATES, INC., et al,

Defendants.

DEPOSITION OF: MICHAEL WATTS

DATE: January 29, 2008

TIME: 9:08 a.m.

LOCATION: LEATHERWOOD WALKER TODD & MANN, P.C.
300 East McBee Avenue, Suite 500
Greenville, South Carolina

TAKEN BY: Counsel for Defendant,
CENTURY BMW

REPORTED BY: KATHY P. TAYLOR,
Registered Professional Reporter

Computer-Aided Transcription By:

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EXHIBIT

A

Page 2

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18 ALSO PRESENT:

19 MELANIE BLEASE, Paralegal

20 (Index at rear of transcript)

Page 4

1 STIPULATION

2 It is stipulated by and between Counsel

3 that this deposition is being taken in accordance

4 with the South Carolina Rules of Civil Procedure,

5 Rule 30; that all objections as to notice of this

6 deposition are hereby waived; that all objections

7 except as to form are reserved until the time of

8 trial; and that the deponent does not waive reading

9 and signing of this deposition.

10

11 MICHAEL WATTS,

12 being first duly sworn, testified as follows:

13 EXAMINATION

14 BY MR. BLACK:

15 Q. Good morning, Mr. Watts. Could you state

16 your name and address for the record.

17 A. Michael M. Watts, 210 Providence Square,

18 Greenville, South Carolina 29615.

19 Q. And, Mr. Watts, my name is Dennis Black.

20 I'm from a law firm called Williams & Connolly. And

21 do you understand I represent Century BMW in this

22 case?

23 A. Correct.

24 Q. Okay. The other counsel at the table, just

25 so you know, also represent others, either Century

Page 5

1 BMW or other defendants in the case. And you have

2 your counsel here?

3 A. Yes.

4 Q. Okay. Have you ever had your deposition

5 taken before?

6 A. One time.

7 Q. And when was that?

8 A. About 20 years ago.

9 Q. And was that in a business dispute, a

10 personal dispute?

11 A. It was a workers' comp dispute.

12 Q. Just to give you a little refresher course

13 after 20 years, I'll be asking a series of questions

14 today. Hopefully you'll be answering them. If you

15 can try to answer the questions aloud and with

16 words, because the court reporter can't take down

17 nods and shakes and shrugs.

18 A. Okay.

19 Q. Is that acceptable?

20 A. It's - yes.

21 Q. And try to avoid saying uh-huh or huh-uh in

22 response to my questions, because they look very

23 similar on the transcript, and it will be hard to

24 decipher later. Is that -

25 A. Yes, sir.

1 Q. If you don't understand any of my
2 questions, please ask me to clarify or explain any
3 problem you have with the question. And if you have
4 a problem or need clarification, please direct your
5 request for clarification to me and not to your
6 counsel.

7 A. Yes, sir.

8 Q. Is that okay?

9 A. (Witness nods head.)

10 Q. And under the rules, just so you know,
11 you're not allowed to talk to your counsel about
12 this deposition or the case from now until when we
13 conclude the deposition, even if we take a break.
14 Is that acceptable?

15 A. Yes, sir.

16 Q. And if -- this isn't an endurance contest,
17 so if at any time you need to take a break for any
18 reason, feel free to ask, and we'll take a break.

19 A. Yes, sir.

20 Q. Okay. What did you do to prepare for your
21 deposition today?

22 A. I met with counsel on Sunday night. I got
23 the time and place where we were going to meet, and
24 we briefly looked at the paperwork.

25 Q. And what -- when you say the paperwork,

1 A. Approximately 30, 35 minutes.

2 Q. And where did it take place?

3 A. Took place at my wife's office. Land
4 America.

5 Q. And there's Christine Watts that's also a
6 plaintiff in this case. Is that your daughter?

7 A. Yes, sir.

8 Q. And have you talked with her about the case
9 or your transaction in preparation for this
10 deposition?

11 A. Yes, sir.

12 Q. Uh-huh. And when was that?

13 A. Sunday night when we met.

14 Q. Okay. Was -- was she present for your
15 meeting with counsel?

16 A. Yes, sir.

17 Q. Was anyone else present?

18 A. Metairie Blasco.

19 Q. And is that the young lady sitting over
20 here?

21 A. Yes, sir.

22 Q. Is she also a plaintiff in the case --

23 A. No, sir.

24 Q. -- do you know? No? The -- anyone else?

25 A. No, sir.

1 what paperwork was that?

2 A. The sale paperwork. The information for
3 the bill of sale when we bought the car.

4 Q. How many documents would you say you looked
5 at?

6 A. 20. Approximately 20.

7 Q. And without getting into the substance of
8 what was said, did you have a chance to discuss
9 those documents with your counsel?

10 A. Briefly.

11 Q. Had you seen all the documents you were
12 shown before?

13 A. No, sir.

14 Q. Did it include -- I sent over last week to
15 your counsel a -- the dealership's file on the
16 transaction. Were those the documents you reviewed?

17 A. Yes, sir.

18 Q. Okay. And did you review any of them
19 outside the presence of your counsel?

20 A. No, sir.

21 Q. Okay. So to the extent you had discussions
22 about the documents, it was only with your counsel?

23 A. Yes, sir.

24 Q. How long was your meeting on Sunday night
25 with your counsel?

1 Q. Did you have any discussions with your
2 daughter, Christine Watts, outside the presence of
3 your counsel about the transaction or this case?

4 A. Yes, sir.

5 Q. Oh, okay. And when was that?

6 A. Sunday night, on the way home.

7 Q. All right. And what did you discuss with
8 her on the way home?

9 A. We discussed primarily the taking of a
10 deposition, what it involved and, you know, you
11 would be asking me questions. And I was trying to
12 refresh the deposition process.

13 Q. Uh-huh.

14 A. And --

15 Q. And has Christine had her deposition taken
16 before?

17 A. No, sir.

18 Q. Did you discuss -- refresh any of the details
19 of the negotiation of the car deal or the
20 transaction at Century BMW in this conversation
21 outside the presence of your counsel?

22 A. Yes, sir.

23 Q. And tell me about that. What was said on
24 that subject?

25 A. We discussed -- I could not remember what

Page 10

1 we bought the car for, the purchase of the car,
2 because it was primarily for her as a graduation
3 present. And all the steps.

4 Q. And by all the steps, you mean all the
5 steps --

6 A. All the steps in the process, trying to
7 review the purchase of the car.

8 Q. And did the two of you refresh each other's
9 recollections as to what went on?

10 A. She told me how much money we paid for the
11 car. We were told -- I couldn't even remember the
12 purchase price.

13 Q. Uh-huh. Did she refresh your recollection
14 about any other details of the transaction?

15 A. No. It was pretty much the conversation
16 was towards the purchase price and how we financed
17 the car.

18 Q. Was there anything that she didn't remember
19 that you were able to refresh her recollection
20 about?

21 A. I'm thinking of the conversation, because
22 it was brief. She just mentioned that on the last
23 page, the -- the commission statement on the car,
24 you know, how much profit was made on the car.

25 Q. And I take it that was something you didn't

Page 12

1 A. Yeah.

2 Q. Okay. And prior to Sunday night, within
3 the last couple of months, have you had any
4 discussions with your daughter about the case or the
5 deposition?

6 A. We have not really talked about it.

7 Q. Does she live at the same address as you?

8 A. No, sir.

9 Q. I'd like to talk a little about your
10 educational background. Could you describe any
11 education you've had since high school?

12 A. I graduated the University of South
13 Carolina with a major in journalism.

14 Q. And what year did you graduate?

15 A. '78.

16 Q. And that's the University of South Carolina
17 in Columbia?

18 A. Columbia.

19 Q. And was that a bachelor's degree?

20 A. Yes, sir.

21 Q. And since getting your bachelor's degree in
22 1978, have you done any further education?

23 A. No, sir.

24 Q. Could you -- starting with when you
25 graduated from University of South Carolina, could

Page 11

1 know until --

2 A. I had no idea. That's not my business.

3 Q. And the dealership didn't provide you with
4 that information at the time of the transaction?

5 A. No, sir.

6 Q. Okay. And what did she have to say on that
7 subject?

8 A. That was -- they did pretty good.

9 Q. Did you have any other discussions about
10 the transaction or the case in this ride home with
11 your daughter on Sunday night?

12 A. The only other thing that I can remember
13 was that I told her I couldn't remember some of the
14 paperwork that we had looked at.

15 Q. And that was some of the paperwork you had
16 had the opportunity to discuss with counsel earlier
17 in the evening?

18 A. Yes, sir.

19 Q. Okay. And since that drive home Sunday
20 night, have you talked to her any further about the
21 case or the transaction?

22 A. The only thing that we talked about was
23 last night, that we both were nervous about the
24 deposition.

25 Q. No need to be nervous.

Page 13

1 you just -- what was your first job after college?

2 A. First job was working for Wallace Business
3 Forms as a salesman. Oh, I worked for J.M. Fields
4 as an appliance manager prior to Wallace Business
5 Forms, while I was looking for a full-time job.

6 Q. Okay. And J.M. Fields is what type of
7 business?

8 A. It was a retail store, similar to like a
9 Sears. They're out of business now.

10 Q. Okay. And your job was with respect to
11 appliances?

12 A. I was selling appliances.

13 Q. Okay. And was that selling appliances to
14 consumers rather than businesses?

15 A. Consumers.

16 Q. Did you also sell like extended warranties
17 and the like?

18 A. No, sir.

19 Q. And then you went to work for Wallace
20 Business Forms?

21 A. Correct.

22 Q. And what was your position there?

23 A. Sales rep.

24 Q. And what was the business of Wallace
25 Business Forms?

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1 A. They designed and sold computer forms to
2 companies.
3 Q. And by computer forms, that would be what
4 type of forms?
5 A. Continuous custom-made business forms, such
6 as invoices.
7 Q. And how long did you remain in the position
8 as a sales rep for them?
9 A. Approximately two years.
10 Q. So up to about 1980?
11 A. Yes, sir.
12 Q. And what was your next job position?
13 A. I worked for Spartan Express. They're a
14 transportation company. As a sales rep.
15 Q. And what would you have been selling?
16 A. Transportation services.
17 Q. Is that like trucking or --
18 A. Trucking.
19 Q. And how long did you remain in that
20 position?
21 A. Approximately two, two and a half years.
22 Q. So we're up to about 1983ish?
23 A. Give or take, yes, sir.
24 Q. And what was your next job position?
25 A. I went to work for AAA Cooper

Page 15

1 Transportation, trucking company, sales rep.
2 Q. And were you again selling trucking
3 services?
4 A. Yes, sir.
5 Q. And how long were you in that position?
6 A. I was in that position for four to five
7 years.
8 Q. So we're up to 1988ish?
9 A. Yeah.
10 Q. And then what did you do?
11 A. I moved to Columbia with AAA Cooper. I was
12 still working for AAA Cooper.
13 Q. Oh, okay. And when you moved to Columbia,
14 did you take on a different position?
15 A. I was primarily in sales for the first
16 year. It was a new territory.
17 Q. And you sold for the first year. Did
18 you -- did you change positions after a year?
19 A. They opened a terminal, and I became
20 terminal manager.
21 Q. And that was about 1989?
22 A. Yes, sir. Approximately, you know.
23 Q. What were your job responsibilities as
24 terminal manager?
25 A. To hire employees.

Page 16

1 Q. Did you also manage them --
2 A. I don't --
3 Q. -- once you hired them?
4 A. I managed the employees. I was responsible
5 for the entire operation.
6 Q. And how many employees were you responsible
7 for at the terminal?
8 A. 45.
9 Q. And how long did you remain in the position
10 as terminal manager?
11 A. Until nineteen-ninety -- 1999.
12 Approximately.
13 Q. And what did you -- what position did you
14 take on in 1999?
15 A. Sales manager for environmental
16 accessories.
17 Q. And what type of environmental accessories
18 are you referring to?
19 A. Environmental accessories, we sold -- we
20 were a broker, and we sold services to industry for
21 handling their non-haz and hazardous materials.
22 Q. And how long were you in that position?
23 A. To 2004. Approximately.
24 Q. Okay. And what was your next position?
25 A. I went to work for W.W. Grainger.

Page 17

1 Q. And what business are they in?
2 A. Industrial sales.
3 Q. And what was your position with W.W.
4 Grainger?
5 A. Government sales.
6 Q. And what would you have been selling?
7 A. Nuts, bolts. Industrial maintenance
8 supplies.
9 Q. And I thought I had heard you say before
10 that you still work for AAA Cooper today.
11 A. No, sir.
12 Q. Okay. I misheard. How long were you
13 with -- or are you still with W.W. Grainger?
14 A. No, sir.
15 Q. Okay. What was your next position?
16 A. Next position, I left W.W. Grainger, and I
17 presently work for Bilt Rite Corporation.
18 Q. Bilt Rite?
19 A. Bilt Rite. Yeah.
20 Q. And how do you spell Bilt Rite?
21 A. B-I-L-T, R-I-T-E.
22 Q. Two words?
23 A. Two words.
24 Q. And what was your first position with Bilt
25 Rite?

Pages 14 to 17

Page 18

1 A. I'm a sales rep. and manager in Greenville.
 2 Q. And what is the business of Bill Rite?
 3 A. I call on contractors and sell garage
 4 doors.
 5 Q. And is that garage doors for residential?
 6 A. Residential.
 7 Q. And that's your position today?
 8 A. Correct.
 9 Q. Aside from working for Bill Rite, do you do
 10 any other work?
 11 A. I teach fly fishing.
 12 Q. And where do you teach that?
 13 A. Clemson University.
 14 Q. And how long have you done that?
 15 A. Two weeks.
 16 Q. Aside from your recent two-week stint
 17 teaching fly fishing, have you ever taught any
 18 courses before?
 19 A. Not besides fly fishing.
 20 Q. Okay. But you've taught fly fishing
 21 before?
 22 A. I've taught fly fishing classes.
 23 Q. And what department is fly fishing in at
 24 Clemson?
 25 A. Leisure Skills.

Page 19

1 Q. And I think you said you're married?
 2 A. Yes, sir.
 3 Q. And your wife's name is Phyllis?
 4 A. Correct.
 5 Q. And is she employed?
 6 A. She is employed with Land America.
 7 Q. And what does she do?
 8 A. She's a branch manager.
 9 Q. And what business is Land America in?
 10 A. Title insurance.
 11 Q. How did you first come to meet the lawyers
 12 who are representing you in this case?
 13 A. Melanie Blease was my daughter's roommate
 14 at the College of Charleston.
 15 Q. And Ms. Blease is, I understand, a
 16 paralegal for the Plaintiff's law firm?
 17 A. Yes, sir.
 18 Q. So did your introduction to the lawyers
 19 come through your daughter?
 20 A. Yes, sir.
 21 Q. And as you understand it, your daughter's
 22 introduction to the lawyers came through Ms. Blease?
 23 A. Correct.
 24 Q. When was the first time you purchased an
 25 automobile?

Page 20

1 A. In high school.
 2 Q. And how many automobiles have you purchased
 3 in your life?
 4 A. Approximately 10, 12.
 5 Q. And have those all been from automobile
 6 dealerships?
 7 A. Yes.
 8 Q. And in this 10 to 12 car purchases you've
 9 made in your life, did you negotiate the price in
 10 each of them?
 11 A. Yes, sir.
 12 Q. And did you always realize when you were
 13 buying the car that, you know, the price is
 14 negotiable at a car dealership?
 15 A. I try to make it negotiable.
 16 Q. Have you ever been — have you ever had an
 17 automobile transaction which the dealership refused
 18 to negotiate on the price?
 19 A. They refused up to a point.
 20 Q. In other words, the negotiations reached a
 21 point where they said, we won't take a penny less.
 22 A. Correct.
 23 Q. But up to that point, they negotiated.
 24 A. Correct.
 25 Q. And then you had the choice as to whether

Page 21

1 you were going to buy the car or not.
 2 A. Yes, sir.
 3 Q. In connection with — putting aside your
 4 transaction at Century BMW, is the transaction that
 5 brings us here today the only time you've ever had a
 6 deal with Century BMW?
 7 A. Yes, sir.
 8 Q. Okay. Prior to Century BMW, had you ever
 9 signed an arbitration agreement in connection with a
 10 car purchase?
 11 A. I do not remember.
 12 Q. Did you, also, in the relatively recent
 13 past, buy a car at Toyota of Greenville?
 14 A. Yes, sir.
 15 Q. And do you know if there was an arbitration
 16 agreement included with that transaction?
 17 A. No, sir.
 18 Q. You don't know or —
 19 A. I don't remember. I —
 20 Q. Okay. Prior to your transaction at Century
 21 BMW, had you ever signed an arbitration agreement in
 22 any context?
 23 A. I don't believe I have.
 24 Q. Have any of your employers ever asked you
 25 to sign an arbitration agreement?

1 A. I don't remember. I don't think so.
 2 Q. Okay. When you were the terminal
 3 manager for -- was it AAA Cooper?
 4 A. Yes, sir.
 5 Q. -- did they have arbitration agreements
 6 with their employees; do you know?
 7 A. No, sir.
 8 Q. In any of your various sales representative
 9 jobs -- where I assume you entered into contracts
 10 with people to sell them products; is that --
 11 A. Not -- there were very few contracts. It
 12 was more on a purchase order basis.
 13 Q. Were there ever arbitration agreements
 14 involved in those deals, to your knowledge?
 15 A. No, sir.
 16 Q. Have you ever been asked to sign an
 17 arbitration agreement and refused to do so?
 18 A. No, sir.
 19 Q. Do you have an understanding of what
 20 arbitration is?
 21 A. No, sir.
 22 Q. Do you understand it's another way of
 23 resolving a dispute other than going to court?
 24 A. I've kind of got -- I've got that idea,
 25 yes, sir.

1 Q. But beyond that very basic idea, you don't
 2 know the details of it?
 3 A. I've never been involved, no, sir.
 4 Q. So I take it you have no either good or bad
 5 impressions of the process.
 6 A. No, sir.
 7 Q. I think you just answered this, but have
 8 you ever participated in an arbitration, either as a
 9 witness or a party?
 10 A. No, sir.
 11 Q. I think you testified the vehicle you
 12 purchased at Century BMW was a graduation present
 13 for your daughter?
 14 A. Yes, sir.
 15 Q. To the extent there was a search for a
 16 vehicle to purchase for your daughter, who conducted
 17 it primarily; was it you or her?
 18 A. She did.
 19 Q. And what, briefly, do you understand she
 20 did in that process?
 21 A. Looked on the internet, told her friends,
 22 asked her friends, and just looked at body styles in
 23 the internet.
 24 Q. Were you specifically looking for a used
 25 vehicle?

1 A. No, sir.
 2 Q. Were you specifically looking in a certain
 3 price range?
 4 A. She wanted a convertible.
 5 Q. And did you pretty much leave the search
 6 for the convertible to her?
 7 A. Yes, sir.
 8 Q. Okay. And did you understand in the market
 9 for used vehicles, there are a number of different
 10 places you can buy a used vehicle from?
 11 A. Yes, sir.
 12 Q. You understand that you don't even have to
 13 go to a car dealership, you can buy it from a
 14 private individual?
 15 A. Correct.
 16 Q. And there are ads in the newspaper you can
 17 look to for vehicles?
 18 A. Yes, sir.
 19 Q. There are internet sites, like Craig's List
 20 and others, that -- where people post cars they're
 21 selling?
 22 A. Yes, sir.
 23 Q. Specialized publications like -- in D.C.,
 24 it's called Auto Trader, but where they have nothing
 25 but car ads in them?

1 A. Yes, sir.
 2 Q. You can also go to new car dealerships.
 3 A. Yes, sir.
 4 Q. And I take it there are a number of new car
 5 dealerships in the Greenville area?
 6 A. Yes, sir.
 7 Q. So you weren't limited to going to Century
 8 BMW by any --
 9 A. No, sir.
 10 Q. Also, are you familiar with used car
 11 dealerships like CarMax?
 12 A. Yes, sir.
 13 Q. And do you know where -- did you go to any
 14 other dealerships in the search for a graduation
 15 present?
 16 A. Reluctantly.
 17 Q. Okay. How many dealerships did you visit?
 18 A. Two.
 19 Q. And is that two in addition to Century BMW
 20 or two --
 21 A. Yes.
 22 Q. Okay. What were the other two?
 23 A. Fairway Ford and CarMax.
 24 Q. And did you do anything other than look at
 25 cars at either of those dealerships?

Page 26

1 A. We made an offer.
 2 Q. At both?
 3 A. No, sir. At Fairway Ford.
 4 Q. And is Fairway Ford here in the Greenville
 5 area?
 6 A. Yes, sir.
 7 Q. And do you remember what type of vehicle
 8 you made an offer on?
 9 A. Ford Mustang.
 10 Q. I take it that it was a convertible?
 11 A. It was a convertible.
 12 Q. And did you engage in price negotiation
 13 back and forth?
 14 A. Yes, sir.
 15 Q. And I take it you didn't buy the car.
 16 A. No, sir.
 17 Q. And why was that?
 18 A. We had -- I'm going -- we had -- I had
 19 talked to a gentleman at a Greenwood Ford dealership
 20 first on a car, told him what my daughter was
 21 looking for. And I do not remember how I engaged in
 22 conversation with him. And he found one, and he was
 23 negot -- we were negotiating price. And my
 24 daughter had gone by Fairway Ford and driven the
 25 car. And they came up with a less -- a cheaper

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1 the Greenwood dealership?
 2 A. I was on the Internet and was just looking
 3 at cars. And naturally, I got tagged from the
 4 dealership in Greenwood when -- in my search.
 5 Q. Okay. So you gave the contact
 6 information, and they called you?
 7 A. Yes, sir.
 8 Q. How long did you spend doing research on
 9 the internet?
 10 A. Very little.
 11 Q. Had you ever been to Century BMW before you
 12 bought the car?
 13 A. We had test driven a car there.
 14 Q. And was that in connection with the same
 15 search, or was it a prior vehicle?
 16 A. No, sir, it was a prior vehicle.
 17 Q. Okay. And when was that?
 18 A. Six months or a year prior to buying the
 19 vehicle.
 20 Q. So was that in connection with the search
 21 for the car you ended up buying at Toyota of
 22 Greenville?
 23 A. No, sir.
 24 Q. For whom were you looking for a car when
 25 you test drove the car at Century BMW six months

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1 price, the dealership in Greenwood, then we could
 2 have bought it at Fairway Ford. And then when they
 3 found out my daughter had driven the car, they
 4 wouldn't sell it to me, so I walked.
 5 Q. They said --
 6 A. It --
 7 Q. Okay. You engaged in price negotiations
 8 with the Greenwood dealership?
 9 A. Yes, sir.
 10 Q. And when they found out you had test driven
 11 a car at a different dealership, they wouldn't sell
 12 you a vehicle at their dealership; is that --
 13 A. Pretty much, in a nutshell.
 14 Q. Did they give you a reason for that?
 15 A. Pretty -- they were trying to protect the
 16 other dealership, Fairway Ford.
 17 Q. Did they co-own or --
 18 A. I don't know. I -- you know, I walked.
 19 Q. Okay.
 20 A. I didn't get into any of the specifics. I
 21 just -- I left.
 22 Q. And did you -- had you engaged in any price
 23 negotiations at Fairway Ford?
 24 A. I hadn't. I --
 25 Q. So how did you know the deal was cheaper at

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1 ago?
 2 A. Nobody. My daughter wanted to test drive
 3 the four-door convertible, so we did.
 4 Q. Did you engage in any price negotiations
 5 the six months earlier?
 6 A. No, sir.
 7 Q. And was that a new or used vehicle she --
 8 A. It was --
 9 Q. -- wanted to test drive?
 10 A. It was new.
 11 Q. When you came to Century BMW in connection
 12 with the purchase of the 2004 Z4, had your daughter
 13 already been there?
 14 A. No, sir.
 15 Q. Did you come together?
 16 A. Yes, sir.
 17 Q. Okay. And when you came, did you already
 18 have a car in mind?
 19 A. No, sir.
 20 Q. Once you got to the dealership, did you
 21 walk around the lot and look at a lot of different
 22 cars?
 23 A. Yes, sir.
 24 Q. Okay. Tell me about that. How many cars
 25 did you look at?

1 A. I don't remember. We didn't test drive --
 2 I don't remember if we test drove any besides the
 3 Z4.
 4 Q. And did you walk around the lot on your
 5 own, or were you accompanied by someone else other
 6 than your daughter?
 7 A. We were accompanied by a salesperson.
 8 Q. Okay. Was that a male or a female?
 9 A. Female.
 10 Q. Do you remember her name?
 11 A. No, sir.
 12 Q. And did she describe the various cars to
 13 you?
 14 A. Yes, sir.
 15 Q. Did you like her?
 16 A. She was nice.
 17 Q. Okay. So I take it she didn't put undue
 18 pressure on you as you were touring the lot?
 19 A. No, sir.
 20 Q. Okay. How did you come to -- I think you
 21 said you test drove the Z4.
 22 A. Correct.
 23 Q. Did you test drive it, or your daughter, or
 24 both?
 25 A. We both test drove it.

1 Q. And did the salesperson accompany you?
 2 A. I think she -- if I -- I think she
 3 accompanied my daughter, and I think my daughter and
 4 I drove it.
 5 Q. After test driving the vehicle, did you
 6 determine you wanted to buy it?
 7 A. I let my daughter make the decision.
 8 Q. Okay. Did she express an interest in
 9 purchasing the car?
 10 A. Yes, sir.
 11 Q. Okay. Did she like the car?
 12 A. Yes, sir.
 13 Q. And at that point, did you engage in any
 14 price negotiations with anyone at the dealership?
 15 A. Not right then. We went back and talked
 16 about it.
 17 Q. Okay. So you test drove the car and
 18 decided you liked it, and left.
 19 A. Correct.
 20 Q. Okay. And why did you leave rather than
 21 stick around and negotiate the purchase right then?
 22 A. We wanted to think about it, talk about it,
 23 and I wanted to call the credit union and check on
 24 financing.
 25 Q. And how long after you test drove the car

1 was it before you returned to negotiate the deal?
 2 A. Probably -- I think -- I can't remember.
 3 It was within a day.
 4 Q. Were you aware that the dealership would
 5 likely offer you financing on the vehicle?
 6 A. Yes, sir.
 7 Q. But you preferred to finance it elsewhere?
 8 A. Yes, sir.
 9 Q. So I take it you understood you didn't have
 10 to enter into a financing agreement with the car
 11 dealership in order to purchase the car.
 12 A. Yes, sir.
 13 Q. Is it your general practice to finance car
 14 purchases through your own credit union --
 15 A. Yes, sir.
 16 Q. -- rather than the dealership?
 17 A. Yes, sir.
 18 Q. Have you ever financed the terms of a --
 19 have you ever financed a car through the car
 20 dealership?
 21 A. Yes, sir.
 22 Q. And did you engage in negotiations on the
 23 terms of the financing?
 24 A. No, sir.
 25 Q. You realized you were free to ask for a

1 lower interest rate than what they offered you, I
 2 take it.
 3 A. I figured they would offer me the lowest.
 4 I didn't know that their finance rate would be
 5 negotiable.
 6 Q. But in any event, you determined you were
 7 going to get financing away from Century BMW for
 8 this transaction.
 9 A. Right.
 10 Q. When you came back to the dealership to
 11 negotiate the purchase, who did you meet with?
 12 A. The saleslady.
 13 Q. And was it the same saleslady you dealt
 14 with previously?
 15 A. Yes, sir.
 16 Q. And when you came back, did you come back
 17 alone or with your daughter?
 18 A. We negotiated via telephone.
 19 Q. Okay. So you didn't come into the
 20 dealership?
 21 A. I did not come -- I called, and we
 22 negotiated over the telephone.
 23 Q. Okay.
 24 A. And then once the price was agreed upon, we
 25 went from there.

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1 Q. And is the reason you dealt with them by
2 phone, was it because you felt more comfortable
3 being at home rather than being at the dealership
4 with the employees?
5 A. You know, I don't know why we did it from
6 the house.
7 Q. Who was on the phone when you were
8 negotiating the price?
9 A. The saleslady and I.
10 Q. Okay. Was Christine on an extension, or
11 was it just you and the salesperson?
12 A. It was just me and the salesperson.
13 Q. Okay. Who called --
14 A. Christine was in the room.
15 Q. Okay. So she may have overheard -- I take
16 it the salesperson wasn't on a speakerphone in your
17 house.
18 A. No, sir.
19 Q. Okay. So Christine may have overheard your
20 side of the conversation, but she wouldn't have
21 heard the other side?
22 A. Correct.
23 Q. Okay. Who initiated the phone call?
24 A. I did.
25 Q. Okay. And did you ask to speak to the

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1 A. Correct.
2 Q. And what did she say? Do you remember what
3 your initial offer was?
4 A. No, sir.
5 Q. Was it, I take it, less than you ended up
6 paying?
7 A. More than likely.
8 Q. But you don't recall?
9 A. I do not remember.
10 Q. Okay. And did you have -- when you made
11 the call, did you have a bottom-line figure in mind
12 that you wouldn't pay more than?
13 A. Yes, sir.
14 Q. Do you remember what that was?
15 A. I'm losing my brain. 30 -- it was 31, 32,
16 somewhere right in there.
17 Q. Okay.
18 A. I do not remember exactly.
19 Q. And you knew -- you knew that if the
20 dealership, for whatever reason, didn't offer terms
21 that you were comfortable with, you could hang up
22 the phone, and you weren't under any obligation to
23 purchase the vehicle from them, is that fair?
24 A. That's fair.
25 Q. Okay. And that would include terms other

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1 saleslady?
2 A. Yes, sir.
3 Q. And did -- when you called, did you tell
4 her you were interested in getting the Z4?
5 A. Yes, sir.
6 Q. And did you make an offer on the vehicle?
7 A. Yes, sir.
8 Q. Had there been a -- any sort of price on
9 the car?
10 A. Yes, sir. I don't remember what it was.
11 Q. Okay. Do you remember how it was posted on
12 the car? Was it written in shoe polish, or was it
13 on some sort of sticker?
14 A. I don't remember.
15 Q. Okay. And had you discussed that price at
16 all with the salesperson when you were back at the
17 dealership?
18 A. No, sir.
19 Q. So you called -- I think her name is
20 Elizabeth Courtney, does that ring a bell?
21 A. Sounds familiar.
22 Q. Well, whoever it was, you called --
23 A. Yes.
24 Q. -- the salesperson, and you made an initial
25 offer.

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1 then the price, such as if they refused to offer you
2 a warranty on the car, you could hang up the phone
3 and not have to deal with them, is that fair?
4 A. Yes, sir.
5 Q. Okay. Do you recall what Ms. Courtney's
6 response was to your offer?
7 A. There was negotiation. I don't remember
8 the interaction.
9 Q. Was it all in one phone call or multiple
10 phone calls?
11 A. No, sir, there were multiple phone calls.
12 Q. Okay. After you made your offer, did she
13 say, I'll have to get back with you and call you
14 back?
15 A. All I remember is there were multiple phone
16 calls back and forth.
17 Q. Okay. And did all of this take place in
18 one day?
19 A. Yes, sir.
20 Q. Okay. Do you generally recall over what
21 time period, how many hours or --
22 A. It was late afternoon.
23 Q. Was it a weekend?
24 A. It was a Friday afternoon.
25 Q. And did you talk with anyone other than

1 Ms. Courtney?
 2 A. No, sir.
 3 Q. And eventually in this back and forth phone
 4 calls, did you reach an agreement on price?
 5 A. Yes, sir.
 6 Q. And then did you come into the dealership
 7 to finalize the paperwork?
 8 A. After I did my credit up and got my
 9 financing in order.
 10 Q. From the credit union?
 11 A. Correct.
 12 Q. So did you come into the dealership with a
 13 cashier's check from the credit union?
 14 A. I came in with some paperwork that they
 15 needed to fill out, and the credit union verified
 16 the funds would be sent to them.
 17 Q. The credit union --
 18 A. Verified the funds would be sent.
 19 Q. So you didn't have a check?
 20 A. I did not have a check.
 21 Q. And I assume you signed a promissory note
 22 or financing agreement with the credit union?
 23 A. Yes, sir.
 24 Q. Do you maintain -- still have a copy of
 25 that?

1 A. Probably so.
 2 Q. Are you still making payments on it?
 3 A. She is, yes, sir.
 4 Q. So your daughter is making the payments?
 5 A. Yes, sir.
 6 Q. Who was the -- were you the borrower on the
 7 financing agreement, or were both of you, or how was
 8 that arranged?
 9 A. She co-signed with me.
 10 Q. Okay. Do you recall whether -- did you
 11 enter into any other agreements with the credit
 12 union? Did they offer you any sort of service
 13 agreement on the car or anything like that?
 14 A. No, sir.
 15 Q. Did the financing agreement that you signed
 16 with the credit union contain any arbitration
 17 clause?
 18 A. I do not know.
 19 Q. Did you check with the dealership as to
 20 whether they could give you a better interest rate
 21 than the credit union was giving you?
 22 A. I like my credit union, and past
 23 experience, their rates have always been very, very
 24 competitive.
 25 Q. When you came into the dealership with your

1 paperwork from the credit union, did you engage in
 2 any further negotiations with Ms. Courtney, or had
 3 that been resolved at that point?
 4 A. It had been resolved, to the best of my
 5 knowledge.
 6 Q. And was your daughter with you?
 7 A. Yes, sir.
 8 Q. And was this -- how many days after the
 9 back and forth on the phone was this, or was it the
 10 same day?
 11 A. I think we came in like Monday, Tuesday of
 12 the following week. I can't remember exactly.
 13 Q. And do you recall whether -- how many
 14 dealership employees did you deal with when you came
 15 into the dealership on the following Monday or
 16 Tuesday; do you recall?
 17 A. One. There was the finance and insurance
 18 guy.
 19 Q. Okay. Did you -- was Ms. Courtney there?
 20 A. I don't remember.
 21 Q. Okay. So you -- as best you recall, the --
 22 you went back and dealt with the F and I manager?
 23 A. Yes, sir.
 24 Q. And was that a male or a female?
 25 A. Male.

1 Q. Do you remember his name?
 2 A. No, sir.
 3 Q. Did that gentleman attempt to sell you any
 4 further products beyond the car?
 5 A. Yes, sir.
 6 Q. Did he attempt to sell you a number of
 7 products beyond the car?
 8 A. I think so.
 9 Q. Let me show you a document I've marked
 10 as Michael Watts Exhibit 1. It's actually a
 11 collection of documents.
 12 (Defendant's Exhibit 1, Dealership
 13 transaction documents, was marked for
 14 identification.)
 15 BY MR. BLACK:
 16 Q. And Watts Exhibit 1 is Bates Numbered CBM
 17 501 through 45. And if you could thumb through that
 18 exhibit, Mr. Watts, can you confirm that these are
 19 the documents you were shown Sunday night?
 20 A. Yes, sir.
 21 Q. If you could turn to the second page of the
 22 Exhibit, which is CBM-00002. Five (7)s. Do you
 23 see -- and this is a document entitled Century BMW
 24 Menu of Investment Enhancements. Do you see that?
 25 A. Yes.

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1 Q. And is that your signature down at the
2 bottom right-hand corner?
3 A. Yes, sir.
4 Q. And were you shown this document by the F
5 and I manager?
6 A. Yes, sir.
7 Q. Does the name Corey James ring a bell as to
8 the name of the F and I manager?
9 A. I don't remember, sir.
10 Q. And did Mr. James go through this document
11 with you?
12 A. I don't remember.
13 Q. Do you -- you said you recalled him trying
14 to sell you some products. Do you recall him trying
15 to sell you a service contract/extended warranty?
16 A. We wanted that, yes, sir.
17 Q. You wanted an extended warranty?
18 A. Yes, sir.
19 Q. Did you purchase one?
20 A. Yes, sir.
21 Q. Did you purchase it from the dealership?
22 A. Yes, sir.
23 Q. Okay. You sure?
24 A. I thought we did.
25 Q. If you turn to the next page, you see the

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1 car was still covered by the BMW warranty?
2 A. We bought -- excuse me. We bought the
3 extended warranty after the car was -- came out of
4 warranty. I knew we had an extended warranty.
5 Q. Okay.
6 A. I apologize there.
7 Q. So in the -- when Mr. James or the F and I
8 manager were through the products with you, you
9 didn't buy an extended warranty on the day you
10 purchased the car?
11 A. Correct.
12 Q. But you did buy an extended warranty
13 sometime thereafter.
14 A. Yes, sir.
15 Q. And from -- did you buy it from the
16 dealership?
17 A. Yes, sir.
18 Q. Okay. But at the time of your sale, you
19 turned him down on buying it.
20 A. Yes, sir.
21 Q. Okay. So I take it you knew it wasn't a
22 requirement of purchasing a vehicle at Century BMW
23 that you enter into a service agreement with the
24 dealership.
25 A. Correct.

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1 Q. Did he also try and sell you this tire and
2 wheel guaranty that's referenced on the form?
3 A. That's the one I remember.
4 Q. Okay.
5 A. Yes, sir.
6 Q. And you didn't purchase that?
7 A. No.
8 Q. Okay. Did he try and sell you this
9 upgraded maintenance agreement referenced here in
10 the middle column, the top?
11 A. I don't think -- the upgraded maintenance
12 agreement, he discussed it, and it's the one we came
13 back and bought later.
14 Q. Okay. And I notice here that someone has
15 scratched through the 1695 and written 1335 by hand.
16 Do you see that?
17 A. Yes, sir.
18 Q. And in trying to convince you to purchase
19 this item, did he offer to lower the price from what
20 was on the menu?
21 A. He must have.
22 Q. So I take it you understood that these
23 various items, the price was negotiable on them?
24 A. No, sir, not really.
25 Q. But you did understand that it wasn't a

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1 requirement of purchasing a vehicle that you enter
2 into any of these agreements referenced on the form.
3 A. Yes, sir.
4 Q. And down at the bottom of the page, is that
5 your handwriting that says, declined coverage, or is
6 that the F and I manager's?
7 A. That's the F and I manager.
8 Q. And you signed next to that?
9 A. Yes, sir.
10 Q. Do you recall how long after you purchased
11 the car you came in to buy the service agreement?
12 A. It was before the 50,000-mile warranty ran
13 out.
14 Q. So it was some number of months after you
15 purchased the car?
16 A. A good number of months, yes, sir.
17 Q. How long do you recall him pitching these
18 products to you for?
19 A. I can't remember how long.
20 MR. BLACK: Can we take a break?
21 MR. THOMAS: Yeah, I was about to ask.
22 (A recess transpired.)
23 BY MR. BLACK:
24 Q. You mentioned that your daughter was
25 roommates with Ms. Blease. That was in college?

1 A. Yes, sir.
 2 Q. And did your daughter graduate from college
 3 in 2005?
 4 A. Christy graduated in 2004, I believe.
 5 Q. Okay. So it was the year -- it was a year
 6 after she graduated that you purchased the car?
 7 A. She graduated -- she finished -- she stayed
 8 down there and finished her master's, so maybe it
 9 was 2005.
 10 Q. Okay. And had she been rooming with
 11 Ms. Blasse up until she got her master's degree?
 12 A. Yes, sir.
 13 Q. Was she --
 14 A. Up to a point. She -- I don't exactly
 15 remember. I think her last year, she lived by
 16 herself.
 17 Q. So as you understood it, she had been a
 18 roommate of Ms. Blasse up to sometime in -- when did
 19 she stop being Ms. Blasse's roommate, as you
 20 understand it?
 21 A. Christy had roommates, and the biggest
 22 thing I remember is having to move her all the time.
 23 Okay? I think Christy roomed with Melanie Blasse
 24 2003, 2002, somewhere like that.
 25 Q. And did they remain friends after they

1 Q. If you turn to Page 000005, do you see
 2 that's an Affidavit and Notification of Sale of
 3 Motor Vehicle?
 4 A. Yes, sir.
 5 Q. And do you see that there's a certification
 6 that the odometer, at the time you purchased the
 7 vehicle, read 15,5147
 8 A. Yes, sir.
 9 Q. So I take it if the car was approaching
 10 50,000 miles at the time you bought the service
 11 agreement, it was a significant period of time after
 12 you purchased the car.
 13 A. Yes, sir.
 14 Q. And someone had put approaching 30,000
 15 miles on the car in the interim?
 16 A. Yes, sir.
 17 Q. So I take it it was over a year after you
 18 bought the car?
 19 A. Yes, sir.
 20 Q. So it was after this litigation was filed
 21 A. Before the litigation was filed.
 22 Q. Well, you bought the car in June of '05; is
 23 that right?
 24 A. Yeah.
 25 Q. And this litigation was filed in August of

1 stopped being roommates?
 2 A. Yes.
 3 Q. And are they still friends?
 4 A. As far as I know, yes.
 5 Q. And do you know if Ms. Blasse -- do you
 6 know when she graduated, if she's graduated?
 7 A. No, sir.
 8 Q. Okay. Do you know, while she was at school
 9 with your daughter, was she working for the law firm
 10 at the same time?
 11 A. I don't think so. I know Melanie has
 12 always held jobs, but I don't know where she was
 13 working.
 14 Q. Okay. So she may have been working for the
 15 law firm; you don't know one way or the other?
 16 A. I don't know.
 17 Q. Okay. You said you purchased the service
 18 agreement after you purchased the car.
 19 A. Right.
 20 Q. And I think you said you purchased it
 21 before the car hit the 50,000-mile mark?
 22 A. Correct.
 23 Q. At the time you purchased it, was the car
 24 approaching the 50,000-mile mark?
 25 A. Yes, sir.

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 2 A. Okay. It had to have been. I'm not good
 3 on dates. I apologize. I don't -- I am not good on
 4 dates, trying to time line everything.
 5 Q. Okay. It -- but would you agree that it's
 6 likely you bought the service agreement after you --
 7 after the litigation was filed?
 8 A. Yes, sir.
 9 Q. When you met with the F and I manager,
 10 where in the dealership did you meet with him?
 11 A. In his office.
 12 Q. And was that a cubicle-type office off the
 13 showroom floor?
 14 A. Yes, sir.
 15 Q. And did you meet with him alone, or was
 16 Christine with you?
 17 A. Christine was with me.
 18 Q. And was she there the whole time?
 19 A. With the F and I manager?
 20 Q. Yes.
 21 A. Yes, sir.
 22 Q. And do you recall how much time elapsed
 23 from the moment you walked into the F and I office
 24 until you left?
 25 A. I do not remember.

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1 Q. Was it over an hour?
 2 A. I tried to keep it as short as possible.
 3 Q. Okay.
 4 A. So I don't -- I don't remember.
 5 Q. You wanted to get in and out as quickly as
 6 possible?
 7 A. Correct. Yes, sir.
 8 Q. So was it likely less than an hour?
 9 A. Yes, sir.
 10 Q. And what was your impression of the F and I
 11 manager? Was he a nice guy?
 12 A. He seemed like an all right guy.
 13 Q. He didn't put any undue pressure on you?
 14 A. No, sir.
 15 Q. And to the extent he tried to sell you
 16 things, you didn't buy them, at least at the time.
 17 A. Correct.
 18 Q. Did you sign some documents while you were
 19 in the F and I office?
 20 A. Yes, sir.
 21 Q. Do you know how many?
 22 A. No, sir.
 23 Q. Do you have an estimate of how many?
 24 A. Five, six.
 25 Q. So it wasn't some huge stack of documents

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1 Q. And the -- at the bottom of the page, have
 2 you signed the document?
 3 A. Yes, sir.
 4 Q. And right -- right above you, where your
 5 signature is, do you see in bold, all caps, it says:
 6 By signing below, the parties acknowledge that they
 7 have read and agreed to the terms of this
 8 arbitration agreement?
 9 A. Yes, sir.
 10 Q. And do you agree with me that that's easy
 11 to read?
 12 A. Correct.
 13 Q. And immediately above that, there are a
 14 number of bullet points that are also in all caps?
 15 A. Yes, sir.
 16 Q. And that's in perfectly readable type?
 17 A. Yes, sir.
 18 Q. And, in fact, the entire document, while
 19 the other type on the page may be somewhat smaller,
 20 none of it is difficult to read if one wanted to?
 21 A. Correct.
 22 Q. I think we said that's your signature in
 23 the bottom left-hand corner in the top signature
 24 line?
 25 A. Yes, sir.

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1 you had to sign, it was just a handful.
 2 A. There were copies and stuff. That's all I
 3 can remember.
 4 Q. Okay. But you don't remember having to
 5 traipse through some enormous stack of documents?
 6 A. Not a huge stack of documents.
 7 Q. And were the documents such things as
 8 transferring title to the vehicle and the like?
 9 A. Yes, sir.
 10 Q. And those documents, you understood, were
 11 required by law?
 12 A. Yeah, they were all -- all the documents
 13 were right there together.
 14 Q. And the documents you were given to sign,
 15 did Mr. James do anything to prevent you from
 16 reading them?
 17 A. No, sir.
 18 Q. And if you'd turn to Page -- the page that
 19 ends in 14. And do you see that that's a document
 20 that is titled, in all caps and bold print at the
 21 top, Arbitration Agreement?
 22 A. Yes, sir.
 23 Q. And would you agree with me that the
 24 heading of the document is easy to read?
 25 A. Yes, sir.

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1 Q. And is that your daughter's signature below
 2 that?
 3 A. Yes, sir.
 4 Q. And that's the -- Mr. James' signature to
 5 your right?
 6 A. I would assume so, yes, sir.
 7 Q. And this document was presented to you at
 8 the dealership when you were meeting with Mr. James?
 9 A. Yes, sir.
 10 Q. What, if anything, did Mr. James say to you
 11 when he presented you with this document?
 12 A. I don't remember if he said anything.
 13 Q. Did you see, when he handed you this, that
 14 it said arbitration agreement at the top?
 15 A. I did not really pay it any attention,
 16 because they weren't doing any financing for me. We
 17 were eager to get the car.
 18 Q. So you were here to just get out of there.
 19 A. Yes, sir. All the papers were together,
 20 and he handed me all the papers.
 21 Q. Okay. But he didn't do anything to prevent
 22 you from reading what he handed to you.
 23 A. No, sir.
 24 Q. Do you recall one way or another whether
 25 you did read it?

1 A. I did not read it, no, sir.
 2 Q. Did you glance your way down and at least
 3 read the things in all caps?
 4 A. I don't even remember signing it. Because
 5 all the papers were together.
 6 Q. So I take it you don't remember him telling
 7 you that you had to sign this document in order to
 8 purchase the vehicle?
 9 A. No, sir.
 10 Q. And I take it, from what you've said, you
 11 didn't object to signing the document at the time.
 12 A. I didn't know I didn't have to.
 13 Q. But you didn't say, I don't want to sign
 14 this, to Mr. James; is that fair?
 15 A. No, I did not say that.
 16 Q. Okay.
 17 A. No, sir.
 18 Q. And you didn't raise any complaint about
 19 the document at the time?
 20 A. No, sir.
 21 Q. And you didn't ask any questions about
 22 whether it was required that you sign the document?
 23 A. No, sir.
 24 Q. And I take it the same -- all of those
 25 questions, same is true of your daughter?

1 A. My wife.
 2 Q. And what other car was there?
 3 A. I'm trying to think what I was driving.
 4 Because I've had so many company cars over the
 5 years, and they change those out so much that --
 6 Q. Who drove the vehicle you purchased at
 7 Toyota of Greenville?
 8 A. I did.
 9 Q. Okay.
 10 A. I'm trying to remember the dates, if I had
 11 that car or not at that particular time, or if I had
 12 a company car. I think I had the Toyota.
 13 Q. Okay. Was Christine driving a car prior to
 14 the --
 15 A. Christy had a Montero Sport.
 16 Q. That's a Mitsubishi?
 17 A. Correct.
 18 Q. And how long had she been driving that car?
 19 A. Three years. Four years.
 20 Q. And was that car still in working order at
 21 the time of the Century BMW --
 22 A. Yes, sir.
 23 Q. -- transaction?
 24 A. Yes, sir.
 25 Q. Okay. So aside from wanting a nice -- I

1 A. Yes, sir.
 2 Q. Okay. She didn't ask any questions about
 3 the document?
 4 A. No, sir. She wanted the keys.
 5 Q. Okay. The credit union you financed the
 6 transaction through, what was the name of the credit
 7 union?
 8 A. Carolina College Federal Credit Union.
 9 Q. Did you finance the purchase at Toyota of
 10 Greenville through the same credit union?
 11 A. Yes, sir.
 12 MR. BLACK: Can we take a break?
 13 MR. THOMAS: Yeah.
 14 (A recess transpired.)
 15 BY MR. BLACK:
 16 Q. At the time of your purchase from Century
 17 BMW, how many cars did you and your wife and your
 18 daughter collectively own?
 19 A. We owned -- we bought this car. We owned
 20 two.
 21 Q. Two in addition to this car?
 22 A. Yes, sir.
 23 Q. Okay. And what cars are those?
 24 A. One was a Honda.
 25 Q. And who primarily drove the Honda?

1 realize it's a used vehicle, but a nice new vehicle,
 2 she wasn't under any pressure to replace her car
 3 because she didn't have a working car at the time.
 4 A. Correct.
 5 Q. And you didn't trade that car in.
 6 A. No, sir.
 7 Q. What did -- what did you do with that
 8 Montero Sport?
 9 A. Sold it to an individual.
 10 Q. Okay. And you did that through the
 11 Internet or something?
 12 A. Through a little car lot.
 13 Q. And would you agree that if all that you
 14 needed was transportation around town, while that
 15 might be necessary here in South Carolina, there's
 16 no necessity of buying a luxury BMW automobile?
 17 A. For just transportation, I agree.
 18 MR. BLACK: That's all I have.
 19 THE WITNESS: Okay.
 20 MR. THOMAS: I don't have anything.
 21 MR. BLACK: Okay.
 22 (The deposition was concluded at 10:35
 23 a.m.)
 24
 25

[illegible]

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF AIKEN

HERRON, et al.,

Plaintiffs,

Case No.

2006-CP-02-1230

vs.

DICK DYER & ASSOCIATES, INC., et al,

Defendants.

DEPOSITION OF: JOHN ROBERT BISHOP

DATE: January 30, 2008

TIME: 10:07 a.m.

LOCATION: LEATHERWOOD WALKER TODD & MANN, P.C.
300 East McBee Avenue, Suite 500
Greenville, South Carolina

TAKEN BY: Counsel for Defendant,
CENTURY BMW

REPORTED BY: KATHY P. TAYLOR,
Registered Professional Reporter

Computer-Aided Transcription By:

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EXHIBIT

B

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13 ALISON DANNERT, Paralegal
14
15 (Index at rear of transcript)

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1 STIPULATION
2 It is stipulated by and among Counsel
3 that this deposition is being taken in accordance
4 with the South Carolina Rules of Civil Procedure,
5 Rule 30; that all objections as to Notice of this
6 deposition are hereby waived; that all objections
7 except as to form are reserved until the time of
8 trial; and that the deponent does not waive reading
9 and signing of this deposition.
10
11 JOHN ROBERT BISHOP,
12 Being first duly sworn, testified as follows:
13 EXAMINATION
14 BY MR. LEWIS:
15 Q. And you're Mr. Bishop, they tell me.
16 A. Yes, sir.
17 Q. Well, I'm required to tell you a couple of
18 things. Have you had your deposition taken before?
19 A. No, sir.
20 Q. Okay. Well, then, listen up. So when you
21 give an answer, they're going to write it down, and
22 so you've got to make sure you understand my
23 question.
24 A. Yes.
25 Q. So if you don't understand it, you ask me

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1 to explain it or whatever, and I will try to make 2 sure that it's an understandable question. Is that 3 fair? 4 A. Yes, sir. 5 Q. Now, if I cut you off, because I get 6 excited, you say, I'm not finished, and I will let 7 you finish. Or if I'm - if I'm making you mad, you 8 say, I'm making you - you're making me mad, and 9 I'll try to change the way I'm doing things so I 10 don't make you mad. Does that make sense? 11 A. Yes, sir. 12 Q. Now, you're going to give answers to 13 questions that I give, and she's going to take them 14 down. You don't get to ask me questions, thank 15 goodness. So just understand that 16 Now, have you been explained about reading 17 and signing your deposition? 18 A. No, sir. 19 Q. Okay. You have the right to read your 20 deposition and make corrections to it, like the 21 spelling of your name or the spelling of somebody 22 else's name. You don't get to change yeses to nos, 23 but, you know, so you can read and sign it to make 24 sure that it's what you think you said. But that's 25 up to you whether you want to do that, and you can	1 Q. And what's your full name? 2 A. My name is Bobby Bishop. Bobby is a 3 nickname. John Robert Bishop is my legal name. 4 Q. And where do you live? 5 A. I live in Simpsonville, South Carolina. 6 Q. Do you know a Mr. Hawkins that lives in 7 that town? 8 A. Don Hawkins? 9 Q. Bill Hawkins. 10 A. No, sir. 11 Q. Okay. Now, what do you do? 12 A. I'm the general manager at Century BMW. 13 Q. General manager. Okay. Have you - you 14 know you've been designated as the person that's 15 most knowledgeable about certain items that we asked 16 that the Century BMW produce; do you understand 17 that? 18 A. Yes, sir. 19 Q. And I'm going to show you Exhibit Number 1, 20 which is our Notice. 21 (Plaintiff's Exhibit Number 1, Notice of 22 Deposition, was marked for identification.) 23 BY MR. LEWIS: 24 Q. And this is the Notice. If you would turn 25 to Page 2, you will see the areas that we're
Page 7	Page 9
1 ask your lawyer if he would like you to do that. 2 And you need to tell her at the end of the 3 deposition so she can get you the deposition copy 4 and you make whatever corrections you want. 5 MR. BLACK: He will read and sign, but I 6 object to your instructions to the extent it 7 misstates the law and what changes he can make, but 8 go ahead. 9 MR. LEWIS: You ob- - I'm sorry. You were 10 talking - 11 MR. BLACK: Object to what you instructed 12 the witness. 13 MR. LEWIS: You were talking to the table. 14 If you'll talk to me, I'll be able to hear you. 15 MR. BLACK: I said I object to your 16 instruction to the witness to the extent it 17 misstates the law as to what changes you can make in 18 your deposition. 19 MR. LEWIS: That's fine. I just don't 20 think you can change yeses to nos; but if you think 21 so, that's fine with me. If you want to do that, 22 that's okay with me, too. 23 Now, you ready? 24 THE WITNESS: Ready. 25 BY MR. LEWIS:	1 interested in. Do you see the person or persons 2 most knowledgeable regarding A, B, C, and D? 3 A. Yes, sir. 4 Q. Which one are you - have you been 5 identified to address? 6 A. A, B, C, and D. 7 Q. So you're the only one that's here. 8 A. Yes, sir. 9 Q. So you've been designated for all of them. 10 A. Yes, sir. 11 Q. Had you seen those I - topics before? 12 A. Yes, sir. 13 Q. Who is the person second-most knowledgeable 14 for each of those items? 15 MR. BLACK: Object to the form. You can 16 answer. 17 THE WITNESS: I'm sorry? 18 MR. BLACK: I said objection to form. You 19 can answer. 20 THE WITNESS: Oh. 21 BY MR. LEWIS: 22 Q. He'll say that a lot, object to the form, 23 but that just means that you get to answer, and he's 24 just putting it on the record. 25 A. Okay.

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1 Q. It doesn't allow you not to do it or 2 anything. 3 A. Corey James. 4 Q. Corey James? And he would be the same -- 5 he would be for all of them, like you? 6 A. Yes, sir. 7 Q. Okay. Now, have you talked to anybody 8 about each of these topics? 9 A. Yes, sir. 10 Q. Who? 11 A. Corey James and Elizabeth Courtney. 12 Q. And why did you talk to Elizabeth Courtney? 13 A. She was the salesperson. 14 Q. And when you talked to Corey James and 15 Eliz -- Corey James, did you talk to him with any 16 documents, or was it just talking to him? 17 A. Just talking. 18 Q. And what did you talk about? 19 A. I asked him if he remembered this deal, the 20 Watts deal. 21 Q. And did he remember? 22 A. Specifically, he did not. 23 Q. And so did you then stop talking? 24 A. I mean, if he didn't remember the deal, I 25 asked him what his procedures were at that time.	1 Q. You know that now, don't you? 2 A. Yes, sir. 3 Q. Because someone -- were you at the 4 deposition yesterday? 5 A. No, sir. 6 Q. So someone talked to you about the 7 deposition. 8 A. Yes, sir. 9 Q. And they told you that the buyer said that 10 there was a stack and that there were flags on them. 11 A. Yes, sir. 12 Q. And then when you went to Corey James, was 13 that before or after you had that -- knew that 14 yesterday they talked to -- they said that there was 15 flags on the documents? Did you talk to Corey James 16 about his procedure before or after? 17 A. I talked to him before -- 18 Q. Yeah. 19 A. -- and after. 20 Q. Okay. When did you bring up the flags to 21 him? 22 A. This morning. 23 Q. And you asked him if that was true? 24 A. Yes, sir. 25 Q. And he said no?
Page 11	Page 13
1 Q. And what did he tell you his procedures 2 were at that time? 3 A. You -- I'm talking about the way he rolls 4 off the paper. Which is a car term; you know that. 5 Q. What? 6 A. Rolls off the paper. He presents the 7 paper. 8 Q. Yeah. How does he roll off the paper? 9 A. He presents it one piece at a time to the 10 customer. 11 Q. That's what he said? 12 A. Yes, sir. 13 Q. And did he tell you that he presented them 14 in a stack with little flags on them? 15 A. No, sir. 16 Q. Does he ever mention he put flags on them? 17 A. He said he did not put flags on them. 18 Q. Oh. So we have a difference of opinion 19 between the buyer and the seller. 20 MR. BLACK: Object to the form of the 21 question. 22 A. Apparently. 23 BY MR. LEWIS: 24 Q. Apparently? 25 A. Apparently.	1 A. Yes, sir. 2 Q. Before that, you didn't ask him? 3 A. No, sir. 4 Q. No, sir, you -- that's a hard answer. 5 Before that you did not ask him; is that correct? 6 A. I did not ask him before. 7 Q. Okay. Did he tell you he ever used flags? 8 A. He stated that he never used flags. 9 Q. Never used flags. Okay. With any 10 customer? 11 A. That's what he stated, sir. 12 Q. All right. Good. All right. Now, did 13 you -- what else -- okay. Before yesterday, before 14 yesterday, what else did Mr. Corey James say? 15 A. Basically he stated he didn't remember this 16 deal at all. 17 Q. Okay. What did he say about his 18 procedures -- 19 A. I -- 20 Q. -- other than he presented them, what did 21 you say, a document at a time? 22 A. Yes, sir, that's exactly what he said. 23 Q. Anything else? 24 A. No, sir. 25 Q. Did he say what he said to the -- to the

Pages 10 to 13

A. William Roberts, Jr. & Associates (800) 743-DEPO

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1 people? 2 A. He doesn't remember them, sir. 3 Q. Does he say what he generally -- is there 4 some procedure where they have a specific spiel, you 5 know, like -- you've heard spiels before. You know 6 that. 7 A. He would -- his procedure was to present 8 each piece of paper and put his finger where they 9 needed to be signed -- 10 Q. Okay. 11 A. -- individually. 12 Q. All right. And did he say anything about 13 the pages, or just point to them? 14 A. He would explain the pages and point to the 15 signature. 16 Q. Did he say he explained the pages? 17 A. Yes, sir. 18 Q. Did he say that before yesterday or after 19 yesterday? 20 A. He said that before yesterday. 21 Q. Okay. Anything else did he say besides 22 pointing where to sign and explained the paper? 23 A. No, sir. 24 Q. Anything else? 25 A. No, sir.	1 Q. And there's no procedure that you tell them 2 what to explain? 3 A. We practice full disclosure. 4 Q. Well, what do you disclose? What do you 5 tell them to disclose about this? 6 A. We tell them to go over the form and tell 7 them exactly what it contains. 8 Q. Well, what? What does this form contain? 9 Can you sit here and tell me what this form 10 contains? 11 A. I'm not an expert, but I can tell you that 12 this is a document providing remedy for the customer 13 without having to go to court. 14 Q. Is that what you tell them when you 15 explain -- 16 A. Yes, sir. 17 Q. If you were to explain it, that's what you 18 would say? 19 A. Yes, sir. 20 Q. Is there anything else you'd tell them, 21 other than it's a remedy for the customer and you 22 don't have to go to court? 23 MR. BLACK: Object to the form. You can 24 answer. 25 A. No, sir, I would tell them nothing else.
Page 15	Page 17
1 Q. Okay. Now, we'll get to the -- 2 MR. LEWIS: Where's the arbitration 3 agreement? 4 (Plaintiff's Exhibit Number 2, Arbitration 5 Agreement, was marked for identification.) 6 BY MR. LEWIS: 7 Q. You understand that Exhibit Number 2 is the 8 arbitration agreement that -- in this deal, as you 9 call it. 10 A. Yes, sir. 11 Q. And it's -- and this is one of the pieces 12 of paper that had been rolled out? 13 A. Yes, sir. 14 Q. And this is one of the papers, according to 15 Mr. James, that he would have pointed at and told 16 them where to -- that they should sign that. 17 A. Yes, sir. 18 Q. And what did Mr. James say he explained 19 about this document, Exhibit Number 2? 20 A. I did not ask him what he explained with 21 the documents. 22 Q. You didn't? 23 A. No, sir. 24 Q. So you don't know? 25 A. No, sir.	1 BY MR. LEWIS: 2 Q. Okay. And is that what you expect your 3 employees to tell the -- the people? 4 A. They're more informed than I. 5 Q. Well, is that what you expect them to tell 6 them, at least that? 7 A. At least that. 8 Q. Okay. Is there anything else you expect to 9 tell -- them to tell them? 10 A. No, sir. 11 Q. All right. Anything else you talked to 12 Mr. -- did we cover everything you talked to 13 Mr. James about? 14 A. Yes, sir. 15 Q. Now, what did you talk to Ms. Courtney 16 about? 17 A. I talked to her about the deal itself. 18 Q. Did she remember the deal? 19 A. She did not. 20 Q. What did she say about the papers that were 21 rolled out? 22 A. We talked about the arbitration and the -- 23 I mean, she -- she basically doesn't handle any of 24 that paperwork as far as the arbitration and stuff 25 would go, so she had no knowledge of what the Watts

Page 18	Page 20
1 said in the office, the F and I office, or nothing. 2 Q. Well, what is she? She - I thought she 3 was the salesman. 4 A. Yes, sir, she is the salesperson, but all 5 these transactions are conducted in the F and I 6 office. 7 Q. So the salesperson doesn't do any of the 8 roll out of papers. 9 A. No, sir. 10 Q. So she just tries to sell the car, and then 11 when she says okay, there's a point in the sales 12 process, I got to get them into the guy that rolls 13 out the paper. 14 A. Yes, sir, exactly right. 15 Q. And when is it you get to go - you have to 16 go in to roll out the paper? How long and where in 17 the process does that happen? 18 A. At the very end. 19 MR. BLACK: Object to the form. 20 BY MR. LEWIS: 21 Q. Huh? 22 A. At the very end of the process. 23 Q. So you've already negotiated a price at 24 that time? 25 A. Yes, sir.	1 she doesn't remember this deal, and she doesn't do 2 any of the paper. 3 A. Yes, sir. 4 Q. So she has nothing to do with this 5 arbitration at all. 6 A. No, sir. 7 Q. Does she know what an arbitration agreement 8 is? Is she ever schooled on it? 9 MR. BLACK: Object to the form. 10 A. As far as general knowledge, she does know 11 about it. 12 BY MR. LEWIS: 13 Q. Well, does she mention it, or do you tell 14 her that she's supposed to tell the customer? 15 A. She's not supposed to tell the customer. 16 She has no reason to tell the customer. 17 Q. So she is specifically not to tell the 18 customer about the arbitration? 19 A. Not specifically not. She has no reason to 20 discuss it. 21 Q. So you don't tell her to bring it up? 22 A. No, sir. 23 Q. Okay. When Mr. Courtney James has that 24 piece of paper, the arbitration agreement, and he - 25 you say he presents it to the customer.
Page 19	Page 21
1 Q. And then you roll - you go in, and they 2 roll out the paper. 3 A. Yes, sir. 4 Q. And all - Ms. Courtney doesn't explain any 5 of the papers to the people; that would be in 6 Mr. James' area. 7 A. Correct. 8 Q. Is Mr. James the one that explains it to 9 all the customers, or are there more people that 10 work for or under Mr. James? 11 A. At that time, Corey was our only F and I 12 manager. 13 Q. The what? 14 A. He was the only F and I manager, so he - 15 Q. F and I? 16 A. Yes, sir, finance and income manager. 17 Q. Okay. And so he was the one that rolled 18 out the paper. 19 A. Yes, sir. 20 Q. And - and you talked to Elizabeth 21 Courtney, and did you talk to her both before and 22 after yesterday? 23 A. I have no reason to talk to her this 24 morning. 25 Q. Okay. And so you talked to her before, and	1 MR. BLACK: It's Corey James. 2 MR. LEWIS: What? 3 MR. BLACK: It's Corey James. Courtney is 4 the last name of the salesperson. 5 MR. LEWIS: Corey? 6 MR. BLACK: Corey. 7 MR. LEWIS: Okay. Every time I said 8 Courtney, I meant Corey. 9 MR. BLACK: I think you said Corey every 10 time except that last time. 11 MR. LEWIS: Well, I appreciate you helping 12 me out there. 13 MR. BLACK: No problem. 14 BY MR. LEWIS: 15 Q. Okay. Mr. James. How about that? 16 Mr. James, when he does the papers - we've already 17 talked about that. He does the arbitration paper. 18 Does he tell them that they don't have to sign it? 19 A. No, sir. 20 Q. Does he - when he points and tells them to 21 sign here, does he say, this is where you have to 22 sign? 23 A. No, sir. 24 Q. What does he say? 25 A. To my knowledge, he says nothing.

Pages 18 to 21

Page 22	Page 24
1 Q. So he just -- he says what we said he said 2 about the agreement, and then he puts his little 3 finger down there, and that's supposed to indicate 4 that they sign, and he doesn't say anything. 5 MR. BLACK: Object to the form. 6 BY MR. LEWIS: 7 Q. Is that right? 8 A. I don't understand exactly what you're 9 asking me here. 10 Q. Well, we told -- we already went over what 11 he told -- what the minimum was he had to tell 12 people, what you said. 13 A. Correct. 14 Q. All right. And you said that he points to 15 where they sign. 16 A. Yes, sir. 17 Q. I want to know what he says when he points 18 to where they're -- he -- they sign. Does he say, 19 you have to sign here, sign here, or you don't have 20 to sign, but we want you to sign? What does he say? 21 A. I don't know his exact verbiage. 22 Q. Well, what did you all tell him to say? 23 A. Sign here. 24 Q. Okay. But he doesn't tell them they don't 25 have to sign.	1 A. Yes, sir. Faster. 2 Q. It's faster, you say? 3 A. Yes, sir. 4 Q. And it's secret. Did you know that? 5 A. No, sir. 6 Q. You didn't know that? 7 A. No, sir. 8 Q. Do you know what the rules of the 9 arbitration agreement are? 10 A. As pertaining to -- 11 Q. How -- the process. 12 A. Vaguely. 13 Q. How you do it. Vaguely? 14 A. Yes, sir. 15 Q. Well, what are your vague understanding? 16 Now, what's your job; you're the general manager? 17 A. Yes, sir. 18 Q. Okay. Does Mr. Courtney James know anymore 19 about how arbitration works than you, or would you 20 say you're better? 21 MR. BLACK: It's Corey James. 22 MR. LEWIS: Corey James. Mr. James. 23 A. I would say neither one of us would be 24 involved in the process or actually been through the 25 process.
Page 23	Page 25
1 A. No, sir. 2 Q. What if they won't sign? 3 A. Then we still sell them the car. 4 Q. But you don't tell them? 5 A. No, sir. 6 Q. Now, how many people have refused to sign 7 the arbitration agreement? 8 A. I can't tell you an exact number. 9 Q. Have there been any? 10 A. Yes, sir. 11 Q. Do you keep a count of them? 12 A. No, sir. 13 Q. Do you flag the deal differently? 14 A. No, sir. 15 Q. You just go right on through, and if it's 16 signed, it's okay, and if it's not signed, it's 17 okay. 18 A. Yes, sir. 19 Q. Why do you want them to sign it? 20 A. I think it's good for the customer. 21 Q. You do? Why do you think it's good for the 22 customer? 23 A. It's just, to me, a better way of settling 24 differences. 25 Q. Than what, court?	1 BY MR. LEWIS: 2 Q. Or know anything about it? 3 A. Not much. 4 Q. Or what the rules are or what you have to 5 do; do you know any of that? 6 A. No, sir. 7 Q. Do you know who has to pay for arbitration? 8 A. I understand that we pay a large percentage 9 of it going in. 10 Q. Who -- who told you that? 11 A. It's in here. 12 Q. Did you know that before yesterday? 13 A. Yes, sir. 14 Q. Did you know it before a week ago? 15 A. Yes, sir. 16 Q. You just -- did you always tell the 17 customer that? 18 A. No, sir. 19 Q. Now, you say a large percentage; what's the 20 percentage difference you pay? 21 A. I think we pay up to \$1500 to start it out, 22 and then at some point we'll assume a lot more 23 responsibility. 24 Q. Does the customer have to pay any? 25 A. I can't answer that.

Page 26	Page 28
1 Q. You don't know? 2 A. No. 3 Q. Do you know how you choose an arbitrator? 4 A. No, sir. 5 Q. Did you talk to anybody other than 6 Mr. James and Ms. - Elizabeth about the deposition 7 other than the lawyer? 8 A. No, sir. 9 Q. We - that agreement, Exhibit Number - 10 that's before you, it's Exhibit Number 2, how long 11 has that been the arbitration agreement for your 12 company? 13 A. That actual version, I cannot answer to 14 that. 15 Q. Okay. Was it - how - is it the same 16 version that it is now? 17 A. From 2005 until now? 18 Q. Uh-huh. 19 A. I would - I couldn't tell you. 20 Q. Well, and how far back from 8/25/05 was 21 this agreement being used? 22 A. That actual agreement, I don't know. It 23 has evolved over the years. 24 Q. Well, who would know? 25 A. Sonic Automotive.	1 A. No, sir. 2 MR. BLACK: Mr. James doesn't work at the 3 dealership anymore, which is why I made the 4 objection, but - 5 BY MR. LEWIS: 6 Q. Where is Mr. James? 7 A. I understand yesterday he left the company, 8 so I have no idea where he is now. 9 Q. He left the company yesterday? 10 A. Or I heard it yesterday that he left the 11 company. 12 Q. Where does - where do you work? 13 A. I work for Century BMW in Greenville. 14 Q. And where does this Corey - this guy named 15 Mr. James work? 16 A. His last position was in a Sonic store in 17 Charlotte, North Carolina. 18 Q. And when it - when - in 8/25/05, he was 19 in your store? 20 A. Yes, sir. 21 Q. And he was moved from your store up to 22 someplace in Charlotte? 23 A. Yes, sir. 24 Q. And he left Charlotte yesterday? 25 A. I heard that he left Charlotte yesterday.
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1 Q. Sonic Automotive? 2 A. Yes, sir. 3 Q. It's hard to talk to Sonic Automotive. Is 4 there somebody in particular? 5 A. Richard O'Connor. 6 Q. Richard O'Connor? 7 A. Yes, sir. 8 Q. Who is Richard O'Connor? 9 A. The national F and I director. 10 Q. The F and I director? 11 A. Yes, sir, national. 12 Q. Well, we have a national F and I director, 13 and that's who Mr. James would be under. 14 A. Yes, sir. 15 Q. Does it come - is he under you, or is he 16 under this - what's his name? 17 MR. BLACK: I assume you're - I don't mean 18 to - I assume you're asking back in 2005? 19 MR. LEWIS: Well, I'll ask - if you want 20 me to, I'll ask in 2005. 21 A. In 2005, Corey would have worked directly 22 for me, and he also would have worked for Richard 23 O'Connor indirectly. 24 BY MR. LEWIS: 25 Q. Is that different now?	1 I don't know exactly what day he left. 2 Q. I thought you talked to him after the 3 deposition. 4 A. I didn't ask him. 5 Q. Wait a minute. I got to understand this. 6 You called him after the deposition, right? 7 A. Yes, sir. 8 Q. And - but you didn't ask him where he 9 worked? 10 A. No, sir. 11 Q. Did you know at the time he didn't work for 12 Sonic? 13 A. Yes, sir. This morning. 14 Q. And - but you called him. Where did you 15 call him? 16 A. I called him on his cell phone. 17 Q. And you didn't say, hey, where are you 18 working now or what are you doing? 19 A. No, sir. 20 Q. Why wouldn't you - that's just befuddling 21 to me. That's just - you just didn't care. 22 A. No, sir. 23 Q. You didn't care. 24 A. No, sir. 25 Q. You don't like that guy?

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1 A. I like him, but I don't care where he's 2 working. 3 Q. Huh. Where is his cell phone number? 4 A. It's in my car. 5 Q. Your car? 6 A. Yes, sir. 7 Q. Would you mind giving us that? 8 A. (704)577 -- wait a minute. 9 MR. BLACK: Let me consult with co-counsel. 10 A. I may. I may. 11 (A discussion was had off the record and 12 out of the hearing of the court reporter.) 13 MR. BLACK: Go ahead. 14 BY MR. LEWIS: 15 Q. 705 what? 16 A. 704. 17 Q. Oh, okay. 18 A. (704)577-5935. 19 Q. Okay. How many cars per year does BMW 20 sell? 21 A. Approximately -- 22 MR. BLACK: BMW? 23 BY MR. LEWIS: 24 Q. Century. 25 A. Approximately 1200.	1 does he send down a -- is there some kind of booklet 2 that they send down or a manual that they send down 3 telling everybody how to go through the rolling of 4 paper, how you do it, what you do, what they're for, 5 is there some I could go get it? 6 A. No, sir, it's all done in training classes. 7 Q. In training classes where? 8 A. Various places. Atlanta, Charlotte. 9 Q. Is all the training the same? 10 A. Yes, sir. 11 Q. So you would think, then, just logically, 12 that there is somewhere there is a training manual. 13 A. I don't have one in my possession. 14 Q. I know you don't, but -- 15 A. I don't know of one. 16 Q. Well, how -- when they go up there, do they 17 have little -- you know, this is the age of 18 PowerPoint. Do you have little PowerPoints and they 19 show a form and they tell about it? Have you ever 20 been to these -- 21 A. I've never been to a session for F and I. 22 Q. You never have? 23 A. No, sir. 24 Q. So I guess the person that would know that 25 would be Mr. O'Connor?
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1 Q. And since 2005 or -- 5, since this 2 agreement here, how many of those cars did anybody 3 refuse to sign an arbitration agreement on? 4 A. I don't know that number, sir. 5 Q. Do you know of one? 6 A. Yes, sir. 7 Q. You do? 8 A. Yes, sir. 9 Q. Who was that? 10 A. Brad Martin. 11 Q. And who is Brad Martin? 12 A. Our attorney. 13 Q. Oh. Okay. Now, give me one more. 14 A. I cannot give you another name. 15 Q. Okay. Thank you. Is it -- the fact that 16 you use arbitration agreements is something that 17 Sonic, above you, makes that decision; it's not the 18 decision of your store? 19 A. That's correct. 20 Q. Huh? 21 A. That's correct. 22 Q. So there's some higher-up, this -- what was 23 his name, Mr. -- 24 A. O'Connor. 25 Q. Yeah, Richard O'Connor. And his -- now,	1 A. Yes, sir. 2 Q. And where is he located? 3 A. Charlotte, North Carolina. 4 Q. Where? 5 A. It's Sonic headquarters. 6415 Idlewild is 6 the address. 7 Q. You're pretty good on this stuff, 8 remembering stuff. How old are you? 9 A. Do I have to answer that? 51. 10 Q. Pretty good for 51. So Sonic -- Sonic, 11 this -- what do you call the headquarters, Sonic? 12 A. Yes, sir. 13 Q. Okay. Sonic, they make the decision to use 14 the arbitration agreement. 15 A. Yes, sir. 16 Q. And you don't know why they made that 17 decision. 18 A. No, sir. 19 Q. And you don't know what was the 20 considerations in that. 21 A. No, sir. 22 Q. And as far as you know, there is nothing in 23 your dealership that says that or gives an 24 explanation or tells Mr. James how to conduct his 25 rolling of paper.

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1 MR. BLACK: Object to the form. 2 A. You're talking about a written document 3 that explains it? 4 BY MR. LEWIS: 5 Q. Uh-huh. 6 A. No, sir. 7 Q. Or -- or any kind of guidelines for him, 8 how does he do it. 9 A. No, sir. 10 Q. How does he know -- there's a packet of 11 documents, isn't there? 12 A. Yes, sir. 13 Q. And for every -- say, oh, this is what we 14 call it, a packet, or you roll out this packet. 15 Right? 16 A. Yes, sir. 17 Q. And the packets are the same for all sales. 18 A. No, sir. 19 Q. What's the difference? 20 A. Well, there's different kinds of contracts 21 for different kinds of deals, lease versus retail. 22 Q. All right. 23 A. The basic paperwork would be the same. 24 Q. Okay. 25 A. But there would be different retail and	1 Q. And you don't know what he says or what 2 explanations he makes. 3 A. No, sir. 4 Q. But you gave me the one that you would make 5 and what you would expect to be the minimum. 6 A. Yes, sir. 7 Q. So if I ask you about the agreement, who 8 made the decision to do something like the 9 class-action waiver, you wouldn't know anything 10 about that, would you? 11 A. No, sir. 12 Q. You don't even know what a class-action 13 waiver is. 14 A. Yes, sir. 15 Q. What is it? 16 A. You agree not to file a class-action 17 lawsuit. 18 Q. Well, do you think that's to the customer's 19 advantage? You said you thought this was to his 20 advantage. Is that -- is that one to the advantage 21 of the customer? 22 A. I really don't know, sir. 23 Q. Well, isn't it to the advantage of you? 24 A. No, sir. 25 Q. It's not to the advantage of the company?
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1 lease contracts. 2 Q. Other than the retail versus lease, would 3 the rest of it be the same? 4 A. Yes, sir. 5 Q. Would the arbitration agreement be the 6 same? 7 A. Yes, sir. 8 Q. Now, so we know that there is a packet for 9 a lease or a sale. Let's suppose it's a sale. This 10 packet, do you keep the little packets together, 11 like he grabs a packet, or does he have to go 12 through and grab every one of them? How does it 13 work? 14 A. Each individual. They're not stored as a 15 packet. 16 Q. They're not. So he pulls them, each one of 17 them, as individually. 18 A. Yes, sir. 19 Q. And then he goes and he sits down with the 20 customer. 21 A. Yes, sir. 22 Q. And according to your testimony, he shows 23 it to them individually, and he points and does not 24 use flags. 25 A. Yes, sir.	1 A. I wouldn't think so. 2 Q. Well, why is it in there? 3 A. I have no idea. 4 Q. Have you talked to anybody about Exhibit 5 Number 2? 6 A. No, sir. 7 Q. I take it that it's a form contract, the 8 arbitration. I mean, it's a form document. 9 A. Yes, sir. 10 Q. And you all drafted the form, right? 11 A. Sonic Automotive drafted the form. 12 Q. Oh, the high-ups sent it down to you and 13 said, use this. 14 A. Yes, sir. 15 Q. Do you know anything about the negotiations 16 for buying this particular deal or going through 17 with this deal? 18 A. No, sir. 19 Q. Do you know how it happened? 20 A. No, sir. 21 Q. Do you know if it was -- if there was any 22 telephone conversations or it was all in store, how 23 many visits there were; do you know anything about 24 it? 25 A. No, sir.

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1 Q. If I show you this, would you know this was 2 the packet for this deal? 3 A. Yes, sir. 4 MR. LEWIS: Would you mark it? That's 5 pretty good. 6 (Plaintiff's Exhibit Number 3, Dealership 7 transaction documents, was marked for 8 identification.) 9 BY MR. LEWIS: 10 Q. So if I look at Exhibit Number 3, that's 11 the packet for this deal, which was a sale of the 12 car, that would be the same packet that any sale 13 would have. 14 MR. BLACK: Object to the form. You can 15 answer. 16 A. Yes, sir. 17 BY MR. LEWIS: 18 Q. Turn to the last page there. It has the 19 number on it of 04039. Do you see that down at 20 the -- at the -- 21 A. Oh, yes, sir. 22 Q. I want to make sure we're looking at -- we 23 were looking at Exhibit Number 3. 24 MR. HAMM: Mr. Lewis, repeat the number you 25 just referenced.	1 Because I don't have the Martin deal in front of me. 2 I can't -- 3 Q. You said Mr. Martin didn't sign an 4 arbitration agreement. You told me that. 5 A. Yes, sir. 6 Q. And I'm asking did he sign the front page, 7 the privacy notice, the front page, did he sign that 8 page of his packet? 9 A. I can't tell you that. I'm sorry. I 10 misunderstood. I cannot tell you. 11 Q. You remember the arbitration, but you don't 12 remember this. 13 A. Yes, sir. 14 Q. But we could pull his packet and find out 15 what he did, right? 16 A. Yes, sir. 17 Q. Okay. Because you have his packet 18 somewhere. 19 A. Yes, sir. 20 Q. What does it say on arbitration -- the 21 arbitration agreement in his packet, or is it just 22 blank? You don't know. 23 A. (Witness shakes head.) 24 Q. Is that right? 25 A. I don't know.
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1 MR. LEWIS: 4039. 2 MR. BLACK: It appears they added a number 3 to the document in addition to our number. Page 4 CBM-0000045. 5 MR. HAMM: Okay. Thank you. 6 BY MR. LEWIS: 7 Q. You see that packet? 8 A. Yes, sir. 9 Q. Just out of curiosity, turn to the front 10 page. Did Brad Martin sign that front page? 11 A. No, sir. 12 Q. Huh? 13 A. No, sir. 14 Q. And did -- did Brad Martin agree to pay the 15 document fee? 16 MR. BLACK: Object to the form of the 17 question. I'll instruct him not to answer. That 18 goes beyond the -- 19 MR. LEWIS: Not to answer. Okay. That's 20 fine. 21 BY MR. LEWIS: 22 Q. Did -- did -- he didn't sign that. Is 23 there any other places he didn't sign? 24 A. When you're referring to Brad Martin, 25 are -- we're talking about the Watts, correct?	1 Q. All right. Let's look at that last page. 2 It's got the All Cars Checklist. Right? 3 A. Yes, sir. 4 Q. And down there it says, Arbitration 5 Agreement. 6 A. Yes, sir. 7 Q. That's on every deal. 8 A. Yes, sir. 9 Q. And it's a check. Either you check it or 10 you don't, right? 11 A. Yes, sir. 12 Q. Is this just a reminder to Mr. James, or 13 where does this -- this document go after it's 14 completed? 15 A. This -- this document here is something we 16 haven't used in a while. This is a checklist for 17 the F and I manager, Corey James, to make sure that 18 he's got everything in this package so it will go 19 upstairs to the accounting department. 20 Q. Okay. Where -- so this form, this one, 21 04039, isn't used anymore. 22 A. Not this version, no, sir. 23 Q. Is there another version? 24 A. On the back of the deal jacket. 25 Q. On the back of the deal jacket.

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1 A. Yes, sir. 2 Q. Well, that explains a lot to me. What is a 3 deal jacket? 4 A. That's where all these documents would be 5 placed. 6 Q. Does that just mean a folder? 7 A. Yes, sir. It's a pre - 8 Q. It's - huh? 9 A. It's a pre-printed folder with this 10 checklist and some other checklists. 11 Q. On the - on the back of it. 12 A. Yes, sir. 13 Q. So when you put all this in the folder, 14 they want to make sure they have all this in it. 15 A. Yes, sir. 16 Q. And then this folder is kept in your 17 dealership. 18 A. Yes, sir. 19 Q. Is this checklist sent anywhere or it just 20 sits there in - on the folder? 21 A. In the folder. 22 Q. In the folder? 23 A. Yes, sir. 24 Q. It's not sent anywhere? 25 A. No, sir.	1 Q. They just look? 2 A. Yes, sir. 3 Q. So this checklist, they just say, huh-uh, 4 not signed. 5 A. It wouldn't state not signed. 6 Q. Well, it's blank. 7 A. Blank. 8 Q. And then they - they wouldn't do anything. 9 A. No, sir. 10 Q. You don't know anything about how the 11 arbitration agreement was presented to the Watts, 12 other than you - you say that Mr. James said it was 13 each piece of paper was given to them, and he 14 pointed to where to sign, that's all you know about 15 the presentation of the arbitration agreement. 16 A. That is correct. 17 Q. You don't know anything that was said, 18 anything else but that. 19 A. No, sir. 20 Q. And you're the man most knowledgeable. Do 21 you have a record of how many arbitrations that you 22 have - you have gone through with reference to the 23 arbitration agreement? 24 A. I'm sorry. I didn't understand. 25 Q. You have an arbitration agreement there.
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1 Q. Well, who reviews to see if the checklist 2 is in there and properly done? 3 A. Corey would. Corey James. 4 Q. Corey James would look at it? 5 A. Yes, sir. 6 Q. Well, he's the one that did it. 7 A. Yes, sir. 8 Q. So he'd look at the checklist that he did 9 to see that everything in the checklist was done. 10 A. Yes, sir. 11 Q. Does anybody else look at it? 12 A. Accounting probably. 13 Q. Probably accounting. So this - this - 14 what do you call it, the deal folder would be sent 15 to accounting? 16 A. Yes, sir. 17 Q. And they check it over, too, to see that 18 all these things are in here. 19 A. Yes, sir. 20 Q. Now, what - what are they instructed to do 21 if the - with Mr. Martin when he didn't sign the 22 arbitration agreement? What do they do then? 23 A. Nothing. 24 Q. Nothing? 25 A. Nothing.	1 A. Yes, sir. 2 Q. It requires arbitration, you say. 3 A. Yes, sir. 4 Q. Has anybody ever arbitrated with you? 5 A. I have one now. 6 Q. One. Is that the only one you can 7 remember? 8 A. That's the only one that I've ever heard 9 of. 10 Q. Well, how long have you been with this 11 company? 12 A. 32 years. 13 Q. That's pretty good. So in 32 years, you 14 haven't ever heard of another one except the one you 15 have now. 16 A. Right. 17 Q. What's the one you have now? 18 A. I can't remember the guy's name. It's 19 Turner. 20 Q. What's he mad about? 21 A. A paint defect on his car. 22 Q. What kind of car was it? 23 A. It's a BMW. 24 Q. BMW. Did Mr. James leave on his own, or 25 was he fired, or do you know?

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1 MR. BLACK: Object. Leave from where? 2 MR. LEWIS: He left from -- 3 MR. BLACK: From Century BMW? 4 MR. LEWIS: He was up in -- he just told 5 me. 6 MR. BLACK: In Charlotte? Okay. 7 BY MR. LEWIS: 8 Q. Charlotte. 9 A. Mr. James left on a mutual agreement. 10 Corey's family was living in Charlotte. He was 11 having to live in Greenville, and he needed to go 12 back to Charlotte to his family. 13 MR. BLACK: That's why -- he's asking -- 14 he's answering why he left Century BMW. 15 MR. LEWIS: I understand that. I'm not too 16 bad. I can listen. 17 BY MR. LEWIS: 18 Q. All right. Do you know why he left Sonic 19 in Charlotte? 20 A. No, sir. 21 Q. You don't know if he was fired or he left 22 on his own? 23 A. No, sir. 24 Q. All you know is he wanted to leave your 25 company to go back to Charlotte because that's where	1 A. No, he's the lawyer for us. 2 Q. And who is the other guy? 3 A. I really don't remember his name, sir. 4 Q. And it's up here in Greenville? 5 A. Yes, sir. 6 Q. And it's over a BMW. 7 A. Yes, sir. 8 Q. Have you told anybody else about this 9 claim, this arbitration claim, other than me here 10 today? 11 A. I'm sure quite a few of my employees know 12 about it. 13 Q. Well, how about people out -- all your -- 14 any customers or anything? 15 A. No, sir. 16 Q. You don't tell that? 17 A. No, sir. 18 Q. You're frowning. Why are you frowning? 19 A. That wouldn't be a good business practice. 20 Q. Wouldn't be a good business -- okay. And 21 you don't know how you choose an arbitrator under 22 your arbitration agreement. 23 A. No, sir. 24 Q. You don't know anything about that. 25 A. I understand there's a board or a -- a
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1 his family was. 2 A. Yes, sir. 3 Q. Well, did he come from Charlotte? 4 A. Yes, sir. 5 Q. Did he come from Sonic of Charlotte? 6 MR. BLACK: Object to the form. 7 A. I really don't remember where Corey -- what 8 his other job was before us. I really don't 9 remember. 10 BY MR. LEWIS: 11 Q. This claim you have in arbitration, what -- 12 where is it in the process? 13 A. It's just in beginning stages. 14 Q. Someone just said they want -- they want to 15 make a claim? 16 A. Yes, sir. 17 Q. Did they sue you first, or did they just go 18 into arbitration? 19 A. They sued us, and then it went into 20 arbitration. 21 Q. Who was the -- who is the lawyers involved; 22 do you know? 23 A. Brad Martin. 24 Q. Brad Martin again, huh? He's the lawyer 25 for you, or he's suing you?	1 panel that you call, and they assign them or 2 whatever. But that's to the -- my extent of the 3 understanding. 4 MR. BLACK: Cam, are you getting to a point 5 where we can take a break soon? 6 MR. LEWIS: Sure, we can take a break now. 7 MR. BLACK: Okay. 8 (A recess transpired.) 9 BY MR. LEWIS: 10 Q. You've been with this company, I think you 11 said 32 years. 12 A. Yes, sir. 13 Q. And that company is what -- which company? 14 A. Century BMW. 15 Q. All right. How -- did Sonic always own 16 Century BMW? 17 A. No, sir. 18 Q. When did they buy them out? 19 A. 1998. 20 Q. Okay. Now, how long have arbitration 21 agreements been -- been used? 22 A. I became general manager in 2002, and they 23 were in effect then. 24 Q. How about before that? 25 A. I can't answer to that, sir.

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1 Q. What were you before? 2 A. I was parts and service director. 3 Q. So as parts and service director, you 4 didn't ever know what was in the packet? 5 A. No, sir. 6 Q. And in the -- you being appointed as the 7 man most knowledgeable about the arbitration 8 agreement, you never looked back in the history to 9 see when it became any arbitration? 10 A. No, sir. 11 Q. Now, when did Mr. James leave you, that is, 12 Century BMW? 13 A. To the best of my recollection, it was 14 early 2008. 15 Q. Now, you said he left on mutual terms or 16 something like that. 17 A. Mutual agreement. 18 Q. What does that mean? 19 A. I decided and he decided that this wasn't 20 the place for him to be at this time. 21 Q. Okay. Would it be fair to say you weren't 22 happy with his work? 23 A. I was happy with his work. 24 Q. Well, then why -- why wasn't it good for 25 him to be here?	1 Q. You have? 2 A. Yes, sir. 3 Q. And you don't know whether it's finance and 4 income or finance and insurance? 5 A. I've always called it finance and income. 6 Q. Okay. Fine. And so with him coming in 7 five, ten minutes late two times, three times a 8 week, you decided maybe it would be better if he 9 would go somewhere else? 10 A. He needed to go home. 11 Q. He needed to go home. And you made that 12 decision he needed to go home? 13 A. And he agreed. 14 Q. Okay. And did you get him a job then up 15 there at Sonic? 16 A. No, sir. 17 Q. Where did he go when he went to Charlotte? 18 A. He went to Sonic when he went to Charlotte, 19 but I did not get him the job. 20 Q. You didn't get him the job? 21 A. No, sir. 22 Q. Well, how did he get a job back at Sonic 23 when he left Sonic? 24 MR. BLACK: Object to the form. 25 A. I could only guess to that.
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1 A. He was continuously late, but his work was 2 very good. 3 Q. Okay. Now we got it. So he was late, but 4 a good worker after he was late. 5 A. Yes, sir. 6 Q. Now, late, that means he just didn't come 7 in five minutes, that would be real late. 8 A. No, sir. Five minutes, in my book, is 9 late. 10 Q. Well, you're one of these people. 11 A. Yes, sir. 12 Q. You want them on time. 13 A. Yes, sir. 14 Q. So how -- how late would he be? 15 A. Five to ten minutes. 16 Q. And he would be five to ten minutes late 17 over -- and how often? 18 A. At the end of his employment, it became 19 more regular. Maybe twice a week, three times a 20 week. 21 Q. And that just irritated you. 22 A. Yes, sir. 23 Q. And he was the -- is it finance and income 24 or is it finance and insurance, F and I? 25 A. I've always called it finance and income.	1 BY MR. LEWIS: 2 Q. Well, guess at it. 3 MR. BLACK: Object to having the witness 4 guess. 5 A. Networking. 6 BY MR. LEWIS: 7 Q. Networking. 8 A. Yes, sir. 9 Q. What was his job in Charlotte? 10 A. Previously? 11 Q. No, when he left you. 12 A. F and I. He took the same job in Charlotte 13 that he left me. 14 Q. And went to another dealership? 15 A. Yes, sir. 16 Q. What was the dealership? 17 A. Arnold Palmer Cadillac. 18 Q. Arnold Palmer Cadillac. And that's a Sonic 19 dealership? 20 A. Yes, sir. 21 Q. And he was doing the same thing? 22 A. Yes, sir. 23 Q. Was he the only one in that dealership like 24 he was in this dealership? 25 A. I don't know if he was the only one in that

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1 store or not. 2 Q. Okay. Do you have a new guy? 3 A. Yes, sir. 4 Q. What's his name? 5 A. Rodney McCaully. 6 Q. And where is he from? 7 A. He is from the Greenville area. 8 Q. So he just -- did he come out of a Sonic 9 store, or did he -- 10 A. No, sir. 11 Q. You just went and found him? 12 A. I just went and found him. 13 Q. Did you know him? 14 A. No, I didn't personally. 15 Q. Who did? 16 A. His former employer recommended him. 17 Q. Who was that? 18 A. James Brockman. 19 Q. And what -- what's he? 20 A. He's a car dealer. 21 Q. And what dealer is that? 22 A. Kia. 23 Q. The -- we talked about that class-action 24 waiver in that agreement, Exhibit Number 2. Do you 25 remember that?	1 Q. And how do you order them? Do you order 2 them by some -- is there like -- you know, sometimes 3 they say this is Form Number 686. Is there -- at 4 the bottom, do you see -- looking at Exhibit Number 5 3, do you see that? 6 A. Yes, sir. 7 Q. Do you see the long one, the first long one 8 that comes out? It's called the Full Disclosure 9 Customer Worksheet. Do you see that? It's the 10 first one. 11 A. Yes, sir. 12 Q. And down at the bottom, it has a Form 13 814WS. 14 A. Yes, sir. 15 Q. You know what, if anything, that means? 16 A. That's the Austin Business Forms form 17 number for this. 18 Q. Who is Austin Business Forms? 19 A. That's the supplier of this form. 20 Q. And so who makes -- they just -- they print 21 them up? 22 A. Yes, sir. 23 Q. Where is this Austin Business Form place? 24 A. I have no idea. 25 Q. How do you know about it?
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1 A. Yes, sir. 2 Q. Do you know when it was put in or -- 3 A. No, sir. 4 Q. You just know that it's in there now? 5 A. I know that it's in there now. 6 Q. And you couldn't tell me if it was in 7 there -- and we know it was in there when -- 8 6/25/05. 9 A. Yes, sir. 10 Q. And it's been in there ever since. 11 A. Yes, sir. 12 Q. But we don't know how long before 6/25/05 13 it was put in. 14 A. No, sir. 15 Q. As a general manager, you don't -- do 16 they -- how many of those stacks of these -- each of 17 these pieces of paper in the packet, Exhibit 18 Number 3, how many do they send you at a time, or do 19 you run them off a Xerox? 20 MR. BLACK: Object to the form. 21 A. We order them. The exact quantity, I have 22 no idea, in each package. 23 BY MR. LEWIS: 24 Q. So you order them. 25 A. Yes, sir.	1 A. It's one of our recommended vendors. 2 Q. So how do they know -- is this a worksheet 3 that -- that Sonic tells you to use? 4 A. Yes, sir. 5 Q. And Sonic says that they got this form we 6 want you to use. 7 A. Yes, sir. 8 Q. And you buy it from them. 9 A. Yes, sir. 10 Q. I notice on the Arbitration Agreement, I 11 don't see any form numbers. 12 MR. BLACK: Is there a question? 13 BY MR. LEWIS: 14 Q. Do you see that? 15 A. Yes, sir. 16 Q. Well, how do you order it? 17 A. It's probably -- well, I can't attest to 18 that, what I -- how you order it. I don't order the 19 supplies. 20 Q. Well, it doesn't have a form number. How 21 do you know what to ask for? 22 A. Probably by title. 23 Q. Now by title. So you order by title. 24 A. If it doesn't have a form -- a form number, 25 you would order it by title.

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1 Q. And where do you order the Arbitration 2 Agreements from? 3 A. All of our ordering is done online through 4 Sonic. 5 Q. Through Sonic? 6 A. Yes, sir. 7 Q. Is there something you bring up? What kind 8 of screen do you bring up; what's it called? 9 MR. BLACK: Object to the form. 10 BY MR. LEWIS: 11 Q. Form order? 12 A. The exact system name is PECOS. P-E-C-O-S. 13 Q. And when you bring up PECOS, what does it 14 tell you? 15 A. It gives you the list of forms. 16 Q. Oh, and you just can order like that. 17 A. Yes, sir. 18 Q. And the -- the form list, you see -- let's 19 go back to that last page again on Exhibit Number 3. 20 Are the All Cars Checklist, are those all forms? 21 A. You're talking about each individual -- 22 Q. Yeah. 23 A. -- area? Some of them are forms. Some of 24 them are information. 25 Q. Okay. Well, let's look at the packet then.	1 A. Yes, sir. 2 Q. Is that a form that's required by law? 3 A. Yes, sir. 4 Q. And you order those from that same place? 5 A. Yes, sir. 6 Q. Okay. Look at 3998. That's not a form, is 7 it? 8 A. I have no idea what that is. A fax 9 confirmation. 10 Q. Okay. Look at 3999. That's -- is that a 11 form? 12 A. Yes, sir. 13 Q. Is that one you order from the same place? 14 A. This one may not be. This one may be from 15 the State of South Carolina. 16 Q. Okay. Is it a required form? 17 A. Yes, sir. 18 Q. By law? 19 A. Yes, sir. 20 Q. The next one is a vehicle history report, 21 4000. 22 A. This is computer-generated from BMW. 23 Q. Okay. How about 4001, is that part of the 24 same report, or no? 25 A. This is -- this is where we shipped a lien
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1 Look at the packet. Start with the first number, 2 and that's 3995. Do you see that? 3 A. Yes, sir. 4 Q. Is that a form? 5 A. Yes, sir. 6 Q. And do you order that? 7 A. Yes, sir. 8 Q. Is that a required form by law, or just a 9 required form by Sonic? 10 MR. BLACK: Object to the form. You can 11 answer if you know. 12 A. This is a privacy notice. It is required 13 by Sonic and probably required by law. 14 BY MR. LEWIS: 15 Q. All right. 16 A. It is required by law. 17 Q. And the next one is -- is this a form that 18 you order? 19 A. No, sir. This is automatically printed out 20 at the time the purchase is made, depending on what 21 coverage the customer decides to or not to take. 22 Q. And that's 3996. 23 A. Yes, sir. 24 Q. All right. Let's look at 3997. Is that a 25 form?	1 off to someone. 2 Q. Okay. But that's not -- 3 A. That's not a form, no. 4 Q. Okay. How about 4002? 5 A. This is a form. 6 Q. Is this a -- required by law? 7 A. This is an agreement to provide insurance. 8 Q. An agreement with who? 9 A. The customer and their insurance company. 10 Q. Okay. Do you -- is that something that you 11 require? 12 A. We do require it. 13 Q. But is it -- so this is a form of Sonic, 14 not a -- a form by law. 15 MR. BLACK: Object to the form. 16 A. This is a form by Sonic. 17 BY MR. LEWIS: 18 Q. Okay. And you order it? 19 A. Yes, sir. 20 Q. All right. How about 4003? 21 A. This is a computer-generated. 22 Q. At your dealership? 23 A. Yes, sir. This is built into our computer 24 system, so this is the way it prints. 25 Q. All Sonic dealerships have the same

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1 computer system? 2 A. Yes, sir, now we do. 3 Q. What is it called? 4 A. ADP. 5 Q. ADP. And 4004 would be another 6 ADP-generated? 7 A. Yeah, the next three forms are the same 8 form. 9 Q. Okay. How about -- how about now we're 10 looking at 4007. We already talked about it. 11 A. Yes, sir. 12 Q. Now, is this form, when it comes, this full 13 disclosure customer worksheet, is it long like this, 14 or is it the same size of those other papers? 15 A. This form was long in 2005, and they 16 changed it between 2005 and 2008. It's shorter now. 17 Q. It fits in to be like the other ones. 18 A. Yes, sir. 19 Q. But it was long back then. 20 A. Yes, sir. 21 Q. Now, the next one is 4008, which is Exhibit 22 Number, I believe, 2, as well as part of the packet. 23 A. Yes, sir. 24 Q. And it's long. 25 A. Yes, sir.	1 Q. Okay. Car invoice. Now, this one here, 2 looking at 4009, this is a car invoice to who? Who 3 is it an invoice to? 4 A. This one's an invoice to the Watts. 5 Q. And what does it tell you, that this is 6 what they paid, 32,000? 7 A. Yes, sir. Yes, sir. 8 Q. And the 32,000 is made up of 31,375, plus 9 289.50, plus 300, plus 257 10 A. If that adds up to 32,000, yes, sir. 11 Q. Well, okay. What is total time price? 12 A. Oh, that would be if you financed it. 13 Q. If I financed it, it would be less? 14 A. It would be more, because of two lines 15 above you would add your finance charge in. 16 Q. I'm con -- I'm very confused. It has in 17 here, number -- total time price. What is that? 18 31,700.50. 19 A. I don't -- what's that, 31 -- 20 MR. BLACK: Let me just object that I think 21 we've strayed beyond the topic in the Notice. 22 MR. LEWIS: Okay. 23 MR. BLACK: I'm giving you some leeway. 24 The witness wasn't -- didn't come in prepared to 25 analyze each of these forms in detail.
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1 Q. Was it long at that time, or was it -- 2 A. Yes, sir. 3 Q. -- short? 4 A. Yes, sir. 5 Q. It was long. 6 A. Long. 7 MR. BLACK: And by long, you mean on 8 legal-size paper? 9 BY MR. LEWIS: 10 Q. Is this -- looking at it, is this the size 11 of the document, the original document? 12 A. Yes, sir. 13 Q. Do you know how many words are in this 14 document? 15 A. No, sir. 16 Q. Would you believe me there was 1100? 17 A. Yes, sir. 18 Q. And the next one, 4009, is a -- 19 A. Ordered form. 20 Q. A what? 21 A. Ordered form. 22 Q. Ordered. And it's -- but it's not required 23 by law? 24 A. Car invoice may be required by law, I'm not 25 sure of that.	1 BY MR. LEWIS: 2 Q. Okay. So you don't know what that is 3 today. 4 A. Without a calculator and sitting down and 5 figuring it out, probably not. 6 Q. Okay. 7 A. But I just don't know right this moment. 8 Q. Okay. 4010, is that -- what is that? 9 A. It's an ordered form. 10 Q. And ordered, we mean ordered from Sonic? 11 A. Yes, sir. 12 Q. And is it required by law? 13 A. No, sir. 14 Q. The same as 4011? 15 A. Yes, sir. 16 Q. And 4012 is something that was generated on 17 your computer? 18 A. Yes, sir. 19 Q. And 4013, I don't know what that is. That 20 must be something that's stamped on the back of 21 something. It doesn't matter. 22 A. I have no clue. 23 Q. And then you have pictures with people on 24 them and an insurance card. 25 A. Yes, sir.

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1 Q. And then you have another picture of a 2 pretty lady. Do you see that of one? 3 A. Yes, sir. 4 Q. All right. That's 4015. 5 A. I saw that. 6 Q. 4016, that must come off of a computer? 7 A. Yes, sir. 8 Q. 4017, what is that? 9 A. This is computer-generated, to do the tag 10 work for the car. 11 Q. Okay. And 4018 is a -- 12 A. A copy of a check. 13 Q. Okay. 4019, that's -- is that a form? 14 A. Yes, sir, that's an ordered form. 15 Q. Okay. And it's not required by law? 16 MR. BLACK: Object to the form. 17 A. The Retail Buyer's Order is required by 18 law. 19 BY MR. LEWIS: 20 Q. Okay. Required by law. Now, if I -- and 21 is this form ordered? 22 A. Yes, sir. Yes, sir. 23 Q. And everything that's not written on it 24 would -- that is -- that is, it looks typed, that 25 would be on the ordered form?	1 Q. -- by law? 2 A. Yes, sir. It's required. 3 Q. And is 4025 required by the law? 4 A. Yes, sir. That's the back of Form 400. 5 Q. Okay. 4026 is an Internal form? 6 A. Yes, sir. 7 Q. And is this check requested, is that 8 something that comes from Sonic, or is that just 9 y'all's form? 10 A. This form comes -- all our forms that are 11 pre-printed come from Sonic. 12 Q. So this one comes from Sonic, too. 13 A. Right, yes. 14 Q. But it's not required by law? 15 A. No, sir. 16 Q. Same with 4027? 17 A. Yes, sir. 18 Q. 4028? 19 A. This is a BMW computer printout. 20 Q. Okay. 4029? 21 A. Same. 22 Q. 4030? 23 A. Yes, sir. Same thing. 24 Q. 4031? 25 A. Same thing.
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1 A. Yes, sir. 2 Q. So every ordered form on BM -- from Sonic 3 will have the processing fee there? 4 MR. BLACK: Objection. And I'll instruct 5 you not to answer. That goes well beyond the 6 Deposition Notice to the merits of the case. 7 MR. LEWIS: You shouldn't have given me the 8 form. 9 BY MR. LEWIS: 10 Q. The next one, 4020? 11 A. This is sent to us by BMW. 12 Q. Is it required by law? 13 MR. BLACK: Object to the form. Go ahead. 14 A. I have no idea. 15 BY MR. LEWIS: 16 Q. How about 4021? 17 A. Continuation. 18 Q. All right. And then the certificate of 19 title, we know what that is, 4022. 4023 is a what? 20 A. The back of the title. 21 Q. Okay. 4024, what is that? 22 A. That is a Form 400. This comes from the 23 State of South Carolina. 24 Q. Is that required -- 25 A. Yes, sir.	1 Q. Now, that's required by law, isn't it? 2 A. The odometer statement? 3 Q. Yeah. 4 A. This one is sent to BMW. 5 Q. But there is an odometer statement -- 6 A. Yes, sir. 7 Q. -- required by law? 8 A. Yes, sir, there is. 9 Q. But this is not it? 10 A. No, sir. 11 Q. Okay. 4032. 12 A. That's a pre-printed form from Sonic. 13 Q. Is that required by law? 14 A. No, sir. 15 Q. And 4033? 16 A. Computer-generated, in-house form. 17 Q. 4034? 18 A. Computer-generated, in-house. 19 Q. 4035? 20 A. The same. 21 Q. 40 -- I don't see it. It's cut off. It's 22 CBM-0000042. 23 A. Right. This is a computer-generated, a 24 copy of the one we just went over that was 25 handwritten.

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1 Q. Oh, that is a copy of that one he wouldn't 2 let me ask you about. 3 A. Yes, sir. 4 Q. And this is -- the next one is 4037. Those 5 are government forms? 6 A. These are county tax papers. 7 Q. And 4038? 8 A. That's a copy of a fax. 9 Q. And 4039 is that checklist we've already 10 gone over. 11 A. Yes, sir. 12 Q. And this is essentially what a packet would 13 look like for anybody that bought a car. 14 A. Yes, sir. 15 MR. BLACK: Object to the form of the 16 question. 17 BY MR. LEWIS: 18 Q. Now, if you had a -- if you were going to 19 finance the car through you, would there be a 20 finance packet, too, or would this packet, Exhibit 21 Number 3, be bigger? 22 A. Exhibit 3 would be bigger. 23 Q. Was it -- and if you were going to lease a 24 car, there would be just different documents that 25 would support a lease, but it would be essentially	1 contains a lot of documents that don't go to the 2 customer. 3 MR. LEWIS: Okay. 4 BY MR. LEWIS: 5 Q. Pick up Exhibit Number 3. And I want you 6 to look through it and tell me each document that 7 the customer is explained. 8 A. The privacy notice, the first one. 9 Q. All right. 10 A. The second one, which is the -- 11 Q. Give me the numbers of them at the bottom. 12 A. Okay. Okay. The first one is 3995. 13 Q. Uh-huh. 14 A. 3996. 15 Q. Uh-huh. 16 A. 3997 is explained on the sales floor. This 17 is a -- 18 Q. Sales floor? 19 A. Yes, this is a document that's actually 20 posted in the window of the car. 21 Q. So that document is for the salesman to 22 explain. 23 A. It's -- yes, sir. 24 Q. But the F and I guy doesn't say anything 25 about it?
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1 the same documents otherwise? 2 A. Yes, sir. 3 Q. Do you know -- we went through each of the 4 documents in Exhibit Number 3. Do you know what the 5 purchasers in this case were told about each of 6 those documents? 7 A. No, sir. 8 Q. Do you -- what is the requirement you have 9 on your F and I guy to explain each of the 10 documents; does he have a requirement? 11 A. Yes, sir. 12 Q. And he's supposed to explain each one of 13 them? 14 A. Yes, sir. 15 Q. And how long -- how long does that take? 16 A. Oh, it could take, depending if the 17 customer had any questions on each one, it could 18 take five, ten minutes a form -- 19 Q. Is that what -- 20 A. -- if they had questions. 21 Q. Well, what does it take normally? You've 22 been in the business. Y'all sell 1200 cars a year. 23 How long does it take to explain this packet? One 24 guy, 1200 people. 25 MR. BLACK: Object to the form. The packet	1 A. He will go over it again. 2 Q. He will go over it again. 3 A. I'm going to skip 3998, because -- 3999 4 would be reviewed in the F and I office. 5 Q. Reviewed. Do they explain it to them or do 6 they just review it? Do they have a requirement to 7 explain it? 8 A. Well, yes, they would explain it. There's 9 nothing but the sale-of-a-motor-vehicle form. 10 Q. Okay. 11 A. 4002 would be explained and ask the 12 customer for information specifically on this form. 13 Q. Okay. 14 A. Skipping ahead, 4008. 15 Q. Yeah. We've already talked about that one. 16 A. 4010. 17 Q. Uh-huh. 18 A. The printed version of 4019, the one we 19 couldn't find the number on. 20 Q. 4019? 21 MR. BLACK: I think the printed version 22 was -- 23 MR. LEWIS: Okay. 24 MR. BLACK: The printed version is CBM -- 25 BY MR. LEWIS:

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1 Q. 4019 is gone through. 2 A. Yes, sir. 3 MR. BLACK: Well, he said the printed 4 version. 5 A. The printed version. 6 BY MR. LEWIS: 7 Q. Yeah. Yeah. I don't understand the 8 printed version. 4019 is printed. 9 A. The computer printed one, the one we could 10 not find the -- the number on at the end. 11 MR. BLACK: It's CBM-000042. It's the one 12 that your number got knocked off the bottom of. 13 MR. LEWIS: 40 what -- 14 MR. BLACK: Four 0's, and then 42. 15 MR. LEWIS: 42. 16 BY MR. LEWIS: 17 Q. Okay. It's got them all typed. 18 A. Yes, sir. 19 Q. What do they do -- both of them are signed. 20 Why do they go through one and then type one? 21 A. The -- the handwritten one is generated out 22 on the sales floor with the sales manager. 23 Q. Oh, the sales manager. 24 A. Yes, sir. 25 Q. And so there's a new person that's been	1 A. Yes, sir. 2 Q. And should be exactly the same, except 3 one's typed and one isn't. 4 A. Yes, sir. 5 Q. Well, why do you do that? 6 MR. BLACK: Object to the form. 7 A. Why do you do the first one, the 8 handwritten one? 9 BY MR. LEWIS: 10 Q. No, why do you take one and get it all 11 filled in in handwriting, and then take the time to 12 type it -- type it and get it on a different -- the 13 same form typed? 14 A. To make sure there's no mistakes. 15 Q. To make sure there's no mistakes? 16 A. Yes, sir. 17 Q. There's more likely to be a mistake if you 18 go from a handwritten one to a typed one. 19 MR. BLACK: Object to the form. 20 A. These two have to match. 21 BY MR. LEWIS: 22 Q. Oh, they have to match. I gotcha. And who 23 determines they match? 24 A. The account -- I mean, the F and I office, 25 Corey James.
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1 involved here. We had -- I thought it went direct 2 from Mrs. Elizabeth to Mr. James. It doesn't? 3 There's somebody in between? 4 A. The salesperson will confer with the sales 5 manager to get his signature, approval to sell the 6 car. 7 Q. So the -- I got -- I got to understand 8 something. So this Exhibit Number -- Exhibit 9 Number -- hold on -- 3, 4019 -- 10 A. Yes, sir. 11 Q. -- that's done on the floor. 12 A. Yes, sir. 13 Q. Now, is the sales manager's signature on 14 that document? 15 A. Yes, sir. 16 Q. And so they sit down there, and this is 17 negotiated, and then the sales manager signs it. 18 A. Right. 19 Q. Okay. And then where does it go? 20 A. Then the salesperson takes it to Corey 21 James at that time. 22 Q. And Corey James then types up Exhibit 23 Number -- the one that doesn't have that cut off. 24 A. That is correct. 25 Q. CBM-000042.	1 Q. Now, who is -- the bottom signature, who is 2 that? 3 MR. BLACK: There are a number of 4 signatures. Which are you asking him about? 5 BY MR. LEWIS: 6 Q. On 000042. Mine is cut off a little bit. 7 What's the bottom signature; is that Corey James? 8 A. Are you talking about where it says, this 9 agreement, the very last -- 10 Q. Yeah. 11 A. That would -- it's cut off, but it looks 12 like Corey. 13 Q. Okay. And then it says, disclaimer of 14 warranties, purchaser's signature. The purchaser's 15 signature is not there, right? Am I right? 16 A. You're talking on new vehicle disclaimer 17 warranties? 18 Q. Yeah. 19 A. They didn't buy a new vehicle. 20 Q. So you have to sign either one of those? 21 A. Yes, sir. 22 Q. Okay. And Corey James is the officer of 23 the company that signed this. 24 A. Yes, sir. 25 Q. And he is also the -- is that his signature

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A. William Roberts, Jr. & Associates (800) 743-DEPO

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1 on the 4019? Whose signature is that? 2 A. I haven't seen this signature in a long 3 time, but I would assume it's Jeff Novak. 4 Q. And what is he? 5 A. He was the used car manager. 6 Q. So the used car manager agreed to it, and 7 Corey James agreed to it on a different form. 8 A. Yes, sir. 9 Q. Once they -- the used car manager agreed to 10 it, it's over with then, isn't it? Does Corey James 11 have the right then to not do it? 12 MR. BLACK: Object to the form. 13 A. Corey does not have the right to stop the 14 deal. 15 BY MR. LEWIS: 16 Q. So why -- so he approved it, but he doesn't 17 have the right to not approve it? 18 A. He would not sign it if it did not match 19 up. 20 Q. But all he would be able to do is match it 21 up, because once it's signed, as shown on 4019, then 22 you have to sell the car. 23 MR. BLACK: Object to the form. 24 A. Sold -- 4019, we agreed to sell the car for 25 this amount.	1 claims court part of it. 2 Q. Does -- do you know if that's something 3 they explain to people, or do you know? You don't 4 know? 5 A. I don't know. 6 Q. Okay. We've got the packet that we showed 7 before you, Exhibit Number 3. Okay. Our client 8 said there were more documents than this, than 9 shown, some other documents than shown in this 10 packet. Do you know what they could have been? 11 MR. BLACK: Objection. Mischaracterizes 12 the testimony. 13 BY MR. LEWIS: 14 Q. Well, could there have been more documents 15 given to the Watts than are in this packet? 16 MR. BLACK: Okay. Form, speculation. 17 A. I mean, other than owner's manuals? 18 BY MR. LEWIS: 19 Q. Yeah. 20 A. There could be owner's manuals. 21 Q. Anything else? 22 A. There should be other -- no more legal 23 documents, no. 24 Q. You know anything about what's been called 25 the Dealer Act, the act that allows people to bring
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1 BY MR. LEWIS: 2 Q. Right. And that's it. 3 A. The manager. 4 Q. Right. 5 A. Corey would have the right, if there was 6 something that did not add up correctly, to go back 7 to Jeff and say, there's something wrong here, I'm 8 not going to sign it until you get it straightened 9 out. 10 Q. And Jeff would have to go straighten it 11 out. 12 A. Yes, sir. 13 Q. And that could even mean having -- making 14 them pay more money? 15 MR. BLACK: Object to the form. 16 A. Not above what they originally agreed to. 17 BY MR. LEWIS: 18 Q. Okay. Now, this arbitration agreement 19 says -- has some provision in there about small 20 claims court. Do you understand that, or do you 21 know anything about that? 22 A. I don't know anything about the small 23 claims court. 24 Q. You what? 25 A. I don't know anything about the small	1 suits against dealers for not doing -- for fraud and 2 so forth? 3 A. No, sir. 4 Q. Have you ever read anything on it? 5 A. No, sir. 6 Q. Now, I want to ask you one more little set 7 of questions. And what I want to know is you 8 mentioned to me that there may be a training or -- 9 and the training might lead us to what is taught to 10 F and I people. Where would we go to find that? 11 MR. BLACK: Object to the form. 12 A. To find the training schedule? 13 BY MR. LEWIS: 14 Q. To find out what -- how they train people. 15 What is -- 16 A. Richard O'Connor. 17 Q. And he would have the training? 18 A. Yes, sir. 19 Q. And he's up in the offices in -- 20 A. Charlotte. 21 Q. -- Charlotte. And what -- and it's called 22 Sonic, the Sonic offices? 23 A. It's Sonic Automotive. 24 Q. Okay. In Charlotte? 25 A. Yes, sir.

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1 MR. LEWIS: Excuse me just a minute. 2 MR. BLACK: Break? 3 MR. LEWIS: I hope that we can leave you. 4 (A recess transpired.) 5 MR. LEWIS: Thank you, Mr. Bishop. 6 THE WITNESS: Thank you. 7 EXAMINATION 8 BY MR. BLACK: 9 Q. Mr. Bishop, my name is Dennis Black. I'm 10 from the law firm called Williams and Connolly. You 11 understand I represent Century BMW? 12 A. Yes, sir. 13 Q. Mr. Lewis asked you a bunch of questions 14 about what he termed "the packet" this morning, and 15 I think it's marked in front of you as Exhibit 3. 16 Do you recall those questions? 17 A. Yes, sir. 18 Q. Are there a number of documents in what he 19 called the packet that are not shown to the customer 20 at the time of the deal? 21 A. There's quite a few in there that wouldn't 22 be shown to the customer. 23 Q. So what's -- what you've got in front of 24 you as Exhibit 3 is not a stack of documents all of 25 which are given to the customer in the F and I	1 Q. How about 4009? 2 A. 4009 would go to the customer. 3 Q. 4012? 4 A. Would not. 5 Q. 4013? 6 A. Would not. 7 Q. 4014 came from the customer? 8 A. Yes, sir. 9 Q. Same for 4015? 10 A. Yes, sir. 11 Q. How about 4016? 12 A. That would not go to the customer. 13 Q. 4017? 14 A. Would not. 15 Q. 4018? 16 A. No, sir. 17 Q. 4020? 18 A. No, sir. 19 Q. 217 20 A. No, sir. 21 Q. How about 22, does that go to the customer, 22 4022? 23 A. Yes. They paid cash for it; they would get 24 this title. 25 Q. Okay. 4026?
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1 office. 2 A. That's correct. 3 Q. Let's go through and give some examples of 4 that. Would the -- and you skipped over -- when you 5 were asked about documents that were explained to 6 the customer, you skipped over a number of documents 7 in the deal jacket, right? 8 A. Correct. Those would be documents the 9 customer wouldn't see. 10 Q. Okay. Let's look at CBM -- well, let me 11 use his numbers since he did. If you turn to 12 Document Number 4000, the vehicle history report. 13 A. That wouldn't be to the customer. 14 Q. And 4001, where you were paying off the 15 lien on the trade-in? 16 A. That wouldn't be to the customer. 17 Q. If you go to the 4003. 18 A. No. 19 Q. And by no, you mean that doesn't go to the 20 customer? 21 A. Would not go to the customer. 22 Q. 4004? 23 A. It's a copy of 4003, and 4005 and 4006 is 24 all copies of the same document. They would not go 25 to the customer.	1 A. No, sir. 2 Q. 4027? 3 A. Would not go. 4 Q. 4028? 5 A. Would not go. 6 Q. 4029? 7 A. No. 8 Q. 4030? 9 A. No. 10 Q. 4031? 11 A. No, sir. 12 Q. 4032? 13 A. No, sir. 14 Q. 4033? 15 A. No, sir. 16 Q. 4034? 17 A. No, sir. 18 Q. 4035? 19 A. No, sir. 20 Q. 4038 is a fax from the customer sometime 21 after the transaction? 22 A. Yes, sir. 23 Q. So that wouldn't have been explained to the 24 customer during the transaction. 25 A. No, sir.

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1 Q. And the checklist at 4039, that doesn't go 2 to the customer, does it? 3 A. No, sir. 4 Q. Did Century BMW have an official policy of 5 whether you would sell a vehicle to a customer who 6 refused to sign the arbitration agreement? 7 MR. LEWIS: Object to the form. 8 A. If a customer objected to signing the 9 arbitration form, we would still sell them the car. 10 BY MR. BLACK: 11 Q. You -- you testified that you -- that the F 12 and I managers were not trained to volunteer to the 13 customer that you don't have to sign this 14 arbitration agreement. Do you recall that? 15 A. Correct. The F and I manager was not 16 obligated to explain that they did not have to sign 17 the arbitration agreement. 18 Q. Were they trained to tell the customer, you 19 are required to sign this arbitration agreement? 20 A. No, sir. 21 Q. If the customer asked, am I required to 22 sign this arbitration agreement as a condition of 23 buying the car, what was Century BMW's policy for -- 24 MR. LEWIS: I object to the form. 25 A. The customer --	1 sold a car by Century BMW? 2 MR. LEWIS: Object to the form. 3 BY MR. BLACK: 4 Q. You can answer. 5 A. Yes, sir. 6 Q. You mentioned earlier that you're only 7 aware of one arbitration that's been filed since 8 you've been general manager? 9 A. Yes, sir. 10 Q. How many lawsuits are you aware of that 11 have been filed against Century BMW since you've 12 been general manager? 13 A. Actually, there was two. 14 Q. And does that include this one? 15 A. Yes, sir. 16 Q. So this one and one other. 17 A. Yes, sir. 18 Q. And was the one other the one that went to 19 arbitration? 20 A. The other one, I cannot recall. I did not 21 go to court. I believe it was dismissed between the 22 two lawyers. 23 Q. Okay. So there's the Turner case that went 24 to arbitration. There's the one other one. 25 A. Right.
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1 BY MR. BLACK: 2 Q. Let me ask the question. What was Century 3 BMW's policy about whether they would sell a car to 4 someone who objected to signing the arbitration 5 agreement? 6 A. We would still sell the car. 7 Q. You testified that you could only remember 8 the name of one person who had refused to sign the 9 arbitration agreement and, nevertheless, bought a 10 car. Are you aware that there are other customers 11 whose names you don't remember who similarly refused 12 to sign the arbitration agreement and you, 13 nevertheless, sold them the car? 14 A. Yes. 15 MR. LEWIS: Object to the form. 16 BY MR. BLACK: 17 Q. And are there other customers other than 18 the one person whose name you remembered who refused 19 to sign the arbitration agreement and -- 20 MR. LEWIS: Object to the form. 21 BY MR. BLACK: 22 Q. Let me finish my question. Are there 23 people other than the person whose name you 24 mentioned that you are aware of who refused to sign 25 the arbitration agreement and, nevertheless, were	1 Q. And then there's this lawsuit. 2 A. Yes. 3 Q. And that's the only litigation you're aware 4 of? 5 A. That's the only litigation I've been 6 involved in since 2002. And before that, I was not 7 involved in any. 8 MR. BLACK: Nothing further. 9 EXAMINATION 10 BY MR. LEWIS: 11 Q. You mentioned you remember some other 12 customers that you couldn't remember on the 13 arbitration agreement? 14 A. I remember other cus -- customers not 15 signing. I do not remember their names. 16 Q. Do you remember whether it was one, two, 17 three, four? 18 A. Exact number, I couldn't tell you, sir. 19 Q. You couldn't tell me anything about it. 20 You just remembered somewhere -- 21 A. Yes, sir. 22 Q. -- just in your head somewhere. 23 A. Yes, sir. 24 MR. LEWIS: Nothing further. 25 (The deposition was concluded at 11:58 p.m.)

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SIGNATURE OF DEPONENT

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

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JOHN ROBERT BISHOP DATE

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CERTIFICATE OF REPORTER

I, Kathy P. Taylor, Registered Professional Reporter and Notary Public for the State of South Carolina at large, do hereby certify that the foregoing transcript is a true, accurate and complete record.

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

WITNESS MY HAND, I have hereunto
affixed my official seal this 1st day of
February, 2008, at Greenville County, South
Carolina.

KATHY P. TAYLOR
REGISTERED PROFESSIONAL REPORTER
MY COMMISSION EXPIRES
JUNE 13, 2017

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF AIKEN

HERRON, et al.,

Case No.

Plaintiffs,

2006-CP-02-1230

vs.

DICK DYER & ASSOCIATES, INC., et al,

Defendants.

DEPOSITION OF: CHRISTINE WATTS

DATE: January 29, 2008

TIME: 5:15 p.m.

LOCATION: LEATHERWOOD WALKER TODD & MANN, P.C.
300 East McBee Avenue, Suite 500
Greenville, South Carolina

TAKEN BY: Counsel for Defendant,
CENTURY BMW

REPORTED BY: KATHY P. TAYLOR,
Registered Professional Reporter

Computer-Aided Transcription By:

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EXHIBIT

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ALSO PRESENT:

MELANIE BLEASE, Paralegal

ALISON DANNERT, Paralegal

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STIPULATION

It is stipulated by and between Counsel

that this deposition is being taken in accordance

with the South Carolina Rules of Civil Procedure,

Rule 30; that all objections as to Notice of this

deposition are hereby waived; that all objections

except as to form are reserved until the time of

trial; and that the deponent does not waive reading

and signing of this deposition.

.

CHRISTINE WATTS.

being first duly sworn, testified as follows:

EXAMINATION

BY MR. BLACK:

Q. Good evening, Ms. Watts. Could you state

your name and your address for the record, please.

A. Christine Watts. And my address is 3729

Harwick, H-A-R-W-I-C-K, Plaza, Charlotte, North

Carolina 28211.

Q. And we haven't met before, but my name is

Dennis Black. I'm an attorney from a law firm

called Williams & Connolly. And you understand I

represent Century BMW and some other car dealerships

in this dispute?

A. Okay. Yes, I do.

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Q. Okay. And the other people sitting here

also represent -- at least on this side of the

table -- also represent Century BMW, until you get

to the guy at the end, who represents some other

dealerships. And I take it you know your own

counsel.

A. Yes, sir.

Q. (Pointing) And he represents some car

dealerships, too.

A. Okay.

Q. So just so you know who everyone is.

Have you ever had your deposition taken

before?

A. I have not.

Q. Okay. Let me give you a couple of ground

rules. I'll be asking a bunch of questions.

Hopefully you'll be answering them. Try to answer

them aloud and with words.

A. Okay.

Q. Because the court reporter here is trying

to take everything down, and she can't take down

gestures and nods and shakes and shrugs. Is that

acceptable?

A. Yes.

Q. And if you say -- if you nod or shake your

Page 6

1 head, one of us may say. Is that a yes or is that a
2 no.
3 A. Okay.
4 Q. We're not trying to be rude; we're just
5 trying to keep a clear record.
6 (Ms. Chapman entered the deposition.)
7 BY MR. BLACK:
8 Q. The -- also try and avoid uh-huh and
9 uh-uh, because they look garbled on the transcript.
10 A. Yes.
11 Q. If you could try and let me finish my
12 questions before you jump in with your answers, that
13 will help keep a clean record, also; and I'll try
14 and give you the same courtesy of letting you finish
15 your answers before I jump in with another question.
16 Is that acceptable?
17 A. Yes.
18 Q. If I ask any garbled questions, as I'm
19 prone to do from time to time, please, if you don't
20 understand it, ask me to rephrase the question or
21 tell me that you don't understand it. And the rules
22 here in South Carolina require you to direct any
23 requests for clarification to me and not to your own
24 counsel. Is that acceptable?
25 A. Yes, I understand.

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1 Q. And the rules also require that you not
2 talk with your counsel about the deposition or the
3 case while we're going on with the deposition. Is
4 that acceptable?
5 A. I understand.
6 Q. Okay. What, if anything, did you do to
7 prepare for your deposition?
8 A. I had a meeting with my lawyers.
9 Q. Okay. And who was present for that
10 meeting?
11 A. Melanie and Brady.
12 Q. Anyone else?
13 A. My father, Mike Watts.
14 Q. Was that Friday -- Sunday night?
15 A. Yes.
16 Q. And how long approximately did the meeting
17 last?
18 A. Maybe an hour.
19 Q. The -- and then as you were driving home
20 from the meeting, did you have a chance to have a
21 further discussion with your father about the
22 deposition?
23 A. We did not talk about that on the way home.
24 Q. Since you -- since Sunday night, have you
25 talked to anyone else in preparation for your

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1 deposition?
2 A. I talked to Melanie and Brady before I came
3 today.
4 Q. Okay. Did you have a chance to talk to
5 your father after he was finished with his
6 deposition today?
7 A. Yes.
8 Q. And when was that?
9 A. Maybe lunchtime.
10 Q. Okay. And was it in person or on the
11 phone?
12 A. It was just on the phone.
13 Q. Okay. And who called who?
14 A. I called my father to ask him how long it
15 would take.
16 Q. All right. And what did he tell you?
17 A. Two hours.
18 Q. Okay. Hopefully, since we got some
19 information from him this morning, we won't have to
20 repeat it with you, and we'll be even quicker. Did
21 he tell you anything about the questions that were
22 asked at the deposition?
23 A. No, he did not.
24 Q. Aside from the length of the deposition,
25 did you have any other discussions about the

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1 deposition with him?
2 A. No.
3 Q. Other than Melanie and your father today,
4 did you -- have you talked to anyone else in
5 preparation for your deposition?
6 A. Just my boss, that I had to go to the
7 deposition.
8 Q. Okay. Could you describe for us your
9 educational background since high school?
10 A. I have a bachelor's and a master's degree
11 in accounting.
12 Q. And what year did you get your bachelor's?
13 A. '03, 2003.
14 Q. And from what school?
15 A. College of Charleston.
16 Q. And from what school did you get your
17 master's?
18 A. College of Charleston.
19 Q. And what year was that?
20 A. 2005.
21 Q. And you said that was in accounting?
22 A. Accounting.
23 Q. And any subspecialty or -- in accounting?
24 A. No.
25 Q. Since getting your master's in 2005, have

Pages 6 to 9

Page 10

1 you pursued any other studies?

2 A. Please rephrase.

3 Q. Since -- have you done any further
4 schooling since 2005, when you got your master's?

5 A. Only accounting-related.

6 Q. So you're continuing to study accounting?

7 A. Yes, sir.

8 Q. Okay. Are you going for a Ph.D. or --

9 A. No, I -- you have to do it for -- to get a

10 CPA.

11 Q. Okay. And have you received -- do you have

12 a CPA?

13 A. No.

14 Q. What's the stages in getting a CPA?

15 A. I can sit for the CPA, but I have to have a
16 certain number of hours before -- accounting
17 experience before I can actually get my license.

18 Q. Okay. And how far along in that process
19 are you?

20 A. Getting pretty close.

21 Q. Okay. So have you scheduled to take the
22 exam?

23 A. I have not. I filled out the application.

24 Q. The -- where have you -- did you work at
25 all when you were at the College of Charleston?

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1 Q. Please. And when were you Metairie's

2 roommate?

3 A. Undergraduate, 2002 and -3.

4 Q. And not thereafter?

5 A. Not thereafter.

6 Q. Okay. Have you remained friends with

7 Metairie thereafter?

8 A. Yes, I have.

9 Q. Up until today?

10 A. Yes.

11 Q. Since you got your -- what month did you
12 get your master's in 2005?

13 A. August.

14 Q. August. And since you got your master's,
15 have you become employed?

16 A. Yes. I worked for PriceWaterhouseCoopers
17 until June of this year.

18 Q. June of last year?

19 A. This -- yeah, last year.

20 Q. And so when did you start with
21 PriceWaterhouseCoopers?

22 A. 2005.

23 Q. Immediately upon graduating in August?

24 A. In -- September 1st.

25 Q. And what position did you take?

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1 A. I did not work at College of Charleston.

2 Q. Okay. And is that true through your
3 master's degree?

4 A. Between my undergraduate and graduate, I
5 had an internship with PriceWaterhouseCoopers.

6 Q. And where was that?

7 A. In Spartanburg, South Carolina.

8 Q. And what was involved in the internship?

9 A. Audit work.

10 Q. So that would have been in 2003?

11 A. 2004.

12 Q. And then while you were -- how long did it
13 take to get a master's degree?

14 A. Just one year.

15 Q. Okay. And were you working while you were
16 studying for your master's?

17 A. I was not.

18 Q. Okay. The -- we learned from your father
19 this morning that -- I'm sorry. I forget Metairie's
20 last name -- you're Metairie's former roommate?

21 A. Yes, I am.

22 Q. And what is Metairie's last name?

23 A. Please.

24 Q. What?

25 A. Please.

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1 A. Audit associate.

2 Q. And what were your job responsibilities?

3 A. Handling client relationships, performing
4 audits of all types of nature.

5 Q. Were you focused in any particular industry
6 or business?

7 A. Manufacturing.

8 Q. And were you an audit associate throughout
9 your tenure at PriceWaterhouseCoopers?

10 A. I was.

11 Q. Okay. And you -- you left in June of 2007?

12 A. Yes.

13 Q. And did you take another position in June
14 of 2007?

15 A. I started July 1st with Dixon Hughes.

16 Q. And what is Dixon Hughes?

17 A. It is a regional accounting firm.

18 Q. And is that in Charlotte, North Carolina?

19 A. Yes, sir.

20 Q. And what position did you take in July
21 of 2007 with Dixon Hughes?

22 A. Audit associate.

23 Q. And do you focus on any type of business or
24 industry?

25 A. Manufacturing and non-profit.

1 Q. And do you remain an audit associate today?
 2 A. I do.
 3 Q. Does PriceWaterhouseCoopers have its
 4 employees sign arbitration agreements when they
 5 become employed?
 6 A. Not to my knowledge, no.
 7 Q. Do you know if you signed an arbitration
 8 agreement with PriceWaterhouseCoopers?
 9 A. Not that I'm aware of, no.
 10 Q. Same question for Dixon Hughes; do they
 11 have you sign an arbitration agreement?
 12 A. No.
 13 Q. Your father told us this morning you were
 14 introduced to the lawyers that are now representing
 15 you through your friend, Melanie.
 16 A. That is correct.
 17 Q. Do you recall when you first talked to
 18 Melanie about this case?
 19 A. I do not remember.
 20 Q. Do you know how long it was in advance of
 21 the case being filed?
 22 A. I do not know.
 23 Q. In your discussions with Melanie prior to
 24 your retaining counsel, did the subject of your
 25 having signed an arbitration agreement with Century

1 Q. Prior to owning that - driving that
 2 vehicle, had you ever been present when anyone
 3 purchased a car from a car dealership?
 4 A. No.
 5 Q. After the Ford Ranger, what was the next
 6 vehicle you were the primary driver of?
 7 A. Toyota Celica.
 8 Q. And how many years later was that?
 9 A. One year.
 10 Q. And did your family own that car before you
 11 became the primary driver?
 12 A. No.
 13 Q. Was it purchased for you?
 14 A. Yes.
 15 Q. Was it a new or used vehicle?
 16 A. Used.
 17 Q. Used. Who paid for it?
 18 A. My parents, Mike and Phyllis Watts.
 19 Q. Were you involved in choosing it?
 20 A. Yes.
 21 Q. Was it purchased at a car dealership?
 22 A. Yes.
 23 Q. Do you remember which one?
 24 A. No.
 25 Q. Were you present when the car was

1 BMW come up?
 2 A. No.
 3 Q. In your conversations with anyone other
 4 than counsel and their staff prior to your - the
 5 lawsuit being filed, did you discuss the fact that
 6 you had signed an arbitration agreement with Century
 7 BMW?
 8 A. No.
 9 Q. How many vehicles have you been the primary
 10 driver of in your life?
 11 A. Four.
 12 Q. And what was the first one?
 13 A. Ford Ranger.
 14 Q. And when did you become the primary driver
 15 of that vehicle?
 16 A. When I was 15.
 17 Q. So that would be what, approximately what
 18 year?
 19 A. '85.
 20 Q. And did your family own that vehicle before
 21 you became the primary driver of it?
 22 A. Yes.
 23 Q. Okay. Were you present when the vehicle
 24 was purchased?
 25 A. No.

1 purchased?
 2 A. No.
 3 Q. Did your - who was - who was primarily
 4 involved in the back and forth with the dealership
 5 on the purchase?
 6 A. My father, Mike Watts.
 7 Q. And did he negotiate the price of the
 8 vehicle?
 9 A. I have no idea.
 10 Q. Okay. So you weren't there at all.
 11 A. No, sir.
 12 Q. Okay. What was the next vehicle that you
 13 became the -
 14 A. Ford Mustang.
 15 Q. And when was that?
 16 A. A year after the Celica.
 17 Q. So now you're 17?
 18 A. Uh-huh.
 19 Q. Okay. And did you own that - was that
 20 vehicle owned by your family prior to you becoming
 21 primary driver?
 22 A. No.
 23 Q. What happened to the Celica?
 24 A. I just didn't like it.
 25 Q. Okay. So it was - so the Ford Mustang was

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1 purchased from a car dealership?
 2 A. Yes.
 3 Q. And were you present when it was purchased?
 4 A. Yes.
 5 Q. And did you take part in any negotiations?
 6 A. No.
 7 Q. Did your father?
 8 A. Yes.
 9 Q. And did he -- were you present when he
 10 negotiated the price of the vehicle?
 11 A. Yes.
 12 Q. Okay. How long -- how long did that take,
 13 if you recall?
 14 A. I don't remember.
 15 Q. Were you a co-owner of any of the vehicles
 16 we've discussed so far --
 17 A. No.
 18 Q. -- the Ranger, the Celica, or the Mustang?
 19 So they were all in your father's name, and
 20 mother's, maybe?
 21 A. Yes.
 22 Q. So I take it you didn't sign any paperwork
 23 associated with those vehicles?
 24 A. No.
 25 Q. How long did you -- were you the primary

Page 20

1 reason?
 2 A. No.
 3 Q. At the time you were in Century BMW buying
 4 the Z-4, did you have an understanding what
 5 arbitration is?
 6 A. No.
 7 Q. So I take it at the time, you didn't have a
 8 view whether it was a good thing or a bad thing.
 9 A. No.
 10 Q. No, I'm -- no, I'm wrong, or no, you didn't
 11 have a view?
 12 A. No, I didn't have a view or -- I didn't
 13 really know what it was, so no, I didn't have a view
 14 of it.
 15 Q. Okay. Up until today, have you ever
 16 participated in arbitration in any capacity, as a
 17 witness or a party or anything like that?
 18 A. No.
 19 Q. So I take it you've had no bad experiences
 20 with arbitration.
 21 A. No.
 22 Q. As I understand it, the Z-4 was a
 23 graduation present of sorts for you.
 24 A. Yes.
 25 Q. And you were the person that primarily did

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1 driver of the Mustang?
 2 A. Three years.
 3 Q. And is that when you got the Montero?
 4 A. Yes.
 5 Q. The -- was the Montero purchased at a car
 6 dealership?
 7 A. No.
 8 Q. Okay. Where was the Montero purchased
 9 from?
 10 A. A family friend.
 11 Q. And who purchased it?
 12 A. Mike Watts.
 13 Q. And what did you do with the Mustang?
 14 A. Sold it.
 15 Q. Just in a private sale?
 16 A. Private sale.
 17 Q. And you were the primary driver of the
 18 Montero up until you got the Z-4?
 19 A. Yes.
 20 Q. Aside from the transaction at Century BMW
 21 when you purchased the Z-4, had you ever signed an
 22 arbitration agreement before?
 23 A. No.
 24 Q. Had you ever before been requested to sign
 25 an arbitration agreement and refused for whatever

Page 21

1 the research in looking for a car before you
 2 purchased it, is that true?
 3 A. That's correct.
 4 Q. Can you describe for us what types of
 5 things you did -- how long did the process of
 6 looking for a car take from beginning to end?
 7 A. Can you rephrase? Like truly looking, or
 8 just kind of researching?
 9 Q. Well, when did you first start researching?
 10 A. Two months beforehand.
 11 Q. And about six months before you had come
 12 into Century BMW and test driven a car?
 13 A. Yes.
 14 Q. Were you looking to buy a car at the time?
 15 A. No, not really.
 16 Q. So was it more in the -- and I don't mean
 17 this disparagingly, but was it more in the nature of
 18 a joyride test drive than as part of a serious
 19 looking for a car?
 20 A. Well, I knew I would eventually, once I
 21 graduated, so I guess it was a joyride.
 22 Q. Okay.
 23 A. Just kind of checking out things.
 24 Q. What type of car did you test drive?
 25 A. 3 Series.

1 Q. And you said you started researching a
2 couple of months before the actual purchase. What
3 did you do to start researching?
4 A. I looked at safety, insurance rates, what I
5 think the taxes would be. That's all.
6 Q. Did you start looking at different types of
7 models and makes of cars?
8 A. I did.
9 Q. And in what way did you do that?
10 A. Internet.
11 Q. And were there any particular sites you
12 looked at at the -- on the Internet?
13 A. Probably Kelley Blue Book. Probably the
14 individual car websites, like manufacturer websites
15 type things.
16 Q. Did you look at all at purchasing a car
17 from a private individual as opposed to a car
18 dealership?
19 A. No.
20 Q. You know from at least your own past
21 experience that one option was you didn't have to go
22 to a car dealership at all, you could just buy it
23 from some individual that was looking to sell their
24 car, is that --
25 A. Yes.

1 Q. How much before you purchased the Z-4 did
2 you actually go into a car dealership to look at
3 cars for the first time during this particular
4 search?
5 A. Maybe a month or two. Maybe a month or
6 two.
7 Q. And do you recall how many different car
8 dealerships you visited in the month or two prior to
9 coming into Century BMW?
10 A. Two.
11 Q. And what were they?
12 A. Ford in Greenville. I don't know --
13 Q. Is that Fairway Ford?
14 A. You might be correct.
15 Q. Over on Laurens Road?
16 A. Yes, sir.
17 Q. Okay. And did you test drive a Mustang
18 there?
19 A. Yes.
20 Q. And was that a new Mustang?
21 A. Yes, it was.
22 Q. And what other dealership did you go into?
23 A. Century BMW.
24 Q. So only one dealership other than Century
25 BMW?

1 A. Yes.
2 Q. Did you visit a Ford dealership in
3 Greenwood?
4 A. Greenwood? Not that I remember.
5 Q. Were you aware of your father visiting
6 another Ford dealership about buying a -- possibly
7 buying a Mustang for you?
8 A. I don't remember.
9 Q. Had you -- prior to coming into the Century
10 BMW, had you talked to any other car dealerships by
11 phone or e-mailed back and forth with them or
12 anything?
13 A. No, I had not.
14 Q. Putting aside the test drive of whatever --
15 do you remember what car you last drove six months
16 before?
17 A. 3 Series.
18 Q. Oh, that's right. I already asked you
19 that. How long before you actually purchased the
20 car at Century BMW did you come into the dealership
21 during your search for a vehicle?
22 A. Can you please rephrase that question?
23 Q. Yes. Your father said that you -- your
24 first visit to Century BMW in connection with your
25 search was not the day you purchased the vehicle, is

1 that right?
2 A. That is correct.
3 Q. Okay. How many days or weeks before you
4 actually purchased the vehicle did you first come
5 into Century BMW in connection with this search?
6 A. Can I just -- are you saying when I went
7 and test drove the one that I bought, how long
8 before I went in and purchased?
9 Q. Yes.
10 A. Three or four days.
11 Q. And on your first visit to the dealership,
12 did you go alone, or were you accompanied by anyone?
13 A. My father was with me, Mike Watts.
14 Q. And anyone else?
15 A. No.
16 Q. And when you got to the dealership, did you
17 know what car you wanted -- were interested in when
18 you first got there, or did you look around and
19 compare the various vehicles?
20 A. When I test drove or when I bought?
21 Q. When you came in three or four days before
22 you bought.
23 A. I was just looking around.
24 Q. Okay. And did you and your father look
25 around on your own, or were you accompanied by

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1 anyone from the dealership, or a little of both?
2 A I don't -- I really don't remember.
3 Q Okay. Do you remember at all having any
4 interactions with a salesperson that day?
5 A No, I don't remember.
6 Q Okay. Did you -- have you heard of a woman
7 called Elizabeth Courtney?
8 A Yes.
9 Q And who is Elizabeth Courtney?
10 A She's the one we actually -- the day we
11 purchased it, we talked to.
12 Q Okay. Do you recall whether you had any
13 conversations with her on the -- when you visited
14 three or four days before you purchased it?
15 A I think we did, yes.
16 Q Okay. And what, if anything, do you recall
17 about your conversations with her three or four days
18 before you purchased the car?
19 A I don't remember.
20 Q Who primarily interacted with her in that
21 visit, was it you or your father?
22 A My father.
23 Q And did you overhear whatever they were
24 saying, or were you off looking at cars while they
25 were talking?

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1 A I was looking at cars.
2 Q Did you test drive one or more vehicles
3 during that visit?
4 A I test drove the vehicle I bought.
5 Q Okay. So -- and no other?
6 A No other.
7 Q When you test drove the vehicle, was anyone
8 with you in the car?
9 A My father.
10 Q Was the salesperson in the car?
11 A It's a two-seater, so no.
12 Q Did your father test drive the car?
13 A I don't remember.
14 Q Do you recall one way or the other whether
15 there was any pricing information about the vehicle
16 on the vehicle?
17 A Yes.
18 Q And what do you recall about that?
19 A I remember it was around 31 -- about
20 32,000.
21 Q And how was that displayed? Was that
22 displayed somewhere on or in the vehicle?
23 A It was 34. Sorry. Yes, it had a big
24 sticker.
25 Q Okay. And your recollection is the number

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1 34,000-something was on there?
2 A Something like that.
3 Q Was it also written in the windshield or
4 anything like that?
5 A Not that I remember.
6 Q While you were at the dealership that day,
7 did you have any discussions with Ms. Courtney or
8 any other Century BMW employees about how much you
9 could buy the vehicle for?
10 A No. That was later on the telephone.
11 Q Okay. Did you understand when you were in
12 the dealership that the price was negotiable?
13 A Yes.
14 Q So you knew whatever that 34 figure was was
15 not a take-it-or-leave-it number?
16 A Yes.
17 Q Do you recall any discussions you had with
18 anyone from Century BMW during that visit that day?
19 A No, I do not.
20 Q Okay. Do you know whether your father had
21 any such discussions about pricing that day?
22 A I do not know.
23 Q And you left the dealership that day
24 without purchasing the car, right?
25 A That is correct.

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1 Q Why?
2 A We wanted to -- I needed to look at my
3 budget and talk to our -- the finance people that we
4 work with and see what rate I could get and how much
5 I could get from them for the loan.
6 Q Were you aware that Century BMW would
7 normally offer you financing for a purchase of a
8 vehicle there?
9 A Yes.
10 Q But you knew you didn't have to take
11 Century BMW's financing if you didn't want to, is
12 that fair?
13 A That is correct.
14 Q So you understood it wasn't a requirement
15 buying a vehicle at Century BMW that you enter into
16 a financing agreement with them.
17 A That is correct.
18 Q Did you ever ask, at any time, anyone from
19 Century BMW whether they could give you a better
20 rate than you were getting from your credit union?
21 A No.
22 Q You said you -- did you always intend to
23 finance with the credit union from the moment you
24 got to the dealership?
25 A That is correct.

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1 Q. Did you personally have any discussions
2 with the credit union about the terms of financing,
3 or did your father do that?
4 A. That would be my father.
5 Q. And was that done by phone?
6 A. That is correct.
7 Q. Were you present?
8 A. No, I was not.
9 Q. Did you sign any paperwork with the credit
10 union before coming back to Century BMW?
11 A. I did not. No.
12 Q. Do you know if your father did?
13 A. I have no idea.
14 Q. Did you visit the credit union in person
15 before coming back to Century BMW?
16 A. No, I did not.
17 Q. Do you know if your father did?
18 A. I have no idea.
19 Q. Okay. Before you came back to Century BMW,
20 had you already agreed on a bottom-line price for
21 the vehicle with Century BMW?
22 A. Yes.
23 Q. And how did that occur?
24 A. Via telephone.
25 Q. Okay. And who was it that dealt with

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1 Century BMW by telephone?
2 A. My father, Mike Watts.
3 Q. And who -- who initiated the telephone
4 calls; did your father call them first?
5 A. That is correct.
6 Q. And had you had a -- prior to your father
7 calling Century BMW, had you discussed with your
8 father what your goal was in terms of a price for
9 the vehicle?
10 A. Yes.
11 Q. And do you recall what your goal was?
12 A. \$1,000.
13 Q. \$1,000?
14 A. That's correct.
15 Q. And was that after all taxes and whatever
16 else, or was it --
17 A. That's correct.
18 Q. Had you discussed with your father what
19 your worst-case scenario was so far as the cost of
20 the vehicle?
21 A. Yes, I did.
22 Q. And was that different than what your goal
23 was?
24 A. That is correct.
25 Q. Okay. And what was -- do you recall what

Page 32

1 your bottom-line break point was?
2 A. \$2,000, and it had to include the
3 maintenance warranty.
4 Q. Did you know one way or the other whether
5 the vehicle was still covered by the BMW warranty
6 that covers a new car?
7 A. I do not remember.
8 Q. The car was a 2004?
9 A. That is correct.
10 Q. And you were buying it in 2005; is that
11 right?
12 A. That's correct.
13 Q. The -- were you present when your father
14 was having telephone calls with someone at Century
15 BMW to discuss pricing?
16 A. Yes, I was.
17 Q. Do you -- was there one call or a number of
18 calls?
19 A. A number of calls.
20 Q. Do you recall how many approximately?
21 A. At least two.
22 Q. Do you know -- do you know one way or the
23 other who he was talking to?
24 A. Elizabeth Courtney.
25 Q. And do you know who made the first offer?

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1 A. My father.
2 Q. And do you remember what it was?
3 A. No, I do not.
4 Q. Do you remember what the dealership's
5 response was?
6 A. No, I do not.
7 Q. Do you remember anything other than what
8 the final agreed figure was?
9 A. No, that's all I remember.
10 Q. Okay. And what was the final agreed
11 figure?
12 A. \$2,000.
13 Q. And do you recall what day that was that --
14 was it the day after you were in the dealership or
15 the day before you came back to the dealership, or
16 can you place in time where it was?
17 A. I don't remember. I know that it was over
18 a weekend, and the credit union was closed, like a
19 Sunday. So there was some lapse of time. I don't
20 remember exactly.
21 Q. And after your father reached an agreement
22 on the price with Ms. Courtney -- do you know if he
23 talked to anyone else in the process?
24 A. On the telephone? Not that -- I do not
25 know.

Pages 30 to 33

1 Q. After he agreed upon the price, did you
2 then return to Century BMW in person?
3 A. That's correct.
4 Q. And did you know if anyone visited the
5 credit union in between those two events?
6 A. I do not know.
7 Q. Okay. Did you bring any paperwork to the
8 credit union from Century BMW?
9 A. I do not know.
10 Q. And what day of the week did you purchase
11 the vehicle, do you recall?
12 A. I do not know.
13 Q. When you went back to Century BMW, did you
14 go back alone or with anyone else?
15 A. With my father and mother.
16 Q. Okay.
17 A. Phyllis and Mike Watts.
18 Q. Okay. And your mother is Phyllis Watts?
19 A. That's correct.
20 Q. So this time, all three of you were
21 present?
22 A. That's correct.
23 Q. And did you all three pretty much stay
24 together during the time you were there?
25 A. No. My mother looked at cars.

1 Q. Okay. So your -- you and your father dealt
2 with the transaction, and your mother --
3 A. That's correct.
4 Q. -- went to see if you could purchase yet
5 another vehicle?
6 A. That is correct.
7 Q. When you -- do you remember who you -- what
8 Century BMW employee you first dealt with on your
9 return visit to the dealership?
10 A. Elizabeth Courtney.
11 Q. Okay. And when you came in, did she come
12 and greet you?
13 A. That's correct.
14 Q. And did you have a discussion with
15 Ms. Courtney?
16 A. That's correct.
17 Q. And what do you recall about that?
18 A. We briefly discussed how excited I was
19 about the car, and that was about -- finished
20 looking at seeing the price, and that was about it.
21 Q. Did -- do you recall whether Ms. Courtney
22 had you sign any document or documents?
23 A. We may have signed the price with her, and
24 then we ended up talking to a different guy for the
25 rest of it.

1 Q. Do you recall that there was a handwritten
2 document that you -- a pre-printed, with numbers
3 written in by hand, that you signed?
4 A. Pre-printed?
5 Q. A pre-printed buyer's order, but whereas
6 the final contract would have all the numbers
7 typewritten, this was a handwritten?
8 A. Can you tell me what -- did it say anything
9 particular other than the price?
10 MR. BLACK: Can you put in front of her the
11 Exhibit 1 that was marked this morning?
12 A. (Viewing documents.) I don't remember
13 signing this.
14 BY MR. BLACK:
15 Q. Okay. Exhibit 1 is a collection of
16 documents. I'll represent to you it's the
17 dealership's file on your transaction.
18 A. Okay.
19 Q. If you turn to the page -- you see there
20 are little numbers that have been printed in the
21 bottom right-hand corner. If you could turn to Page
22 CBM-0000025.
23 A. Oh, what did you say?
24 Q. 25.
25 MR. THOMAS: Have you got an extra copy?

1 MR. BLACK: Yeah. I'm sure the answer is
2 yes. I have one more.
3 MR. THOMAS: That's for my illustrious
4 co-counsel there. Thank you.
5 A. Retail Buyer's Order?
6 BY MR. BLACK:
7 Q. Yes.
8 A. Okay.
9 Q. And you see that the information in all the
10 boxes has been filled out by hand on that form.
11 A. I see that, yes.
12 Q. And it totals out to the price you
13 testified before, about 32,000?
14 A. Yes.
15 Q. And do you know if -- who -- is that your
16 signature at the bottom of the page where it says,
17 co-buyer?
18 A. Yes.
19 Q. And do you recall who gave you this
20 document to sign?
21 A. I do not remember.
22 Q. Did -- was there any further discussion
23 with Ms. Courtney about the terms of the sale, any
24 terms of the sale?
25 A. Not that I remember.

1 Q. Okay. And she then introduced you to
2 another person at the dealership?
3 A. That is correct.
4 Q. And do you recall what his name was?
5 A. Corey, maybe. I know he's the finance --
6 he was the finance guy.
7 Q. And Ms. -- Ms. Courtney, was she always
8 professional in her dealings with you?
9 A. Yes, she was.
10 Q. Always nice?
11 A. Very much so.
12 Q. Didn't put any undue pressure on you?
13 A. No.
14 Q. The same for Corey?
15 A. He was -- what do you mean?
16 Q. Did he -- was he a nice person to you,
17 behaved professionally?
18 A. He did.
19 Q. Okay. Did he -- didn't put any undue
20 pressure on you?
21 A. About the warranty a little bit, yes.
22 Q. Okay. So he tried to sell you a warranty?
23 A. That's correct.
24 Q. Okay. We'll get to that. The -- and what
25 did you understand Corey's position was at the

1 Q. Is that a yes?
2 A. That's -- yes.
3 Q. And your father's signature appears at the
4 bottom of that page in the right?
5 A. That's correct.
6 Q. And do you recall Corey going through this
7 menu with you, trying to sell you the various
8 products listed?
9 A. Yes.
10 Q. And how long did that process take, if you
11 recall?
12 A. Maybe 30 minutes.
13 Q. Okay. And that's 30 minutes of him trying
14 to sell you products as opposed to 30 minutes being
15 in the office altogether?
16 A. I think so.
17 Q. Okay.
18 A. Yes.
19 Q. And were you eager to get out of the
20 office?
21 A. Yes.
22 Q. You wanted to go drive your car?
23 A. That's correct.
24 Q. The -- notwithstanding whatever aggressive
25 sales techniques Corey used, you declined to buy any

1 dealership?
2 A. I didn't understand his position.
3 Q. Okay. Where did you meet with Corey?
4 A. In his office.
5 Q. And was that in a little cubicle-like
6 office off the dealer showroom?
7 A. That's correct.
8 Q. And who was present?
9 A. Him, me, and my father.
10 Q. And as between you and your father, who did
11 most of the talking with Corey?
12 A. My father.
13 Q. Okay. Did you do any talking?
14 A. No.
15 Q. The -- I think you told us Corey tried to
16 sell you a warranty.
17 A. That's correct.
18 Q. And did he also try to sell you a number of
19 other products?
20 A. Yes, that's correct.
21 Q. And let me ask you to turn to Page CBM,
22 five zeros, and then a 2, so the second page of the
23 document. Do you see that's a document entitled
24 Century BMW Menu of Investment Enhancements?
25 A. Uh-huh.

1 of these agreements; is that fair?
2 A. That is not correct. We did buy one of the
3 maintenance agreements.
4 Q. Did you buy it while you were buying the
5 car?
6 A. Yes.
7 Q. Okay. So if your father testified that you
8 didn't buy it until the car was approaching
9 50,000 miles, would he be incorrect?
10 A. No, that was correct. It was included --
11 I'm sorry -- in the initial -- we upgraded it after
12 50,000 miles.
13 Q. Okay. Do you remember when that was?
14 A. April, May of this year.
15 Q. Okay. So about eight months after you sued
16 the dealership?
17 A. That's correct.
18 Q. And you bought it --
19 A. I guess.
20 Q. And you bought it from the dealership?
21 A. That's correct.
22 Q. And the warranty you're referring to, if
23 you turn to the next page, the third page of the
24 document, do you see that it indicates that it's
25 still under the factory warranty?

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1 A. Yes.
 2 Q. So it was when that -- when the factory
 3 warranty was about to expire is when you, what you
 4 said, upgraded to the extended service plan.
 5 A. That's correct.
 6 Q. Okay. But at the time you were in the
 7 dealership after hearing the 30-minute pitch from
 8 Corey, you declined to purchase any of the things he
 9 tried to sell you, is that right?
 10 A. That's correct.
 11 Q. So you knew that it wasn't a requirement of
 12 buying the vehicle at Century BMW that you enter
 13 into any of these agreements?
 14 A. That's correct.
 15 Q. Okay. And none of them were offered on a
 16 take-it-or-leave-it basis, that you can't get the
 17 car unless you get this.
 18 A. That's correct.
 19 Q. Once Corey got done trying to sell you
 20 investment enhancements, what was the next thing
 21 that happened? Was that the first thing you did
 22 when you came back to the -- his office?
 23 A. He did that while we were signing our
 24 papers.
 25 Q. Okay. So he did what while you were

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1 Q. It takes you 30 seconds to sign your name?
 2 A. Sometimes.
 3 Q. So if you spent ten minutes signing your
 4 name and it took you 30 seconds a time, you must
 5 have signed your name about 20 times.
 6 A. That may be correct.
 7 Q. What?
 8 A. That could be correct.
 9 Q. Okay. And if it was 15 minutes, then it
 10 could be about -- it could be, if it took you 30
 11 seconds a time, 30 times you signed your name.
 12 A. That could be correct.
 13 Q. Okay. Did you -- I forget what you
 14 answered. Did you review the documents you were
 15 being asked to sign?
 16 A. Nothing but the price.
 17 Q. Okay. Did Mr. -- did Corey do anything to
 18 prevent you from reviewing the documents?
 19 A. No.
 20 MR. BLACK: I'm going to take a break.
 21 THE WITNESS: Okay.
 22 (A recess transpired.)
 23 BY MR. BLACK:
 24 Q. Ms. Watts, could you get Exhibit 1 back in
 25 front of you. And could I ask you to thumb through

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1 signing your papers?
 2 A. Was selling us the warranties while we were
 3 signing all our documents.
 4 Q. Okay. How many documents do you recall
 5 signing?
 6 A. I have no idea.
 7 Q. More than 30?
 8 A. I have -- I do not remember.
 9 Q. 20?
 10 A. I have no idea.
 11 Q. How long did it take to sign -- sign your
 12 names as many times as you signed it?
 13 A. Me? Probably ten minutes.
 14 Q. Ten minutes, so you were --
 15 A. Ten, 15 minutes.
 16 Q. So it's your testimony for ten or 15
 17 minutes, you were signing your name over and over
 18 again to documents?
 19 A. That's correct.
 20 Q. And were you reading the documents as you
 21 signed them?
 22 A. No.
 23 Q. How long does it take you to sign your
 24 name?
 25 A. Maybe half a minute.

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1 the entire exhibit and identify for me each of the
 2 pages in the exhibit in which your signature
 3 appears?
 4 A. Would you like me to do it along and along,
 5 or --
 6 Q. Yeah. How about, what's the first page on
 7 which your signature appears?
 8 A. Number 1.
 9 Q. Okay. What's the next page on which your
 10 signature appears?
 11 A. 5.
 12 Q. Okay. What's the next page on which your
 13 signature appears?
 14 A. 14.
 15 Q. Okay. We're up to three. What's the next
 16 page on which your signature appears?
 17 A. Technically, 21.
 18 Q. 21 is --
 19 A. That's my driver's license.
 20 Q. -- was your driver's license. You didn't
 21 sign that at the dealership, right?
 22 A. No.
 23 Q. Okay. So why don't we ignore 21. And what
 24 is the next page on which your signature appears?
 25 A. 25.

1 Q. We're up to four. And what's the next page
2 after 25 on which your signature appears?
3 A. 31.
4 Q. And the next page? We're up to five.
5 A. 42.
6 Q. Up to six. Is there any other page on
7 which your signature appears?
8 A. No.
9 Q. So if these are the documents from the
10 transaction file, you signed your name six times?
11 A. Some of them I signed more than once.
12 Q. Okay. So six - how many - did you count
13 how many you signed more than once?
14 A. No, I did not.
15 Q. Okay. So you signed six separate
16 documents.
17 A. Uh-huh.
18 Q. Okay. Did you object to signing any of the
19 documents that you were given to sign while you were
20 in the dealership?
21 A. Of course not. I just wanted the car.
22 so -
23 Q. Okay. But you - whether or not you wanted
24 the car, did you voice any objection to signing any
25 of the documents you were given?

1 A. No.
2 Q. Okay. Did you ask any questions about any
3 of the documents you were given?
4 A. No.
5 Q. Did you voice any complaints about any of
6 the documents you were given?
7 A. No.
8 Q. Am I correct that the - as you were
9 thumbing through the documents you signed, one of
10 them was an arbitration agreement?
11 A. That's correct.
12 Q. And am I correct that to your recollection,
13 nothing at all was said orally about that
14 arbitration agreement in the office with Corey?
15 A. That is correct.
16 Q. Okay. So no one said to you that you were
17 required to sign that document in order to get the
18 vehicle, is that fair to say?
19 A. That's correct.
20 MR. BLACK: That's all I have.
21 MR. THOMAS: Can we take a quick break?
22 (A recess transpired.)
23 EXAMINATION
24 BY MR. SPEARS
25 Q. Christine, I'm Mike Spears. When is the

1 first time you and I have met?
2 A. Today, before I got here.
3 Q. Okay. Did we talk about the case at all
4 that you recall?
5 A. No.
6 Q. Okay. Let me show you a copy of
7 Plaintiff's (sic) Exhibit 1, which is allegedly the
8 dealer's file with the documents from your
9 transaction. Do you remember which documents were
10 gone over during your deposition by Mr. Black when
11 he asked you which documents you signed and what was
12 told to you about it? I'm not asking you every
13 document you signed. But he asked you which
14 documents you thought you had to sign.
15 MR. BLACK: Objection. I didn't ask that.
16 MR. SPEARS: Okay.
17 BY MR. SPEARS:
18 Q. Which documents do you - you certainly
19 signed the document of CBM-5; did you not?
20 A. That is correct.
21 Q. Okay. As we sit here today, do you know
22 what it is?
23 A. No.
24 Q. Do you - did you know what it was when you
25 bought the car?

1 A. No.
2 Q. Okay. Why did you sign it?
3 A. I thought I had to to get the car.
4 Q. Okay. Do you publish your personal
5 information on Facebook on the internet?
6 A. On Facebook? No, I do not.
7 Q. Okay. Are you in the habit of giving out
8 personal information on write-ups to anybody?
9 A. No.
10 Q. Have you ever been contacted by anyone not
11 to do that for whatever reason?
12 A. Yes, I have.
13 Q. Okay. Look at CBM-1. Did you sign that?
14 A. Yes.
15 Q. Okay. Did you know what it was when you
16 signed it?
17 A. No.
18 Q. Okay. Did you realize by signing CBM-1,
19 that you were being given notice to tell you how
20 they were going to use your non-public - personal
21 information about you, and that they could release
22 it to market service providers amongst affiliates of
23 BMW Carlux - and to other third parties, we may
24 share all private information about you as a
25 consumer, customer, or former customer with other

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1 non-affiliated parties as permitted by law. Did you
2 see that?
3 A. No, I did not. I did not read it.
4 Q. Okay. Did you know you were doing that
5 when you signed it?
6 A. No, I did not.
7 Q. Okay. Is it your habit to release personal
8 information to anyone?
9 A. Not usually.
10 Q. Okay. Let's go to Number 14. Okay? Was
11 CBM-14 passed to you?
12 A. I'm sure that it was in the packet.
13 Q. Okay. Is that your signature?
14 A. That is correct.
15 Q. Did you know what you were signing?
16 A. No, I did not.
17 Q. Why did you sign it?
18 A. I thought I had to to buy the car.
19 Q. Okay. In what way was any implication
20 given or any word left with you that it was a
21 document necessary for you to buy the car?
22 MR. BLACK: Object to the form of the
23 question.
24 BY MR. SPEARS:
25 Q. Go ahead.

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1 A. Can you please repeat it?
2 Q. Certainly. Why did you think you had to
3 sign any or all of these documents in order to get
4 the car?
5 A. The way it was presented, I just thought I
6 had to sign everything.
7 Q. Okay. Now, were you in a small title
8 cubicle with Corey and your dad and yourself?
9 A. That is correct.
10 Q. All right. Was there a machine in there
11 that printed out these documents, and one by one
12 they were passed across the table to you?
13 A. I just remember a big packet.
14 Q. A big packet. Okay. Were the documents
15 removed from the packet by someone in the room, or
16 were they just clipped together like we kind of have
17 them clipped together right now?
18 A. That is how I remember it.
19 Q. Okay. What were you told about the packet?
20 Was it passed to you?
21 A. It was passed to me.
22 Q. Okay. And were you merely to look at it,
23 or were you told to do anything with the packet?
24 A. To basically sign. They had the title
25 flags.

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1 Q. All right. That's my point. How did you
2 know which pages to turn to to sign them?
3 A. Flags.
4 Q. I've got a title sticky, a title red
5 sticky, on this particular page. Were there title
6 flags similar to this?
7 A. That is correct.
8 Q. And were you told that you needed to sign
9 on every page with the flags?
10 A. Yes.
11 Q. Did you turn to that page and sign it?
12 A. That is correct.
13 Q. Did you read it before you signed it?
14 A. No.
15 Q. Okay. And did you know what any or all of
16 those pages meant as you signed them?
17 A. No.
18 Q. Okay. Now, let me ask you if you would
19 look with me at CBM-25. And CBM-25 has a purchase
20 price of what written in hand?
21 A. 32,980.
22 Q. Did you agree to that? Is that what you --
23 was that your breaking -- your break point, 32,980?
24 A. I --
25 MR. BLACK: Object to the form of the

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1 question.
2 BY MR. SPEARS:
3 Q. Go ahead.
4 A. I agreed to 32.
5 Q. Okay. Is that number higher than 32?
6 A. That's correct.
7 Q. Did you in any way agree to pay that
8 number?
9 A. No.
10 Q. Okay. The next says: Additional options.
11 And it has \$1604.50. Now, what can --
12 MR. BLACK: I apologize. What page are you
13 on?
14 MR. SPEARS: CBM-25.
15 BY MR. SPEARS:
16 Q. \$1,604.50. Does that appear, as you look
17 at it, to be a -- is there a minus in front of that?
18 A. No, there's not.
19 Q. Does that -- does that appear -- I mean,
20 you're an accounting master's graduate. Does that
21 appear to be in addition to 32,980, without looking
22 at the numbers below it?
23 A. It appears to be.
24 MR. BLACK: Object to the form of the
25 question.

1 BY MR. SPEARS:
 2 Q. Okay. Does it in any way appear to be
 3 something that's going to be subtracted from that as
 4 an additional option?
 5 A. No, it doesn't.
 6 Q. Okay. Can you buy an option that you're
 7 transfer with from a car company where it will
 8 depreciate the cost of the car?
 9 A. No, I do not.
 10 Q. Okay. Yet does the total number show that
 11 1604.50 has been subtracted from 32,000?
 12 A. That's correct.
 13 Q. Did you know what in the world that's for?
 14 A. No, I do not.
 15 Q. Did you know then?
 16 A. No, I did not.
 17 Q. Okay. Then sales tax is put down in the
 18 amount of what?
 19 A. 300.
 20 Q. And then a transfer of license is put down
 21 in the amount of what?
 22 A. 25.
 23 Q. And then pre-printed on here is a charge,
 24 and what's that for?
 25 A. I have no idea.

1 was.
 2 BY MR. SPEARS:
 3 Q. Okay. If I went through the rest of these
 4 documents where your sig- signature appears on 31
 5 and 42, did you have any idea what you were signing?
 6 A. No, I did not.
 7 Q. Okay. On Page 42, CBM-42, okay, what's the
 8 total price shown there?
 9 A. 32,000.
 10 Q. Okay. Did you know what this is?
 11 A. No, I did not.
 12 Q. Okay. As you read it today, what does it
 13 say?
 14 A. Retail Buyer's Order.
 15 Q. Okay. Do you see anywhere on here - have
 16 you read it, by the way, word for word?
 17 A. No, I have not.
 18 Q. Okay. Have you - do you see or did you
 19 see - well, if you've never read it, you wouldn't
 20 know whether the Retail Buyer's Order references any
 21 other document or not, would you?
 22 MR. THOMAS: Object to the form of the
 23 question.
 24 A. I would not.
 25 BY MR. SPEARS:

1 Q. What does it say?
 2 MR. BLACK: Let me just object that this
 3 has extended beyond what the scope of what the Court
 4 allowed this deposition for. And it's your client,
 5 so you can ask whatever you want, but the -
 6 MR. SPEARS: It's for arbitration. I'm
 7 getting to -
 8 MR. BLACK: I don't think it is for
 9 arbitration, but go on.
 10 BY MR. SPEARS:
 11 Q. What does it say it's for?
 12 A. Recording and processing fees.
 13 Q. Okay. And what did the total end up being?
 14 A. 32,000.
 15 Q. So somehow or another it ended up being
 16 exactly what your break point was?
 17 A. That's correct.
 18 Q. Okay. Did you sign that document?
 19 A. Yes, I did.
 20 Q. Okay. Did you think 1604 was being added
 21 to or subtracted from your car, or did you have any
 22 idea about that number?
 23 A. I didn't have -
 24 MR. BLACK: Object to the form.
 25 A. I didn't have any idea what that number

1 Q. Okay. Okay. Now, you were not required to
 2 sign it in any regard, but do you have any idea what
 3 CBM-45 concerns?
 4 A. Just a checklist.
 5 Q. Okay.
 6 A. Everything we had to sign.
 7 Q. It's a check -
 8 MR. BLACK: Excuse me. Could you - could
 9 you read back that answer?
 10 THE COURT REPORTER: I missed that last
 11 part where he interrupted.
 12 MR. BLACK: Did you get the checklist of -
 13 THE COURT REPORTER: Just a checklist.
 14 MR. BLACK: And did you get what she said
 15 after that?
 16 THE COURT REPORTER: I did not. That's
 17 what I missed.
 18 A. - of everything we had to sign.
 19 BY MR. SPEARS:
 20 Q. Okay. Now, you didn't sign this checklist,
 21 did you?
 22 A. No.
 23 Q. Okay. And have you looked over it since
 24 the time that the lawsuit was brought?
 25 A. Yes.

Page 58

1 Q. Okay. Are there things here that are not
2 checked off with check?
3 A. Yes.
4 Q. Okay. Did you finance the car through BMW?
5 A. No.
6 Q. Okay. Okay. Were you of the opinion you
7 had to buy -- that you had to sign the documents
8 where presented with the tags in order to get the
9 car, or not?
10 MR. BLACK: Object to the form of the
11 question.
12 A. Yes.
13 BY MR. SPEARS:
14 Q. Okay. Any doubt in your mind about that?
15 MR. BLACK: Object to the form of the
16 question.
17 A. No.
18 BY MR. SPEARS:
19 Q. As to that being your opinion at the time?
20 A. There's no doubt in my mind.
21 Q. Okay. And how far in your education
22 process had you gone when you bought this car?
23 A. I had not completed my master's degree.
24 Q. Okay.
25 A. I was within a month or two.

Page 59

1 Q. So would it be fair to say you had a
2 baccalaureate and were at the end of your master's?
3 A. That's correct.
4 Q. Okay. And you had been the primary driver
5 of four previous vehicles?
6 A. That's correct.
7 MR. SPEARS: Okay. Give us a second.
8 (A discussion was had off the record and
9 out of the hearing of the court reporter.)
10 BY MR. SPEARS:
11 Q. Why did you need this car? What were you
12 going to utilize it for?
13 A. Work purposes.
14 Q. Okay. Did you need a way to and from work?
15 A. I did.
16 Q. Was this going to be your primary source of
17 transportation?
18 A. It was.
19 Q. Okay. Did you need the car?
20 A. I needed a car.
21 MR. SPEARS: Okay. That's all I have.
22 EXAMINATION
23 BY MR. BLACK:
24 Q. You were driving a Mitsubishi Montero at
25 the time?

Page 60

1 A. That's correct.
2 Q. It was in fine working order?
3 A. Yes.
4 Q. So you could have continued to drive that
5 car to work; would that be fair to say?
6 A. Yes. It just had a lot of mileage.
7 Q. Okay. You didn't need to buy a convertible
8 BMW Z-4 luxury automobile to get to and from work,
9 fair?
10 A. Fair.
11 Q. Your job is an auditor?
12 A. That's correct.
13 Q. And as an auditor, you spend a lot of time
14 reviewing documents; is that fair to say?
15 A. Yes.
16 Q. And you spend a lot of time with numbers;
17 is that fair to say?
18 A. That's correct.
19 Q. And it's important when you're reviewing
20 documents as an auditor that you do so carefully,
21 right?
22 A. Yes.
23 Q. And you're trained in reviewing documents
24 carefully as an auditor.
25 A. Yes.

Page 61

1 Q. And at the time you purchased this
2 automobile, you were a couple of months from a
3 master's degree in accounting; is that fair?
4 A. That's correct.
5 Q. So you have some facility with numbers; is
6 that fair to say?
7 A. Yes.
8 Q. Okay. Look at CBM-000001, which was one of
9 the documents that Mr. Spears discussed with you.
10 Do you recall that?
11 A. I do.
12 Q. And he read you some language about sharing
13 private information with other third-party
14 affiliates and the like, do you recall that?
15 A. Yes.
16 Q. Would you agree with me that as he read the
17 language, there was nothing unclear about the
18 language?
19 A. That is correct.
20 Q. You understood what the language meant when
21 he read it to you?
22 A. Yes.
23 Q. And had you read it at the dealership on
24 that day, you would have understood it then?
25 A. Yes.

Pages 58 to 61

Page 62

1 Q. A number of the documents in Exhibit 1 were
2 never shown to you while you were at Century BMW,
3 true?

4 A. That's correct.

5 Q. For example, there are documents in the
6 stack that include the commission vouchers for the
7 salesperson?

8 A. That's correct.

9 Q. And so it would not be accurate to say that
10 this stack of documents was presented to you in the
11 F and I office at Century BMW, true?

12 A. That is correct.

13 Q. And, in fact, a stack of documents that
14 actually contained your signature would be a stack
15 six documents high, right?

16 A. That is correct.

17 Q. Let me ask you to turn to Page CBM-0025.
18 Mr. Spears called your attention to the 32,980
19 number at the top. Do you see that?

20 A. Yes.

21 Q. Can you subtract in your head for me
22 1604.50 from 32,980?

23 A. Yes, I can.

24 Q. Does it come to \$31,375.50?

25 A. Yes.

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1 Q. So, in fact, the 1604.50 is being
2 subtracted from the 32,980 on this form, fair?

3 A. That's correct.

4 Q. And the numbers then total out to add up to
5 the bottom-line figure you agreed to, 32,000, right?

6 A. That is correct.

7 Q. Let me ask you to turn to Page 45. Is it
8 fair to say the checklist on Page 45 includes many
9 more documents than you actually signed?

10 A. That is correct.

11 MR. BLACK: I have nothing further
12 EXAMINATION

13 BY MR. SPEARS:

14 Q. Okay. Just to follow up on the questions
15 that you were asked you in reply, on CBM-1, you were
16 asked whether or not if you had read it at the time,
17 you would be able to understand it?

18 A. That's correct.

19 Q. You indicated that you could if you had
20 read it?

21 A. Uh-huh.

22 Q. If you had read it and understood it and
23 knew that you didn't have to sign it in order to get
24 the car, would you have signed it?

25 A. No.

Page 64

1 Q. Okay. If you thought you had to get it --
2 had to sign it in order to get the car, would you
3 have signed it?

4 MR. BLACK: Object to the form of the
5 question.

6 A. Yes.

7 BY MR. SPEARS:

8 Q. Okay. Would the same be true of the other
9 documents you signed?

10 A. That is correct.

11 Q. Okay. Now, out of the packet that was
12 presented to you, were there documents in the packet
13 that your father signed that you did not sign?

14 A. That is correct.

15 Q. But they were in the packet, though?

16 A. That's correct.

17 Q. Okay. Were there documents in the packet
18 that you didn't have to sign at all?

19 A. Yes.

20 Q. Okay. So can we say that the packet itself
21 merely had six documents in them, all requiring your
22 signature, or did it have more than that?

23 A. It had more than that.

24 MR. SPEARS: All right. That's all I have.

25 MR. BLACK: Do you have the transcript up

Page 65

1 on the page?

2 THE COURT REPORTER: Uh-huh. What are
3 you looking for?

4 MR. BLACK: Go on back a few questions.
5 (Viewing transcript on the computer
6 screen.)

7 MR. BLACK: Oh, I remember. I have no
8 questions. Thank you. Can we stipulate that the
9 exhibit is the same as this morning?

10 MR. THOMAS: Yes. Not a problem.
11 (Defendant's Exhibit Number 1, Dealership
12 transaction documents, was previously marked for
13 identification.)

14 (The deposition was concluded at 5:44 p.m.)

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

) AFFIDAVIT OF CHRISTINE
WATTS

PERSONALLY APPEARED before me, Christine Watts, being duly sworn, deposes and

states that:

1. I am a named Plaintiff in this action and am competent to testify to the matters stated herein.
2. On June 25, 2005 I purchased a 2004 BMW from Defendant Sonic Automotive, Inc. d/b/a Camby BMW. A copy of my Retail Buyer's Order is attached as Exhibit A.
3. The 2004 BMW was purchased to be and is my primary source of transportation.
4. I was hastily given other paperwork which the dealership required me to sign. This paperwork included the "Arbitration Agreement" that is attached as Exhibit B.
5. The "Arbitration Agreement" was not discussed or explained to me and was given to me on a "take it or leave it" basis.
6. I did not participate in the drafting of the "Arbitration Agreement" and had no



02028

voice in the formulation of its terms.

7. At the time of my purchase I did not understand the implications of arbitration or possess the experience necessary to make me aware of the implications of arbitration.
8. I did not have a lawyer present to provide me assistance in the execution of the paperwork required to purchase the 2004 BMW.

Further affiant sayeth not.

SWORN TO AND SUBSCRIBED BEFORE ME)

this ____ day of April 3 2007)

Cynthia J. Speed)
Notary Public for the State of South Carolina)
My Commission Expires: 12-5-15)

Christine Watts
Christine Watts

EXHIBIT A

02030

4-2885 15:58 FROM: CENTURY BMW SERVICE 8642975929

TO: 18032275623

P.1

CENTURYBMW CENTURYBMW		RETAIL BUYER'S ORDER	
2730 LAURENS ROAD • GREENVILLE, SC 29607 PHONE (864) 244-6437 www.centurybmw.com • www.centurybmw.net		Name: <u>Michael M Watts or Christine M. Watts</u>	
Date: <u>6-25-05</u> Stock No.: <u>15514</u>		Address: <u>210 Providence Sq, Greenville SC 29615</u>	
Salesperson: <u>Elizabeth Courtney</u>		Employee: <u>864-2707396</u>	
E-mail Address:		Phone: <u>864-2707396</u>	
PURCHASE	☐ NEW ☐ DEMO ☐ FACTORY CAR	Year: <u>04</u> Make: <u>BMW</u> Body Type: <u>24</u>	PRICE: including Taxes, Insurance & Service Charge: <u>32980</u>
	Cylinders: <u>4</u> Serial No.: <u>445BT33554L350759</u> COLOR: <u>Estoril</u> / <u>Interior</u>	Additional Options: <u>\$1,604.50</u>	
	☐ PREMIUM PACKAGE ☐ SPORTS PREMIUM PACKAGE ☐ SPORTS PACKAGE ☐ COLD WEATHER PACKAGE ☐ ACTIVITY PACKAGE ☐ CONVENIENCE PACKAGE ☐ MOON ROOF ☐ LEATHER UPHOLST. ☐ PREMIUM SOUND ☐ IN DASH CD ☐ CD CHANGER ☐ HEATED SEATS ☐ ON BOARD COMPUTER ☐ ALLOY WHEELS ☐ CRUISE CONTROL ☐ ENGINE: <u> </u> ☐ TRANSMISSION: <u> </u> ☐ AUTOMATIC ☐ MANUAL	TOTAL: <u>31,375.50</u>	
	Mileage: <u>15514</u>	Allegiance on Title-In: <u> </u>	
TRADE	Year: <u> </u> Make: <u> </u> Body Type: <u> </u> Series: <u> </u>	Cash Difference: <u> </u>	
	Cylinders: <u> </u> Serial No.: <u> </u> COLOR: <u> </u> / <u> </u>	AC Base Tax: <u>300</u>	
	Mileage: <u> </u> Condition: <u> </u>	Balance Owed on Trade-In: <u> </u>	
	Phone: <u> </u> Contact: <u> </u> Phone: <u> </u> Contact: <u> </u>	Title and License: <u>25</u>	
Effective Date: <u> </u> Effective Date: <u> </u>		Recording & Processing Fee: <u>\$299.50</u>	
Insurance Information: Company Name: <u> </u> Policy # <u> </u> Effective Date: <u> </u>		TOTAL: <u>3,200.00</u>	
Agent: <u> </u> Phone: <u> </u> Driver's License # <u> </u>		Service Agreement: <u> </u>	
Remarks: <u> </u>		Insurance: <u> </u>	
		TOTAL: <u> </u>	
		Cash on Delivery: <u> </u>	
		BALANCE DUE: <u> </u>	
READ CAREFULLY: Century BMW / Century Mini agrees to sell and the Buyer(s) agree to purchase the vehicle as above described at the price set forth. The Buyer shall remit full payment of the entire balance due on or before <u> </u> . This Buyer's Order constitutes the entire agreement between the parties and may not be changed except by an instrument in writing signed by the party to be changed.			
Buyer: <u> </u> Co-Buyer: <u> </u>		CENTURYBMW CENTURYBMW Made as authorized by an officer of the Company	

☐ USED CAR CONTRACTUAL DISCLOSURE STATEMENT: The information you see on the window form (Buyer's Guide) for this vehicle is part of the contract. Information on the window form overrides any contrary provisions in the contract of sale.

NEW VEHICLEPurchaser's Signature:

DISCLAIMER OF WARRANTIES: - I have read, understood and accept all provisions of the Manufacturer's Warranty Statement covering this new vehicle that I am purchasing. Furthermore, I understand that all warranties on this vehicle are those of the manufacturer. The seller, Century BMW / Century Mini, hereby expressly disclaims all warranties, either expressed or implied, including any implied warranty of merchantability or fitness for a particular purpose and Century BMW / Century Mini, neither assumes nor authorizes any dealer to assume for it any liability in connection with the sale of this vehicle. This disclaimer in no way affects the provisions of the manufacturer's warranty.

Purchaser's Signature:

This agreement between the undersigned buyer(s) and dealer is incorporated by reference into and is made a part of any separate cash installment or credit sale agreement between the undersigned buyer(s) and dealer ("Retail Financing Agreement"). Notwithstanding anything to the contrary in any other document, if there is a Retail Financing Agreement (as defined herein) and the undersigned buyer(s) agree that the transaction evidenced by this agreement and the Retail Financing Agreement is contingent upon credit approval by, and assignment of the Retail Financing Agreement to, a third-party financial institution, if the Retail Financing Agreement is not accepted by a third-party financial institution, you shall immediately return the vehicle referred to in this agreement, and the entire transaction evidenced by this agreement and the Retail Financing Agreement and this agreement shall be null and void.

Signed: (Buyer) Signed: (Dealer)
 Signed: (Buyer)

02031

EXHIBIT B

02032

ARBITRATION AGREEMENT
(All States Except CA)

DATE: 6.25.05

VIN: 4USGT33546597259

In this Arbitration Agreement ("Agreement"), "you" and "your" refers to the customer(s) who sign(s) below. "We", "us", and Dealer refer to the Dealer signing below, and includes the Dealer's employees, agents, and parent and affiliated companies (including, but not limited to, Chevrolet Acceptance Corporation) and their employees and agents. "Parties" refers to you and us. "Vehicle" refers to the automobile identified by the VIN set forth above. "Claim(s)" includes any and all disputes, claims or controversies between the Parties relating to this Vehicle or arising out of or relating to: (a) the application for and the terms of and enforceability of the sale, lease, or financing of the Vehicle, (b) the purchase or terms of any warranty, service agreement, maintenance plan, paint/undercoating/interior protection product, anti-theft locking product and warranty, GAP protection, deficiency waiver addendum, or any or other product or insurance, (c) any claims of breach of contract, negligence, misrepresentation, conversion, fraud, or unfair and deceptive trade practices, (d) any claim of a violation of any state or federal statute or regulation, or (e) the Vehicle's condition, warranty, workmanship, servicing, maintenance or repair. All Claims must be brought within the time allowed by the applicable statute(s) of limitation. "Contract(s)" refers to any agreement(s) between you and us regarding the sale, lease, financing, service or maintenance of the Vehicle.

Upon the request of a Party, any and all Claim(s) shall be decided in binding arbitration before the American Arbitration Association (1-800-778-7879/www.aaa.org) ("AAA"). The Parties may mutually agree to use another arbitration forum and/or qualified arbitrator. Unless mutually agreed otherwise between the Parties, any arbitration under this Agreement shall be conducted under the commercial arbitration rules of the AAA. To the extent that any Claim is deemed a "consumer dispute", the Parties agree that the fee schedule provided in the rules for consumer disputes of the AAA, if any, will apply. You can get a copy of the rules from the AAA. The arbitration hearing shall be conducted, at your option, in the federal district in which you reside or in which the Vehicle was purchased or leased.

The Parties waive the right to request arbitration for a Claim filed and maintained individually (as opposed to a class action) in your state's small claims court, if any. However, if such a Claim originally brought in small claims court is transferred or removed to a higher state or federal trial court, the Parties reserve their right to request arbitration under this Agreement.

The Parties agree that once one of the Parties has elected to arbitrate, binding arbitration is the exclusive method for resolving any and all Claims. By entering into this Agreement the Parties are waiving their right to a jury trial and their right to bring or participate in any class action or anti-plaintiff or classmate action in court or through arbitration. Until a Party decides to do so requests arbitration under this Agreement, any party to this Agreement may proceed with all other rights and remedies they may have. Neither you nor we waive our right to request arbitration under this Agreement, even after all Parties have elected to litigate a Claim in court, in the event new Claims are asserted after the initial filing of such litigation in court.

The arbitrator shall be an attorney or retired judge. The arbitrator shall apply and be bound by governing local, state or federal law when making an award, and shall award only those damages or other relief allowed by such governing law. Issues regarding whether a matter is arbitrable shall be made by the arbitrator. The arbitrator shall prepare a written decision setting reasoned findings of fact and conclusions of law. A party may seek entry of a judgment on the award in any court of competent jurisdiction.

If you initiate a Claim for Arbitration under this Agreement, we agree to pay that portion of the AAA's initial filing fee which exceeds the lower of the court filing fee for the state or federal court located in the jurisdiction in which you reside. If we initiate a Claim for arbitration we will pay the entire initial filing fee. We also agree to pay up to \$1500 of the arbitrator's fees, unless applicable law or the rules of the AAA require otherwise. Unless applicable law or the rules of the AAA require otherwise, the Parties agree to share equally all other costs and fees, including the arbitrator's fees in excess of \$1500. Notwithstanding any other provision of this Agreement, we will also pay any amount of fees or costs that a court or the arbitrator decides we must pay in accordance with applicable law for this Agreement to be enforceable. The arbitrator deciding the Claim(s) shall have the authority to award fees, costs, injunctive or equitable relief in accordance with this Agreement and applicable law. Unless otherwise ordered by the arbitrator in accordance with applicable law or provided otherwise by applicable law, the Parties shall be responsible for the payment of their own attorney's fees.

This Agreement evidences a transaction involving interstate commerce. The Parties acknowledge and agree that the Federal Arbitration Act (9 U.S.C. § 1 et seq.) ("FAA") shall govern any arbitration under this Agreement. The arbitrator's decision shall be final and binding, except for any right of appeal provided by the FAA or the rules of the AAA.

If any part of this Agreement shall be deemed or found unenforceable for any reason, the remainder of the Agreement shall remain enforceable. In the event this Agreement is found void you and we waive our respective rights to a trial by jury, if such waiver is permitted by applicable law.

This Agreement shall survive the repayment of all amounts owed by you with respect to the Vehicle. This Agreement is incorporated into and made a part of all Contract(s) as defined in this Agreement. If there is a separate arbitration agreement in any other Contract, then to the extent this Agreement is inconsistent with any such arbitration agreement this Agreement shall supersede such other arbitration agreement with respect to Claims between you and us, unless otherwise provided by law.

- EITHER YOU OR WE MAY CHOOSE TO HAVE ANY DISPUTE BETWEEN US DECIDED BY ARBITRATION AND NOT IN COURT.
- IF A DISPUTE IS ARBITRATED, YOU AND WE WILL EACH GIVE UP OUR RIGHT TO A TRIAL BY THE COURT OR BY A JURY.
- IF A DISPUTE IS ARBITRATED, YOU WILL GIVE UP YOUR RIGHT TO PARTICIPATE AS A CLASS REPRESENTATIVE OR A CLASS MEMBER ON ANY CLASS CLAIM YOU MAY HAVE AGAINST US, INCLUDING ANY RIGHT TO CLASS ARBITRATION OR ANY CONSOLIDATION OF INDIVIDUAL ARBITRATIONS.
- THE INFORMATION YOU AND WE MAY OBTAIN IN DISCOVERY FROM EACH OTHER IN ARBITRATION IS GENERALLY MORE LIMITED THAN IN A LAWSUIT.
- OTHER RIGHTS THAT YOU AND WE WOULD HAVE IN COURT MAY NOT BE AVAILABLE IN ARBITRATION.
- YOUR AND OUR RIGHTS TO APPEAL OR CHANGE AN ARBITRATION AWARD IN COURT ARE VERY LIMITED.

BY SIGNING BELOW, THE PARTIES ACKNOWLEDGE THAT THEY HAVE READ AND AGREE TO THE TERMS OF THIS ARBITRATION AGREEMENT

Customer:

Dealer:

Customer:

By:

02033

1 PLAINTIFFS, AND IN CONNECTION WITH THE FOUR CORNERS OF THE
2 COMPLAINT ARGUMENT AND AS YOU CONSIDER A MOTION TO
3 DISMISS, THEY'VE GOT NO NAME PLAINTIFFS IN THIS CASE
4 AGAINST A SUBSTANTIAL NUMBER OF DEFENDANTS THAT ARE IN
5 HERE. THERE'S BEEN NO MOTION TO AMEND THAT I'VE HEARD
6 TODAY OR THAT I'VE RECEIVED TO ADD PARTY PLAINTIFFS. THIS
7 CASE IS GOING ON FIVE MONTHS OLD AT THIS STAGE. THERE HAS
8 BEEN NO MOTION FOR CLASS CERTIFICATION. Y'ALL BATTED THAT
9 AROUND IN THE DEBATES ALREADY TODAY.

10 THE COURT: WELL, THEY SAY THAT THIS IS NOT A CLASS
11 ACTION. SO, THEY HAVEN'T MOVED TO CERTIFY IT.

12 MR. NESS: RIGHT. SO, AND THERE'S BEEN NO CHALLENGE
13 TO AN ARBITRATION CLAUSE THAT, YOU KNOW, WE'VE SUBMITTED
14 AN AFFIDAVIT TO THE COURT --

15 THE COURT: WE'RE GOING TO DO ARBITRATION LATER.

16 MR. NESS: I UNDERSTAND THAT, YOUR HONOR, AND THIS IS
17 SOLELY AS TO OUR MOTION TO DISMISS, BUT THE POINT BEING
18 THAT IF THERE IS AN ARBITRATION CLAUSE OUT THERE AND
19 INVOLVES GENE READ OR ANY OTHER NUMBER OF DEFENDANTS, THIS
20 COURT IS GOING TO HAVE TO DISMISS THE CASE BECAUSE THEY
21 DON'T HAVE A PLAINTIFF UNDER 12B -- NOT NECESSARILY 12B6,
22 BUT A JURISDICTIONAL ISSUE BECAUSE THEY DON'T HAVE A NAMED
23 PLAINTIFF AGAINST THE DEFENDANT SUCH AS GENE READ, SUCH AS
24 ERVIN TOYOTA, AND SOME OTHERS BECAUSE OF AN ARBITRATION
25 ISSUE OUT THERE. I UNDERSTAND THE GATEWAY ISSUE OF THE

1 SIMPSON CASE HAS JUST COME UP, BUT WE'RE FIVE MONTHS INTO
2 THIS CASE. THERE ARE A NUMBER OF LAWYERS THAT ARE
3 DEFENDING ON BEHALF OF, BASICALLY, A PHANTOM ON BEHALF OF
4 THE DEFENDANTS FROM A PHANTOM PLAINTIFF IN THIS CASE.

5 THE COURT: WELL, THEY TAKE THE POSITION IT IS A
6 CONSPIRACY BETWEEN ALL OF THE CAR DEALERS AND THEY
7 CONSPIRED AGAINST THEIR NAMED PLAINTIFFS. SO, THEY DON'T
8 HAVE TO HAVE JACK EARLY BUYING A CAR FROM ZEIGLER'S
9 CHEVROLET. I AM SUING ALL OF THE DEALERS BECAUSE THERE IS
10 AN ALLEGED CONSPIRACY. ISN'T THAT CORRECT, MR. SPEARS?

11 MR. SPEARS: ABSOLUTELY.

12 MR. NESS: I UNDERSTAND THAT, YOUR HONOR, BUT THE
13 ISSUE GETS TO BE THAT IF THERE IS AN ARBITRATION AGREEMENT
14 OUT THERE AND I WANT TO DEAL WITH THAT, BUT IF THE COURT
15 DOESN'T WANT TO DEAL WITH THAT TODAY, THEN WHAT I WOULD
16 ASK THE COURT TO DO IS LET'S SET A DATE. WHOEVER HAS GOT
17 ARBITRATION AGREEMENTS --

18 THE COURT: WELL, MR. HAMM AND I HAD A CONVERSATION
19 YESTERDAY ALONG WITH MR. SPEARS ABOUT THE ARBITRATION THAT
20 WE WEREN'T GOING TO DEAL WITH THAT TODAY IN LIGHT OF THE
21 CASE THAT CAME OUT LAST WEEK AND WE WERE GOING TO ALLOW
22 Y'ALL TO DO SOME CONTINUED DISCOVERY AND THAT WOULD
23 CERTAINLY BE SOMETHING THAT WE'LL DEAL WITH DOWN THE ROAD.
24 YOU'RE NOT BEING PRECLUDED BECAUSE YOU'RE NOT ARGUING HERE
25 TODAY. IS THAT CORRECT?

1 MR. NESS: WE CERTAINLY WANT TO PRESERVE ALL OF OUR
2 RIGHTS.

3 MR. SPEARS: WE AGREE.

4 THE COURT: ARBITRATION IS STILL A MAJOR ISSUE IN THE
5 CASE.

6 MR. NESS: BUT, YOUR HONOR, ONE THING THAT I'D ASK
7 THE COURT TO DIRECT AND LET'S PUT SOME TIMEFRAMES ON IT OR
8 SOMETHING THAT IF THERE ARE SOME PLAINTIFFS OUT THERE
9 AGAINST GENE READ AND SOME OF THESE OTHER PEOPLE WHO DON'T
10 KNOW WHO A PLAINTIFF IS AGAINST THEM, THERE NEEDS TO BE A
11 TIME LIMIT. YES, THESE PEOPLE ARE GOING TO BE NAMED.
12 THERE HADN'T EVEN BEEN A MOTION TO AMEND, YOUR HONOR.

13 THE COURT: WELL, LET'S --

14 MR. SPEARS: YOUR HONOR, MAY WE HAVE 90 DAYS AND
15 WE'LL COMPLETE --

16 THE COURT: HERE'S WHAT I'M GOING TO DO. LET'S
17 FINISH THE 12B6 MOTION ON THE RECORD AND THEN I AM GOING
18 TO DO SOME HOUSEKEEPING MATTERS.

19 MR. SPEARS: THANK YOU, YOUR HONOR.

20 THE COURT: WE'LL ADDRESS ALL OF THAT. ANYBODY ELSE
21 ON THE 12B6? MR. SMITH?

22 MR. SMITH: MAY IT PLEASE THE COURT, YOUR HONOR. I
23 JUST WANTED THE RECORD TO REFLECT THAT PART OF OUR 12B
24 MOTION WAS AN ARBITRATION GROUNDS AND WE DO RESPECTFULLY
25 REQUEST THAT THAT BE SET AS SOON AS POSSIBLE BECAUSE IF

1 THE CLAIMS AREN'T SUPPOSED TO BE LITIGATED, THEN WE
2 SHOULDN'T BE DOING ANY DISCOVERY AND THE COURT NEEDS TO
3 GET INTO THE ISSUES.

4 THE COURT: WE'LL TALK ABOUT THAT.

5 MR. SMITH: I APPRECIATE THE FACT THAT THAT CASE CAME
6 OUT RECENTLY. I DON'T KNOW ABOUT THE CONVERSATION
7 YESTERDAY.

8 THE COURT: WELL, JUST FOR EVERYBODY'S -- MR. HAMM
9 WAS AT THE HEARING WHERE I HAD THE INITIAL HEARING ON THE
10 SETTLEMENT WITH CARMAX. MR. HAMM HAND-DELIVERED ME A
11 LETTER AND FAXED ME A LETTER SAYING THAT LET'S HOLD OFF ON
12 ARBITRATION UNTIL EVERYBODY CAN DIGEST AND ABSORB THE
13 LATEST CASE THAT CAME OUT. WE'LL DO IT IN A TIMELY
14 FASHION. IS THAT, BASICALLY, WHAT YOU SAID?

15 MR. HAMM: WELL, IT IS SLIGHTLY DIFFERENT THAN THAT.
16 WHAT I WAS SAYING IS SINCE WE HAD GENE READ, CENTURY
17 B.M.W., MR. SMITH'S CLIENT, THAT WE RECOGNIZE THAT THE
18 SUPREME COURT DECISION AND WE RECOGNIZE THAT YOU DIDN'T
19 WANT TO GET INTO THE BROAD GENERAL REASONS, BUT, IN FACT,
20 FOR EXAMPLE, CENTURY HAS A MOTION TO COMPEL ARBITRATION
21 BEFORE YOU, AND AS MR. NESS JUST SAID WE'VE GOT -- YOU CAN
22 APPRECIATE THAT WE HAVE CLIENTS THAT ARE SAYING WE'VE BEEN
23 IN THIS FOR FIVE MONTHS -- WHY ARE WE STILL HERE OR CAN'T
24 YOU GET THE COURT TO MAKE A DETERMINATION? THAT GOES BACK
25 TO WHAT MR. NESS WAS SAYING ABOUT LET'S GET TO THESE

1 ARBITRATION ISSUES IMMEDIATELY.

2 THE COURT: ALL RIGHT. WELL, LET'S FINISH THE 12B6
3 AND THEN I'LL DO SOME HOUSEKEEPING. I WILL ACCOMMODATE
4 THOSE WHO HAVE ARBITRATION A.S.A.P.

5 MR. HAMM: ALL RIGHT. THANK YOU.

6 THE COURT: ANYBODY ELSE WITH A 12B6? MS. CHAPMAN,
7 DO YOU HAVE ANYTHING THAT YOU WANT TO ADD? YOU SURE ARE
8 QUIET BACK THERE. SO UNLIKE YOU. ANYBODY ELSE? WE'LL GO
9 OFF THE RECORD NOW.

10 (WHEREUPON, THE HEARING WAS CONCLUDED AND A
11 DISCUSSION WAS HELD OFF THE RECORD.)
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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

NOVEMBER 30, 2007
AIKEN, SOUTH CAROLINA

B E F O R E:

THE HONORABLE DOYET A. EARLY, III, JUDGE.

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

A. CAMDEN LEWIS, ESQ.
GEDNEY M. HOWE, III, ESQ.
RICHARD A. HARPOOTLIAN, ESQ.
BRADY R. THOMAS, ESQ.
ATTORNEYS FOR THE PLAINTIFF

JAMES Y. BECKER, ESQ.
STEVEN W. HAMM, ESQ.
RYAN L. VANGRACK, ESQ.
BRADFORD N. MARTIN, ESQ.
GREGORY STUDEMAYER, ESQ.
T. ALEXANDER BEARD, ESQ.
ATTORNEYS FOR THE DEFENDANTS

LISA H. HICKLIN
OFFICIAL COURT REPORTER

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>

(NONE OFFERED)

1 (WHEREUPON, ON NOVEMBER 30, 2007 THE FOLLOWING
2 PROCEEDINGS WERE HELD:)

3 THE COURT: ALL RIGHT. GENTLEMEN AND LADIES, I'VE
4 HAD SEVERAL SUGGESTIONS ON HOW TO PROCEED THIS MORNING,
5 BUT IT LOOKS LIKE THE CONSENSUS IS TO HEAR THE PLAINTIFF'S
6 MOTION TO DISMISS WITH PREJUDICE THEIR NO-SALE DEFENDANTS
7 IN HERRON AND MOVE FORWARD AFTER THAT. ANYBODY HAVE ANY
8 REAL PROBLEM WITH THAT, LET ME KNOW.

9 MR. LEWIS, ET AL? I ASSUME THAT'S A NO?

10 MR. STUDEMAYER: YOUR HONOR --

11 THE COURT: HOLD ON. I HADN'T GOTTEN TO YOUR SIDE
12 YET, MR. STUDEMAYER.

13 MR. LEWIS: WE HAVE NO PROBLEM WITH THAT, YOUR HONOR.
14 WE THINK THAT'S VERY FAIR AND THE THING TO DO BECAUSE IT
15 DICTATES A WHOLE LOT OF OTHER THINGS.

16 THE COURT: IT CERTAINLY DOES, I THINK. ALL RIGHT.
17 I GOT A LETTER FROM MR. STUDEMAYER. MR. STUDEMAYER?

18 MR. STUDEMAYER: YES, YOUR HONOR. I WOULD ASK THAT
19 SINCE MY 12(B)(8) MOTION WAS FILED IN THE WEST-COX CASE
20 NEARLY A MONTH BEFORE THE MOTION FOR VOLUNTARY DISMISSAL
21 WAS FILED IN THE HERRON CASE THAT THAT MATTER BE FIRST --
22 NOT NECESSARILY FIRST, BUT BEFORE THIS VOLUNTARY DISPUTE.

23 THE COURT: WHAT IF I GRANT THEIR MOTION? THEN YOUR
24 GUY IS GONE, ISN'T HE?

25 MR. STUDEMAYER: NO.

1 THE COURT: ALL RIGHT. I'LL HAVE TO DECIDE THAT.
2 ANYBODY ELSE?

3 MR. MARTIN, I SAW YOU STANDING.

4 MR. MARTIN: I WOULD RESPECTFULLY ASK THAT THE
5 MOTIONS GO --

6 THE COURT: STAND UP, PLEASE.

7 MR. MARTIN: SORRY -- IN THE ORDER THAT JAMIE HAS
8 REQUESTED BECAUSE WE HAVE SOME SIGNIFICANT LEGAL ISSUES
9 THAT HAVE BEEN FULLY BRIEFED.

10 THE COURT: I SPENT ALL DAY YESTERDAY, I PROMISE YOU,
11 READING EVERYTHING -- EVERYBODY'S BRIEF.

12 MR. MARTIN: BUT WHATEVER SUITS YOU, YOUR HONOR.
13 JUST FOR THE RECORD WE WOULD REQUEST THIS ORDER.

14 THE COURT: ALL RIGHT. WELL, ANY WAY I DO IT YOU
15 WILL NOT BE PREJUDICED FROM MAKING ANY ARGUMENTS THAT
16 RELATE BACK AND FORTH. I'LL JUST DO IT LIKE THAT.

17 MR. HAMM, HOW ARE YOU DOING?

18 MR. HAMM: I HAVE BEEN ALL RIGHT, YOUR HONOR. I HAVE
19 LOST MY VOICE, BUT I HAD A GOOD REPORT WHEN I WENT TO
20 TEXAS.

21 THE COURT: GOOD. WELL, I HAVE SENT SEVERAL MESSAGES
22 BY SEVERAL PEOPLE.

23 MR. HAMM: AND I GOT THEM. THANK YOU.

24 THE COURT: THANK YOU. ALL RIGHT. LET ME HEAR
25 ANYBODY'S OPPOSITION AND MR. LEWIS' MOTION TO DISMISS IN

1 THE HERRON CASE. ANYBODY HAVE ANY OPPOSITION TO THAT?
2 PLEASE IDENTIFY YOURSELF. MR. BRAD MARTIN?

3 MR. MARTIN: MAY IT PLEASE THE COURT.

4 THE COURT: YES, SIR.

5 MR. MARTIN: I HAVE SUBMITTED A MEMORANDUM IN SUPPORT
6 OF MY OPPOSITION. I HAD 29 --

7 THE COURT: YOU HAD SOME THAT AGREED AND SOME THAT
8 DIDN'T AGREE.

9 MR. MARTIN: THAT'S RIGHT.

10 THE COURT: I UNDERSTAND.

11 MR. MARTIN: TWENTY-NINE THAT WANT IN AND --

12 THE COURT: WELL, Y'ALL HAVE BEEN ARGUING TO GET OUT.
13 NOW YOU WANT TO STAY IN.

14 MR. MARTIN: WELL, THAT IS AT FIRST BLUSH TRUE, BUT
15 IF YOU REALLY LOOK AT IT IT MAKES A LOT MORE SENSE TO HAVE
16 FINALITY. WHAT WE HAVE HERE IS A SITUATION WHERE THE CASE
17 STARTED WRONG FROM DAY ONE. IT WENT FROM 4 PLAINTIFFS AND
18 51 DEFENDANTS, 8 PLAINTIFFS TO 324 DEFENDANTS, AND THEN
19 THEY TRIED TO BRING IN 250 PLAINTIFFS. IT'S BEEN WRONG
20 FROM DAY ONE.

21 WE'VE BEEN AT THIS ALMOST A YEAR AND A HALF, AND THE
22 REASON WHY MY 29 CLIENTS WANT YOU TO DENY THIS MOTION IS
23 BECAUSE THEY NEED FINALITY. THEY NEED A DECISION HOW IT
24 AFFECTS THEM. THEY WILL BE SEVERELY PREJUDICED IF THEY DO
25 NOT HAVE AN OPPORTUNITY FOR YOU TO DECIDE THE RULE 59(E)

1 MOTION AND MAKE A FINAL DECISION IN THIS CASE. THE
2 CASELAW I HAVE HANDED UP -- YOU DID SAY YOU READ THE
3 BRIEFS. I HANDED UP A LITTLE ONE THAT'S IN A NICE LITTLE
4 FOLDER FOR YOU THIS MORNING.

5 THE COURT: I HAVE NOT READ THAT BECAUSE I JUST GOT
6 IT.

7 MR. MARTIN: OKAY. WELL, THAT WAS ACTUALLY FILED TWO
8 DAYS AGO. THIS IS JUST THE SAME THING IN A NICE LITTLE
9 PACKAGE JUST IN CASE YOU HADN'T SORTED MY OTHER ONE OUT.

10 THE COURT: OKAY.

11 MR. MARTIN: BUT, BASICALLY, THE CASELAW IN SOUTH
12 CAROLINA IS VERY CLEAR THAT IF YOU CAN SHOW LEGAL
13 PREJUDICE OR AN ISSUE OF -- IMPORTANT ISSUE OF PUBLIC
14 POLICY, A MOTION TO DISMISS IS NOT APPROPRIATE. WHAT WE
15 HAVE HERE IS AN ENTIRE INDUSTRY IN SOUTH CAROLINA HAS BEEN
16 PARALYZED BY THIS LAWSUIT. THEY DO NOT KNOW WHAT TO DO.
17 THEY'VE HAD THE LEGISLATURE SAYING YOU CAN CHARGE A
18 CLOSING FEE. THEY'VE HAD THE SUPREME COURT SAY IN FANNING
19 IN 1996 THAT IT'S NOT A VIOLATION OF THE CONSUMER
20 PROTECTION CODE, AND NOW WE HAVE THIS CLAIM THAT IT'S,
21 QUOTE, ILLEGAL AND ALL OF MY DEALERS HAVE HAD TO COME FROM
22 ALL COUNTIES HERE IN AIKEN BECAUSE OF THE WAY THIS CASE
23 HAS BEEN STYLED.

24 WE'VE BEEN AT THIS A YEAR AND A HALF BECAUSE OF THE
25 PROCEDURAL MISTAKES THAT HAVE BEEN MADE, AND WHAT WE HAVE

1 HERE IS NOT A PLAINTIFF SAYING I HAVE A VALID AND GOOD
2 REASON TO DISMISS THESE PEOPLE. WHAT WE HAVE IS A
3 PLAINTIFF SAYING, UH-OH, THE JUDGE IS MOVING. THE JUDGE
4 HAS GOT PROBLEMS WITH STANDING. SO, WE'RE GOING TO TRY TO
5 FIX IT EVERY WAY WE CAN DESPITE THE PREJUDICE THAT IT
6 COSTS TO THE PEOPLE ON THE OTHER SIDE.

7 WHAT I'M ASKING YOU TO DO -- AND IF YOU HAVEN'T READ
8 MY BRIEF I WANT YOU TO READ IT --

9 THE COURT: I HAVE READ THE BRIEF.

10 MR. MARTIN: -- IS TO MAKE A FINDING THAT THE LEGAL
11 ISSUES HAVE BEEN JOINED IN THIS CASE. MY CLIENTS HAVE
12 BEEN FORCED TO BRING ME HERE TIME AND TIME AGAIN. OVER A
13 QUARTER OF A MILLION DOLLARS HAS BEEN SPENT IN THIS YEAR
14 AND A HALF DEFENDING THIS SITUATION. ALL THE ISSUES ARE
15 RIPE. THE BRIEFS ARE DONE. ORAL ARGUMENT IS ABOUT TO
16 OCCUR. JAMIE IS GOING TO BE OUR LEAD ARGUER. WE WANT TO
17 HAVE A PLACE AT THE TABLE FOR YOU TO DECIDE THESE ISSUES
18 WITH FINALITY.

19 PUBLIC POLICY --

20 THE COURT: WILL YOU HAVE ANY CLIENTS LEFT IF I GRANT
21 MR. LEWIS' MOTION IN THE HERRON CASE?

22 MR. MARTIN: NO, I WILL NOT. I HAVE 29 THAT WANT TO
23 STAY IN --

24 THE COURT: OKAY.

25 MR. MARTIN: -- IF YOU LET ME. NOW, THE CASELAW SAYS

1 LEGAL PREJUDICE. I CITED THE CASE IN WHICH WE HAD THE
2 LIQUOR STORE AND ONE GUY SAID I OWN HALF OF THIS LIQUOR
3 WHOLESALE BUSINESS AND THIS MAN HAS GOT TO MAKE AN
4 ACCOUNTING FOR MY PROFITS AND IT COMPLETELY STYMIED THE
5 BUSINESS. JUSTICE LEWIS SAID THAT YOU CANNOT DISMISS IT.
6 YOU HAVE TO GO FORWARD. YOU HAVE TO HAVE A FINAL
7 DECISION.

8 I CITED MOORE'S FEDERAL PRACTICE. THERE ARE FIVE
9 REASONS WHY YOU NEED TO TAKE INTO CONSIDERATION IN
10 DETERMINING WHETHER DISMISSAL WITHOUT PREJUDICE WOULD
11 CAUSE HARM TO ME. NUMBER ONE IS DUPLICATIVE EXPENSE OF A
12 SECOND LITIGATION. WELL, WE KNOW A SECOND LITIGATION HAS
13 ALREADY BEEN FILED IN THE ADAMS CASE. MY PEOPLE HERE ARE
14 FACING EIGHT OR SEVEN PLAINTIFFS. IN ADAMS THEY'RE FACING
15 302 PLAINTIFFS. THINK OF THE DEPOSITIONS THAT MY PEOPLE
16 WILL HAVE TO FACE IN ADAMS COMPARED TO THIS CASE. THAT IS
17 A SIGNIFICANT PREJUDICE, AND IT'S NOT ETHERIAL BECAUSE THE
18 ADAMS CASE HAS ALREADY BEEN FILED. IT'S RIGHT IN THIS
19 COUNTY AGAIN.

20 THE COURT: WELL, EVERYONE IS SORT OF THE OPINION
21 THAT IF WE CAN GET THIS CASE UNDER CONTROL IT WILL STAY
22 ADAMS AND ALL OF THE LEGAL ISSUES CAN BE ADDRESSED.

23 MR. MARTIN: IF WE STAY ADAMS I'VE GOT ALL OF MY
24 CLIENTS NOT GETTING TO PARTICIPATE WONDERING WHAT'S GOING
25 TO HAPPEN WITH THIS HANGING --

1 THE COURT: WELL, YOU COMPLAINED THE LAST TIME ABOUT
2 HAVING TO PARTICIPATE.

3 MR. MARTIN: WE WANT YOU TO LET MY PEOPLE GO BUT FOR
4 THE LEGAL REASONS THAT WE'RE GOING TO ARGUE -- NOT JUST
5 WE'RE GOING TO FREEZE YOU SO YOU DON'T KNOW WHAT'S GOING
6 TO HAPPEN FOR ANOTHER YEAR OR TWO. WE'VE BEEN HERE A YEAR
7 AND A HALF TO GET FINALITY. PUBLIC POLICY ISSUES HAVE TO
8 BE DECIDED. TODAY IS THE DAY. WE'VE BEEN AT THIS A YEAR
9 AND A HALF. MY PEOPLE WANT A PLACE AT THE TABLE BECAUSE
10 THESE ARE IMPORTANT ISSUES OF PUBLIC POLICY.

11 CAN YOU CHARGE A CLOSING FEE IF THE LEGISLATURE SAYS
12 YOU CAN AND THE SUPREME COURT SAYS YOU CAN? DO OUR
13 BUSINESSES STILL HAVE TO WORRY ANOTHER YEAR AND A HALF TO
14 WHAT'S GOING TO HAPPEN TO THEM? IMPORTANT ISSUES OF
15 PUBLIC POLICY IS A REASON TO DENY THE MOTION TO DISMISS.
16 WE HAVE BEEN HERE FROM THE START. WE HAVE PAID HUNDREDS
17 OF THOUSANDS OF DOLLARS TO BE HERE AND PARTICIPATE. ALL
18 THAT GETS FLUSHED, YOUR HONOR, AND WE DON'T GET THE
19 BENEFIT OF ANY DECISION BECAUSE WE'LL BE OUT OF IT.

20 THE COURT: MR. LEWIS, DO YOU HAVE ANY PROBLEM WITH
21 THEM STAYING WITH US -- HIS 20-SOME-ODD CLIENTS?

22 MR. LEWIS: WELL, RIGHT NOW WE HAVE --

23 THE COURT: I MEAN, I CAN'T UNDERSTAND THE CIRCULAR
24 ARGUMENTS GOING ON.

25 MR. LEWIS: -- 78, YES, THEY WANT OUT WITH US THAT

1 AGREE WITH US, 40 THAT SAY, NO, AND 118 HAVE SAID NOTHING.
2 THE REASON IS -- AND I'VE HEARD THE ARGUMENTS JUST MADE
3 AND THERE IS NO SUCH RULE THAT ALLOWS A NON-DISMISSAL SO A
4 LAWYER CAN PARTICIPATE. THAT'S WHAT THEY'RE ASKING.

5 THE COURT: ALL RIGHT. I DIDN'T MEAN TO INTERRUPT.
6 I'LL GET BACK TO YOU, BUT YOU CONSENT TO HIM STAYING OR DO
7 YOU WANT --

8 MR. LEWIS: NO, I WANT HIM -- I THINK ALL THAT DOES
9 IS GO BACK TO THE CLUTTERED THING WE'VE TRIED VERY HARD AT
10 MR. MARTIN'S INSISTENCE --

11 THE COURT: TO UNCLUTTER.

12 MR. LEWIS: -- TO DISMISS THEM AND GET DOWN TO SEVEN
13 SO THAT WE CAN HAVE THE GUT ISSUES THAT HE NOW SAYS NEED
14 TO BE DETERMINED WHICH WE'VE SAID FOR A YEAR AND A HALF
15 NEED TO BE DETERMINED AND THEY FINALLY COME OVER TO OUR
16 SIDE AND SAID WE NEED THEM DETERMINED AND THE WAY TO GET
17 THEM DETERMINED IS IN THE SEVEN PEOPLE GOING FORWARD AS
18 QUICK AS WE CAN AND THEY WILL HAVE THE OPPORTUNITY TO TAKE
19 IT TO THE SUPREME COURT AND WE'LL GET THE GUT CORE ISSUES
20 DETERMINED, AND JUST BECAUSE MR. MARTIN IS NOT IN IT IS
21 NOT A REASON TO CLUTTER US UP WITH 29 NEW PLAINTIFFS.

22 THE COURT: ALL RIGHT. I UNDERSTAND YOUR POSITION.

23 I APOLOGIZE, MR. MARTIN. I WILL NOT INTERRUPT YOU
24 AGAIN. I THOUGHT WE COULD DO IT EASY, BUT, OBVIOUSLY, WE
25 CAN'T.

1 MR. MARTIN: WELL, THIS IS NOT FOR MY BENEFIT. THIS
2 IS FOR THE BENEFIT OF MY CLIENTS. THINK ABOUT RUNNING A
3 BUSINESS AND HAVING THIS HANGING OVER YOUR HEAD. IF I'VE
4 GOT TO PICK UP A PHONE AND CALL THEM AND SAY, FELLOWS,
5 THEY'VE STAYED YOUR CASE. YOU'RE OUT OF THIS CASE. WE
6 CAN'T TELL YOU WHAT YOU'RE GOING TO DO AND YOU DON'T HAVE
7 A SAY. WILLIAM BRADSHAW WAS THE PRESIDENT OF N.A.D.A.
8 WILLIAM BRADSHAW IS ONE OF THE BEST KNOWN CAR DEALERS IN
9 AMERICA. HE WAS NATIONAL PRESIDENT. HE WANTS FINALITY SO
10 HE CAN DO HIS BUSINESS.

11 ALL THE BRIEFS ARE DONE. WHAT WE HAVE HERE IS --
12 THE COURT: LET ME ASK YOU THIS. SAY THAT WE GO WITH
13 THE SEVEN AND WE GO TO THE SUPREME COURT AND MR. LEWIS'
14 THEORY AND MR. HARPOOTLIAN'S THEORY AND MR. HOWE'S THEORY
15 IS SHOT DOWN BY THE SUPREME COURT. DOES THAT NOT AFFECT
16 YOUR CLIENT? I MEAN, DON'T YOU BENEFIT FROM THAT?

17 MR. MARTIN: WELL, MR. LEWIS WILL NOT AGREE WITH
18 THAT.

19 THE COURT: WHAT --

20 MR. MARTIN: I PROMISE YOU HE WILL FIGHT IT FROM DAY
21 ONE.

22 MR. LEWIS: YOUR HONOR, I --

23 THE COURT: HOLD ON.

24 MR. MARTIN: WHAT WE HAVE HERE -- YOU KNOW, THE
25 PROBLEM WITH THIS CASE FROM DAY ONE --

1 THE COURT: I'LL GET TO YOU IN A MINUTE, MR. LEWIS.

2 MR. MARTIN: -- AND MY FRIEND IS A VERY GOOD AND
3 CAPABLE LAWYER AND I PROMISE I WILL NOT INTERRUPT HIS
4 ARGUMENT. I REALLY DO. I WILL NOT DO THAT.

5 THE COURT: I WILL ASK HIM TO SIT DOWN. BUT YOU'RE
6 TELLING ME THAT IF THE SUPREME COURT RULES THAT MR. LEWIS'
7 POSITION IS INCORRECT THAT YOU DON'T BENEFIT FROM THAT?

8 MR. MARTIN: WHO KNOWS? I MAY OR MAY NOT, BUT WHY
9 NOT -- WHY NOT BE A PARTY SO ALL ISSUES OF RES JUDICATA
10 ARE DECIDED? YOU HAVE CASELAW BEFORE YOU. I HAVE CITED
11 THE SOUTH CAROLINA SUPREME COURT CASES. IT SAYS VERY
12 CLEARLY IF THERE IS LEGAL PREJUDICE OR AN ISSUE OF PUBLIC
13 POLICY YOU CAN'T DISMISS A DEFENDANT WHO DOESN'T WANT TO
14 GO. THE LAW IS BLACK AND WHITE AND THERE'S BEEN NO LAW
15 CITED TO REFUTE IT.

16 MY PEOPLE -- 29 DEALERS -- ARE SAYING WE HAVE SPENT A
17 QUARTER OF A MILLION DOLLARS TO GET TO THIS POINT. WE
18 WANT A DECISION TODAY. WE WANT -- AND IF YOU'RE GOING TO
19 DECIDE IT HOWEVER YOU'RE GOING TO DECIDE IT, WHEN WE GO TO
20 THE SUPREME COURT THEY WANT TO BE A PART OF THAT DECISION
21 BECAUSE THEY WANT FINALITY AND IF THEY'RE PART OF THIS --
22 IF MR. LEWIS SIMPLY SUED SEVEN ON AUGUST OF 2006 AND WE
23 DIDN'T SPEND A QUARTER OF A MILLION DOLLARS TO GET HERE
24 TODAY, I WOULD HAVE NO OBJECTION, BUT THAT'S NOT WHAT HE
25 DID. HE WENT FROM 51 DEALERS TO 324 DEALERS AND THEN

1 TRIED TO BRING IN 250 PLAINTIFFS AND NOW HAS SUED FOR 300
2 PLAINTIFFS IN A CASE JUST SITTING BEHIND HERE A YEAR AND A
3 HALF LATER.

4 THAT'S NOT HOW YOU PLAY THE GAME. WE HAVE RULES. WE
5 HAVE PROCEDURES. THE RULES OF CIVIL PROCEDURE ARE CRYSTAL
6 CLEAR AS TO WHAT SHOULD HAPPEN. IF HE MADE A MISTAKE, IF
7 HE DID IT WRONG AND HE IS READING THE TEA LEAVES AND
8 SEEING YOUR TROUBLE WITH STANDING WHICH YOU HAVE MADE VERY
9 CLEAR FROM THE BEGINNING, HE CAN'T JUST PREJUDICE US INTO
10 TRYING TO FIX HIS PROBLEM.

11 THERE'S A LATIN PHRASE CALLED DEUS EX MACHINA.

12 THE COURT: IT IS WHAT?

13 MR. MARTIN: IT'S DEUS EX MACHINA.

14 THE COURT: I AM VERY FAMILIAR WITH THAT.

15 MR. MARTIN: IT IS A SITUATION WHERE YOU HAVE SOMEONE
16 WHO CREATES AN ABSOLUTE MESS AND THEY DON'T KNOW WHAT TO
17 DO. SO, A WRITER COMES IN AND HE JUST LIKE HAS GOD ON A
18 CRANE DROPPING IN OUT OF HEAVEN TO FIX THE PROBLEM.

19 THAT'S WHAT WE HAVE HERE. WE HAVE AN ABSOLUTE
20 UNMANAGEABLE, UNPRECEDENTED, AND UNFAIR SITUATION. MY
21 PEOPLE HAVE BEEN SEVERELY PREJUDICED BY THIS. IT IS AN
22 ISSUE OF PUBLIC POLICY SO THEY CAN GET ON WITH THEIR
23 BUSINESS. IF WE GET YOU TO DECIDE AND WE GO TO COLUMBIA
24 OR NOT GO TO COLUMBIA, WE'RE IN THE BALLGAME AND MY 29
25 DEALERS HAVE SOME FINALITY.

1 THAT IS THE CLEAR LAW IN SOUTH CAROLINA -- CLEAR AS A
2 BELL -- AND YOU CAN'T JUST SAY, OH, WELL, I AM GOING TO
3 SUE YOU FOR A YEAR AND A HALF. I AM GOING TO BRING YOU
4 FROM ALL OF THESE COUNTIES TO AIKEN AND TO BAMBERG AND
5 MAKE YOU SPEND ALL OF THESE THOUSANDS OF DOLLARS AND WE'RE
6 JUST GOING TO CHANGE OUR MIND AND JUST LET YOU GO. THE
7 REASON WHY YOU HAVE RULE 41 AND THE CASELAW IS BECAUSE
8 THAT'S NOT FAIR. LEGAL PREJUDICE OR PUBLIC POLICY ISSUES
9 MUST GO FORWARD. AND THEY --

10 THE COURT: WELL, WILL NOT THE PUBLIC POLICY ISSUE AT
11 LEAST GO FORWARD WITH THE SEVEN?

12 MR. MARTIN: BUT NOT FOR MY PEOPLE.

13 THE COURT: BUT FOR THE PUBLIC. YOU'RE PART OF THE
14 PUBLIC.

15 MR. MARTIN: I AM PART OF THE PUBLIC, BUT I HAVE BEEN
16 SUED.

17 THE COURT: OKAY.

18 MR. MARTIN: OKAY? IN ANALYZING THIS AND TO
19 DETERMINE WHETHER THE DISMISSAL WITHOUT PREJUDICE WOULD
20 CAUSE HARM TO ME YOU LOOK AT THE DUPLICATIVE EXPENSE IN
21 THE SECOND LITIGATION. I HAVE ALREADY TOLD YOU THE SECOND
22 LITIGATION HAS 300 PLAINTIFFS, NOT 7. NUMBER TWO, THE
23 EXTENT TO WHICH THE CURRENT SUIT HAS PROGRESSED. WE'VE
24 BEEN HERE A YEAR AND A HALF.

25 NUMBER THREE, THE ADEQUACY OF THE PLAINTIFF'S

1 EXPLANATION FOR THE NEED TO DISMISS. I HAVE NEVER READ A
2 CASE WHERE THE PLAINTIFF IS TRYING TO FIX A PROBLEM -- A
3 PROCEDURAL PROBLEM WHERE THEY DID SOMETHING WRONG BY DOING
4 IT THIS WAY. NORMALLY, WHEN THEY MAKE A MOTION TO DISMISS
5 THEY'VE GOT A SICK WITNESS OR THEIR EXPERT CAN'T COME OR
6 THEY REALIZE AT THE LAST SECOND THEY NEED AN EXPERT. WE
7 DON'T HAVE EVEN HAVE ANY OF THOSE REASONS. HE IS JUST
8 TRYING TO FIX -- HE DOESN'T WANT YOU TO DECIDE THE RULE
9 59(E) MOTION SAYING THESE PEOPLE DON'T HAVE STANDING AND
10 THAT'S WHY HE WANTS TO DO IT. THAT'S NOT KOSHER. THAT'S
11 NOT ALLOWED.

12 NUMBER FOUR, THE PLAINTIFF'S DILIGENCE IN BRINGING
13 THE MOTION TO DISMISS. THERE IS NOTHING DILIGENT ABOUT A
14 YEAR OR 15 MONTHS LATER AFTER CREATING THIS ABSOLUTE
15 HORROR THAT I'VE BEEN COMPLAINING ABOUT FROM DAY ONE AND
16 THEN SAY, OH, SORRY, FORGET IT. WE'LL JUST LET YOU GO.
17 THAT IS NOT DONE IN A TIMELY MANNER. WE HAVE BEEN
18 PREJUDICED BY THAT.

19 AND, NUMBER FIVE, ANY UNDUE VEXATIOUSNESS ON THE
20 PLAINTIFF'S PART. I WOULDN'T CALL MY FRIEND VEXATIOUS. I
21 CALL HIM INTERESTING, CREATIVE, AND QUICK ON HIS FEET, BUT
22 THIS IS NOT THE SOLUTION. THE CASELAW IS CLEAR. NOW, IF
23 YOU AGREE WITH ME AND WE HAVE A RIGHT TO STAY IN A FIGHT
24 THAT WE DIDN'T WANT TO BE IN HERE TO GET FINALITY FROM
25 YOU, THAT'S WHAT WE'RE ASKING. WE WANT TO BE A PART OF

1 JAMIE'S MOTION SO YOU CAN DECIDE WHETHER MY 29 DEALERS
2 INCLUDING THE FORMER PRESIDENT OF N.A.D.A. HAS A CHANCE TO
3 HAVE FINALITY IN THIS CASE SO THERE'S RES JUDICATA SO THE
4 MONEY WE SPENT DOESN'T GO DOWN THE DRAIN AND WE DON'T HAVE
5 TO SPEND IT AGAIN IN THE SECOND CASE BECAUSE YOU KNOW THAT
6 RULE 12(B)(8) WILL KNOCK US OUT OF THE SECOND CASE IF IT
7 KEEPS IN THE FIRST CASE.

8 IF YOU DECIDE TO ALLOW THEM TO DISMISS US, THE
9 CASELAW IS EQUALLY CLEAR THAT THEY HAVE TO PAY THE
10 FREIGHT. THEY HAVE ABSOLUTELY HAVE TO PAY THE COST AND
11 ATTORNEYS' FEES IN ORDER TO GET THERE, AND, AGAIN, I'VE
12 CITED THE CASES AGAIN. THERE'S NOT BEEN ONE CASE CITED IN
13 OPPOSITION TO IT. THE LAW IN SOUTH CAROLINA IS CLEAR IF
14 YOU MAKE A MESS YOU GOT TO CLEAN IT UP.

15 THE COURT: ISN'T THAT AN ARGUMENT FOR ANOTHER DAY?

16 MR. MARTIN: NO, IT'S FOR TODAY. UNDER RULE 41 YOU
17 HAVE TO DECIDE IF YOU'RE GOING TO DISMISS THE COST AND
18 EXPENSES. NOW, THE AMOUNT IS FOR ANOTHER DAY AS I SAID IN
19 MY BRIEF. WE'RE GOING TO SUBMIT OUR AFFIDAVITS AND PROVE
20 TO YOU HOW MUCH TIME, BUT TODAY IS THE DAY YOU HAVE TO
21 DECIDE -- AS A CONDITION OF DECIDING WHETHER THESE PEOPLE
22 WANT TO LET US GO YOU HAVE TO PUT IN YOUR ORDER AT THIS
23 TIME -- NOT WHEN THEY REFILE, BUT NOW -- THAT THEY HAVE TO
24 PAY THE COSTS IN ATTORNEYS' FEES.

25 IF THEY DO THAT, MY PEOPLE WILL HAVE SOME SOLUTION TO

1 THE PREJUDICE, BUT THE TRUTH IS THEY WANT TO GET ON WITH
2 THIS. THERE'S ABSOLUTELY NOTHING WRONG WITH CLOSING FEES.
3 WE WANT TO GET ON WITH IT, BUT WE'VE BEEN BROUGHT INTO
4 THIS MESS. WE WANT YOU TO DECIDE THE LAW AND THE
5 PROCEDURE UNDER SOUTH CAROLINA LAW THAT ALLOWS US TO BE IN
6 HERE. WE WANT A FINAL DECISION. OUR PEOPLE WANT TO
7 PARTICIPATE, AND, IF NOT, WE WANT ATTORNEYS' FEES AND
8 COSTS.

9 THE COURT: THANK YOU, MR. MARTIN. HOLD ON ONE
10 SECOND, MR. HAMM. YOU GOT SOME LAWYERS WAITING? LET THEM
11 IN.

12 MR. HAMM?

13 MR. HAMM: YOUR HONOR, I WANT TO RAISE ANOTHER ISSUE.
14 I HAVE 20 OF MY ALMOST 80 CLIENTS THAT HAVE DECLINED TO BE
15 DISMISSED. THE REMAINDER, BASICALLY, SAID THEY WOULD
16 LEAVE IT UP TO THE COURT. ONE ISSUE THAT MR. MARTIN DID
17 NOT RAISE, YOUR HONOR, AND I'LL GIVE YOU A SPECIFIC
18 EXAMPLE IS THE CHANGE IN THE STATUTE OF LIMITATIONS. I
19 HAVE A NUMBER OF DEALERS AT THE TIME THAT THEY WERE SUED
20 HAD BEEN IN BUSINESS FOR A VERY SHORT PERIOD OF TIME.
21 STATELINE CHRYSLER IN THE ROCK HILL AREA HAD BEEN IN
22 BUSINESS A MONTH WHEN THEY WERE SUED IN THE HERRON CASE.

23 SO, GETTING DISMISSED OUT OF THAT NOW ADDS,
24 BASICALLY, ANOTHER YEAR OF LIABILITY. IT'S CLEAR
25 PREJUDICE TO THAT CLIENT AND I HAVE SOME OTHERS THAT THEY

1 WERE NOT IN BUSINESS FOR ALL THE WAY BACK TO 2002. SO,
2 THAT CREATES THAT PROBLEM, AND I THINK THAT IS A SEVERE
3 PREJUDICE.

4 I WANT TO BE CLEAR BECAUSE I DON'T WANT TO BE SEEN AS
5 TRYING TO ARGUE OUT OF BOTH SIDES OF MY MOUTH BEFORE THE
6 COURT, AND I'M SENSITIVE TO THAT. I HAVE THE GREATEST
7 RESPECT FOR THE LAWYERS ON THE OTHER SIDE. THIS WILL BE A
8 HARD FOUGHT BUT WELL FOUGHT FIGHT ON BOTH SIDES, BUT THAT
9 PREJUDICE ISSUE IS REAL AND THERE IS PRACTICAL BUSINESS
10 CONSIDERATIONS, YOUR HONOR.

11 I HAVE SOME CLIENTS THE WAY THEIR INSURANCE COVERAGE
12 WORKS THEY HAVE SOME LIMITED COVERAGE IN HERRON, BUT THEIR
13 CARRIERS ARE TAKING THE POSITION THAT'S ALREADY ADDRESSED
14 IN THE HERRON CASE AND THEY'RE DISMISSED. THE COVERAGE IS
15 NOT GOING TO PICK UP IN THE ADAMS CASE. SO, SOME OF THEM
16 ARE GOING TO FIND THEMSELVES WITHOUT ANY COVERAGE IF
17 THEY'RE DISMISSED.

18 I WOULD -- I CAN -- VERY BRIEFLY WOULD LIKE TO
19 REFLECT THAT WE DIDN'T DECIDE AND I LOOKED AT THE
20 TRANSCRIPTS -- YOU HAVE BEEN REPEATEDLY TOLD IN PREVIOUS
21 HEARINGS THAT THEY COULD BRING THIS ENTIRE CASE WITH SEVEN
22 OR EIGHT PLAINTIFFS. YOU CERTAINLY HAVEN'T RULED, BUT YOU
23 CERTAINLY ASKED SOME COGENT QUESTIONS THAT SUGGESTED
24 PERHAPS SOME RESERVATIONS ABOUT THAT ARGUMENT. AS
25 MR. MARTIN HAS SAID WHAT THEY'RE ATTEMPTING TO DO IS TO

1 CLEAN UP A MESS THAT THEY CREATED, BUT IN DOING SO IT IS
2 GOING TO CREATE PREJUDICE WITH REGARD TO THE STATUTE OF
3 LIMITATIONS FOR SOME OF MY CLIENTS.

4 SO, I DID WANT YOU TO KNOW THAT IT WAS NOT LIGHTLY
5 THAT WE HAD THESE VARIOUS CLIENTS NOT AGREE TO DISMISS.
6 MOST OF THEM HAVE, BUT THERE WERE BUSINESS REASONS. I
7 THINK THERE'S PREJUDICE, AND TO THE EXTENT THAT THEY
8 REMAIN IN THE CASE AS MR. MARTIN ALSO SAID AND THEY'RE
9 NAMED AGAIN IN THE ADAMS CASE WE THINK THAT THERE IS A
10 12(B) (8) ISSUE WHICH IS NOT ON THE TABLE TODAY THAT WE'RE
11 NOT READY TO LET GO OF. SO, I RESPECTFULLY RAISE THAT
12 ISSUE TO YOU, YOUR HONOR.

13 THE COURT: THANK YOU. ANYONE ELSE WOULD LIKE TO
14 SPEAK?

15 MR. LEWIS, HOW ABOUT ADDRESS POTENTIAL COST ISSUES
16 AND EXPENSES, I.E., ATTORNEY FEES, PREJUDICE CONCERNING
17 THE STATUTE OF LIMITATIONS, PREJUDICE CONCERNING COVERAGE,
18 PUBLIC POLICY ARGUMENT MR. MARTIN HAS RAISED AND I WAS
19 HOPING WE COULD GET THIS THING DOWN TO A MANAGEABLE
20 NUMBER. SEVEN SEEMS TO BE A GOOD NUMBER, BUT MR. MARTIN
21 CERTAINLY -- GO AHEAD. FINISH YOUR CONVERSATION.

22 MR. MARTIN: I'M SORRY, YOUR HONOR.

23 THE COURT: GO AHEAD. FINISH. SAY WHAT YOU WANT TO
24 SAY.

25 MR. MARTIN CERTAINLY RAISES SOME VERY INTERESTING

1 ISSUES. THIS IS ABOUT AS COMPLEX AS I'VE HAD. SO, HELP
2 ME WITH YOUR POSITION.

3 MR. LEWIS: FIRST OF ALL, IF THE SUPREME COURT RULES
4 OR IF THE COURT OF APPEALS RULES I AGREE WE'LL BE BOUND BY
5 IT. SO, MR. MARTIN -- IF HE SAYS THIS ISN'T GOING TO
6 DECIDE ANYTHING, IS SIMPLY WRONG. THERE COULD BE APPEAL
7 OUT THERE RIGHT NOW THAT COULD COME DOWN WITH SOME KIND OF
8 RULING AND WE'D BE BOUND BY IT. WHEN THE SUPREME COURT
9 RULES, WE'RE BOUND BY IT.

10 NOW, IF MR. MARTIN WANTS TO PARTICIPATE WE'LL AGREE
11 RIGHT NOW THAT HE CAN BE AN AMICUS IN ANY KIND OF QUESTION
12 WE HAVE, BUT WHAT THEY'VE DONE, YOUR HONOR, THEY'VE COME
13 IN HERE AND THEY HAVE TOLD YOU THAT IT'S TOO BURDENSOME TO
14 HAVE ALL THESE PEOPLE.

15 THE COURT: AND I AM LISTENING.

16 MR. LEWIS: AND YOU AGREED WITH THEM.

17 THE COURT: I DID AGREE.

18 MR. LEWIS: AND, SO, THEN THEY STAND UP AND SAY IF WE
19 CAN JUST GO AHEAD WITH THE SEVEN THAT WOULD BE GOOD, AND
20 WE AGREED WITH THAT, AND WE MADE THE MOTION. NOW THEY
21 COME BACK AND THEY SAY, NO, WE DON'T WANT TO GO AHEAD WITH
22 THE SEVEN. WE WANT TO GO AHEAD WITH SOME 40 OR 50. NOW,
23 ON 40 OR 50 THAT'S GOING TO BE JUST AS BURDENSOME TO GET A
24 DEPOSITION SCHEDULED. THAT'S WHAT THEY'VE ARGUED.

25 SO, WHAT WE'RE TRYING TO DO IS GET IT DOWN TO AS

1 MR. MARTIN SAID THE -- A FINALITY ON THESE VERY, VERY
2 IMPORTANT ISSUES. WE AGREE. WE'VE BEEN TRYING. MY
3 GOODNESS, WE'VE HAD DISCOVERY OUT FOR OVER A YEAR. WE'VE
4 TRIED EVERYTHING WE CAN. WE'VE HIT EVERY BLOCK WE CAN.
5 THEY KEEP ARGUING AND WE KEEP TRYING TO FIX IT, AND THEN
6 WHEN WE FIX IT THEY GO BACK IN THE OTHER DIRECTION.

7 THE COURT: LET ME ASK YOU THIS. I ASSUME IF I RULED
8 FOR YOU AND ALLOWED YOU TO AMEND AND REDUCE IT TO SEVEN
9 AND I HEAR THE 59(E)'S TODAY AND I HEAR THE MOTIONS TO
10 DISMISS ON THE -- I CALL IT THE THREE-PLAINTIFF CASE,
11 THREE PLAINTIFFS, THREE DEFENDANTS. COX WHAT?

12 MR. MARTIN: WEST-COX.

13 THE COURT: I ASSUME FROM WHAT I'M LISTENING FROM THE
14 DEFENDANTS THEY'RE GOING -- EVEN THOUGH IT MAY BE
15 INTERLOCUTORY, THEY'RE GOING TO APPEAL THOSE ORDERS WHICH
16 IS FINE WITH ME, BUT IS THAT WHERE WE'RE GOING, MR. HAMM?

17 MR. HAMM: YES, SIR.

18 THE COURT: THAT'S FINE. AND THAT WAY WE'LL HAVE
19 SOME FINALITY --

20 MR. HAMM: YES, SIR.

21 THE COURT: -- WITH SOME --

22 MR. LEWIS: WE'LL HAVE SOME QUESTIONS ANSWERED. WE
23 WON'T HAVE ALL OF THEM ANSWERED BECAUSE SOME OF THEM
24 AREN'T UP BEFORE YOU YET.

25 THE COURT: I UNDERSTAND.

1 MR. LEWIS: LIKE, FOR EXAMPLE, WHEN IT SAYS YOU CAN'T
2 ADVERTISE WITHOUT PUTTING THIS FEE ON IT, WHAT DOES THAT
3 MEAN? THEY ADVERTISE WITHOUT IT. THERE IS ALL KINDS OF
4 QUESTIONS.

5 THE COURT: I UNDERSTAND, BUT THE STANDING QUESTION,
6 THE RULE 23 QUESTION, WHETHER OR NOT THE STATUTE GIVES YOU
7 A SUBSTANTIVE RIGHT -- ALL THOSE ISSUES WHICH Y'ALL HAVE
8 THROWN INTO MY PLATE WILL -- MY DECISION ON THOSE
9 DEPENDING ON HOW I RULE TODAY WILL BE REVIEWED BEFORE WE
10 MOVE FORWARD OR ATTEMPT WILL BE MADE TO HAVE IT REVIEWED
11 BEFORE WE MOVE FORWARD.

12 MR. LEWIS: THAT'S CORRECT, BUT LET'S SHOW YOU THE
13 ILLOGIC POSITION OF THEM.

14 THE COURT: NOW, WE'RE BACK TO THE MOTION TO AMEND.

15 MR. LEWIS: OKAY. LET'S JUST TAKE THE STANDING
16 ISSUES.

17 THE COURT: WELL, LET'S STAY WITH THE MOTION TO
18 AMEND.

19 MR. LEWIS: LET'S SUPPOSE YOU AGREE WITH THEM ON THE
20 STANDING ISSUE, AND WHAT IS THE SOLUTION? YOU DISMISS
21 THEM.

22 THE COURT: THAT'S RIGHT.

23 MR. LEWIS: AND WE'RE JUST RIGHT WHERE I AM NOW.

24 THE COURT: BACK TO SEVEN.

25 MR. LEWIS: THAT'S CORRECT. IF YOU AGREE WITH THE

1 STANDING ISSUE; WE'RE RIGHT BACK. SO, I MEAN, WHAT DOES
2 THAT MEAN? IT MEANS THAT OUR AMENDMENT TAKES CARE OF ALL
3 OF THESE ISSUES AND WE CAN GO UP ON WHATEVER OTHER ISSUES
4 THEY HAVE BECAUSE THE STANDING ISSUE, IF YOU DECIDE THAT,
5 IT'S OVER WITH, AND THEN WE JUST DISMISSED -- JUST LIKE WE
6 ASKED FOR IT TO BE DISMISSED. IT MAKES NO -- I JUST DON'T
7 UNDERSTAND IT. THERE ARE 196 SMART DEFENDANTS. THERE ARE
8 JUST THE 40 THAT HAVE NO'S. SO, I MEAN, TO ME IT MAKES NO
9 SENSE OTHER THAN TO JUST GRANT THE DISMISSAL AND WE GO
10 FORWARD WITH THE SEVEN AND THEN ON THE SEVEN --

11 THE COURT: THE EASIEST THING TO DO IS GRANT THEIR
12 59(E) ON STANDING SO THEY DON'T HAVE TO APPEAL AND THEN
13 YOU GOT SEVEN LEFT. YOU CAN MOVE QUICKLY WITHOUT AN
14 APPEAL.

15 MR. HAMM: YOU'RE EXACTLY RIGHT.

16 THE COURT: THAT'S ONE WAY.

17 MR. MARTIN: I VOTE FOR THAT, YOUR HONOR.

18 THE COURT: WELL, THE END RESULT IS GOING TO BE THE
19 SAME.

20 MR. LEWIS: THAT'S EXACTLY RIGHT. IT'S NOT WITH
21 PREJUDICE.

22 MR. MARTIN: THE END RESULT IS GOING TO BE THE SAME
23 IN THE NUMBER OF PEOPLE, BUT THE DAMAGE THAT HAS BEEN
24 CAUSED BY THE INCONSISTENCY OF MY VERY LEARNED FRIEND ON
25 THE FIRST DAY HE BROUGHT THIS SUIT IS NOT GOING TO BE

1 FIXED. THIS IS MY DAY FOR MY CLIENTS TO GET WHOLE. WE
2 HAVE A RULE 41. WE HAVE CASELAW THAT GOES BACK TO THE
3 50'S THAT CREATES THE THINGS THEY HAVE TO DO.

4 THE COURT: BUT NOW Y'ALL ARE COMPLICATING IT EVEN
5 FURTHER. LET'S SAY I JUST SAY, MR. LEWIS, SIT DOWN AND
6 FORGET ABOUT YOUR MOTION TO AMEND. Y'ALL ARGUE YOUR 59(E)
7 AND ALL MY CONCERN IS ABOUT THE STANDING. I WOULD REVERSE
8 MY POSITION ON THE STANDING, GRANT THE 59(E), AND THEN IT
9 LEAVES THE 707.

10 MR. MARTIN: WELL --

11 THE COURT: WHERE DOES THAT PUT YOU?

12 MR. MARTIN: -- THAT'S WHY WE RESPECTFULLY REQUESTED
13 YOU TO DO THAT FIRST, FRANKLY. YOU KNOW, THAT'S WHY WE
14 THOUGHT IT MADE MORE SENSE FOR JAMIE TO GO FIRST JUST
15 BECAUSE OF THAT, BUT I NEED ALSO TO BRING ANOTHER POINT IN
16 PLAY. THE SEVEN PLAINTIFFS DON'T -- IF YOU RULE ABOUT
17 STANDING THAT MEANS PLAINTIFF NUMBER ONE -- LET'S SAY HER
18 NAME IS HERRON. I DON'T KNOW WHETHER SHE WAS CARMAX OR
19 NOT. SHE CAN'T SUE THE OTHER SIX. SHE DOESN'T HAVE
20 STANDING TO SUE THE OTHER SIX.

21 SO, IT'S NOT NECESSARILY THE SAME, AND JAMIE WILL GET
22 INTO THAT. SO, IT'S NOT APPLES AND APPLES.

23 THE COURT: I UNDERSTAND. ALL RIGHT. MR. HAMM?

24 MR. HAMM: JUST FOR THE RECORD, YOUR HONOR, WE ARE
25 NOT ATTEMPTING BY MY 20 CLIENTS TO BE DIFFICULT OR BE

1 INCONSISTENT. THERE ARE BUSINESS AND PRACTICAL REASONS
2 AND PROBLEMS THAT WE ARE RAISING. WE ARE, AGAIN, NOT --

3 THE COURT: I CERTAINLY WOULDN'T WANT ANYBODY TO GET
4 THE IMPRESSION THAT I THOUGHT IT WAS FRIVOLOUS.

5 MR. HAMM: NO. THERE WAS A COMMENT MADE, AND I JUST
6 FELT LIKE I HAD TO PROTECT MYSELF ON THE RECORD.

7 THE COURT: WELL, MY STRUGGLE IS TO GET THIS THING
8 UNDER CONTROL, AND I WAS EXCITED WHEN WE GOT THE MOTION TO
9 AMEND DOWN TO SEVEN. MR. MARTIN IS RAISING SIGNIFICANT
10 ISSUES. NOW, MR. LEWIS SAYS, WELL, IF YOU GRANT 59(E)
11 WE'RE BACK TO WHERE WE ARE -- MY SEVEN.

12 GO AHEAD, MR. LEWIS. I DIDN'T MEAN TO INTERRUPT YOU.

13 IN OTHER WORDS, I GOT A TIGER BY THE TAIL, AND I AM
14 TRYING TO FIND THE SOLUTION.

15 MR. LEWIS: BUT THE SOLUTION IS TO GRANT OUR MOTION
16 TO DISMISS AND YOU'RE DOWN TO SEVEN AND WE GO FORWARD, AND
17 IF MR. MARTIN WANTS TO PARTICIPATE -- LET'S SUPPOSE YOU
18 GRANT HIS MOTION TO -- JUST WHATEVER, FOR ANY -- DISMISS.
19 NONE OF THEM ARE WITH PREJUDICE. NONE OF THEM BOUND
20 ANYBODY IN THE NEXT SUIT BECAUSE IT'S DIFFERENT PLAINTIFFS
21 AND WE HAVE A PLAINTIFF FOR EVERY PERSON. SO, WHAT WE'RE
22 SAYING IS HE'S OUT OF THE SUIT THEN, AND HE DOESN'T GET TO
23 BE THERE FOR ALL OF THESE HEARINGS AND EVERYTHING WHICH HE
24 WANTS TO BE. I JUST DON'T UNDERSTAND WHAT'S GOING ON AND
25 WHY IN THE WORLD --

1 THE COURT: WELL, WHAT'S GOING ON -- AND ADDRESS THIS
2 FOR ME, PLEASE. WHAT'S GOING ON HE'S TELLING ME HE HAS A
3 NUMBER OF CLIENTS WHO AFTER A YEAR HAS SPENT A QUARTER OF
4 A MILLION DOLLARS IN DEFENSE OF THIS MATTER AND IF HE GETS
5 OUT HE IS ENTITLED TO HIS COSTS AND EXPENSE.

6 MR. LEWIS: THERE IS NO --

7 THE COURT: SIR?

8 MR. LEWIS: THERE IS NOTHING THAT ALLOWS THAT FOR HIM
9 IN THIS CASE BECAUSE IF YOU BRING -- BECAUSE HE SAYS HE
10 SHOULD GET IT BECAUSE OF BRINGING THE NEW SUIT. YOU DON'T
11 GET IT. IF I AM IN HERE AND I GET -- TAKE A NON-SUIT,
12 THEY DON'T GET THEIR MONEY. NOBODY GETS THEIR MONEY FOR A
13 NON-SUIT. IT DOESN'T HAPPEN, AND WHEN YOU BRING ANOTHER
14 SUIT AFTER YOU BROUGHT A NON-SUIT, THEN SOME PEOPLE MOVE
15 FOR IT, BUT IN THIS CASE IT'S DIFFERENT PLAINTIFFS.
16 DIFFERENT PLAINTIFFS CAN BRING THE SUIT.

17 AND THEN YOU ASKED ME TO TALK ABOUT THE STATUTE OF
18 LIMITATIONS. NOW, I DIDN'T UNDERSTAND THAT A BIT. HE IS
19 SAYING BECAUSE WE BROUGHT A SUIT LATER IN TIME WE'RE GOING
20 TO GET MORE MONEY? I DON'T THINK SO. IF THEY CHOOSE WHEN
21 WE BRING A SUIT AND IT'S A SUIT ON BEHALF OF EVERYBODY AND
22 THEY CONTINUE TO DO THE DEED AND NOT CORRECT THEIR PROBLEM
23 THAT'S WHAT -- THAT'S STILL PART OF WHATEVER SUIT IS
24 PENDING. SO, STATUTE OF LIMITATIONS MEANS NOTHING.

25 AS FAR AS INSURANCE COVERAGE, I HAVE NO IDEA. I

1 HAVEN'T SEEN THEIR POLICIES. SO, I CAN'T UNDERSTAND IF WE
2 -- WE ALL AGREE. I CAN'T BELIEVE THEY SAID THAT -- THAT
3 THE SUPREME COURT IF THEY GET IT UP THERE ON ANY ISSUE AND
4 THE SUPREME COURT RULES WE'RE BOUND BY IT. WE'RE BOUND BY
5 IT IN THE FIRST SUIT, SECOND SUIT, THIRD SUIT, OR ANYBODY
6 ELSE THAT BRINGS A SUIT ON THESE PARTICULAR GROUNDS, AND
7 IF THERE IS A SUPREME COURT RULING, THE SUPREME COURT
8 RULING WINS. THAT'S THE WAY OUR SYSTEM WORKS.

9 SO, AGAIN, WE'RE BACK TO THE POINT I THOUGHT
10 EVERYBODY WOULD -- IT WOULD WORK. FIRST WE BROUGHT -- WE
11 SAID, OKAY, WE'LL TRY THE THREE CASE. WE BROUGHT THAT
12 ONE. THEN THEY SAY THEY STILL WANT TO GO FORWARD WITH THE
13 FIRST CASE. THEN THEY ARGUE THAT THERE IS GOING TO BE TOO
14 MANY PEOPLE IN THE DEPOSITIONS. SO WE FIGURE OUT A WAY TO
15 CORRECT THEIR CONCERNS.

16 EVERY MOVE WE'VE TRIED IS TO TRY TO CORRECT THEIR
17 CONCERNS, AND ALL THEY DO IS SWITCH AND GO BACK THE OTHER
18 WAY WHEN WE FIX THEIR CONCERNS. THEY GO BACK -- BECAUSE
19 WANTING TO PUT 50 PEOPLE INSTEAD OF SEVEN IN A SUIT GOES
20 RIGHT BACK TO EVERY ARGUMENT THEY MADE FOR YOU TO DENY
21 AMENDMENT.

22 THE COURT: THANK YOU. ANYTHING IN RESPONSE,
23 MR. MARTIN?

24 MR. MARTIN: MAY IT PLEASE THE COURT. DEUS EX
25 MACHINA. WE CREATE THIS MESS 4 AND 51, 8 AND 324. THROW

1 IN ANOTHER 250. OH MY GOD, THE JUDGE IS GOING CRAZY. HE
2 DOESN'T KNOW WHAT TO DO. DEUS EX MACHINA. MAKE IT GO
3 AWAY AND SAY WE'RE THE ONES WHO CHANGED AND WE'RE THE ONES
4 WHO CAN'T MAKE UP OUR MIND.

5 THE COURT: WELL, YOU WANTED TO GO AWAY AND NOW YOU
6 WANT TO STAY.

7 MR. MARTIN: I WANTED TO GO AWAY UNDER THE SOUTH
8 CAROLINA RULES AND PRECEDENT. I WANT TO HAVE A FINAL
9 DECISION. I AM VERY OPTIMISTIC THAT YOU HAVE UNDERSTOOD
10 THE TOTAL UNMANAGEABILITY OF THIS MESS.

11 THE COURT: THAT'S WHY I SUGGESTED THEY AMEND TO GET
12 THE 7 PLAINTIFFS ON THE 7 DEFENDANTS WHICH IS WHERE WE ARE
13 WHICH IS MANAGEABLE.

14 MR. MARTIN: WHY THEY'RE WILLING TO DO THAT IS
15 BECAUSE THEY KNOW YOU'RE ABOUT TO DROP THE HAMMER ON THEM
16 AND THEY ARE SAYING, NO HAMMER, NO HAMMER; WE DON'T WANT A
17 DECISION. WHAT WE HAVE HERE IS \$250,000 OUT OF THE WINDOW
18 FOR WHAT? BECAUSE THEY CHANGED THEIR MIND AND THEY ARE
19 TRYING TO PLEASE YOU BECAUSE THEY DIDN'T DO IT RIGHT IN
20 THE BEGINNING.

21 THE COURT: THEY'RE NOT TRYING TO PLEASE ME. THEY'RE
22 TRYING TO GET THE THING MANAGEABLE.

23 MR. MARTIN: I KNOW BECAUSE THEY MADE IT
24 UNMANAGEABLE. IF THEY DID IT RIGHT FROM DAY ONE WE
25 WOULDN'T BE HERE. HE SAYS THERE'S ABSOLUTELY NO CASELAW

1 ABOUT ATTORNEYS' FEES. WELL, ABOUT SHIFT VERSUS
2 RICHARDSON CORPORATION AND MORROW VERSUS CLAYBORN?

3 THE COURT: WHAT PAGE --

4 MR. MARTIN: PAGE 8-6 OF MY BRIEF, YOUR HONOR. ANY
5 GRANT OF A VOLUNTARY DISMISSAL SHOULD INCLUDE THE PAYMENT
6 OF COST AND ATTORNEYS' FEES. SOUTH CAROLINA RULES OF
7 CIVIL PROCEDURE 41(A)(C) ALLOWS THE IMPOSITION OF
8 ATTORNEYS' FEES ON THE GRANTING OF A VOLUNTARY NON-SUIT.
9 SEE SHIPP VERSUS RICHARDSON CORPORATION. THE AWARD OF
10 ATTORNEYS' FEES MUST BE ADEQUATE TO COMPENSATE THE
11 DEFENDANTS, AND THEN -- I MEAN, THIS IS THE LAW OF THE
12 STATE. JUST LIKE WE HAVE RULES OF CIVIL PROCEDURE TO TELL
13 US WHAT TO DO IN THESE SITUATIONS AND WE HAVE PRECEDENT
14 FROM THE SUPREME COURT TO TELL US WHAT WE CAN DO, WE CAN'T
15 JUST DEUS EX MACHINA AND SAY THOSE THINGS DON'T APPLY.

16 THE COURT: WELL, LET ME ASK YOU THIS. LET'S SAY I
17 DENY HIS MOTION TO AMEND. THEREFORE, YOU'RE AREN'T
18 ENTITLED TO ATTORNEYS' FEES. YOU'RE STILL IN IT. I RULE
19 ON YOUR 59(E) THAT THEY DON'T HAVE STANDING, I MADE A
20 MISTAKE, AND THEN WE'RE BACK TO THE SEVEN AND YOU'RE OUT.

21 MR. MARTIN: PERFECTLY FINE TO ME, YOUR HONOR.

22 THE COURT: SO, YOU GIVE UP YOUR CLAIM TO \$250,000
23 FEES.

24 MR. MARTIN: WELL, I WILL NEED TO RESEARCH WHETHER I
25 HAVE AN OPPORTUNITY FOR FEES UNDER A 59(E). THAT MAY BE

1 DISCRETIONARY. I HAVEN'T RESEARCHED IT YET.

2 THE COURT: I DON'T KNOW THE ANSWER TO THAT EITHER.

3 MR. MARTIN: BUT I MAY STILL GET IT THEN, BUT THAT'S
4 NOT WHAT'S BEFORE US US NOW. WHAT'S BEFORE US NOW IS RULE
5 41 AND WHEN YOU FIND YOURSELF IN A SITUATION AND YOU'RE
6 SAYING, WHAT DO I DO? WELL, WHAT DOES THE RULE SAY? THE
7 RULE SAYS LEGAL PREJUDICE OR A PUBLIC POLICY ISSUE YOU
8 CAN'T JUST FLUSH IT IF YOU GOT PEOPLE OBJECTING.

9 THE COURT: WELL, YOU MADE YOUR POINT ON THAT. WHAT
10 IS BEFORE ME IS TO TRY TO GET THIS LITIGATION UNDER
11 CONTROL SO IT CAN BE MANAGEABLE WITHOUT HAVING --

12 MR. MARTIN: WE FIRST CAME INTO YOUR COURTROOM IN
13 APRIL LAST YEAR.

14 THE COURT: I KNOW YOU DID. I REMEMBER.

15 MR. MARTIN: IN APRIL OF LAST YEAR I SAID TO YOU THE
16 WAY THIS SHOULD BE DONE IS JUST LIKE THE FANNING VERSUS
17 FRITZ CASE AND THE NEWSOME CASE. YOU GOT ONE PLAINTIFF,
18 AND IF THERE'S TOO MANY TO BRING IN -- PLAINTIFFS --
19 AGAINST THAT ONE DEALERSHIP, SUE THAT DEALERSHIP. THAT'S
20 WHAT IT'S SUPPOSED TO BE. THEN GET YOUR CLASS ACTION.

21 I TALKED ABOUT ROUTE 23. YOU GOT TO HAVE BANKS TO
22 RIVERS. WHEN YOU HAVE BANKS TO RIVERS YOU DON'T GET
23 OVERFLOWED AND YOU DON'T DROWN. WE TALKED ABOUT THE
24 JAGUAR CASE. IF YOU GOT EIGHT BAD JAGUARS YOU CAN'T JUST
25 BRING --

1 THE COURT: I KNOW THAT YOU TALKED ABOUT ALL OF THAT,
2 AND I MADE A RULING ON IT, AND I AM GOING TO HEAR YOUR
3 59(E) ON IT.

4 MR. MARTIN: SO, BUT THE REASON WHY WE'RE HERE TODAY
5 AND THE REASON WHY WE HAVE RULE 41 IS BECAUSE MY VERY,
6 VERY CLEVER AND VERY GOOD LAWYERS ON THE OTHER SIDE KEEP
7 CHANGING TO TRY TO FIGURE OUT HOW TO GET TO WHERE THEY
8 WANT TO BE. WELL, WHY DON'T WE JUST FOLLOW THE RULES?
9 WHY DON'T WE FOLLOW THE PRECEDENT? WHY DON'T WE SAY ONE
10 PLAINTIFF, ONE DEFENDANT, AND IF YOU GOT SEVERAL
11 PLAINTIFFS THAT ARE IN THE SAME SITUATION AGAINST THAT
12 DEFENDANT, SO BE IT, BUT PROVE IT. THEN WE WOULDN'T BE
13 HERE, BUT THAT'S NOT WHERE WE ARE.

14 WE'VE BEEN IN THIS FOR A YEAR AND A HALF. MY FOLKS
15 HAVE FLUSHED A QUARTER OF A MILLION DOLLARS. GIVE IT BACK
16 TO US AND LET US DISMISS. THAT'S AN OPTION. WE WOULD
17 RATHER HAVE FINALITY. WE WANT TO GO AND DO OUR BUSINESS
18 AND KNOW THAT THINGS ARE OKAY.

19 THE COURT: THANK YOU, MR. MARTIN. ANYBODY ELSE IN
20 OPPOSITION OR IN REPLY TO MR. LEWIS? NORMALLY, I WOULDN'T
21 LET YOU SAY ANYTHING ELSE, MR. LEWIS, BUT IF YOU NEED TO I
22 WILL.

23 MR. LEWIS: I WANT TO POINT OUT ONE THING.

24 THE COURT: YES, SIR.

25 MR. LEWIS: YOU NEED TO READ 41(D) WHICH IS THE RULE

1 UPON WHICH THESE CASES HE CITES FIND THEMSELVES AND IT
2 SAYS IF A PLAINTIFF WHO HAS ONCE DISMISSED AN ACTION IN
3 ANY COURT COMMENCES AN ACTION BASED UPON OR INCLUDING THE
4 SAME CLAIM AGAINST THE SAME DEFENDANT THE COURT MAY MAKE
5 SUCH ORDER FOR THE PAYMENT OF COSTS OF THE ACTION
6 PREVIOUSLY DISMISSED AS IT MAY DEEM PROPER AND MAY STAY
7 THE PROCEEDINGS IN THE ACTION UNTIL THE PLAINTIFF HAS
8 COMPLIED WITH THE ORDER. WE DO NOT HAVE THE SAME
9 ACTION -- SAME SECOND ACTION AT ALL. WE HAVE ANOTHER
10 PLAINTIFF WHO HAS BROUGHT A SUIT AGAINST THE DEALER FOR
11 THEIR CAR.

12 SO, 41(D) JUST SIMPLY DOES NOT APPLY. THAT'S WHAT I
13 MEANT WHEN I SAID THERE IS NO RIGHT TO ATTORNEYS' FEES
14 UNDER A DISMISSAL UNLESS YOU BRING A SECOND SUIT EXACTLY
15 LIKE THE FIRST ONE.

16 MR. MARTIN: 41(A)(C) IS WHAT WE'RE GOING UNDER, YOUR
17 HONOR, AND THE SHIPP CASE WHICH IT SETS IT ALL OUT. IT
18 ALLOWS THE IMPOSITION --

19 THE COURT: WAIT A MINUTE. 41(A) WHAT?

20 MR. MARTIN: (A)(C).

21 THE COURT: (A)(C)? HELP ME FIND IT. WHICH RULES
22 ARE YOU LOOKING AT -- FEDERAL OR STATE?

23 MR. MARTIN: STATE.

24 THE COURT: (A) --

25 MR. MARTIN: (A)(C).

1 THE COURT: DISMISSAL -- I SEE IT.

2 MR. MARTIN: I'M SORRY. 41(A)(2)(C). I LEFT OUT
3 THE 2.

4 THE COURT: I DON'T SEE A 2(C). LET ME LOOK AGAIN.
5 I GOT A 41(A)(1) AND A 41(A)(2), NO "C" UNDER 2 -- A "B",
6 A "C," A "D" UNLESS I AM LOOKING AT IT WRONG.

7 MR. MARTIN: IT IS THE OLD LANGUAGE OF RULE 45.

8 THE COURT: WAIT A MINUTE. WHERE ARE WE GOING NOW?

9 MR. MARTIN: I AM TALKING ABOUT THE SHIPP CASE. RULE
10 45 IS NOW RULE 41. AND UNDER RULE 45 AN ACTION SHALL NOT
11 BE DISMISSED AT THE PLAINTIFF'S INSISTENCE SAVE UPON AN
12 ORDER OF THE COURT AND UPON SUCH TERMS AND CONDITIONS AS
13 THE COURT DEEMS PROPER.

14 THE COURT: WE'RE OPERATING UNDER THE NEW RULES NOW.

15 MR. MARTIN: THE NEW RULES HAS THAT SAME PHRASE.

16 THE COURT: SHOW IT TO ME. WELL, THAT'S -- YOU KNOW,
17 HERE IS WHAT I AM GOING TO DO ON THAT. IF I GRANT HIS
18 MOTION TO AMEND I WILL LET HIM BRIEF THAT ISSUE AND WE
19 WILL HOLD THAT IN ABEYANCE AS TO WHETHER OR NOT THEY ARE
20 ENTITLED TO ANY COST -- YOU'RE ENTITLED TO ANY COSTS AND
21 FEES.

22 OKAY. WHAT MR. LEWIS READ TO ME IS PRETTY CLEAR, BUT
23 I AM NOT GOING TO CATCH YOU OFF GUARD.

24 MR. MARTIN: I KNOW ABOUT 41, BUT THAT'S WITH A
25 PREVIOUSLY DISMISSED ACTION AND THAT'S NOT WHERE WE ARE.

1 IN THE SHIPP CASE IT SAYS CLEARLY THAT THE COURT CAN ORDER
2 -- CANNOT ORDER A DISMISSAL SAVE UPON AN ORDER OF THE
3 COURT AND UPON SUCH TERMS AND CONDITIONS AS THE COURT
4 DEEMS PROPER, AND THEN IN MORROW WHICH WAS THE CASE
5 DECIDED AFTER THE RULES WERE CHANGED THEY SAID THAT WOULD
6 INCLUDE THE RIGHT TO ORDER ATTORNEYS' FEES AND COSTS, AND
7 THE LAW IS ABSOLUTELY CLEAR THAT YOU CAN DO THAT IF YOU
8 SHOW THE LEGAL PREJUDICE OR --

9 THE COURT: WELL, NOW, WAIT A MINUTE. THE MORROW
10 CASE SAYS -- WELL, HE'S TALKING ABOUT THE ADAMS CASE.
11 THEY CITE THE LANGUAGE THAT MR. LEWIS JUST CITED. THAT'S
12 WHAT YOU HAVE IN YOUR BRIEF.

13 MR. MARTIN: WELL, THAT'S --

14 THE COURT: WELL -- YOU WILL NOT BE -- IF I GRANT
15 HIS MOTION, I WILL LET YOU RESERVE THAT ISSUE FOR FULL
16 HEARING WHERE EVERYBODY CAN TAKE A LOOK AT IT.

17 MR. MARTIN: OKAY.

18 THE COURT: MR. BECKER, FIRST OF ALL, I WANT TO
19 COMPLIMENT YOU ON YOUR BRIEFS. OBVIOUSLY, A LOT OF WORK
20 AND EFFORT HAS BEEN PUT INTO IT. I APPRECIATE IT. YOU
21 KNOW I SPENT ALL DAY YESTERDAY -- I WAS SUPPOSED TO BE
22 DOING SOMETHING ELSE -- READING.

23 MR. BECKER: THANK YOU, YOUR HONOR. SHALL WE PROCEED
24 WITH ARGUMENT ON THE RULE 59(E) MOTION?

25 THE COURT: WELL, LET ME ASK YOU THIS. IF I GRANT

1 YOUR 59(E) ON HERRON, DON'T WE END UP BACK WHERE WE ARE
2 WITH THE SEVEN DEFENDANTS AND THE SEVEN PLAINTIFFS?

3 MR. BECKER: IF YOU GRANT THE FULL MEASURE OF RELIEF
4 WE ASKED FOR IN THE RULE 59(E) MOTIONS I THINK YOU'LL BE
5 DISMISSING THE HERRON CASE AS TO EVERY DEFENDANT BUT THE
6 ONE THAT IS -- DOES BUSINESS IN AIKEN COUNTY AND THAT'S
7 THE FULL MEASURE OF RELIEF REQUESTED IN THE RULE.

8 THE COURT: WELL, WHAT IF I GIVE YOU PARTIAL RELIEF?

9 MR. BECKER: THAT WILL SOLVE SOME OF THE PROBLEM, BUT
10 NOT ALL OF IT, AND REMEMBER THERE IS -- THERE'S AN
11 800-POUND GORILLA SITTING IN THE BACK OF THIS COURTROOM
12 AND IT'S CALLED THE ADAMS CASE, AND EVERY ISSUE THAT IS
13 DEALING WITH TODAY PRESENTS ITSELF AGAIN IN SPADES IN THE
14 ADAMS CASE. SO, I THINK -- I THINK WE HAVE SOME
15 COMPELLING NEW ARGUMENTS.

16 THE COURT: WELL, YOU DO HAVE A COMPELLING NEW
17 ARGUMENT IN THE CLASS ACTION SETTLEMENT OF CARMAX.

18 MR. BECKER: AND THE AMCHEM CASE WE HAVE SOME NEW LAW
19 TO CITE TO YOU ON THE EFFECT OF 56-15-110(2). WE HAVE
20 SOME NEW ARGUMENTS ON THE CIVIL CONSPIRACY CLAIM. WE NEED
21 TO TALK TO YOU ABOUT THIS CONCEPT OF IMPROPER JOINDER
22 BECAUSE THAT IS NOT AN ISSUE THAT WAS ADDRESSED IN YOUR
23 ORDER. WE THINK THAT IT'S A CRITICAL ONE. IT'S A
24 THRESHOLD ISSUE JUST LIKE THESE OTHERS.

25 THE COURT: WELL, LET'S DO THIS THEN. INSTEAD OF ME

1 INTERRUPTING YOU, YOU GO AHEAD AND MAKE YOUR ARGUMENT.

2 MR. BECKER: THANK YOU. YOUR HONOR, YOU'VE HEARD
3 THAT ADAGE, THAT OLD ADAGE ABOUT THE EXCEPTION THAT
4 SWALLOWS THE RULE?

5 THE COURT: I HAVE HEARD THAT.

6 MR. BECKER: WELL, THE OVERRIDING ISSUE HERE TODAY IS
7 WHETHER THESE EXCEPTIONS THAT THE PLAINTIFF OFFER WILL
8 SWALLOW THE WELL-ESTABLISHED RULES OF CIVIL PROCEDURE, THE
9 CASELAW, THE PRECEDENT THAT WE RELY ON AND THAT GOVERNS
10 ALMOST ALL OF THE OTHER CASES THAT GET FILED IN THIS
11 COURTROOM EXCEPT THESE THREE -- HERRON, WEST-COX, ADAMS.
12 THOSE EXCEPTIONS ARE THIS -- 56-15-110(2), A 1972 STATUTE
13 THAT IS VIRTUALLY IDENTICAL -- AND I'LL SHOW THIS TO
14 YOU -- TO THE OLD SECTION 15 --

15 THE COURT: MERT, CLOSE THAT DOOR.

16 MR. BECKER: 110(2) IS VIRTUALLY IDENTICAL TO THE OLD
17 SECTION 15-5-50 IN THE OLD CIVIL PROCEDURE OF THE CODE.
18 110(2) WAS PASSED IN 1972, 15-50 WAS REPEALED IN '85 WHEN
19 THE SOUTH CAROLINA RULES OF CIVIL PROCEDURE WERE ADOPTED.
20 THAT'S THEIR EXCEPTION ONE.

21 EXCEPTION TWO IS THEIR CIVIL CONSPIRACY CLAIM -- A
22 CLAIM THAT IS MORE OFTEN THAN NOT DISMISSED IN OUR REPORT
23 OF APPELLATE DECISIONS. UNDER THEIR INTERPRETATION OF
24 CIVIL CONSPIRACY IT IS THE GLUE THAT HOLDS EVERYTHING
25 TOGETHER -- EVERYTHING THAT ALL THE OTHER RULES WOULD TELL

1 YOU, NO, THOSE CAN'T BE PUT TOGETHER THIS WAY. SO, THE
2 ISSUE FOR YOU TODAY IS WHETHER THOSE EXCEPTIONS THAT THEY
3 THEY'VE BEEN ADVANCING ALL ALONG WILL SWALLOW RULE 23,
4 WILL SWALLOW THE CONSTITUTIONAL PRINCIPALS IN CASELAW
5 RELATED TO STANDING, WILL SWALLOW RULE 20 RELATED TO
6 JOINDER, AND WILL SWALLOW THE RULES OF PLEADING AS THEY
7 RELATE TO CIVIL CONSPIRACY.

8 LET'S DEAL FIRST WITH RULE 23. WHAT'S NEW ON THIS
9 ISSUE SINCE YOU HEARD US LAST? WELL, THERE ARE FOUR
10 THINGS. THERE IS THE CARMAX CASE. THERE IS THE AMCHEM
11 CASE -- THE CARMAX SETTLEMENT CASE -- EXCUSE ME -- THE
12 AMCHEM CASE WHICH WE'VE CITED TO YOU. WE'VE GOT SOME NEW
13 CASELAW TO SHOW YOU ON THE INTERACTION BETWEEN 110(2) OF
14 THE DEALERS ACT AND 1985 ACT 100, THE RULES ENABLING ACT,
15 THE ACT IN WHICH THE RULES OF CIVIL PROCEDURE WERE ADOPTED
16 AND WHICH WE CONTEND REPEALED 110(2) AND WE'VE GOT A NEW
17 ARGUMENT ON THE DOCTRINE OF COLLATERAL ESTOPPEL.

18 LET'S FIRST LOOK AT THE CARMAX SETTLEMENT. IN IT THE
19 PLAINTIFFS -- THEY'VE SHOWN THEIR CARDS, YOUR HONOR. WE
20 SEE THAT AT SETTLEMENT TIME THEY ABANDON ANY PRETENSE OF A
21 GROUP SUIT. THEY ABANDON ANY PRETENSE OF SUBSTANTIVE
22 RIGHTS UNDER SECTION 110(2). THEY BACKTRACK AND THEY
23 TRAVEL DOWN ROUTE 23. THEY ENTER INTO A SETTLEMENT
24 AGREEMENT DATED MARCH 27. IT'S ENTITLED CLASS ACTION
25 SETTLEMENT AGREEMENT, NOT GROUP SUIT SETTLEMENT AGREEMENT.

1 IT DEFINES CLASS MEMBERS AS PERSONS WHO DO NOT OPT OUT OF
2 THE SETTLEMENT CLASS.

3 IN FACT, SECTION 2.1 OF THAT SETTLEMENT AGREEMENT
4 SIGNED BY THE PLAINTIFFS SAYS THIS: THE PARTIES AGREE
5 THAT THE COMPLAINT IN THIS ACTION -- IN THE HERRON
6 ACTION -- SHALL BE TREATED AS AMENDED TO BE A CLASS ACTION
7 UNDER RULE 23 OF THE SOUTH CAROLINA RULES OF CIVIL
8 PROCEDURE. IN THAT SETTLEMENT AGREEMENT IT IS NOT LIMITED
9 TO FOR SETTLEMENT PURPOSES ONLY. NOW, BY THE TIME THEY
10 SUBMITTED TO YOU THE CONSENT ORDERS, THE PRELIMINARY ONE
11 AND THEN THE FINAL ONE, THEY INSERTED THAT PHRASE FOR
12 SETTLEMENT PURPOSES ONLY, BUT IN THE ORIGINAL SETTLEMENT
13 AGREEMENT SIGNED BY THOSE PARTIES THAT'S WHAT THE
14 PLAINTIFF SAID. IT'S AMENDED TO BE A COMPLAINT UNDER RULE
15 23.

16 THERE ARE NUMEROUS OTHER REFERENCES TO RULE 23 AND
17 ALL THE SETTLEMENT DOCUMENTS AND THE NOTICES TO THE CLASS,
18 AND IN YOUR OCTOBER 22 ORDER GIVING FINAL APPROVAL TO THE
19 SETTLEMENT AGREEMENT THIS COURT SAID, THIS COURT REAFFIRMS
20 ITS FINDINGS THAT THE PREREQUISITES FOR CLASS
21 CERTIFICATION CONTAINED IN RULE 23 HAVE BEEN MET. THAT'S
22 YOUR ORDER ON PAGE TWO. YOU WENT ON TO ANALYZE ALL THE
23 REQUIREMENTS -- NUMEROSITY, COMMONALITY, TYPICALITY,
24 ADEQUACY OF REPRESENTATION -- AND FOUND THAT THEY WERE MET
25 AND THE SETTLEMENT WAS FAIR.

1 I WOULD SUGGEST TO YOUR HONOR THAT IF IT LOOKS,
2 WALKS, AND TALKS LIKE A RULE 23 CLASS ACTION, THEN THAT'S
3 REALLY WHAT IT IS. THE IMPORTANT POINT HERE IS THAT
4 PLAINTIFFS HAVE REVEALED THAT WHEN IT COMES TIME TO SETTLE
5 THEY HAVE TO RELY ON RULE 23 AND ALL THE PROCEDURES IN
6 THAT RULE. NOTICE THEY DIDN'T USE THE OLD BILL OF PEACE
7 THAT YOU USED TO USE IN THE CODE PLEADING DAYS TO SETTLE A
8 GROUP SUIT WHERE THERE WERE A MULTITUDE OF PARTIES. THEY
9 USED THE MODERN VERSION OF RULE 23 FOUND IN THE SOUTH
10 CAROLINA RULES OF CIVIL PROCEDURE.

11 WHY IS THAT SO IMPORTANT? THAT BRINGS US TO AMCHEM
12 PRODUCTS, INC. VERSUS WINDSOR, 521 U.S. 591, A 1977
13 CASE -- A CASE IN WHICH SOUTH CAROLINA'S OWN RON MOTLEY
14 AND JOE RICE WERE REPRESENTING A GROUP OF ASBESTOS
15 PLAINTIFFS FROM ALL OVER THE COUNTRY. YOU MAY RECALL BACK
16 IN THOSE DAYS WHEN ASBESTOS CASES WERE IN EVERY COURTROOM
17 EVERYWHERE. THEY WERE CONSOLIDATED TOGETHER THROUGH AN
18 M.D.L. PROCEEDING THAT WAS SIMILAR IN MANY WAYS TO THE
19 MASS ACTION THAT THE PLAINTIFFS ARE TRYING TO BRING IN
20 THIS COURT HERE IN ONE SINGLE COUNTY BEFORE ONE SINGLE
21 JUDGE.

22 WELL, IN AMCHEM THE PLAINTIFFS DECIDED LET'S TAKE A
23 SHORTCUT. LET'S DO IT THE EASY WAY. LET'S GROUP
24 EVERYBODY TOGETHER AND FIX IT IN ONE FELL SWOOP. NEVER
25 INTENDING TO LITIGATE THE CASE, THE PARTIES IN AMCHEM ON A

1 SINGLE DAY FILED A COMPLAINT, AN ANSWER, A PROPOSED
2 SETTLEMENT AGREEMENT, AND A JOINT MOTION FOR CONDITIONAL
3 CLASS CERTIFICATION PURSUANT TO RULES 23(A) AND (B) OF THE
4 FEDERAL RULES OF CIVIL PROCEDURE.

5 THE TRIAL COURT SAID, OH, THIS MAKES MY LIFE EASY.
6 WE'LL APPROVE IT. WELL, THE THIRD CIRCUIT AND THEN THE
7 SUPREME COURT SAID, HOLD ON. WE'RE SORRY. YOU CAN'T DO
8 IT THAT WAY. THERE ARE RULES YOU HAVE TO FOLLOW. RULE 23
9 IS ONE, AND YOU HAVE TO FOLLOW IT FROM THE GET-GO. THE
10 SUPREME COURT HELD IF RULE 23 IS USED TO CERTIFY A
11 SETTLEMENT CLASS, THE PARTIES MUST ALSO PROVE THAT THE
12 RULE 23 REQUIREMENTS ARE SATISFIED AT THE LITIGATION OR
13 LIABILITY PHASE OF THE CASE.

14 STATED ANOTHER WAY, IF ONE WANTS TO USE RULE 23 TO
15 SETTLE A SUIT IN WHICH A NAMED PLAINTIFF PURPORTS TO
16 REPRESENT UNNAMED PLAINTIFFS, AND, MORE IMPORTANTLY, IF
17 YOU WANT THE COURT'S ORDER APPROVING THAT SETTLEMENT TO
18 BIND THE UNNAMED PLAINTIFFS -- THOSE PLAINTIFFS WHO HAVE
19 NEVER APPEARED IN THE COURTROOM WHOSE NAME HAS NEVER BEEN
20 IN THE CAPTION -- THEN YOU HAVE TO COMPLY WITH RULE 23
21 FROM THE OUTSET OF THE CASE. THE PLAINTIFFS HAVE TO PLEAD
22 AND PROVE THE REQUIREMENTS OF RULE 23 AT THE LIABILITY
23 PHASE AND THEN THE COURT HAS TO DETERMINE IN A LIABILITY
24 DETERMINATION THAT THE CLASS -- THE PUTATIVE CLASS --
25 MEETS THE REQUIREMENTS OF RULE 23.

1 SETTLEMENT CAN BE A FACTOR IN THAT ANALYSIS, BUT IT'S
2 ONLY A FACTOR, AND IT'S NOT THE DETERMINING FACTOR.

3 YOUR HONOR, WE'RE NOT SUGGESTING THAT THE CARMAX
4 SETTLEMENT WAS IMPROPER, BUT I AM SUGGESTING THAT IT MAY
5 HAVE BEEN THE ONLY DEFENDANT FOR WHICH SUCH A SETTLEMENT
6 WAS PROPER. WHY? BECAUSE CARMAX OPERATES VERY
7 DIFFERENTLY FROM MOST OTHER CAR DEALERS. I WAS SHOPPING
8 THERE -- MY SON IS 16. I GOT TO BUY HIM A CAR. I WAS
9 SHOPPING THERE A WEEK AGO. THEY OPERATE VERY DIFFERENTLY
10 FROM MOST OF THE CAR DEALERS. THEY ADVERTISE THE PRICE OF
11 EVERY VEHICLE THEY SELL IN THE PRINT MEDIA AND ON THE
12 INTERNET. THEY DO NOT NEGOTIATE PRICE. THE PRICE YOU GET
13 FROM THEM IS A NO-HAGGLE PRICE. THEY SIMPLY WILL NOT
14 DISCUSS A DIFFERENT PRICE, AND THEY CHARGE THE CLOSING FEE
15 ON EVERY DEAL.

16 NOW, THAT SITUATION PERFECTLY MEETS THE REQUIREMENTS
17 OF RULE 23 AT THE LITIGATION PHASE. YOU HAVE A FAIRLY
18 CLEAR-CUT PROBLEM IN THAT SITUATION WITH THE CLOSING FEE
19 STATUTE BECAUSE THE CLOSING FEE WAS NOT INCLUDED IN THE
20 ADVERTISED PRICE OF THE VEHICLE THAT WAS SOLD. IT'S
21 PRETTY CLEAR-CUT IN THAT SITUATION. SO, THAT SITUATION
22 MET THE REQUIREMENTS OF RULE 23 AT THE LIABILITY PHASE.
23 YOU HAD ONE COMMON ISSUE THAT WAS THE SAME FOR EVERY
24 SINGLE MEMBER OF THAT CLASS. YOU COULD DETERMINE IT ONE
25 TIME FOR ONE PERSON AND IT WAS THE SAME FOR EVERYBODY

1 ELSE.

2 SO, IT WAS FINE TO APPROVE A SETTLEMENT FOR CARMAX,
3 BUT THAT'S JUST NOT THE CASE WITH ALL THE OTHER
4 DEFENDANTS. FIRST OF ALL, WE CAN'T ASSUME THAT IT IS,
5 AND, SECOND, THE FACTS AS YOU PROBABLY KNOW FROM YOUR OWN
6 EXPERIENCE WILL DEMONSTRATE THAT MOST OTHER DEFENDANTS --
7 TRADITIONAL CAR DEALERS -- DON'T OPERATE THE WAY THAT
8 CARMAX DOES. THEY DON'T ADVERTISE THE PRICE OF EVERY
9 VEHICLE THEY SELL. PRICE IS ALWAYS NEGOTIATABLE. SO,
10 IT'S A RADICALLY DIFFERENT WAY OF DOING BUSINESS, AND YOU
11 CAN'T BE SURE THAT THE REQUIREMENTS OF RULE 23 ARE GOING
12 TO BE MET AT THE LIABILITY PHASE WHEN YOU'RE DEALING WITH
13 A DEFENDANT THAT DOES BUSINESS THAT WAY.

14 IN SUM, YOUR HONOR, THE HOLDING IN AMCHEM REQUIRES
15 THAT THE PLAINTIFFS HAVE TO PLEAD AND PROVE THE
16 REQUIREMENTS OF RULE 23 FROM THE OUTSET. I THINK -- I
17 THINK THE CARMAX SETTLEMENT AND THE AMCHEM CASE JUST ALONE
18 DECIDE THIS ISSUE. IN CASE YOU HAVE SOME DOUBT, LET'S
19 MOVE ON. LET'S EXAMINE THE EXCEPTION THAT THEY CLAIM
20 SWALLOWS THE RULE. LET'S REEXAMINE THAT -- THE
21 INTERACTION BETWEEN 56-15-110(2) AND RULE 23.

22 OUR ANALYSIS OF THAT BEGINS ON PAGE 16 OF OUR BRIEF,
23 AND WE'VE GOT SOMETHING NEW HERE. WE'VE GOT SOME NEW
24 CASES CITED. I BELIEVE THAT WE MORE FULLY DEMONSTRATE
25 THAT 110(2) CREATES PROCEDURAL RIGHTS AS OPPOSED TO

1 SUBSTANTIVE RIGHTS AND THAT EVEN IF 110(2) DOES CREATE
2 SUBSTANTIVE RIGHTS THE PROCEDURE FOR ASSERTING THOSE
3 RIGHTS IS RULE 23.

4 LET'S LOOK BACK AT THE PLAINTIFF'S ARGUMENTS
5 REGARDING 110(2). FIRST OF ALL, JUST TO KIND OF PUT IT IN
6 CONTEXT, AGAIN, THEY'RE ARGUING THE EXCEPTION SWALLOWS THE
7 RULE. 110(2) DOES THE FOLLOWING THINGS. IT SUBSTITUTES
8 FOR LONG-ACCEPTED PRINCIPALS OF STANDING. IT TRUMPS RULE
9 23. IT WITHSTANDS LEGISLATIVE REPEAL. IT RENDERS
10 IRRELEVANT LEADING SOUTH CAROLINA SUPREME COURT
11 PRECEDENTS. IT ALLOWS PLAINTIFFS WHO DID NOT TRANSACT
12 BUSINESS WITH THE DEFENDANT TO SUE ANYWAY, AND IT CREATES
13 THIS GROUP SUIT -- THIS UNHEARD OF ACTION -- WHICH OFFENDS
14 PRINCIPALS OF FAIRNESS AND DUE PROCESS. THAT'S A LOT TO
15 ASK OF ANY STATUTE, AND I THINK WHEN WE LOOK AT IT A
16 LITTLE BIT MORE CAREFULLY YOU'RE GOING TO SEE THAT IT'S
17 MORE THAN THE LANGUAGE IN THE INTENT OF 110(2) CAN BEAR.

18 I AM GOING TO HAND YOU OUT A FEW THINGS, YOUR HONOR,
19 THAT I'LL BE REFERRING TO AS WE MOVE ALONG. THE FIRST OF
20 THESE IS A COMPARISON OF THE CLASS ACTION -- WHAT I'M
21 CALLING THE CLASS ACTION STATUTES THAT WE'RE GOING TO BE
22 DEALING WITH AND I'VE GOT THE TEXT OF 110(2) FOR YOU THERE
23 UNDER THE TITLE 56 PART. THAT'S ON THE FIRST THING MARKED
24 "A."

25 NOW, IN YOUR ORDER -- I WANT TO GO BACK AND PARSE

1 YOUR ORDER JUST A BIT. IN YOUR ORDER DENYING THE MOTIONS
2 TO DISMISS YOU FOUND -- FIRST, YOU FOUND THREE THINGS WITH
3 RESPECT TO 110(2). YOU FOUND THAT IT CREATES A
4 SUBSTANTIVE RIGHT, BUT NOTE WHEN YOU LOOK AT IT THAT YOU
5 DID NOT EXPLAIN WHAT THAT RIGHT WAS. IN OTHER WORDS, YOU
6 DID NOT DEFINE WHAT IS THE NATURE OR THE SUBSTANCE OF THIS
7 SUBSTANTIVE RIGHT, AND I'LL GET TO THAT IN A MINUTE.

8 NUMBER TWO, YOU SAID THAT THE RULES ENABLING ACT --
9 THE 1995 ACT 100, THE ACT THAT AUTHORIZED OUR RULES OF
10 CIVIL PROCEDURE -- YOU SAID IT DID NOT REPEAL 110(2), AND
11 IT IS TRUE THAT THIS SPECIFIC SECTION OF THE CODE IN TITLE
12 56 -- THIS SPECIFIC SUBSECTION OF THIS SPECIFIC CODE
13 SECTION WAS NOT SPECIFICALLY REPEALED BY 1985 ACT 100, THE
14 RULES ENABLING ACT. HOWEVER, AS I'LL POINT OUT OTHER
15 SPECIFIC CODE SECTIONS NOTABLY 15-5-50 WHICH IS VIRTUALLY
16 IDENTICAL WERE SPECIFICALLY REPEALED.

17 FINALLY, THE THIRD THING YOU SAID WITH RESPECT TO
18 110(2) IS IT DID NOT INCLUDE A REQUIREMENT THAT A
19 COMPLAINT ASSERTING RIGHTS UNDER 110(2) MUST PLEAD AND
20 PROVE THE REQUIREMENTS OF RULE 23, AND THIS IS ALSO TRUE.
21 THAT ACT DOES NOT INCLUDE SUCH SPECIFIC LANGUAGE, BUT
22 TODAY I WANT TO ENCOURAGE YOU LET'S TAKE THE ANALYSIS JUST
23 ONE STEP FURTHER. LET'S ASSUME FOR THE PURPOSES OF
24 ARGUMENT, FIRST OF ALL, THAT 110(2) DOES CREATE A
25 SUBSTANTIVE RIGHT, BUT LET'S EXAMINE WHAT IS THE SUBSTANCE

1 OF THE SUBSTANTIVE RIGHT CREATED BY 110(2). LET'S READ
2 THAT SUBSECTION UNDER TITLE 56. WHEN SUCH ACTION IS ONE
3 OF COMMON OR GENERAL INTEREST TO MANY PERSONS OR WHEN THE
4 PARTIES ARE NUMEROUS AND IT IS IMPRACTICABLE TO BRING THEM
5 ALL BEFORE THE COURT, ONE OR MORE MAY SUE FOR THE BENEFIT
6 OF THE WHOLE INCLUDING ACTIONS FOR INJUNCTIVE RELIEF.

7 WELL, THAT'S REALLY NOTHING MORE, YOUR HONOR, THAN
8 THE RIGHT TO BRING A SUIT IN A REPRESENTATIVE CAPACITY TO
9 SUE FOR THE BENEFIT OF THE WHOLE, TO BRING CLAIMS AND
10 RECOVER DAMAGES FOR PEOPLE WHO ARE NEVER SPECIFICALLY
11 NAMED AS ONE OF THE PLAINTIFFS IN THE LAWSUIT WHOSE NAMES
12 NEVER APPEAR IN THE CAPTION OF THE CASE. THAT, YOUR
13 HONOR, IS THE SUBSTANCE OF THIS SUBSTANTIVE RIGHT TO BRING
14 CLAIMS IN A REPRESENTATIVE CAPACITY.

15 WELL, WHAT DOES THE U.S. SUPREME COURT SAY ABOUT THE
16 RIGHT TO BRING A CLAIM IN A REPRESENTATIVE CAPACITY? IN
17 U.S. PAROLE COMMISSION VERSUS GARITY 455 US 388, A 1980
18 CASE CITED IN OUR BRIEF, THE COURT HELD THE RIGHT TO
19 REPRESENT A CLASS IS A PROCEDURAL CLAIM. THEY WERE
20 TALKING ABOUT IT IMPORTANTLY IN THE CONTEXT TO STANDING.
21 THEY SAID IN THE CONTEXT OF ESTABLISHING STANDING THE
22 COURT SAID ALTHOUGH THE NAMED REPRESENTATIVE RECEIVED
23 CERTAIN BENEFITS FROM THE CLASS NATURE REPRESENTATIVE
24 NATURE OF THE ACTION, THESE BENEFITS ARE BYPRODUCTS OF THE
25 CLASS ACTION DEVICE. THE MORE -- THE RIGHT IS MORE

1 ANALOGOUS TO THE PRIVATE ATTORNEY GENERAL CONCEPT THAN TO
2 THE TYPE OF INTEREST TRADITIONALLY THOUGHT TO SATISFY THE
3 PERSONAL STATE REQUIREMENT -- THOSE REQUIREMENTS FOR
4 STANDING. AND IN DEPOSIT GUARANTY NATIONAL BANK VERSUS
5 ROPER DECIDED IN 1980 -- TO SHOW YOU HOW SMALL A WORLD
6 THIS IS ONE QUICK INCREDIBLE ASIDE -- WHEN I WAS 21 YEARS
7 OLD WORKING IN WASHINGTON, D.C. I SAW MY FATHER'S LAW
8 PARTNER ARGUE THIS VERY CASE TO THE U.S. SUPREME COURT,
9 HAD NO IDEA WHAT WAS BEING SAID AT THE TIME, BUT TODAY --

10 THE COURT: HAS ANYTHING CHANGED?

11 MR. BECKER: BUT TODAY SOME 29 YEARS LATER THIS CASE
12 IS VERY IMPORTANT TO ME. WHAT DID THE COURT SAY THERE?
13 THE RIGHT OF A LITIGANT TO EMPLOY RULE 23 IS A PROCEDURAL
14 RIGHT ONLY ANCILLARY TO THE LITIGATION OF SUBSTANTIVE
15 CLAIMS. LET'S GO BACK TO THE LAST MOTION HEARING WE HAD.
16 WE GOT A TRANSCRIPT. MR. SPEARS IS NOT HERE TODAY, BUT
17 BACK THEN WHEN HE WAS ARGUING THIS WHAT DID HE SAY ABOUT
18 THE RIGHT TO BRING A CLAIM IN A REPRESENTATIVE CAPACITY?
19 DURING ORAL ARGUMENT HE SAID ON PAGE 46 -- HE SAID,
20 110(2). IT IS IN THE ACT WHICH IS QUITE SUBSTANTIVE AND IT
21 SAYS FOR THESE SUBSTANTIVE THINGS THIS IS THE WAY YOU CAN
22 DO IT. THEN YOU INTERJECTED AND SAID, WELL, THE WAY THAT
23 YOU CAN DO IT, ISN'T THAT PROCEDURAL? AND MR. SPEARS
24 SAID, WELL, IT IS PROCEDURAL WITHIN THE BODY OF THE
25 SUBSTANTIVE RIGHT. I MEAN, IT'S DIFFERENT; HENCE, IN MY

1 VIEW IT IS THE WAY YOU WOULD DO THAT.

2 THEN ON PAGE 47 AT LINE 14 YOU SAID, WHERE DID YOU
3 FIND THE WORD GROUP SUIT? WHOSE LANGUAGE IS THAT? AND
4 MR. SPEARS SAID, I HAVE NEVER EVEN LOOKED FOR GROUP SUIT.
5 I HAVE ALWAYS REFERRED TO THIS AS ANOTHER FORM OF
6 REPRESENTATIVE CAPACITY. AND THEN ON PAGE 49 OF THAT
7 TRANSCRIPT YOU ASKED MR. MARTIN -- YOU SAID, PLEASE ANSWER
8 MY QUESTION AS TO THE NOVEL ISSUE BEING WHETHER OR NOT
9 110(2) IS PROCEDURAL OR SUBSTANTIVE, AND YOU ASKED IF HE
10 COULD SHOW YOU A CASE ON POINT. WE DIDN'T HAVE IT AT THAT
11 TIME, BUT I BELIEVE WE DO NOW, AND WHILE THERE IS NO CASE
12 SPECIFICALLY CONSTRUING 110(2) FOR ANY PURPOSE, I HAVE A
13 CASE THAT I SUGGEST TO YOU DECIDES THIS ISSUE FOR YOU AND
14 THAT I BELIEVE YOU WOULD BE COMPELLED TO FOLLOW, AND IT'S
15 ITEM NUMBER B IN THAT STACK OF MATERIALS THAT I HAVE
16 PROVIDED TO YOU.

17 THIS IS A CASE THAT WAS ADDRESSED BY OUR SUPREME
18 COURT ON TWO SEPARATE OCCASIONS -- IN 1978 AND AGAIN IN
19 1979 -- KNOWLES VERSUS STANDARD SAVINGS AND LOAN
20 ASSOCIATION AND IF YOU LOOK THIS WAS BROUGHT BACK BEFORE
21 WE HAD THE RULES OF CIVIL PROCEDURE IN SOUTH CAROLINA AND
22 IF YOU'LL LOOK DOWN THERE AT THE BOTTOM OF THIS FIRST PAGE
23 OF THE 1978 CASE -- FIRST PAGE IN THE HANDOUT -- IT POINTS
24 OUT THAT THE COMPLAINT ALLEGES A CLASS ACTION UNDER THE
25 PROVISIONS OF SECTION 15-5-50 WHICH IS OUR OLD CLASS

1 ACTION STATUTE AND THEN ON THE NEXT PAGE --

2 MR. LEWIS: EXCUSE ME. WHERE IS IT THAT YOU'RE
3 READING FROM?

4 MR. BECKER: ON THE NEXT PAGE IT POINTS OUT THAT EVEN
5 IN THOSE DAYS PLAINTIFFS WHO WERE BRINGING A CLASS ACTION
6 UNDER SECTION 15-5-50 WOULD ALLEGE ALL THE ELEMENTS OF
7 RULE 23 OF THE FEDERAL RULES OF CIVIL PROCEDURE. AS THIS
8 POINTS OUT IT SAYS -- IT TALKS ABOUT WHAT THE COMPLAINT
9 ALLEGES AND THIS WAS ABOUT WHETHER THE COMPLAINT WAS
10 SUFFICIENT TO STATE A CAUSE OF ACTION FOR A CLASS ACTION
11 AND IT POINTS OUT THAT IT -- THAT THEY GO THROUGH ALL THE
12 COMMON QUESTIONS OF LAW AND FACT, WHETHER THE CLAIMS ARE
13 TYPICAL, WHETHER THEY'RE NUMEROUS, AND WHETHER IT'S
14 IMPRACTICAL TO BRING THEM ALL BEFORE THE COURT, AND
15 WHETHER THEY WOULD ADEQUATELY REPRESENT THE CLASS.

16 SO, IN 1978 IN THIS CASE THE COURT SAID, YEA, OKAY,
17 THAT IS HOW YOU PLEAD A CLASS ACTION UNDER 15-5-50, AND
18 THEN IN 1979 APPARENTLY -- IT'S NOT EXACTLY CLEAR FROM
19 THESE CASES, BUT APPARENTLY THE COURT -- THE TRIAL COURT
20 HAD CERTIFIED A CLASS UNDER 15-5-50 AND THE ISSUE THEN WAS
21 WHETHER THIS -- THIS ORDER CERTIFYING A CLASS WAS AN
22 INTERLOCUTORY APPEAL OR NOT. THAT'S WHAT WAS AT ISSUE IN
23 1979, AND IF YOU LOOK AT THE LAST PAGE OF THIS ITEM B --
24 THE LAST PAGE OF THIS CASE I'VE GIVEN YOU -- HERE IS WHAT
25 THE COURT -- OUR SUPREME COURT -- HAD TO SAY ABOUT CLASS

1 CERTIFICATION RIGHTS WHICH ARE REALLY JUST THE RIGHT TO
2 BRING A CLAIM IN A REPRESENTATIVE CAPACITY. HERE IS WHAT
3 THEY HAD TO SAY ABOUT THOSE THEN. CLASS CERTIFICATION
4 ESSENTIALLY PROCEDURAL IN NATURE -- THIS IS THE SECOND
5 PARAGRAPH ON THAT PAGE -- DOES NOT INVOLVE SUBSTANTIAL OR
6 ESSENTIAL LEGAL RIGHTS WHICH REQUIRES ATTENTION PRIOR TO
7 FINAL JUDGMENT. THEN IN THE NEXT CASE THEY -- IN THE NEXT
8 SENTENCE DOWN THEY SAY, NEITHER DOES CERTIFICATION REACH
9 THE MERITS OF THE UNDERLYING CAUSE OF ACTION AS DEFINED BY
10 THIS COURT.

11 MR. ALEC BEARD POINTED OUT TO ME TODAY EARLIER, TOO,
12 YOUR HONOR, THAT IN -- IN THE BAZZLE CASE WHICH WAS ONE OF
13 THOSE SOUTH CAROLINA CASE --- SUPREME COURT CASE -- THAT
14 ULTIMATELY WENT UP TO THE U.S. SUPREME COURT ON THE ISSUE
15 OF ARBITRATION THAT -- AND THIS IS A --

16 THE COURT: WHO WAS THE DEFENDANT IN BAZZLE? WAS
17 THAT GREENTREE?

18 MR. BECKER: THAT'S GREENTREE, YES, SIR. THAT'S THE
19 GREENTREE CASE. EXCUSE ME. HE GAVE ME AN ORDER. I CAN
20 MAKE COPIES OF THIS AND GIVE IT TO YOU LATER.

21 THE COURT: THAT'S A BARNWELL COUNTY CASE, ISN'T IT?
22 WASN'T IT OUT OF BARNWELL?

23 MR. HAMM: IT IS TWO DIFFERENT COUNTIES, YOUR HONOR.
24 IT WAS ULTIMATELY CONSOLIDATED. IT WAS A DORCHESTER CASE
25 WHICH WAS A BAZZLE CASE AND THE LACKEY CASE WHICH CAME

1 FROM BARNWELL.

2 MR. BECKER: IN AN ORDER IN THE BAZZLE LACKEY
3 GREENTREE CASES THE SUPREME COURT JUNE 12, 1998 CITED THE
4 KNOWLES CASE AND SAID CLASS CERTIFICATION ALTERS THE
5 PROCEDURES FOR THIS MODE OF TRIAL BUT DOES NOT INFRINGE ON
6 A SUBSTANTIAL RIGHT AND THEN THEY CITED THAT LANGUAGE IN
7 KNOWLES CLASS CERTIFICATION ESSENTIALLY PROCEDURAL IN
8 NATURE DOES NOT INVOLVE SUBSTANTIAL OR ESSENTIAL LEGAL
9 RIGHTS WHICH REQUIRE ATTENTION PRIOR TO FINAL JUDGMENT.

10 SO, IN A -- IN OTHER CASES OUR SUPREME COURT HAS
11 RELIED ON AND AFFIRMED THE KNOWLES DECISION. I THINK IT
12 SHOULD BE VERY CLEAR FROM THE ADMISSIONS THE PLAINTIFFS
13 MADE IN THE LAST HEARING ON THESE MOTIONS TO DISMISS FROM
14 THE CARMAX SETTLEMENT, FROM THE SUPREME COURT DECISIONS IN
15 GARITY AND ROPER, FROM THE SOUTH CAROLINA SUPREME COURT
16 DECISIONS IN KNOWLES THAT BRINGING CLAIM IN A
17 REPRESENTATIVE CAPACITY ON BEHALF OF A GROUP OF UNNAMED
18 PLAINTIFFS RELATES TO PROCEDURE AND NOT THE SUBSTANCE OF A
19 LEGAL CLAIM, NOT THE THEORY OR CAUSE OF ACTION THAT
20 ENTITLES ONE TO REMEDIES AS WE COMMONLY UNDERSTAND THEM.

21 SO, WHATEVER SUBSTANCE THERE IS IN THE RIGHTS GRANTED
22 BY 110(2), IT'S REALLY PROCEDURAL IN NATURE. AS
23 MR. SPEARS SAID, IT'S THE WAY YOU DO IT. SO, THIS BRINGS
24 US BACK TO POINTS NUMBER TWO AND THREE FROM YOUR ORDER.
25 THE 1985 ACT 100, TRUE, DID NOT REPEAL 110(2), BUT IT DID

1 REPEAL SECTION 15-5-50 WHICH I'VE PROVIDED FOR YOU AT THE
2 TOP OF HANDOUT "A" AND I'VE ALSO PROVIDED A COMPARISON
3 BETWEEN 15-5-50 AND 56-15-110(2) USING RED-LINING AND AS
4 YOU CAN SEE THAT'S THE THIRD THING DOWN ON THAT SHEET.
5 THOSE TWO PROVISIONS -- THOSE TWO CODE PROVISIONS ARE
6 VIRTUALLY IDENTICAL. SO, THE POINT IS 15-5-50 WAS
7 REPEALED -- VIRTUALLY IDENTICAL LANGUAGE BY THE RULES
8 ENABLING ACT. WE ARGUE YOU SHOULD INFER THAT IT'S BEEN
9 REPEALED. IT'S BEEN WRITTEN OUT OF OUR STATUTE.

10 BUT LET'S MOVE ON TO POINT THREE FROM YOUR ORDER.
11 YOU SAID THE 1985 ACT 100 DID NOT SAY THAT A CLAIM UNDER
12 110(2) MUST COMPLY WITH RULE 23. THAT'S TRUE AGAIN, BUT
13 HERE 1985 ACT 100 THAT REPEALED THE CLASS ACTION STATUTE,
14 IT DID NOT NEED TO BE THAT SPECIFIC TO HAVE THAT EFFECT --
15 THAT SAME EFFECT. WHAT IT SAYS -- AND I'VE QUOTED FOR YOU
16 THE LANGUAGE DOWN HERE AT THE BOTTOM ON THIS SHEET -- IT
17 SAYS, IN THE EVENT OF CONFLICT BETWEEN ANY PROVISION OF
18 THE SOUTH CAROLINA RULES OF CIVIL PROCEDURE AND ANY OTHER
19 STATUTORY PROVISIONS AS TO PRACTICE AND PROCEDURE NOT
20 REPEALED BY THIS ACT THE PROVISIONS OF THE RULES SHALL
21 CONTROL.

22 WELL, I WOULD URGE YOU THAT WE HAVE JUST ESTABLISHED
23 BY THE ADMISSIONS OF PLAINTIFF'S COUNSEL, BY U.S. SUPREME
24 COURT DECISIONS, BY SOUTH CAROLINA SUPREME COURT DECISIONS
25 THAT 110(2) IS A PROCEDURAL AND NOT A SUBSTANTIVE RIGHT OR

1 EVEN IF IT COULD BE CALLED A SUBSTANTIVE RIGHT THE
2 SUBSTANCE OF THE RIGHT GRANTED BY 110(2) IS ACTUALLY ONLY
3 PROCEDURAL IN NATURE. THEREFORE, THERE IS A CONFLICT
4 BETWEEN 110(2) AND THE RULES OF CIVIL PROCEDURE.
5 THEREFORE, RULE 23 TRUMPS -- BY VIRTUE OF 1985 ACT 100,
6 RULE 23 TRUMPS 110(2).

7 WE HAVE ONE OTHER ARGUMENT FOR YOU TO CONSIDER ON
8 THIS SAME -- SCORE. NON-MUTUAL COLLATERAL ESTOPPEL. HERE
9 JUST TO BRIEFLY, BRIEFLY GO OVER THE LAW. ONCE A FINAL
10 JUDGMENT ON THE MERITS HAS BEEN REACHED IN A PRIOR CLAIM
11 THE RELITIGATION OF THOSE ISSUES ACTUALLY AND NECESSARILY
12 LITIGATED AND DETERMINED IN THE FIRST SUIT ARE PRECLUDED
13 AS TO THE PARTIES AND THEIR PRIVIES IN ANY SUBSEQUENT
14 ACTION BASED ON DIFFERENT CLAIMS. OTHER CASELAW SAYS
15 NON-MUTUAL COLLATERAL ESTOPPEL MAY BE ASSERTED UNLESS THE
16 PARTY PRECLUDED LACKED A FULL AND FAIR OPPORTUNITY TO
17 LITIGATE THE ISSUE IN THE FIRST ACTION OR OTHER
18 CIRCUMSTANCES JUSTIFIED AFFORDING HIM THE OPPORTUNITY TO
19 RELITIGATE THE ISSUE.

20 NOW, TRUE, WE'RE RELYING ON A SETTLEMENT AGREEMENT
21 HERE, AND ALTHOUGH A SETTLEMENT AGREEMENT WILL NOT USUALLY
22 PRECLUDE RELITIGATION OF AN ISSUE SUCH AN AGREEMENT MAY
23 HAVE A PRECLUSIVE EFFECT WHEN THE PARTIES INTENDED TO
24 FORECLOSE FURTHER LITIGATION OR CONSIDERATION OF THIS
25 ISSUE AND WHEN THE MATTER IS IMPORTANT AND NECESSARY TO

1 SUPPORT THE FIRST JUDGMENT. UNDER THIS IDEA FINALITY FOR
2 THE PURPOSES OF COLLATERAL ESTOPPEL IS A FLEXIBLE CONCEPT
3 AND MAY -- IT CAN MEAN LITTLE MORE THAN THE LITIGATION OF
4 A PARTICULAR ISSUE HAS REACHED SUCH A STAGE THAT THE COURT
5 SEES REALLY NO GOOD REASON FOR PERMITTING IT TO BE
6 LITIGATED AGAIN.

7 NOW, WE ACKNOWLEDGE THAT THIS DOCTRINE SIMPLY WOULD
8 NOT APPLY IF ALL THESE MANY DEFENDANTS AND PLAINTIFFS WERE
9 NOT IMPROPERLY JOINED IN THIS CASE AS THEY CURRENTLY ARE,
10 AND, MORE IMPORTANTLY, YOU KNOW, THIS CONCEPT APPLIES WITH
11 EVEN MORE POTENCY IN THE WEST-COX AND THE ADAMS CASES IF
12 AND WHEN THEY COME BEFORE YOU BECAUSE THE SITUATION THERE
13 EVEN MORE CLEARLY FITS THE CASELAW OF IT BEING A SECOND
14 ACTION, BUT IN HERRON THE ISSUE OF THE APPLICABILITY OF
15 RULE 23 WAS ACTUALLY LITIGATED, AND IT WAS DIRECTLY
16 DETERMINED IN THE CARMAX SETTLEMENT AT LEAST TO THE EXTENT
17 NECESSARY FOR THE PLAINTIFF'S POSITION ON RULE 23 TO HAVE
18 PRECLUSIVE EFFECT ON THIS ISSUE. IT WAS THE PLAINTIFFS
19 WHO THEMSELVES ASSERTED RULE 23 AND FOUND IT NECESSARY TO
20 APPLY IT IN THE CARMAX SETTLEMENT.

21 NOW, THE PLAINTIFFS HAVE ALREADY AGREED THAT RULE 23
22 APPLIES TO THEIR CAUSES OF ACTION AGAINST CARMAX AND
23 THERE'S ABSOLUTELY NO DIFFERENCE IN THEIR CLAIMS AND
24 CAUSES OF ACTION AGAINST ALL THE REMAINING DEALERS. SO,
25 COLLATERAL ESTOPPEL ALSO SHOULD PRECLUDE ANY FURTHER

1 CONSIDERATION OF WHETHER RULE 23 ACTUALLY APPLIES TO ALL
2 THE OTHER DEFENDANTS.

3 NOW, NOTE I AM NOT CONCEDED HERE THAT THE CLASS
4 ACTION REQUIREMENTS HAVE BEEN MET WITH RESPECT TO ANY
5 OTHER DEFENDANT. ONLY THAT PLAINTIFFS CAN'T NOW RELITIGATE
6 THE ISSUE OF WHETHER RULE 23 APPLIES IN THIS CASE ACROSS
7 THE BOARD TO ALL DEFENDANTS FROM THE OUTSET OF THE CASE.

8 YOUR HONOR, LET ME MOVE ON TO STANDING.

9 THE COURT: ALL RIGHT. HOLD ON ONE SECOND. ARE WE
10 AT A STOPPING POINT BEFORE WE GO TO ANOTHER SUBJECT? MY
11 COURT REPORTER NEEDS ABOUT FIVE.

12 MR. BECKER: YES, SIR.

13 THE COURT: IT'S 10 'TIL BACK ON THAT CLOCK. LET'S
14 BREAK UNTIL ABOUT 11 O'CLOCK AND WE'LL COME BACK AND WE'LL
15 COMPLETE YOUR ARGUMENT.

16 MR. BECKER: YES, SIR.

17 THE COURT: THANK YOU. WE'LL STAND AT EASE FOR JUST
18 A FEW MINUTES.

19 (WHEREUPON, A BREAK WAS TAKEN.)

20 MR. BECKER: MAY IT PLEASE THE COURT.

21 THE COURT: YES, SIR.

22 MR. BECKER: YOUR HONOR, WE'RE ON TO STANDING. A FEW
23 INITIAL OBSERVATIONS ON THIS ISSUE AND I KNOW WE'VE
24 DISCUSSED IT SOME ALREADY IN COURT TODAY. IT IS TRUE THE
25 PLAINTIFF'S RULE 41 MOTION TO DISMISS THE NO-SALE

1 DEFENDANTS AS WE CALL THEM IN HERRON, IF GRANTED, MAKES A
2 BIG DIFFERENCE ON THIS ISSUE, BUT IT DOESN'T COMPLETELY
3 CURE THE PROBLEM AND THE STANDING --

4 THE COURT: I ASSUME IF I GRANT IT, WHERE ARE WE --

5 MR. BECKER: WELL --

6 THE COURT: -- ON STANDING?

7 MR. BECKER: YOU'D STILL BE LEFT WITH A BUNCH OF
8 PLAINTIFFS AND DEFENDANTS WHO ARE IMPROPERLY JOINED IN A
9 SINGLE CASE AND WE'LL TALK ABOUT THE JOINDER ISSUE, BUT
10 RIGHT NOW THE ISSUE OF STANDING -- IT STILL PRESENTS
11 ITSELF IF TWO PLAINTIFFS WHO DIDN'T TRANSACT BUSINESS EACH
12 WHO -- TWO PLAINTIFFS EACH WHO TRANSACTED BUSINESS WITH
13 SEPARATE DEFENDANTS ARE JOINED IN A SINGLE CASE AND THEY
14 ARE ATTEMPTING TO SUE THE DEALER WITH WHOM THEY DID NOT
15 TRANSACT BUSINESS. THE STANDING -- THAT'S THE STANDING
16 ISSUE, BUT IT DOESN'T CURE THE JOINDER PROBLEM, AND WE'LL
17 TALK ABOUT THAT IN A SECOND, BUT RECALL, TOO, THE STANDING
18 PROBLEM PRESENTS ITSELF AGAIN IN SPADES IN ADAMS AND TO
19 SOME EXTENT IN WEST-COX.

20 YOU KNOW, THEY MAY ARGUE AT FIRST THE PLAINTIFFS'
21 SOLUTION TO THE STANDING PROBLEM WAS TO ATTEMPT TO AMEND
22 THE COMPLAINT IN HERRON TO BRING IN A NAMED PLAINTIFF FOR
23 EVERY DEFENDANT NAMED IN HERRON. YOU IN YOUR WISDOM
24 DENIED THAT MOTION TO AMEND. WELL, THEIR CURE, THEIR
25 BACKDOOR AROUND THAT WAS, WELL, WE'LL JUST FILE THE ADAMS

1 CASE. THAT'S A -- HOLD IT IN RESERVE. IT IS REALLY A
2 BACKDOOR ATTEMPT TO CIRCUMVENT WHAT YOU SAID IN YOUR ORDER
3 DENYING THE MOTION TO AMEND IN HERRON, BUT LOOK AT WHAT IT
4 DOES. I MEAN, THEY ARGUE, OH, WELL, THIS CURES THE
5 STANDING PROBLEM. WE'VE GOT A SEPARATE PLAINTIFF TO SUE
6 EACH DEFENDANT.

7 WELL, I HAVE TWO RESPONSES TO THIS. FIRST, IT
8 EXPONENTIALLY COMPOUNDS THE IMPROPER JOINDER PROBLEM ON
9 THE PLAINTIFFS' SIDE OF THE V. IT WAS ALREADY A HUGE MESS
10 ON THE DEFENDANTS' SIDE OF THE V, BUT NOTE IT STILL -- IT
11 REALLY DOESN'T CURE THE STANDING PROBLEM AS THEY SAY IT
12 DOES. THERE IS AN IMPORTANT DISTINCTION TO MAKE HERE. I
13 WAS GETTING TO IT JUST A SECOND AGO EARLIER. THE STANDING
14 ISSUE -- IT'S NOT ABOUT THE ABILITY OF A NAMED PLAINTIFF
15 OR PLAINTIFFS TO SUE THE DEALERSHIP WITH WHICH THEY
16 INDIVIDUALLY TRANSACTED BUSINESS. IT'S NOT ABOUT THEIR
17 ABILITY TO SUE IN A REPRESENTATIVE CAPACITY ON BEHALF OF
18 ALL OTHER UNNAMED PERSONS WHO ALSO TRANSACTED BUSINESS
19 WITH THE DEALERSHIP THAT THEY TRANSACTED BUSINESS WITH.

20 THE STANDING ISSUE IS ABOUT THE ABILITY OF A NAMED
21 PLAINTIFF TO SUE OTHER DEALERSHIPS IN A REPRESENTATIVE
22 CAPACITY OR NOT WITH WHICH IT DID NOT TRANSACT BUSINESS,
23 AND THAT'S WHAT THEY'RE STILL TRYING TO DO IN THIS
24 COMPLAINT EVEN IF IT'S SLIMMED DOWN TO JUST TWO
25 PLAINTIFFS, MUCH LESS THE SEVEN THAT THEY WANT TO GET TO

1 IN HERRON. THE PLAINTIFFS STILL CLAIM THAT EVERY
2 PLAINTIFF CAN SUE EVERY DEFENDANT EVEN IF THEY NEVER
3 BOUGHT A VEHICLE FROM THAT DEFENDANT; EVEN IF THAT
4 DEFENDANT HAS NEVER SOLD A VEHICLE TO ANY MEMBER OF THAT
5 PLAINTIFF'S FAMILY, CHURCH GROUP, SOCIAL GROUP, FACEBOOK
6 COMMUNITY, WHATEVER; EVEN IF THAT DEFENDANT HAS NEVER
7 HEARD OF OR LAID EYES ON THAT PLAINTIFF; AND ALSO EVEN IF
8 THAT DEFENDANT HAS NEVER HEARD OF, LAID EYES ON, OR
9 TRANSACTED ANY BUSINESS WITH THE DEFENDANT THAT DID
10 TRANSACT BUSINESS WITH THAT PLAINTIFF; AND MOST
11 IMPORTANTLY EVEN IF THAT PLAINTIFF HAS NEVER BEEN INJURED
12 BY THAT DEFENDANT. THE LAWS OF STANDING SIMPLY DON'T
13 PERMIT PEOPLE TO SUE OTHERS UNDER THESE CIRCUMSTANCES.

14 NOW, IN YOUR ORDER DENYING THE MOTIONS TO DISMISS YOU
15 MADE ONLY ONE RULING ON THIS ISSUE. YOU SAID THE AMENDED
16 COMPLAINT SUFFICIENTLY PLEADS FACTS SUPPORTING STANDING OF
17 THE PLAINTIFFS TO PROCEED UNDER THE THREE CAUSES OF ACTION
18 PLEAD. WELL, I HOPE I CAN DEMONSTRATE TO YOU TODAY THAT
19 REALLY AND WITH ALL DUE RESPECT THAT THAT CAN'T BE TRUE
20 BASED ON THE FACTS THAT ARE APPARENT FROM THE PLEADINGS OR
21 SIMPLY CANNOT BE DISPUTED BY THE PLAINTIFFS AND LET ME
22 DEMONSTRATE HOW.

23 BLACK LETTER LAW STANDING, THE PLAINTIFF MUST HAVE
24 SUFFERED AN INJURY IN FACT. THERE ARE REALLY THREE, BUT
25 ONLY TWO OF WHICH ARE RELEVANT HERE. FIRST, THE PLAINTIFF

1 MUST HAVE SUFFERED AN INJURY IN FACT, CONCRETE AND ACTUAL,
2 NOT CONJECTURAL OR HYPOTHETICAL. NUMBER TWO, THERE MUST
3 BE A CAUSAL CONNECTION BETWEEN THE INJURY COMPLAINED --
4 INJURY THEY ALLEGE AND THE CONDUCT THEY COMPLAIN OF. THE
5 INJURY HAS TO BE FAIRLY TRACEABLE TO THE CHALLENGED ACTION
6 OF THE DEFENDANT AND NOT THE RESULT OF SOME INDEPENDENT
7 ACTION OF SOME THIRD PARTY.

8 IN THE ENTIRE FIRST AMENDED COMPLAINT THERE'S NOT A
9 SINGLE ACTION THAT ANY OF THE EIGHT NAMED PLAINTIFFS
10 CONDUCTED BUSINESS WITH ANY OF THE NO-SALE DEFENDANTS.
11 THERE IS NO ALLEGATION THEY PAID A CLOSING FEE TO ANY
12 NO-SALE DEFENDANT, NO ALLEGATION THAT THE INJURY THEY DO
13 COMPLAIN OF -- PAYING A CLOSING FEE TO THE DEALER WITH
14 WHICH THEY DID TRANSACT BUSINESS -- WAS, IN FACT, CAUSED
15 BY ANY OF THE NO-SALE DEFENDANTS. THERE IS NO ALLEGATION
16 THAT THE NAMED PLAINTIFFS WERE THEMSELVES INJURED BY THE
17 CLOSING FEES PAID BY THE CUSTOMERS OF THE NO-SALE
18 DEFENDANTS.

19 HERE'S AN EXAMPLE. THE PLAINTIFFS ALLEGE IN THE
20 FIRST AMENDED COMPLAINT THAT THEY WERE MISLED BY THE
21 DEALERS WITH WHOM THEY DID TRANSACT BUSINESS. -- THAT
22 DEALER'S SALE PERSONNEL, BY THE METHODS THE DEALERS USE TO
23 PREPARE AND PRESENT DOCUMENTS, AND BY ADVERTISEMENTS OF
24 THE DEALER WITH WHICH THEY DID TRANSACT BUSINESS, BUT
25 PLAINTIFFS -- THEY SIMPLY COULD NOT HAVE BEEN MISLED TO

1 THEIR INJURY BY DEALERS WITH WHOM THEY DID NO BUSINESS.
2 HOW, FOR EXAMPLE, COULD NATALIE ARMSTRONG, ONE OF THE
3 NAMED PLAINTIFFS IN HERRON, WHO ALLEGES THAT SHE BOUGHT A
4 CAR FROM GALEANNA CHRYSLER PLYMOUTH IN COLUMBIA AND PAID A
5 CLOSING FEE, HOW COULD SHE HAVE BEEN MISLED IN ANY WAY BY
6 BIG O DODGE IN GREENVILLE OR MCDANIELS ACURA IN
7 CHARLESTON? IT'S JUST -- THE ALLEGATION THAT SUPPORTS
8 THEIR CLAIM, THEIR THEORY OF STANDING HERE, IT DEFIES
9 COMMON SENSE AND IT'S AS DEFICIENT PRACTICALLY AS IT IS
10 LEGALLY.

11 YOUR HONOR, ANY WAY YOU SLICE, DICE, OR ANALYZE THE
12 MATRIX OF THE PROVEN OR EVEN THE HYPOTHETICAL
13 RELATIONSHIPS BETWEEN THE NAMED PARTIES IN THIS CASE, THE
14 NAMED PLAINTIFFS CANNOT ESTABLISH INJURY AND A CAUSAL
15 CONNECTION WITH ANY CONDUCT OF THE NO-SALE DEFENDANTS.
16 THERE IS A CRITICAL CASE ON THIS ISSUE, YOUR HONOR, AND I
17 THINK WE HAVE NOT EMPHASIZED IT ENOUGH. IT IS ITEM C IN
18 THE PACKAGE THAT I GAVE YOU. IT'S THE GARDENER CASE --
19 GARDENER VERSUS SOUTH CAROLINA DEPARTMENT OF REVENUE. I
20 HAVE GIVEN YOU A FULL COPY WHICH I INVITE YOU TO READ AT
21 YOUR -- WHEN YOU HAVE AN OPPORTUNITY. IT'S CRITICAL FOR
22 TWO REASONS AND I'M GOING TO JUST DISCUSS IT. I MAINLY
23 WANTED YOU TO HAVE IT. I'LL POINT YOU TO A FEW PAGES IN
24 IT IN A MOMENT. IT'S -- I BELIEVE IT'S REALLY DISPOSITIVE
25 ON THIS ISSUE OF STANDING.

1 IN THE GARDENER CASE THE PLAINTIFFS -- AND THERE ARE
2 NUMEROUS OF THEM -- BROUGHT AN ACTION FOR VIOLATIONS OF
3 THE SOUTH CAROLINA DEBT SET-OFF ACT, AND LIKE THE
4 PLAINTIFFS IN THIS CASE THEY SUED DEFENDANTS WITH WHICH
5 THEY HAD NO CONNECTION WHATSOEVER. THEY SUED -- THEY WERE
6 SUING TAX COLLECTING AUTHORITIES CLAIMING THEY HAD
7 IMPROPERLY COLLECTED TAXES FROM THEM, AND THEY SUED EACH
8 OF THOSE INDIVIDUAL PLAINTIFFS ON THE PLAINTIFFS' SIDE OF
9 THE V, SUED ALL OF THE DEFENDANTS ON THE DEFENDANTS' SIDE
10 OF THE V WHETHER OR NOT THAT DEFENDANT HAD COLLECTED ANY
11 TAXES FROM THAT PLAINTIFF OR NOT. THE POINT WAS REAL
12 SIMILAR TO THIS CASE LIKE JUST THE FACT THAT YOU ARE OUT
13 THERE AND DOING THIS ALONG WITH OTHER MUNICIPALITIES
14 AROUND THE STATE AFFECTS ME, AND, THEREFORE, I CAN SUE YOU
15 WHEN, IN FACT, A RESIDENT IN GREENVILLE HAD NEVER HAD ANY
16 ENTITY IN RICHLAND COLLECT ANY TAXES FROM THE RESIDENT OF
17 GREENVILLE.

18 WELL, THE PLAINTIFFS SUED DEFENDANT CLASS MEMBERS AS
19 I SAID THAT HAD NOT COLLECTED DEBTS FROM THEM, BUT IT
20 COLLECTED DEBTS FROM OTHER PERSONS JUST USING THE ACT LIKE
21 THEY CLAIM HERE. WELL, YOU'RE USING THE CLOSING FEE
22 STATUTE. SUPREME COURT LOOKED AT THIS -- OUR SUPREME
23 COURT, SOUTH CAROLINA SUPREME COURT -- AND SAID THAT
24 PLAINTIFFS COULD NOT SUE PERSONS WHO DID NOT COLLECT DEBTS
25 FROM THEM AND AT WHOSE HANDS THEY HAD SUFFERED NO INJURY.

1 THAT IS THE HOLDING OF THIS CASE. IN SHORT, BASED ON THE
2 BLACK LETTER LAW, BASED ON THE CITES WE'VE SHOWN YOU IN
3 GARDENER, THE NAMED PLAINTIFFS DON'T HAVE STANDING TO SUE
4 THE NO-SALE DEFENDANTS.

5 THIS CASE IS DIRECTLY ON POINT. I THINK IT COMPELS A
6 RULING FOR THE DEFENDANTS ON THIS ISSUE, AND I AM GOING TO
7 CIRCLE BACK TO IT AGAIN IN JUST A MOMENT. LET ME DEAL
8 NEXT WITH THE ISSUE OF WHETHER 56-15-110(2) CREATES
9 STANDING. I'LL DEAL WITH THIS VERY QUICKLY. I MEAN,
10 THEY'VE ARGUED THAT IT DOES CREATE STANDING, BUT IF YOU
11 LOOK AT IT CLOSELY 56-110(2) IS DEPENDENT UPON SUBSECTION
12 ONE, AND IT SAYS ANY PERSON WHO SHALL BE INJURED IN HIS
13 BUSINESS OR PROPERTY CAN BRING A CLAIM UNDER ONE AND IN A
14 REPRESENTATIVE CAPACITY UNDER SUBSECTION TWO, BUT TO HAVE
15 STANDING TO SUE UNDER SECTION ONE YOU HAVE TO BE INJURED
16 BY THE CONDUCT OF THE DEFENDANT YOU'RE SUING. OTHERWISE,
17 YOU DON'T STATE A CLAIM AND IF YOU CAN'T -- SO, YOU'RE
18 BACK THERE EVEN WITH 110(1) AND (2) HAVING TO PROVE THE
19 ELEMENTAL BLACK LETTER LAW REQUIREMENTS OF STANDING --
20 INJURY IN FACT, NOT HYPOTHETICAL OR CONJECTURAL, AND A
21 CAUSAL CONNECTION, AND AS WE'VE SAID THESE ALLEGATIONS --
22 THEY JUST DEFY COMMON SENSE, MUCH LESS MEET THE LEGAL
23 STANDARD.

24 SO, BUT, ALSO, THEY RELY HERE ON THEIR CIVIL
25 CONSPIRACY CLAIM TO CLAIM THAT WE HAVE STANDING TO SUE

1 PLAINTIFFS WITH WHOM WE DIDN'T TRANSACT ANY BUSINESS.
2 WELL, THE WHOLE FOUNDATION OF THAT IDEA IS CALLED THE
3 JURIDICAL LINKS DOCTRINE, AND IT COMES FROM A CASE DECIDED
4 BY THE NINTH CIRCUIT IN 1973. IT IS CITED IN OUR BRIEF.
5 LAMAR VERSUS H & B NOVELTY AND LOAN COMPANY, 1973, NINTH
6 CIRCUIT CASE. THE QUESTION THERE WAS WHETHER A PLAINTIFF
7 HAVING A CAUSE OF ACTION AGAINST A SINGLE DEFENDANT CAN
8 INSTITUTE A CLASS ACTION AGAINST THAT SINGLE DEFENDANT AND
9 AN UNRERELATED GROUP OF DEFENDANTS WHO HAVE ENGAGED IN
10 CONDUCT CLOSELY SIMILAR TO THAT OF THE SINGLE DEFENDANT
11 WITH WHOM THEY ACTUALLY HAD BEEN INJURED. THE NINTH
12 CIRCUIT SAID, NO, JUST LIKE OUR SUPREME COURT DID IN
13 GARDENER. IT SAID, NO, YOU CAN'T DO THAT UNDER THE FACTS
14 OF THIS CASE, BUT THEN THEY WENT ON IN DICTA -- AND AS YOU
15 KNOW, DICTA CAN SOMETIME LEAD TO ALL SORTS OF UNINTENDED
16 CONSEQUENCES -- THEY WENT ON TO SUGGEST THAT IF THE
17 PLAINTIFFS' INJURIES ARE THE RESULT OF A CONSPIRACY OR
18 CONCERTED SCHEMES BETWEEN THE DEFENDANTS OR OTHERWISE
19 JURIDICALLY RELATED IN A MANNER THAT SUGGESTS A SINGLE
20 RESOLUTION OF THE DISPUTE WOULD BE EXPEDITIOUS, THE CLAIM
21 COULD GO FORWARD.

22 SO, IN THAT LITTLE BIT OF DICTA THERE THEY SPAWNED
23 WHAT HAS SINCE BECOME IN THE CASE LAW A COTTAGE
24 INDUSTRY -- THE JURIDICAL LINKS DOCTRINE AS IT'S BEEN
25 CALLED, BUT WHAT DOES OUR COURT SAY ABOUT THIS CONCEPT

1 THAT YOU CAN USE A CIVIL CONSPIRACY CLAIM TO ESTABLISH
2 STANDING WHERE THE CONSTITUTION AND THE REST OF OUR
3 CASELAW SAYS YOU CAN'T? WELL, IN GARDENER OUR COURT SAID
4 THIS AT FOOTNOTE 14 -- AND I INVITE YOU TO TURN TO PAGE 13
5 OF THAT CASE, YOUR HONOR. FOOTNOTE 14 IS RIGHT UP THERE
6 AT THE TOP IN ALL CAPS LETTERS AND IT SAYS THIS: WHILE WE
7 DECLINE TO SPECIFICALLY ADDRESS THE REQUIREMENT OF
8 TYPICALITY WE REJECT PLAINTIFF'S REQUEST FOR US TO ADOPT
9 THE JURIDICAL LINKS DOCTRINE, AND THEN RIGHT THERE THEY
10 CITE THE LAMAR NINTH CIRCUIT CASE FROM 1973. THEY GO ON
11 TO SAY, WE NOTE THE DOCTRINE HAS RECENTLY COME UNDER CLOSE
12 SCRUTINY PRIMARILY DUE TO ITS CONFLICT WITH ARTICLE THREE
13 STANDING ISSUES. THEY CITE CASES AND AUTHORITIES. THEN
14 THEY GO ON TO SAY, THE DOCTRINE ALSO RUNS COUNTERS TO THIS
15 COURT'S PREVIOUS DECISIONS WHICH HOLD THAT A PLAINTIFF MAY
16 NOT SUE A DEFENDANT UNLESS THE PLAINTIFF HAS SUFFERED AN
17 INJURY AT THE HANDS OF THE DEFENDANT, AND THEY GO ON TO
18 CITE CASES.

19 SO, HERE YOU HAVE IN A 2003 CASE OUR STATE SUPREME
20 COURT SAYING, NOPE, CAN'T DO IT, CAN'T USE CIVIL
21 CONSPIRACY AS A WAY AROUND OUR CONSTITUTIONAL PROVISIONS
22 ON STANDING -- THE CONSTITUTIONAL REQUIREMENTS ON
23 STANDING. AGAIN, YOUR HONOR, I WOULD ARGUE THIS IS A CASE
24 ON POINT THAT COMPELS JUDGMENT ON THIS ISSUE FOR THE
25 DEFENDANTS.

1 I'D LIKE TO ALSO INVITE YOU TO THINK ABOUT ANOTHER
2 CONCEPT WE'VE RAISED IN THE BRIEF AND THAT IS THE
3 DERIVATIVE NATURE OF A CIVIL CONSPIRACY CLAIM AND IN THIS
4 CASE -- THE CIVIL CONSPIRACY IS A DERIVATIVE CLAIM WHEN
5 LIKE IN THIS CASE LIABILITY IS BASED ON ACTS WHICH ARE
6 THEMSELVES UNLAWFUL OR WHICH ARE BASED ON AN UNDERLYING
7 TORT OR CONTRACT OR STATUTORY CLAIM. OUR CASELAW IS
8 LITTERED WITH CASES WHICH IN THESE SITUATIONS SAY THAT THE
9 CIVIL CONSPIRACY CLAIM STATES NOTHING MORE THAN WHAT'S
10 ALLEGED TO SUPPORT ALL THE OTHER CLAIMS AND AFFIRMS A
11 DISMISSAL OF THE CIVIL CONSPIRACY CLAIM.

12 WELL, IN THESE SITUATIONS NUMEROUS OTHER COURTS AND
13 OTHER JURISDICTIONS HAVE EXPLICITLY HELD THAT CIVIL
14 CONSPIRACY IS A DERIVATIVE CLAIM WHEN IT'S GROUNDED IN AN
15 UNDERLYING TORT, CONTRACT, OR STATUTORY CLAIM. THEY POINT
16 OUT THAT IN THOSE SITUATIONS THE STANDING ALONE, THE
17 CONSPIRACY DOES NO HARM. THAT HARM WAS DONE BY VIOLATION
18 OF THE -- BY COMMISSION OF THE TORT, BREACH OF THE
19 CONTRACT, OR VIOLATION OF THE STATUTE. SO, IF IT HAS TO
20 BE ACTIVATED BY THE COMMISSION OF A TORT, THE CIVIL
21 CONSPIRACY CLAIM IS DERIVATIVE AND DOES NOT IN AND OF
22 ITSELF SUPPORT STANDING.

23 THE CASELAW IN SOUTH CAROLINA SUPPORTS THE VIEW THAT
24 CIVIL CONSPIRACY IS AN INDEPENDENT CAUSE OF ACTION ONLY
25 WHEN LIABILITY IS BASED ON ACTS WHICH STANDING ALONE ARE

1 LAWFUL BUT WHEN THOSE LAWFUL ACTS ARE COMBINED WITH THE
2 NEFARIOUS PURPOSE OF DAMAGING OR RUINING A TARGETED
3 BUSINESS AND AS WE SHALL DISCUSS A LITTLE BIT LATER RESULT
4 IN SOME SPECIAL DAMAGE EVEN THOUGH THE ACTS WERE LAWFUL
5 WHEN COMBINED WITH THE NEFARIOUS PURPOSE IN A CONCERTED
6 SCHEME THEY CAUSE SOME SPECIAL DAMAGE TO THE PLAINTIFF,
7 THIS IS ACTUALLY A VERY RARE TYPE OF CIVIL CONSPIRACY
8 CLAIM. WE ONLY KNOW OF ONE CASE IN SOUTH CAROLINA THAT'S
9 REALLY BROUGHT AN INDEPENDENT CLAIM FOR CIVIL CONSPIRACY,
10 AND WE'VE CITED THAT THE BRIEF, AND IT'S LAMONT V
11 PUNCHLINE OF COLUMBIA, BUT WHEN YOU THINK ABOUT HOW THIS
12 CIVIL CONSPIRACY CLAIM IS PLEAD -- AND I'LL GET, AS I SAY,
13 TO THAT A LITTLE BIT MORE THOROUGHLY IN A MINUTE -- I
14 THINK YOU SEE THE PRESENT CASE REALLY DOES NOT PRESENT AN
15 INDEPENDENT CIVIL CONSPIRACY CLAIM.

16 NOW, I'M NOT -- I DON'T THINK I'LL SPEND ANY TIME --
17 THEY'VE ALSO ARGUED THAT THEIR CLAIM FOR DECLARATORY
18 JUDGMENT CREATES STANDING. THEY'VE ALSO ARGUED THAT THE
19 PUBLIC INTEREST EXCEPTION HERE CREATES STANDING. WE'VE
20 DEALT WITH THAT IN THE BRIEF. UNLESS YOU WANT ME TO, I
21 WON'T REPEAT IT HERE. I THINK THOSE ARE EASILY DISPOSED
22 OF BECAUSE UNDER THE DECLARATORY JUDGMENT ACTION YOU
23 REALLY STILL HAVE TO DEMONSTRATE INJURY OR THE LIKELIHOOD
24 OF INJURY TO ESTABLISH STANDING UNDER -- FOR A DECLARATORY
25 JUDGMENT CLAIM JUST AS YOU WOULD FOR ANY OTHER CAUSE OF

1 ACTION AND THE PUBLIC INTEREST EXCEPTION IS EASY. THAT
2 REQUIRES PUBLIC BODIES TO BE PLAYERS IN THE LAWSUIT, AND
3 WE DON'T HAVE ANY OF THAT HERE. THERE IS NO PUBLIC ENTITY
4 INVOLVED IN ANY OF THIS. IT'S A BUNCH OF PRIVATE
5 INDIVIDUALS SUING A BUNCH OF PRIVATE BUSINESSES. THERE IS
6 SIMPLY NO PUBLIC BODY INVOLVED AS A PLAYER IN THIS SUIT
7 WHICH WOULD IMPLICATE THE PUBLIC INTEREST EXCEPTION TO THE
8 GENERAL LAWS ON STANDING.

9 LET ME DEAL WITH IMPROPER JOINDER, YOUR HONOR. AS I
10 POINTED OUT THIS, WE BELIEVE, IS A VERY IMPORTANT ISSUE.
11 IT'S ONE THAT THE ORDER YOU SIGNED DENYING THE MOTIONS TO
12 DISMISS DID NOT ADDRESS, AND IT'S AN ISSUE THAT WE BELIEVE
13 REQUIRES DISMISSAL OF THE HERRON SUIT AS IT'S CURRENTLY
14 PLEAD FOR ALL PARTIES EXCEPT THE AIKEN DEALERSHIP AND THE
15 PLAINTIFF THAT IS SUING THAT AIKEN DEALERSHIP, AND, YOU
16 KNOW, THAT POINTS OUT, YOUR HONOR, THAT THE FLIP-SIDE OF
17 THIS IMPROPER JOINDER ISSUE IS VENUE, AND WE HAVE -- WE'VE
18 RESERVED VENUE, BUT THAT'S ANOTHER 800-POUND GORILLA
19 LURKING IN THE BACK OF THE ROOM -- VENUE. WHAT -- AND I
20 AM NOT GOING TO ARGUE THOSE ISSUES HERE, BUT I JUST WANT
21 TO ENCOURAGE YOU TO BE -- AS YOU THINK THROUGH THIS
22 IMPROPER JOINDER ISSUE, THINK THROUGH VENUE. IT'S OUT
23 THERE, AND IT'S IMPORTANT, BUT LET'S LOOK AT RULE 20. I
24 DON'T THINK YOU HAVE TO GO BEYOND RULE 20 TO EVEN GET TO
25 VENUE IF YOU HANDLE RULE 20 CORRECTLY.

1 LET'S LOOK AT THAT. IT GOVERNS BOTH PLAINTIFFS --
2 THE JOINDER OF BOTH PLAINTIFFS AND DEFENDANTS AND IT'S
3 ESSENTIALLY THE SAME RULE WITH RESPECT TO EACH. THE
4 JOINDER OF PLAINTIFFS OR DEFENDANTS IN A SINGLE ACTION IS
5 PROPER ONLY WHEN THE CLAIM ARISES OUT OF THE SAME
6 TRANSACTION, OCCURRENCE, OR SERIES OF TRANSACTIONS OR
7 OCCURRENCES, AND, NUMBER TWO, A QUESTION OF LAW OR FACT
8 COMMON TO ALL PLAINTIFFS OR ALL DEFENDANTS WILL ARISE IN
9 THE ACTION. IMPORTANTLY, JOINDER IS IMPROPER UNLESS BOTH
10 CRITERIA ARE SATISFIED -- BOTH NUMBER ONE -- THAT IS,
11 ARISE OUT OF THE SAME TRANSACTION, OCCURRENCE OR SERIES OF
12 TRANSACTIONS OR OCCURRENCES, AND THERE BE A COMMON ISSUE
13 OF LAW OR FACT COMMON TO ALL OF THE PARTIES IN THE ACTION.
14 YOU GOT TO SATISFY BOTH REQUIREMENTS.

15 NOW, YOU MAY RECALL WE DISCUSSED AND MR. MARTIN
16 REFERRED TO IT BRIEFLY HERE EARLIER THE SAVAL V
17 B.L. LIMITED CASE THAT WAS DECIDED BY THE FOURTH
18 CIRCUIT -- VERY SIMILAR SITUATION HERE WHEN YOU REALLY
19 THINK ABOUT IT AND WE'VE DISCUSSED IT BEFORE, BUT OWNERS
20 OF JAGUAR AUTOMOBILES -- A WHOLE BUNCH OF DIFFERENT OWNERS
21 SUED EVERYONE IN THE CHAIN OF DISTRIBUTION CLAIMING OUR
22 CAR WAS DEFECTIVE. WELL, THE FOURTH CIRCUIT AFFIRMED THE
23 DISTRICT COURT'S REJECTION OF THAT EFFORT TO BRING A
24 SINGLE LAWSUIT BRINGING TOGETHER ALL THOSE DIFFERENT CAR
25 OWNERS PURSUANT TO RULE 20 FINDING THAT THE REQUIREMENTS

1 OF RULE 20 WEREN'T SATISFIED IN THAT CASE BECAUSE THEY
2 DIDN'T SATISFY THE TRANSACTION -- THE SAME TRANSACTION OR
3 OCCURRENCE TEST. THE COURT SAID THE CARS WERE PURCHASED
4 AT DIFFERENT TIMES. THEY WERE DRIVEN DIFFERENTLY, AND THEY
5 HAD DIFFERENT SERVICE HISTORIES. DIFFERENT CARS,
6 DIFFERENT TIMES, DIFFERENT SERVICE HISTORIES, DIFFERENT
7 MECHANICS. YOU KNOW, THIS IS NOT THE SAME TRANSACTION OR
8 OCCURRENCE, AND IN THE PRESENT CASE YOUR HONOR WE'VE GOT
9 THE SAME THING.

10 JOINDER IS IMPROPER BECAUSE THESE PLAINTIFFS ARE
11 SIMPLY UNABLE TO SATISFY EITHER OF THE TWO REQUIREMENTS
12 FOR PERMISSIVE JOINDER. THERE WAS NO COMMON TRANSACTION
13 BECAUSE EACH PLAINTIFFS' INDIVIDUAL CLAIM DOES NOT ARISE
14 OUT OF THE SAME TRANSACTION OR OCCURRENCE. IT'S
15 UNDISPUTED THAT EACH PLAINTIFF PURCHASED A SINGLE VEHICLE
16 FROM A SINGLE DIFFERENT DEALERSHIP. THAT'S THE WAY THE
17 CASE IS PLEAD. THESE ARE COMPLETELY SEPARATE AND
18 UNRELATED SALES THAT OCCURRED ON DIFFERENT DATES AT
19 DIFFERENT DEALERSHIPS IN DIFFERENT CITIES, AND NOT ONLY
20 THAT, BUT EACH SALE -- WHEN YOU LOOK AT THEM, EACH SALE
21 INVOLVED A PLETHORA OF OTHER DIFFERENCES. THERE WERE
22 DIFFERENT SALES PEOPLE, DIFFERENT SALES MANAGERS,
23 DIFFERENT VEHICLES WITH DIFFERENT ACCESSORIES, DIFFERENT
24 PRICES, DIFFERENT CLOSING FEES, DIFFERENT NEGOTIATIONS AND
25 DISCUSSIONS ABOUT PRICE, DIFFERENT DISCLOSURES OF THE

1 CLOSING FEE, DIFFERENT SALES CONTRACTS, DIFFERENT POLICIES
2 AND PROCEDURE AT EACH DEALERSHIP.

3 WHAT'S COMMON? WHAT'S THE SAME TRANSACTION OR
4 OCCURRENCE ABOUT ANY OF THAT? IT'S NOT. AND WHILE IT IS
5 TRUE, YES, THE DEALERS ACT PROVISIONS AND THE CLOSING FEE
6 STATUTE WILL BE DISCUSSED IN ALL OF THOSE CASES, THERE IS
7 NO COMMON QUESTION OF LAW DUE TO THE DIFFERENT FACTUAL
8 CIRCUMSTANCES OF EACH TRANSACTION. THE ISSUE OF WHETHER A
9 COMMON QUESTION OF LAW IS NOT -- OR FACT -- IS NOT
10 SATISFIED BY SIMPLY ASSERTING CLAIMS BASED ON THE SAME
11 LEGAL THEORY. IF THAT WERE TRUE, YOUR HONOR, THEN EVERY
12 CAR WRECK THAT HAPPENS IN AIKEN COUNTY IN A ONE-WEEK
13 PERIOD COULD BE JOINED IN THE SAME ACTION BECAUSE THEY ALL
14 ASSERT A CLAIM -- A CAUSE OF ACTION BASED ON NEGLIGENCE.
15 JUST HAVING THE SAME LEGAL THEORY DOESN'T GIVE YOU THE
16 COMMON -- DOESN'T SATISFY THE COMMON LAW OR FACT CRITERIA
17 FOR JOINDER EVEN IF YOU COULD ASSUME THAT THEY COULD
18 CLAIM, WHICH THEY CAN'T, THAT THESE TRANSACTIONS ARISE OUT
19 OF THE SAME TRANSACTION OR OCCURRENCE.

20 THIS IS NOT A SITUATION WHERE WE HAVE A MASSIVE
21 ACCIDENT, A MASSIVE PLANE CRASH, A TRAIN WRECK, OR LIKE WE
22 HAD IN THIS COUNTY A MASSIVE EXPLOSION OVER IN
23 GRANITEVILLE. IT'S NOT A SITUATION LIKE WHERE THOUSANDS
24 OF PEOPLE TOOK THE SAME MEDICINE OR THEY USED THE SAME
25 MEDICAL DEVICE. YOU MIGHT GET CLOSE TO ARGUING THAT ALL

1 THOSE DIFFERENT PLAINTIFFS COULD BE JOINED IN THE SAME
2 ACTION UNDER CIRCUMSTANCES LIKE THAT, A MASS TORT THAT
3 ARISES OUT OF A SINGLE TRANSACTION OR OCCURRENCE OR WHERE
4 THEY ALL INGEST THE SAME DRUG OR USE THE SAME MEDICAL
5 DEVICE, BUT HERE THEY DIDN'T ALL PAY THE SAME CLOSING FEE
6 TO THE SAME DEALER. THAT JUST DIDN'T HAPPEN. THERE IS NO
7 -- IN SHORT, YOUR HONOR, THE RULES FOR JOINING ALL THESE
8 PLAINTIFFS AND DEFENDANTS TOGETHER IN ONE ACTION HAVE
9 SIMPLY NOT BEEN MET.

10 LET ME MOVE ON TO DEAL WITH CIVIL CONSPIRACY. IN
11 YOUR ORDER DENYING THE MOTIONS TO DISMISS YOU SAID THIS
12 AND THIS ONLY: AT THIS STAGE OF THE PROCEEDINGS THERE ARE
13 SUFFICIENT ALLEGATIONS OF CIVIL CONSPIRACY IN THE AMENDED
14 COMPLAINT TO AVOID DISMISSAL. NOW, IT'S HARD TO DETERMINE
15 THIS, YOUR HONOR, BECAUSE THE FIRST AMENDED COMPLAINT IS
16 73 PAGES AND 411 PARAGRAPHS LONG AND THE PAUCITY OF THE
17 CIVIL CONSPIRACY PLEADINGS -- THE CIVIL CONSPIRACY
18 ALLEGATIONS -- THEY'RE CLEVERLY HIDDEN BY A PLETHORA OF
19 ALLEGATIONS ABOUT ALL THE NAMED PARTIES. THERE IS, IN
20 FACT, A LOT OF SMOKE AND MIRRORS IN THIS PLEADING, BUT
21 WITH ALL DUE RESPECT THE PLEADINGS ON CIVIL CONSPIRACY IN
22 THE FIRST AMENDED COMPLAINT IN HERRON ARE NOT SUFFICIENT
23 UNDER WELL-ESTABLISHED CASELAW IN SOUTH CAROLINA DIRECTLY
24 ON POINT.

25 LET ME DEMONSTRATE. IF YOU'LL TURN TO ITEM "D" IN

1 THE HANDOUT I GAVE YOU, YOU'LL SEE I HAVE COPIED FOR YOU
2 PAGES 70 AND 71 OF THE 73-PAGE 411-PARAGRAPH COMPLAINT,
3 AND I INVITE YOU TO LOOK DOWN THERE AT THE BOTTOM OF PAGE
4 70 BEGINNING WITH PARAGRAPH 404 AND THEN MOVING OVER TO
5 THIS NEXT PAGE AT PARAGRAPH 405. HERE'S -- THE ENTIRE
6 ALLEGATIONS RELATING TO CIVIL CONSPIRACY IN THE FIRST
7 AMENDED COMPLAINT ARE THIS. DEFENDANTS HAVE CONSPIRED
8 TOGETHER IN A COMMON SCHEME DESIGNED TO DECEIVE ALL CAR
9 BUYERS BY ALL ENGAGING IN A COMMON PRACTICE OF
10 PRESENTING/ADVERTISING CAR PRICES IN A MISLEADING MANNER
11 BY CHARGING ADMINISTRATIVE FEES. NEXT PARAGRAPH; THE
12 PLAINTIFFS HAVE SUFFERED SPECIAL DAMAGES AS A RESULT OF
13 DEFENDANTS' CONSPIRACY. NOTHING MORE. THAT'S IT -- SUM
14 TOTAL OF THE ALLEGATIONS PERTAINING TO CIVIL CONSPIRACY.

15 WELL, WHAT DO WE HAVE WITH THIS? IN REALITY THE
16 CIVIL CONSPIRACY ALLEGATIONS JUST INCORPORATE PRIOR
17 ALLEGATIONS ON THE STATUTORY CLAIMS AND THEN MERELY ALLEGE
18 A CONSPIRACY. THERE ARE NO ADDITIONAL ACTS IN FURTHERANCE
19 OF THE CONSPIRACY THAT ARE PLEAD. THERE IS NO ENUMERATION
20 OF WHAT THOSE SPECIAL DAMAGES FLOWING FROM THE CONSPIRACY
21 AS OPPOSED TO THE ALLEGED STATUTORY VIOLATIONS MIGHT BE.

22 CIVIL CONSPIRACY HAS THREE ELEMENTS. YOU GOT TO
23 PROVE A COMBINATION OF TWO OR MORE PERSONS FOR THE PURPOSE
24 OF INJURING THE PLAINTIFF WHICH CAUSES HIM SPECIAL
25 DAMAGE -- CAUSES SPECIAL DAMAGE TO THE PLAINTIFF. THE

1 GRAVAMEN OF THE TORT OF CIVIL CONSPIRACY IS THE DAMAGE
2 RESULTING TO THE PLAINTIFF FROM AN OVERT ACT DONE PURSUANT
3 TO THE COMBINATION, NOT THE AGREEMENT OR COMBINATION PER
4 SE. YOU GOT TO HAVE SOMETHING ABOVE AND BEYOND THE
5 DAMAGES THAT FLOW FROM ANY OTHER VIOLATION OF A CONTRACT,
6 COMMISSION OF A TORT, VIOLATION OF A STATUTE THAT YOU
7 MIGHT CLAIM, AND IN OUR BRIEF WE CITE FIVE OF THEM.

8 THERE ARE NUMEROUS CASES WHERE THE SOUTH CAROLINA
9 APPELLATE COURTS HAVE EXPRESSLY AFFIRMED THE DISMISSAL OF
10 A CIVIL CONSPIRACY CLAIM AS A MATTER OF LAW IN SITUATIONS
11 JUST LIKE THIS ONE WHERE THE CAUSE OF ACTION DOES NO MORE
12 THAN INCORPORATE PRIOR ALLEGATIONS AND THEN ALLEGE THE
13 EXISTENCE OF A CIVIL CONSPIRACY WHERE NO ADDITIONAL ACTS
14 IN FURTHERANCE OF THE CONSPIRACY ARE PLEAD AND WHERE THE
15 ONLY WRONGFUL ACTS PLEAD ARE THOSE FOR WHICH DAMAGES HAVE
16 ALREADY BEEN SOUGHT.

17 FURTHERMORE, RULE 9(G), YOUR HONOR, THE RULES FOR
18 PLEADING SPECIAL MATTERS, SAY THAT SPECIAL DAMAGES MUST BE
19 SPECIFICALLY ALLEGED IN ORDER TO AVOID SURPRISE TO THE
20 DEFENDANT. IN CASES WE'VE CITED TO YOU IT'S NOT ENOUGH
21 FOR A PLAINTIFF TO SIMPLY MAKE A VAGUE, UNSUBSTANTIATED
22 CLAIM THEY HAVE SUFFERED SPECIAL DAMAGES BECAUSE SUCH A
23 STATEMENT DOES NOT AVOID SURPRISE TO THE DEFENDANT AND IT
24 DOESN'T COMPLY WITH THE REQUIREMENTS OF THE RULE 9(G).

25 NOW, MOREOVER, CIVIL CONSPIRACY IS AN INTENTIONAL

1 TORT, AND, SO, THE PLAINTIFFS HAVE TO PLEAD AND PROVE THAT
2 THE DEFENDANTS CONSPIRED TO INTENTIONALLY HARM EACH NAMED
3 PLAINTIFF. WELL, THE PLAINTIFFS HAVEN'T MADE AN
4 ALLEGATION BECAUSE THEY CAN'T AND THEIR CONSPIRACY CLAIM
5 FAILS AS A MATTER OF LAW FOR THIS REASON. HOW CAN THEY
6 ALLEGE -- TO GO BACK TO THE EXAMPLE THAT I HAD BEFORE --
7 THAT BIG O DODGE IN GREENVILLE OR MCDANIEL'S ACURA IN
8 CHARLESTON INTENTIONALLY CONSPIRED TO CAUSE INJURY TO
9 NATALIE ARMSTRONG WHO BOUGHT A CAR FROM GALEANNA CHRYSLER
10 JEEP IN COLUMBIA WHERE THEY'VE NEVER HEARD -- PROBABLY
11 NEVER IMAGINED OF NATALIE ARMSTRONG EVEN IN THEIR WILDEST
12 DREAMS? SO, THEY JUST CAN'T -- THEY CAN'T MEET THE
13 SPECIAL DAMAGE PLEADING REQUIREMENTS. THEY CAN'T ALLEGE
14 THE INTENTIONAL HARM THAT'S REQUIRED TO PROVE THIS.

15 NOW, IT'S TRUE, AS THEY'VE SAID BEFORE, THEY CAN
16 PLEAD ALTERNATIVE CONTRADICTIONARY CAUSES OF ACTION. WELL,
17 THAT'S TRUE, BUT THEY STILL HAVE TO SUFFICIENTLY PLEAD
18 EACH OF THOSE ALTERNATIVE CONTRADICTIONARY CAUSES OF ACTION,
19 AND THAT'S SOMETHING THEY CLEARLY HAVEN'T DONE HERE, AND
20 THEY'VE ALSO ARGUED IN THE PAST, WELL, WE CAN WAIT UNTIL
21 SOME LATER TIME TO PLEAD OUR SPECIAL DAMAGES AFTER SOME
22 DISCOVERY WHEN WE KNOW WHAT IT IS. WELL, THAT DOESN'T GET
23 THEM PAST THE REQUIREMENTS OF RULE 9(G), AND, YOU KNOW, IF
24 THERE IS SOME EVIDENCE OUT THERE OF SOME CIVIL CONSPIRACY
25 WHICH I SUGGEST TO YOU THERE ISN'T, THEN THEY CAN ALWAYS

1 MOVE TO AMEND THEIR COMPLAINT IF THERE IS COMPELLING
2 EVIDENCE OF A CIVIL CONSPIRACY, BUT TODAY FROM WHERE WE
3 SIT RIGHT NOW AT THE OUTSET OF THIS LITIGATION THEY HAVE
4 NOT SUFFICIENTLY PLEAD CIVIL CONSPIRACY TO WITHSTAND A
5 MOTION TO DISMISS. THEY DON'T PASS MUSTER UNDER THE
6 CASELAW. THEY DON'T PASS MUSTER UNDER 9(G) AND THEY CAN'T
7 PROVE AND PLEAD IN GOOD FAITH THE INTENTIONAL ASPECTS OF A
8 CIVIL CONSPIRACY CLAIM.

9 YOUR HONOR, I'M AT THE END, BUT IN SUMMARY THIS CASE,
10 THE WAY IT'S CONSTRUCTED, THE WAY IT'S PLEAD, THE WAY IT'S
11 PUT TOGETHER, IT DEFIES ALL KNOWN PRINCIPALS AND LAW OF
12 STANDING. IT DEFIES THE RULES OF CIVIL PROCEDURE RELATING
13 TO RULE 23 ON CLASS ACTIONS, RELATING TO RULE 20 ON
14 JOINDER OF PARTIES. IT DEFIES THE RULES OF CIVIL
15 CONSPIRACY, RULE 9(G) WITH RESPECT TO SPECIAL DAMAGES. IT
16 CREATES AN UNPRECEDENTED UNFAIR MASS ACTION THAT IS
17 UNKNOWN TO AND NOT PERMITTED BY MODERN DAY RULES AND LAW
18 THAT GOVERN ALL OTHER CIVIL ACTIONS THAT ARE FILED IN THIS
19 COURT.

20 THE EXCEPTION IS SWALLOWING THE RULE. IT'S JUST
21 SWALLOWING IT. IT IS A MESS, AND THE SOLUTION, YOUR
22 HONOR, TO THIS ABOMINATION IS SIMPLE. THE COMPLAINT IN
23 HERRON WITH ALL BUT RESPECT TO THE AIKEN COUNTY DEALER
24 SUED BY THE PLAINTIFF THAT'S ASSOCIATED WITH THAT DEALER
25 SHOULD BE DISMISSED. THANK YOU.

1 THE COURT: THANK YOU. MR. LEWIS, ET AL?

2 MR. LEWIS: MAY IT PLEASE THE COURT.

3 THE COURT: YES, SIR.

4 MR. LEWIS: FIRST, LET ME JUST POINT OUT SOMETHING.
5 IF YOU LOOK AT RULE 59, YOU ARE ONLY ALLOWED TO HAVE A 59
6 MOTION FROM A JUDGMENT. THERE IS NO JUDGMENT HERE. ALL
7 THESE 59 MOTIONS ARE IMPROPER, BUT LET'S GO FORWARD WITH
8 THEM ANYWAY. AND THEN HE SAYS THAT HE WANTS THESE
9 DISMISSED FOR JOINDER AND SO FORTH. WELL, THE RULE
10 SPECIFICALLY PROVIDES YOU CAN'T DISMISS THEM. YOU SEND
11 THEM OUT TO WHEREVER YOU MIGHT THINK THEY SHOULD GO OR
12 SEPARATE THEM OUT AS A JOINDER AND SEPARATE THEM AND SAY
13 THEY'RE NOT JOINED IN A SEPARATE CASE.

14 NOW, CAN YOU IMAGINE WHAT THAT WOULD BE? YOU SEND
15 OUT THESE CASES. WITH THE FIRST RULE IN THE BOOK -- THE
16 PROCEDURE, PRACTICES, THE RULES OF CIVIL PROCEDURE -- IS
17 RULE ONE AND YOU KNOW WHAT IT SAYS? THAT YOU TRY TO DO
18 EVERYTHING EFFICIENTLY AND AS QUICKLY AND AS INEXPENSIVELY
19 AS YOU CAN. IN THIS CASE WE THOUGHT, WELL, WE HAD A CASE
20 OUT THERE -- A HOSPITAL CASE WHERE WE SUED A BUNCH OF
21 HOSPITALS ALL AROUND THE STATE AND THE CHIEF JUSTICE SENT
22 THEM TO JUDGE GOODE FOR THE PRELIMINARY MATTERS AND THEN
23 WHEN THEY WERE GETTING READY TO TRY IT THEY WOULD GO BACK
24 OUT TO THE DIFFERENT PLACES WHERE THEY CAME FROM BECAUSE
25 THAT WAS THE MOST EFFICIENT AND INEXPENSIVE AND BEST WAY

1 TO DO IT. SO, WE DID IT HERE, AND WE CAME BEFORE YOU, AND
2 WE DID THAT, AND WE HAD AN ORDER WHERE YOU SAID THAT YOU
3 WOULD BE THE ADMINISTRATIVE JUDGE FOR DISCOVERY AND WE
4 WOULD GO FORWARD WITH THIS DISCOVERY AND WE'D COME UP TO
5 WHAT TIME PERIOD OR THE PERIOD WHEN IT WAS SUPPOSED TO GO
6 OUT TO BE TRIED AND THEN YOU WOULD DECIDE IF YOU WERE
7 GOING TO KEEP THEM OR SEND THEM OUT, AND THEY -- THEY
8 DIDN'T COMPLAIN THEN. THEY COMPLAINED NOW WITH MOTIONS
9 FOR IMPROPER JOINDER, FOR MOTIONS FOR IMPROPER VENUE, AND
10 ALL THAT IS IS TO TRY TO GET AROUND WHAT WE HAVE ALREADY
11 GONE THROUGH TIME AND TIME AGAIN THAT WE NEED TO GO
12 FORWARD AND GET THESE DECIDED AND DECIDED ON THE DISCOVERY
13 ALTOGETHER.

14 NOW, WHEN WE GOT TO THAT IT BECAME APPARENT IN THE
15 FIRST MOTION THAT THEY DIDN'T WANT TO HAVE A DISCOVERY ALL
16 TOGETHER BECAUSE IT WAS TOO CONFUSING, AND I'VE TOLD YOU
17 ALL ABOUT US TRYING TO SOLVE THAT PROBLEM, AND I THINK WE
18 HAVE BY GETTING DOWN TO THE SEVEN. NOW THEY COME IN AND
19 THEY -- THEY'RE PRETTY TRICKY. I HAVE TO GIVE THEM THAT.
20 THEY SAY RULE 23 SHOULD APPLY. RULE 23 -- LET'S TAKE THE
21 CARMAX CASE. THE CARMAX CASE IS A PERFECT EXAMPLE OF
22 THEIR TRICKERY.

23 IN CARMAX WE SETTLED -- SETTLED. CARMAX WANTED A
24 CLASS ACTION SETTLEMENT. WE HAVE NEVER SAID AND WILL
25 NEVER SAY THAT OUR CAUSES OF ACTION COULDN'T ALSO BE --

1 ALSO BE A CLASS ACTION. WE HAVE NEVER AND WON'T SAY THAT
2 BECAUSE WE THINK THAT OUR CASES COULD ALSO BE A CLASS
3 ACTION UNDER RULE 23. THEY COME IN HERE AND SAY CARMAX
4 WAS A 23 AND WE'RE COLLATERALLY ESTOPPED, BUT DON'T --
5 THAT DOESN'T MEAN IT WOULD BE RULE 23 TO US. SO, WE DON'T
6 SAY NOR ANYWHERE THAT THEY'RE MUTUALLY EXCLUSIVE. THEY
7 EXIST SIDE BY SIDE.

8 NOW, LET'S GO TO THE NEXT THING THEY SAY AND THEY
9 WANT TO TALK ABOUT AMCHEM. WE AGREE 100 PERCENT IF YOU
10 HAVE A CLASS ACTION SETTLEMENT YOU HAVE TO MEET THE
11 REQUIREMENTS OF AMCHEM AND THEY AGREED WE DID IN THE
12 CARMAX CASE BECAUSE CARMAX WANTED IT THAT WAY AND THEY'RE
13 NOT MUTUALLY EXCLUSIVE AND WE SAID, OKAY, IF YOU WANT TO
14 SETTLE THAT WAY, WE WILL GO OVER AND DO THAT. WE WILL
15 SAY, YES, WE WILL AGREE THAT THE RULE 23 -- WE'LL GO THAT
16 WAY INSTEAD OF OUR WAY -- THE PARALLEL TRACKS.

17 THEY SAY THAT THE RULES WERE ADOPTED AND IT REPEALS
18 1020. WELL, IF YOU WILL LOOK VERY CAREFULLY AT CODE
19 SECTION 56-15-110, SUIT FOR DAMAGES, THEY CITE TO YOU
20 56-15-110(2) AND THEY CENTER ON (2) WHICH SAYS WHEN SUCH
21 ACTION IS ON COMMON OR GENERAL INTEREST TO MANY PERSONS OR
22 WHEN THE PARTIES ARE NUMEROUS AND IT IS IMPRACTICAL TO
23 BRING THEM ALL BEFORE THE COURT ONE OR MORE SUITS FOR THE
24 BENEFIT OF THE WHOLE INCLUDING ACTIONS FOR INJUNCTIVE
25 RELIEF. BUT YOU KNOW WHAT'S IMPORTANT? WHEN SUCH ACTION,

1 IT SAYS, AND THEY'RE REFERRING UP TO ONE WHICH GIVES YOU
2 WHAT ACTIONS YOU HAVE -- A SUBSTANTIVE RIGHT OF WHAT
3 ACTIONS YOU HAVE AND THE RIGHT TO BRING THOSE ACTIONS
4 UNDER (2), NOT THE RIGHT TO BRING THOSE ACTIONS AND HAVE
5 RULE 23 APPLY.

6 SO, YOU HAVE TO LOOK AT 56-15-110 WHEN IT SAYS YOU
7 CAN'T -- ANYBODY THAT DOES THINGS IN 56-15-110 YOU HAVE A
8 RIGHT TO BRING AND SUE UNDER THIS CHAPTER IN THE COURT OF
9 COMMON PLEAS AND RECOVER DOUBLE THE ACTUAL DAMAGES. YOU
10 HAVE THAT RIGHT, AND YOU HAVE THE RIGHT TO BRING IT ON
11 BEHALF OF THE PEOPLE OF GENERAL INTEREST TO MANY PERSONS
12 OR WHERE THE PARTIES ARE NUMEROUS AND SO FORTH.

13 SO, YOU GOT TO READ (1) AND (2) TOGETHER, AND, SO, IT
14 IS NOT A PROCEDURAL SECTION. IT IS NOT A SECTION WHERE
15 THE STATUTORY CITINGS OF THE SECTION THREE OF THE 1985
16 ACT -- AND IN THAT THEY DON'T BRING TO YOU THE BLYTHE
17 CASE. UNDER THAT SECTION THEY CLEARLY SAID WHEN YOU HAVE
18 A -- UNDER SECTION THREE OF THE 1995 ACT THE LEGISLATURE
19 PROVIDED IN THE EVENT OF CONFLICT THE RULES REPLACE
20 EXISTING PROCEDURAL STATUTES, BUT THEY HAD A TEST FOR
21 THAT. HOWEVER, REPEAL BY IMPLICATION IS DISFAVORED AND
22 REQUIRES A SHOWING OF CONFLICT BETWEEN THE TWO COMPETING
23 STATUTES INCAPABLE OF REASONABLE RECONCILIATION.
24 MOREOVER, THE REPUGNANCY MUST BE PLAIN AND IF THE TWO
25 PROVISIONS CAN BE CONSTRUED SO THAT BOTH CAN STAND A COURT

1 SHALL SO CONSTRUE THEM.

2 WE HAVE RULE 23 WHICH APPLIES TO EVERYTHING. EVERY
3 CASE THAT COMES IN HERE REGARDLESS OF THE TYPE OF ACTION
4 YOU CAN TRY TO GET A RULE 23. IN THIS CASE HERE IF YOU
5 HAVE AN ACTION WITHIN 56-15-110(1) YOU HAVE A RIGHT TO
6 BRING IT ON BEHALF OF THE PARTIES OF GENERAL -- WHO HAVE
7 GENERAL INTEREST OR ARE SO NUMEROUS IT IS IMPRACTICAL TO
8 BRING THEM ALL BEFORE THE COURT. ONE CAN SUE FOR THE
9 BENEFIT OF THEM, AND THAT IS A RIGHT TO THOSE PARTICULAR
10 CAUSES OF ACTION, AND THEY DON'T POINT THAT OUT TO YOU.
11 THEY HAVE NEVER MENTIONED THE WORD WHEN SUCH ACTION --
12 WHEN SUCH ACTION -- THE SUCH ACTION REFERS BACK TO ONE AND
13 IT ONLY APPLIES TO THOSE ACTIONS WHICH MAKES IT QUITE
14 DIFFERENT THAN THE GENERAL STATUTE THAT APPLIES TO ALL
15 CASES. SO, WHEN THEY TELL YOU THAT -- THAT THIS IS THE
16 SAME AND THEY HAVE THE LITTLE CHART THERE WHERE THEY SHOW
17 YOU HOW CLOSE IT IS IN VERBIAGE THEY DON'T MENTION TO YOU
18 THE FIRST PART OF THE STATUTE. TRICKERY.

19 THEY SAY WE'RE ESTOPPED BECAUSE OF CARMAX. ESTOPPED
20 TO DO WHAT? WE CHOSE TO SETTLE IT. CARMAX WANTED A RULE
21 23, AND THEY'RE SAYING THAT WE'RE ESTOPPED; THAT WE HAVE
22 TO SAY WE'LL SETTLE ALL THE CASES WITH RULE 23? WE WILL
23 SETTLE ALL THE CASES UNDER RULE 23, BUT IT DOESN'T MEAN WE
24 CAN'T BRING THE CASES UNDER WHATEVER RIGHTS WE HAVE AND
25 THIS CASE IT'S THE RIGHT WE JUST TALKED OF.

1 THEY'VE TALKED ABOUT RULE 59, AND I JUST TOLD YOU
2 ABOUT THAT. IT HAD TO BE A JUDGMENT. IT HAS TO BE A
3 JUDGMENT. WE DON'T EVEN HAVE THAT. SO, I DON'T THINK 59
4 APPLIES.

5 STANDING. THEY ALWAYS COME BACK TO STANDING, AND
6 THEY SAY IT'S IMPROPER -- THERE IS NO STANDING. WELL,
7 THERE ARE SEVERAL WAYS TO LOOK AT IT. THERE IS STANDING
8 IF AS TO THE SEVEN BECAUSE THEY HAD A DIRECT DEALING WITH
9 THEIR DEFENDANTS. THIS COURT TOLD US IT HAD A LITTLE
10 TREPIDATION AS TO HAVING A PLAINTIFF WHO HAD A DEALING
11 WITH ONE CAR DEALERSHIP TO BE ABLE TO SUE ALL THE CAR
12 DEALERSHIPS, AND WE SAID, WELL, THAT MAY BE. WE SHOULD
13 TRY TO CORRECT THAT. THEY BROUGHT IT UP, AND WE CORRECTED
14 IT.

15 THE COURT: SO, IF YOU HAVE ONLY SEVEN PLAINTIFFS AND
16 ON THE SEVEN PLAINTIFFS YOU WOULD STILL OPERATE?

17 (WHEREUPON, A PHONE RINGS.)

18 MR. GRIMBALL: I'M SORRY, YOUR HONOR. I FORGOT TO
19 TURN THIS --

20 THE COURT: MR. GRIMBALL, I HAVE BEEN WAITING FOR 33
21 YEARS TO PUT YOU IN JAIL.

22 MR. GRIMBALL: I PLEAD GUILTY, YOUR HONOR.

23 THE COURT: HE USED TO AGGRAVATE ME IN LAW SCHOOL.

24 MR. GRIMBALL: I PLEAD GUILTY. I HOPE IT'S A SHORT
25 TERM.

1 THE COURT: ABOUT TWO SECONDS. NO PROBLEM. NO
2 PROBLEM.

3 MR. LEWIS, IF WE GRANTED THE AMENDMENT THEY WOULD
4 STILL HAVE THE RIGHT AT SOME POINT IN TIME WHEN DISCOVERY
5 IS DONE TO IMPROPER JOINDER AND OR VENUE MOTIONS TO SEND
6 THEM TO WHATEVER COUNTIES THEY'RE SUPPOSED TO BE. ARE YOU
7 SAYING THAT?

8 MR. LEWIS: NO. I AM SAYING YOU DIDN'T RULE ON THAT.
9 I'M SAYING THEY CAN -- AS A MATTER OF FACT, YOU RESERVED
10 THAT IN TALKING ABOUT IT IN THE HEARING AND WHEN WE HAD
11 THE MOTIONS -- EXCUSE ME -- THE ORDER IN THE HOSPITAL
12 CASES IT SENT IT TO ONE JUDGE FOR DISCOVERY AND THEY
13 SPECIFICALLY SAID IT WOULD GO BACK OUT TO THE OTHER COURTS
14 FOR THE TRIALS. IN THIS CASE WE HAVEN'T EVEN COME TO THAT
15 JUNCTURE, AND I DON'T UNDERSTAND WHY WE'RE ARGUING IT
16 BECAUSE --

17 THE COURT: THEY STILL WOULD HAVE THE RIGHT TO ASSERT
18 VENUE AND OR JOINDER AFTER THE DISCOVERY.

19 MR. LEWIS: ABSOLUTELY. ABSOLUTELY.

20 THE COURT: AND IF THE AMENDMENT WERE GRANTED
21 REDUCING IT TO SEVEN, IT PRETTY MUCH TAKES CARE OF THE
22 STANDING ARGUMENT, DOES IT NOT?

23 MR. LEWIS: THAT'S WHAT I SAID.

24 THE COURT: EXCEPT FOR THE PLAINTIFF WOULDN'T HAVE
25 STANDING PERHAPS TO A DISTRIBUTORSHIP SHE DIDN'T DO

1 BUSINESS WITH. ARE YOU GOING TO CONCEDE THAT?

2 MR. LEWIS: I WILL CONCEDE THAT EXCEPT IT DEPENDS ON
3 WHETHER OR NOT THE CONSPIRACY CAUSE OF ACTION BRINGS IT IN
4 AND THEY HAVE MISSTATED CONSPIRACY CONSIDERABLY, BUT THAT
5 IS THE ONLY -- THE ONLY WAY THAT A PLAINTIFF SUING ONE CAR
6 DEALERSHIP CAN GET ANY KIND OF ABILITY TO SUE.

7 THE COURT: THROUGH THE CONSPIRACY?

8 MR. LEWIS: YES. THAT'S THE ONLY WAY.

9 THE COURT: SO, THAT REDUCES THAT THEN. GO AHEAD. I
10 DIDN'T MEAN TO INTERRUPT YOU.

11 MR. LEWIS: NO. THAT'S FINE, YOUR HONOR. THAT HELPS
12 ME. ALL RIGHT. NOW, I GUESS WE'RE AT --

13 THE COURT: SO, IT'S YOUR POSITION YOU CAN PROCEED
14 UNDER THIS PARTICULAR ACT. YOU DON'T HAVE TO DO IT UNDER
15 RULE 23 BECAUSE THERE IS A SUBSTANTIVE RIGHT EVEN THOUGH
16 THERE IS A PROCEDURAL WAY OF DOING IT. BASICALLY, THAT'S
17 WHAT YOU'RE SAYING?

18 MR. LEWIS: NOT A PROCEDURAL WAY. I HAVE A
19 SUBSTANTIVE RIGHT TO BRING A CAUSE OF ACTION ON BEHALF OF
20 A GROUP OF PEOPLE, A GROUP CAUSE OF ACTION -- MY WORDS;
21 THOSE ARE MY WORDS -- A GROUP CAUSE OF ACTION UNDER THE
22 STATUTE FOR VIOLATION OF THE STATUTE AS FOUND IN SECTION
23 56-15-110(1). IT JUST SAYS THAT WHEN I SUE FOR A
24 VIOLATION OF 56-15-110 I CAN BRING IT ON BEHALF OF A GROUP
25 OF PERSONS WHERE THE PARTIES ARE NUMEROUS AND IT IS

1 IMPRACTICAL TO BRING THEM ALL BEFORE THE COURT.

2 THEY WANT TO GET INTO WORD GAMES. IT'S NOT. IT'S A
3 SUBSTANTIVE RIGHT TO BRING THOSE CAUSES OF ACTIONS ON
4 BEHALF OF PEOPLE WHO ARE WHERE THERE ARE NUMEROUS AND
5 IMPRACTICAL TO BRING THEM ALL BEFORE THE COURT. THAT'S
6 WHAT IT SAYS.

7 THE COURT: SO, YOU'RE PLAINTIFF "A" GOING AGAINST
8 THE DEALERSHIP HERE IN AIKEN AND YOU BRING IT IN A
9 REPRESENTATIVE CAPACITY FOR THOSE PEOPLE WHO HAVE DEALT
10 WITH THAT DEALERSHIP?

11 MR. LEWIS: THAT'S RIGHT.

12 THE COURT: AND THE ONLY WAY YOU CAN GET DEALERSHIP
13 "B" INVOLVED IS IF YOU COULD PROVE THROUGH YOUR DISCOVERY
14 AND YOUR ACTION THAT THERE WAS CONSPIRACY.

15 MR. LEWIS: THAT'S CORRECT.

16 THE COURT: IF NO CONSPIRACY IS PROVED, THEN YOU HAVE
17 NOTHING AGAINST THE DEALERSHIPS THEY DIDN'T DO BUSINESS
18 WITH?

19 MR. LEWIS: THAT'S CORRECT.

20 THE COURT: GO AHEAD. AND, OF COURSE, ALONG WITH
21 CONSPIRACY YOU'D HAVE TO PROVE YOUR SPECIAL DAMAGES, ET
22 CETERA, ET CETERA, BUT JUST ASSUMING --

23 MR. LEWIS: I'D LIKE TO SAY SOMETHING ABOUT THAT.
24 YOU'VE USED SPECIAL DAMAGES. EVERYBODY USES THAT TERM.
25 WHAT DOES IT MEAN? THAT'S AN INTERESTING POINT. I HAVE

1 GONE IN AND RESEARCHED THAT AND THE ONLY THING THAT I CAN
2 FIND THAT SAYS WHAT SPECIAL DAMAGES ARE, THEY'RE THE
3 DAMAGES THAT ARE PARTICULAR TO THE PLAINTIFF. LIKE IF YOU
4 HAVE A BROKEN ARM, THAT'S A SPECIAL DAMAGE. IF YOU GOT
5 BURNED UP IN A FIRE, THAT'S A SPECIAL DAMAGE, AND THAT'S
6 WHAT I'VE ALWAYS WONDERED ABOUT THAT BECAUSE EVERYBODY
7 THROWS THAT WORD AROUND LIKE IT'S UNDERSTOOD. IT'S NOT
8 UNDERSTOOD.

9 AND I'LL TELL YOU ANOTHER THING THEY KEEP -- THEY
10 BRING UP THAT WAS WRONG. THEY SAY THAT IF YOU HAVE
11 ANOTHER CAUSE OF ACTION YOU CAN'T PLEAD THIS. ALL THE
12 CASES THEY CITE -- THE TODD CASE AND ALL OF THEM -- WERE
13 BEFORE THE RULES WE HAVE NOW. THERE IS NO QUESTION THAT
14 IN THE DEMURER -- I AM OLD ENOUGH TO HAVE MADE DEMURERS.
15 IN DEMURERS YOU COULD NOT HAVE ALTERNATE CAUSES OF ACTION
16 AND YOU CAN READ THE DISCUSSION ON THEM AND THEY SAY HOW
17 BAD THAT WAS AND HOW THAT WAS HARMFUL AND THEY CHANGED IT
18 IN THE RULES. BUT WHEN YOU GO BACK TO TODD, CONSPIRACY
19 WAS THROWN OUT BECAUSE OF THAT -- BECAUSE OF WHAT YOU
20 COULDN'T HAVE IN THE CODE PLEADING.

21 NOW, WE HAVE -- WE'RE AT THE PLEADING STAGE. WE'VE
22 PLEAD EVERYTHING. NOW, WE MAY LOSE ON SUMMARY JUDGMENT.
23 WE MAY GIVE IT UP AFTER WE HAVE DISCOVERY, OR WE MAY FIND
24 IT'S A GREAT CAUSE OF ACTION AND BUST THEM, BUT WE'RE AT
25 THE PLEADING STAGE. NOW, THEIR LITTLE NOTE -- THAT LITTLE

1 PACKET THEY GAVE YOU -- REMEMBER WHEN YOU LOOK AT THAT IF
2 YOU LOOK AT IT AGAIN THEY DON'T CITE EVERYTHING AS I TOLD
3 YOU WITH REFERENCE TO MOTOR VEHICLE CHAPTER 15. THEY
4 DON'T CITE WHAT THAT RIGHT TO BRING IT ON BEHALF OF OTHER
5 PEOPLE IS TIED TO. IT'S TIED TO THE FIRST PARAGRAPH WHERE
6 THEY HAVE THE RIGHT TO SEEK UNDER THIS CHAPTER FOR CERTAIN
7 WRONGS.

8 THEN THEY BRING TO YOU GARDENER. THAT WAS AN
9 INTERESTING ARGUMENT. HE TALKED TO YOU ABOUT GARDENER
10 SAYING THAT IT HELD THAT YOU COULDN'T DO SOMETHING -- YOU
11 COULDN'T HAVE THE PLAINTIFFS SUING DEFENDANTS THAT THEY
12 DIDN'T HAVE DIRECT CONTRACT -- CONTACT WITH AND THAT'S
13 WHAT GARDENER SAID BECAUSE -- AND HE GIVES YOU A CITE TO A
14 PARTICULAR PARAGRAPH OR FOOTNOTE IN THAT CASE. WELL, THAT
15 CASE, IF YOU'LL READ IT, IS A CASE ABOUT AND IT DEALS
16 ITSELF WITH A CLASS ACTION AND WHETHER YOU CAN HAVE A
17 CLASS OF DEFENDANTS AND WHETHER OR NOT YOU CAN HAVE A
18 CLASS OF DEFENDANTS UNDER A CLASS ACTION CASE AND DOES NOT
19 ADDRESS CONSPIRACY -- DOES NOT SAY ANYTHING ABOUT
20 CONSPIRACY.

21 WHAT IT SAYS IS IF WE WERE UNDER RULE 23 AND WE SUED
22 A DEALERSHIP ON BEHALF OF ALL THE PLAINTIFFS IN THAT
23 DEALERSHIP, THAT'S OKAY. BUT IF WE'VE SUED THAT
24 DEALERSHIP ON BEHALF OF ALL THE PEOPLE IN THAT DEALERSHIP
25 THAT WERE HURT LIKE US AND WE SUED ANOTHER DEALERSHIP FOR

1 PEOPLE THAT WERE HURT LIKE US AND ANOTHER DEALERSHIP FOR
2 PEOPLE THAT WERE HURT LIKE US AND WE HAD NO DIRECT CONTACT
3 WITH THOSE DEALERSHIPS, YOU CAN'T DO THAT AND THEY
4 REJECTED THAT PRINCIPAL. SOME STATES ALLOW IT UNDER THE
5 CLASS ACTION. SOME DON'T.

6 IT HAD NOTHING TO DO WITH CONSPIRACY. UNDER THEIR
7 IDEA OF CONSPIRACY IF WE HAVE SOMEONE GO AND THEY SIT OUT
8 THERE AND THEY SAY, OKAY, WE'RE GOING TO GO BURN DOWN THE
9 BUILDING. ALL RIGHT. I WANT YOU TO GO BURN DOWN THE
10 BUILDING. HERE'S THE GASOLINE. GO BURN DOWN THE
11 BUILDING. AND ONE GUY STAYS AWAY AND SITS OVER THERE AND
12 HE WATCHES THE BUILDING BURN AND GOES HOME. UNDER THEIR
13 THEORY ALL THE PEOPLE THAT GOT KILLED IN THE BUILDING
14 COULDN'T SUE BUT THE GUY THAT LIT THE FIRE -- COULDN'T SUE
15 THE OTHER PERSON BECAUSE HE WASN'T DIRECTLY -- HE HAD NO
16 DIRECT CONTACT WITH THE PLAINTIFF.

17 THAT'S NOT A REQUIREMENT IN CIVIL CONSPIRACY AS THEY
18 SAY IT IS. CIVIL CONSPIRACY HAS THOSE THREE SIMPLE
19 REQUIREMENTS. NOW, THAT DOCTRINE THAT THEY KEEP SAYING
20 APPLIES TO CIVIL CONSPIRACY IS CALLED -- I DON'T KNOW HOW
21 TO SAY IT -- JUDICIAL LINKS DOCTRINE AND IT IS A DOCTRINE
22 THAT ALLOWS TO SUE AND HAVE A CLASS OF DEFENDANTS IN A
23 CLASS ACTION UNDER RULE 23.

24 NOW, THEY CITED TO YOU THE CIVIL CONSPIRACY
25 ALLEGATIONS AND THEY ARE PARAGRAPH 333, 403, 404, AND 405.

1 THOSE ARE WHAT AMOUNT TO OUR CIVIL CONSPIRACY CAUSE OF
2 ACTION AND WHAT YOU HAVE TO PROVE AND PLEAD ARE THE
3 COMBINATION OF TWO OR MORE PEOPLE FOR THE PURPOSE OF
4 INJURING THE PLAINTIFF WHICH CAUSED SPECIAL DAMAGES, AND
5 WE ALLEGE THAT THEY CONSPIRED TOGETHER IN A COMMON SCHEME
6 DESIGNED TO DECEIVE CAR BUYERS AND THESE ACTIONS AMOUNTED
7 TO CONCERTED CONSUMER FRAUD, AND THEY CONSPIRED TOGETHER
8 TO HAVE A COMMON SCHEME BY CHARGING AND CREATING ILLEGAL
9 ADMINISTRATIVE FEES AND THAT THEY WERE DAMAGED BY HAVING
10 TO PAY THE FEES.

11 THAT'S WHAT WE, IN EFFECT, ALLEGE, AND THAT IS WE
12 THINK WHAT IS REQUIRED UNDER THE CIVIL CONSPIRACY CAUSE OF
13 ACTION -- THE COMBINATION OF TWO OR MORE PEOPLE. THEY ALL
14 GOT TOGETHER -- ALL THESE DEALERS -- FOR THE PURPOSE OF
15 INJURING THE PLAINTIFF WHICH THEY ALL GOT TOGETHER TO HAVE
16 ILLEGAL ADMINISTRATIVE FEES AND THESE FEES CAUSED SPECIAL
17 DAMAGES BECAUSE OUR PEOPLE PAID THEM AND THEY LOST MONEY.
18 EACH ONE LOST A DIFFERENT AMOUNT. EACH ONE LOST THEIR
19 MONEY. SPECIAL DAMAGES.

20 THEY GO ON TO TALK ABOUT DECLARATORY JUDGMENT, AND
21 THEY SAY YOU HAVE TO HAVE AN INJURY IN DECLARATORY
22 JUDGMENT -- AN INJURY. NOT TRUE. YOU HAVE TO HAVE A
23 DISAGREEMENT, A JUDICIAL CONTROVERSY. ONE OF THE THINGS
24 IN THERE IS IT SAYS THAT YOU GET TO HAVE A DECLARATORY
25 JUDGMENT TO DETERMINE A STATUTE, A WILL, A CONTRACT, AND

1 YOU DON'T HAVE TO WAIT TO BE INJURED. THAT'S WHAT THAT
2 STATUTE IS FOR.

3 IT ALSO IS VERY CLEAR IN THE STATUTE AND THE ROBINSON
4 CASE THAT YOU CAN BRING A DECLARATORY JUDGMENT AND
5 THEREAFTER SUE FOR DAMAGES. YOU CAN HAVE A DECLARATORY
6 JUDGMENT AND THEREAFTER DETERMINE DAMAGES. DECLARATORY
7 JUDGMENT IS A STATUTORY RIGHT WHERE PLAINTIFFS GET TO ASK
8 THE COURT TO DETERMINE A RIGHT UNDER A CONTRACT, STATUTE,
9 OR WHATEVER, AND THEN THEREAFTER TAKE WHAT ACTION IS
10 NECESSARY OR ALLOWED TO SUPPORT OR TO GET THAT RIGHT. SO,
11 WHEN THEY SAY THAT YOU HAVE TO HAVE AN INJURY, IT'S JUST
12 NOT TRUE.

13 AND THEN THEY SAY THE PUBLIC INTEREST HAS TO BE
14 GOVERNMENT. THERE IS NO CASE IN THE WORLD THAT SAYS THAT.
15 PUBLIC INTEREST FOR STANDING THEY SAY HAS TO BE -- PUBLIC
16 INTEREST HAS TO BE A GOVERNMENT. THERE IS NO CASE THAT
17 SAYS THAT. WHAT IT SAYS IS THAT IT HAS TO BE OF PUBLIC
18 INTEREST, AND THEY HAVE STOOD UP HERE TODAY AND TOLD YOU
19 HOW IMPORTANT IT IS TO GET THIS DETERMINED, HOW IMPORTANT
20 IT IS FOR AN INDUSTRY ALL OVER THE STATE OF SOUTH
21 CAROLINA, AN INDUSTRY THAT'S BEEN HELD HOSTAGE BY THE
22 ADMINISTRATIVE FEES, AND WE SAY WE AGREE. WE NEED TO HAVE
23 THESE DETERMINED. DECLARATORY JUDGMENT CAUSES OF ACTION
24 CAN DETERMINE IT AS FAST AS THE COURT WANTS THEM TO AND
25 THE DECLARATORY JUDGMENT WILL ALLOW STANDING. WE DON'T

1 HAVE TO WORRY ABOUT THAT IF YOU GRANT OUR MOTION TO AMEND,
2 BUT IF YOU DIDN'T, WE THINK THE DECLARATORY JUDGMENT WITH
3 REFERENCE THE STATUTE WOULD ALLOW US TO HAVE STANDING EVEN
4 FOR THOSE PEOPLE WHO DO NOT HAVE A CORRESPONDING
5 DEFENDANT.

6 I EMPHASIZE AGAIN JOINDER. IF YOU LOOK AT THE RULES,
7 YOU DON'T DISMISS FOR MISJOINDER. YOU JUST TRANSFER.

8 THE COURT: WELL, I DON'T THINK I NEED TO REACH THAT
9 ISSUE UNTIL --

10 MR. LEWIS: I AGREE.

11 THE COURT: BUT I THINK HE HAS A PRETTY GOOD ARGUMENT
12 ON IT, BUT...

13 MR. LEWIS: SIR?

14 THE COURT: I THINK HE HAS A GOOD ARGUMENT ON IT, BUT
15 I DON'T THINK WE NEED TO REACH THAT UNTIL WE GET DOWN THE
16 ROAD SOME.

17 MR. LEWIS: WELL, ONE GOOD THING ABOUT WHEN A JUDGE
18 TELLS YOU THAT THE OTHER SIDE HAS DONE REAL GOOD, THERE IS
19 NO REQUIREMENT THAT I AGREE.

20 THE COURT: THAT'S TRUE, BUT HE DID AN EXCELLENT JOB.

21 MR. LEWIS: THERE IS NO REQUIREMENT THAT I AGREE.

22 THE COURT: I WOULD THINK YOU WOULD COMMEND HIM ON
23 HIS PRESENTATION AND HIS PREPARATION.

24 MR. LEWIS: OH, HE LOOKED GOOD UP THERE.

25 THE COURT: WELL, I'LL COMMEND HIM. YOU DON'T HAVE

1 TO AGREE WITH ME.

2 MR. LEWIS: SO, FINALLY, WHAT I THINK WHERE WE'RE
3 DOWN TO IS THE RULE 23 -- AND THEY DRAFTED THAT ORDER AND
4 GAVE IT TO YOU. THE RULE 23 ORDER SHOULD STAY. WE SHOULD
5 DENY THE MOTIONS FOR RECONSIDERATION AND GO FORWARD WITH
6 DISCOVERY WITH -- OF THE SEVEN PEOPLE AFTER YOU HAVE
7 GRANTED OUR MOTION TO DISMISS AND AS QUICK AS POSSIBLE GET
8 UP TO THE COURT THOSE ISSUES THAT THEY SAY ARE NECESSARY
9 FOR THIS INDUSTRY TO BE ABLE TO GET OUT FROM UNDER THE
10 BURDEN OF A DETERMINATION OF WHETHER THEIR ADMINISTRATIVE
11 FEE PROGRAM IS IN VIOLATION OF LAW OR NOT, AND THAT'S WHAT
12 WE WANT, AND WE ASK THAT YOU GRANT OUR MOTION, DENY THEIR
13 MOTION FOR RECONSIDERATION, AND WE GO FORWARD ON THE
14 DISCOVERY AND GET THEM UP TO YOU AS FAST AS POSSIBLE AND,
15 OF COURSE, WE'LL GLAD TO ENTER INTO ANY KIND OF SCHEDULING
16 ORDER TO GET THAT DONE.

17 THE COURT: THANK YOU.

18 MR. BECKER: MAY I REPLY BRIEFLY, YOUR HONOR?

19 THE COURT: YOU CERTAINLY MAY. IF I GRANT YOUR
20 MOTION AS TO STANDING, RULE THAT THEY DON'T HAVE STANDING
21 TO SUE DEALERS WITH WHOM THEY DID NOT DO BUSINESS WITH
22 UNLESS THEY PROVE THIS CONSPIRACY THEORY, WHERE DOES THAT
23 LEAVE US?

24 MR. BECKER: WELL, THAT GOES A LONG WAY, BUT IT --

25 THE COURT: HOLD ON. AND THEN I GIVE YOU THE RIGHT

1 THAT YOU'RE NOT GIVING UP ANY RIGHT TO ARGUE PROPER VENUE,
2 IMPROPER JOINDER, THOSE TYPES OF THINGS AT THE CONCLUSION
3 OF DISCOVERY. WHERE DOES THAT LEAVE US?

4 MR. BECKER: I THINK IT LEAVES US --

5 THE COURT: AND I STAY THE ADAMS CASE AND HAVE TO
6 DEAL WITH OTHERS.

7 MR. BECKER: WELL, IT LEAVES US WITH A SMALLER CASE,
8 BUT STILL WITH A NUMBER OF IMPROPERLY JOINED DEFENDANTS
9 DEFENDING THEMSELVES IN THE WRONG COUNTY.

10 THE COURT: WELL, ISN'T THAT SIMILAR TO WHERE THE
11 SUPREME COURT HAS HANDLED THIS HOSPITAL CASE? THEY GAVE
12 IT TO THE ONE JUDGE TO GO THROUGH JUST LIKE THEY DID THE
13 OXYCOTIN CASE WITH JUDGE GOODSTEIN, JUST LIKE THEY DID THE
14 BACALL CASE WITH JUDGE KING. YOU GO IN AND HANDLE ALL THE
15 PROCEDURAL MATTERS AND HANDLE ALL THE DISCOVERY ISSUES AND
16 WHEN IT COMES DOWN TIME TO TRY THE CASE YOU BREAK THEM OUT
17 AND SEND THEM TO THE CORRECT COUNTY. HASN'T THE COURT
18 DONE THAT IN THESE OTHER CASES?

19 MR. BECKER: YES, SIR, THEY DID DO THAT, BUT THERE IS
20 ONE BIG EXCEPTION.

21 THE COURT: WHAT IS THAT?

22 MR. BECKER: WELL, ALL OF THOSE CASES THAT WERE
23 JOINED TOGETHER BY THE SUPREME COURT THROUGH USE OF ITS
24 SPECIAL POWERS STARTED OUT WHERE THEY WERE SUPPOSED TO BE
25 FILED IN THE FIRST PLACE. RICHLAND COUNTY HOSPITAL --

1 RICHLAND MEMORIAL HOSPITAL WAS SUED IN RICHLAND COUNTY,
2 AND GREENVILLE MEMORIAL HOSPITAL WAS SUED IN GREENVILLE
3 COUNTY AND THE M.U.S.C. WAS SUED IN CHARLESTON COUNTY, AND
4 THE SUPREME COURT DECIDED IN THAT SITUATION THAT THERE
5 WERE ENOUGH COMMON ISSUES OF SIGNIFICANT IMPORTANCE THAT
6 THEY SHOULD BE JOINED TOGETHER FOR PRETRIAL PURPOSES.
7 WHETHER OR NOT THE SUPREME COURT WOULD DO SO IN THIS
8 SITUATION, I DON'T KNOW. I WOULDN'T PROPOSE TO PREJUDGE
9 THAT ISSUE FOR THE SUPREME COURT.

10 THE COURT: NEITHER WOULD I.

11 MR. BECKER: BUT WHAT I DO KNOW, YOUR HONOR, IS THAT
12 -- AND I DO TAKE ISSUE HERE -- I THINK IMPROPER JOINDER
13 AND IMPROPER VENUE, THOSE ARE THRESHOLD ISSUES, AND LET ME
14 JUST GIVE YOU AN EXAMPLE. IF TWO PEOPLE WHO GOT INJURED
15 IN CAR WRECKS OUT THERE IN DOWNTOWN AIKEN COUNTY AT
16 DIFFERENT INTERSECTIONS ON DIFFERENT DAYS DRIVING
17 DIFFERENT CARS AND WERE INJURED BY DIFFERENT DEFENDANTS --
18 IF THEY CAME INTO THIS COURTROOM AND SAID WE WANT TO JOIN
19 OUR CLAIMS TOGETHER AGAINST OUR DEFENDANTS --

20 THE COURT: WELL, YOU KNOW I WOULDN'T DO THAT.

21 MR. BECKER: WELL, YOU WOULDN'T.

22 THE COURT: BUT THIS IS DIFFERENT.

23 MR. BECKER: WELL, HOW IS WHAT I WONDER. IT REALLY
24 ISN'T. THE ONLY COMMON THREAD IS THAT THEY'RE BRINGING
25 CLAIMS UNDER THE DEALERS ACT. THE ONLY COMMON THREAD THAT

1 THOSE TWO CAR-WRECK PLAINTIFFS WOULD BE OFFERING IS, WELL,
2 WE'RE BOTH BRINGING NEGLIGENCE CLAIMS. THAT'S NOT ENOUGH
3 TO BIND TWO UNRELATED PLAINTIFFS TOGETHER IN ONE SUIT TO
4 SUE TWO UNRELATED DEFENDANTS, MUCH LESS TO COMBINE SIX,
5 SEVEN, OR 250 UNRELATED PLAINTIFFS TO SUE 250 UNRELATED
6 DEFENDANTS. THE SAME CAUSE OF ACTION, THE SAME LEGAL
7 THEORY IS JUST NOT ENOUGH. THAT'S ALL THEY HAVE HERE WHEN
8 YOU REALLY LOOK AT IT.

9 VENUE -- YOU KNOW, VENUE IS ANOTHER --

10 THE COURT: I AM NOT TELLING YOU TO GIVE UP YOUR
11 RIGHT TO MOTION TO CHANGE VENUE. I AM SAYING WE'LL HOLD
12 THAT IN ABEYANCE UNTIL WE GET DOWN THE ROAD.

13 MR. BECKER: BUT ALL I'M SUGGESTING IN RESPONSE IS
14 IT'S A THRESHOLD ISSUE. IF SOMEBODY -- IF I AM IN A CAR
15 WRECK --

16 THE COURT: WELL, DO YOU WANT ME TO HEAR THE VENUE
17 MOTIONS AND SAY I WILL GRANT THEM BUT I WILL STILL --

18 MR. BECKER: I DON'T THINK YOU NEED TO GET THERE
19 BECAUSE -- BUT WE CAN IF YOUR HONOR WANTS TO.

20 THE COURT: WELL, NO, I AM TRYING TO ACCOMMODATE YOU.

21 MR. BECKER: I UNDERSTAND, BUT ALL I'M SUGGESTING IS
22 THAT YOU CAN DISMISS. THE CASES ARE OUT THERE. WE'VE
23 CITED THEM IN OUR BRIEF. YOU CAN DISMISS IF PARTIES ARE
24 IMPROPERLY JOINED. THEY, OF COURSE, ARE FREE UPON
25 DISMISSAL TO GO REFILE THE ACTION WHEREVER IT SHOULD BE

1 FILED WITH OR WITHOUT PROPERLY JOINED PARTIES, BUT THE
2 RULES PERMIT YOU TO DISMISS WHEN THERE IS IMPROPER
3 JOINDER, WHEN THERE IS IMPROPER VENUE. JUST SIMPLY
4 TRANSFERRING IT TO ANOTHER COUNTY IS NOT THE ONLY THING.

5 IN FACT, IN THIS CASE BECAUSE IT WAS FILED IN AIKEN
6 COUNTY YOU WOULD BE SPLITTING THE CASE UP IN ORDER TO
7 TRANSFER IT TO WHERE VENUE IS PROPER WHICH, YOU KNOW, THAT
8 DOESN'T USUALLY HAPPEN. I MEAN, NORMALLY WHERE PEOPLE ARE
9 IMPROPERLY JOINED YOU DISMISS THEM, AND IF SOMEONE IS
10 GOING TO BRING A CLAIM AGAINST THEM LATER, THEY GO FILE
11 THE RIGHT ACTION IN THE RIGHT PLACE.

12 SO, I THINK THE HOSPITAL PRICING LITIGATION IS AS
13 MR. LEWIS SUGGESTS A GOOD EXAMPLE OF HOW THIS MASS ACTION
14 MIGHT BE DEALT WITH IN ONE PLACE BEFORE ONE JUDGE, BUT IN
15 THAT CASE PEOPLE FOLLOWED THE RULES FROM THE GET-GO. THEY
16 DIDN'T IMPROPERLY JOIN PARTIES IN THE SAME SUIT. THEY
17 FILED IT IN THE COUNTIES WHERE VENUE WAS PROPER, AND THEN
18 THE SUPREME COURT WHO HAS THE POWER REALLY TO BEND THE
19 RULES, NOT WITH ALL --

20 THE COURT: TO DO WHAT TO THE RULE?

21 MR. BECKER: -- RESPECT TO CIRCUIT COURT JUDGES.

22 THE COURT: TO DO WHAT TO THE RULES?

23 MR. BECKER: TO INTERPRET THE RULES ANY WAY THEY WANT
24 TO CREATE NEW RULES WHEN THE NEEDS REQUIRE WHICH IS WHAT
25 THEY DID IN THE HOSPITAL PRICING LITIGATION. I MEAN,

1 OBVIOUSLY, OUR STATE DOESN'T HAVE --

2 THE COURT: I UNDERSTAND.

3 MR. BECKER: -- HAVE A MULTI-DISTRICT LITIGATION
4 REGIME AND THAT AOELS WHAT THEY DID HERE.

5 THE COURT: WELL, I THINK I'VE HEARD ENOUGH TO TRY TO
6 GET ME DOWN THE ROAD. ONCE AGAIN, NOTWITHSTANDING WHAT
7 MR. LEWIS SAYS, I WANT TO COMMEND YOU ON YOUR PRESENTATION
8 AND ARGUMENT AND PREPAREDNESS. HE WOULD, TOO, REALLY, BUT
9 HE IS JUST -- THAT'S HIS COMPETITIVE NATURE. HE WANTED
10 TO, BUT HE DOESN'T WANT TO DO IT ON THE RECORD.

11 MR. BECKER: THANK YOU. AND I'D BE HAPPY TO RESPOND
12 DIRECTLY TO ANY OTHER POINTS, BUT IF YOU DON'T NEED TO
13 HEAR THAT --

14 THE COURT: NO, I --

15 MR. BECKER: -- I'LL BE HAPPY TO SIT DOWN.

16 THE COURT: I AM NOT GOING TO RULE TODAY. LET ME
17 TELL YOU SORT OF WHERE I'M THINKING UP HERE. I'LL GIVE
18 Y'ALL TIME TO -- I DON'T THINK THEY HAVE STANDING TO SUE
19 YOU OTHER THAN IF THEY CAN PROVE CONSPIRACY. THEREFORE,
20 BASICALLY, IT LEAVES WITH THE SEVEN ON SEVEN. I CAN DO
21 THAT BY AMENDING THE LAWSUIT -- LETTING THEM AMEND IT. IF
22 I DO THAT, THEN I AM GOING TO HOLD IN ABEYANCE OR RESERVE
23 ANY ISSUES CONCERNING ATTORNEY'S FEES AND COSTS MR. MARTIN
24 OR ANY OF THE REST OF YOU MAY HAVE, OR I CAN DO IT BY
25 PARTIALLY GRANTING YOUR MOTION AND IT COMES BACK WITH THE

1 SAME THING.

2 I DON'T THINK I AM GOING TO DISTURBING MY RULING ON
3 THE SUBSTANTIVE RIGHT THAT 56-15-110(1) AND (2) GIVE.
4 THAT'S SOMETHING YOU CAN APPEAL ON IF YOU WANT TO. I AM
5 JUST THINKING OUT LOUD.

6 AS TO VENUE AND IMPROPER JOINDER, AS WE SAID FROM
7 EARLIER ON I AM GOING TO HOLD THOSE MATTERS AND RESERVE
8 THOSE AND WHEN THE DISCOVERY IS DONE AND ALL THE ISSUES
9 ARE JOINED YOU WOULD NOT BE PRECLUDED FROM ARGUING THOSE
10 IN FULL. NOW, THAT'S HOW I AM THINKING RIGHT NOW JUST TO
11 GIVE YOU A FLAVOR OF THINGS.

12 MR. BECKER: WHAT ABOUT RULE 23?

13 THE COURT: I JUST SAID I AM GOING TO STAND ON MY
14 RULE 23 RULING THAT THEY HAVE THE SUBSTANTIVE RIGHT UNDER
15 THAT STATUTE TO BRING IT IN THE MANNER IN WHICH THEY'RE
16 DOING IT. I JUST SAID YOU CAN TAKE THAT ONE UP TO
17 COLUMBIA IF YOU NEED TO. THEN, OF COURSE, INTERWOVEN INTO
18 ALL OF THAT IS THE -- FOR THOSE OF YOU WHO HAVE
19 ARBITRATION AGREEMENTS, I'VE GOT ONE BEFORE ME TODAY THAT
20 NEEDS A RULING BY THE SUPREME COURT -- SIMMONS. I GOT TO
21 LOOK AT EACH ONE OF THOSE INDIVIDUALLY. THAT COULD TAKE A
22 LONG TIME. I DON'T KNOW HOW MANY OF THE SEVEN HAVE IT.
23 JUST ONE OUT OF THE SEVEN?

24 MR. BECKER: JUST ONE AND THEY'RE HERE TODAY.

25 THE COURT: I AM READY TO HEAR THAT.

1 MR. BECKER: READY TO ARGUE THAT.

2 THE COURT: I AM GOING TO HEAR THAT TODAY. BUT
3 THAT'S ASSUMING I HOLD -- STAY THE OTHER TWO ACTIONS THAT
4 ARE CURRENTLY PENDING. THAT WOULD GIVE YOU TIME, I
5 ASSUME, TO GO UP ON THE IMPORTANT ISSUES UNLESS YOU WANT
6 TO ARGUE YOUR MOTIONS TO DISMISS ON ANYTHING ELSE THAT YOU
7 CAN JOIN THEM ALL TOGETHER. I WANT TO MAKE IT CLEAN FOR
8 YOU HOWEVER YOU WANT TO DO IT.

9 MR. BECKER: RIGHT. AND WE APPRECIATE THAT. WE'LL
10 PROBABLY NEED --

11 THE COURT: I AM NOT ASKING YOU TO DECIDED. I AM
12 JUST TELLING YOU THAT'S WHAT I AM THINKING. I GOT TO READ
13 EVERYTHING. I WANT TO STUDY. I WANT PROPOSED ORDERS, BUT
14 THAT'S SORT OF THE WAY I'M THINKING RIGHT NOW.

15 MR. BECKER: YEA.

16 THE COURT: THAT GETS IT, I THINK, MANAGEABLE. THAT
17 DOESN'T -- THE STANDING ISSUE IS THEY DON'T HAVE STANDING
18 UNLESS THEY CAN PROVE A CONSPIRACY, AND, YOU KNOW, YOU GOT
19 MOTIONS FOR SUMMARY JUDGMENT ON THAT AFTER DISCOVERY. IF
20 THEY AREN'T ABLE TO SHOW THAT THEY'RE CONNECTED IN ANY
21 WAY, THEN THEY'RE OUT ON THAT, AND THEN YOU GOT ONE ON
22 ONE. AND THEN YOU HAVE THE MOTION FOR CHANGE OF VENUE,
23 AND THOSE WHO AREN'T HERE, IF THE CORPORATE DEFENDANT
24 MEETS ALL THE REQUIREMENTS OF THE STATUTE, THEY'D GO TO
25 GREENVILLE, CHARLESTON, BIG O, OR WHATEVER YOU'RE TALKING

1 ABOUT OR WHEREVER YOU'D GO.

2 MR. MARTIN WOULD STILL HAVE HIS RIGHT TO CLAIM
3 ATTORNEY'S FEES AND COSTS. I THINK I AM TRYING TO PROTECT
4 EVERYBODY, BUT THAT'S SORT OF WHERE I FEEL LIKE IT NEEDS
5 TO GO.

6 MR. BECKER: OKAY.

7 THE COURT: THAT GIVES YOU THE RIGHT TO GO TO
8 COLUMBIA ON YOUR RULE 23 WHETHER OR NOT THAT STATUTE GIVES
9 YOU A SUBSTANTIVE RIGHT VERSUS PROCEDURAL OR NEGATES YOUR
10 ARGUMENT ON STANDING GOING TO COLUMBIA BECAUSE I PRETTY
11 MUCH AGREED WITH YOU ON THAT EXCEPT FOR THE CONSPIRACY.

12 MR. BECKER: THE ONLY THING THAT I'M THINKING THAT IT
13 MIGHT BE -- SERVE THE INTEREST OF JUDICIAL ECONOMY THEN TO
14 HAVE YOU ALSO CONSIDER A RULE ON WOULD BE VENUE, BUT
15 THAT'S SOMETHING I'LL NEED TO DISCUSS WITH ALL THE OTHER
16 DEFENSE COUNSEL AND WE CAN COME BACK TO YOU. IF WE DO ASK
17 YOU TO ADDRESS THAT, WE COULD PROBABLY DO IT JUST ON
18 BRIEFS.

19 THE COURT: WELL, WHAT IF I GRANT YOUR MOTION TO
20 CHANGE VENUE? THEN DOES THAT LEAD THE DISCOVERY AND ALL
21 THE PROCEDURAL STUFF HERE OR DOES IT SEND IT -- DO WE HAVE
22 CASES IN SEVEN DIFFERENT COUNTIES AND HAVE SEVEN DIFFERENT
23 JUDGES LOOKING AT IT? OR WOULD YOU -- WOULD Y'ALL ASK THE
24 SUPREME COURT FOR GUIDANCE ON THAT?

25 MR. BECKER: I THINK THAT'S WHAT WE'D BE DOING IS

1 WHETHER -- IN MY VIEW THE ISSUE IS WHETHER IMPROPER
2 JOINDER AND IMPROPER VENUE ARE THRESHOLD ISSUES THAT
3 REQUIRE DISMISSAL VERSUS SOME OTHER --

4 THE COURT: OKAY.

5 MR. BECKER: -- RESOLUTION.

6 THE COURT: WELL, I THINK I'VE SHARED WITH YOU MY
7 THOUGHTS RIGHT NOW. I AM NOT RULING RIGHT NOW. IF YOU
8 WANT TO LOOK AT THOSE OTHER ISSUES, WE CAN HAVE A
9 CONFERENCE CALL. WE CAN DO IT HOWEVER YOU WANT TO. IF
10 YOU WANT TO GO AHEAD AND HEAR THOSE SO YOU CAN TAKE THAT
11 TO COLUMBIA AS WELL. OBVIOUSLY, THOUGH, IF YOU COME IN
12 HERE AND TELL ME THAT THE BIG O GUYS FROM SPARTANBURG OR
13 GREENVILLE, I WILL LEAVE IT HERE, BUT WE ALSO HAVE THAT
14 INITIAL ORDER THAT EVERYBODY HAS NOT AGREED TO BUT WAS
15 SIGNED TO DO ALL OF THE DISCOVERY AND PROCEDURAL MOTIONS
16 AND DISPOSITIVE MOTIONS AND THEN ADDRESS VENUE AT THAT
17 TIME. I DON'T KNOW HOW YOU GET AROUND THAT. I AM JUST
18 TALKING OUT LOUD.

19 MR. BECKER: RIGHT.

20 THE COURT: I AM JUST THINKING OUT LOUD.

21 MR. BECKER: WE'LL NEED TO LOOK BACK AT THAT ORDER
22 AND WE'LL NEED TO EXPLORE WHAT OTHER ISSUES MIGHT BE
23 APPROPRIATE FOR RESOLUTION NOW, AND, OF COURSE, WE DON'T
24 KNOW IF THE SUPREME COURT WILL EVEN ACCEPT AN APPEAL IF WE
25 DO IT, BUT --

1 THE COURT: I DON'T EITHER.

2 MR. BECKER: AND SO --

3 THE COURT: BUT ONCE YOU FILE OF APPEAL, DOES THAT
4 DIVEST ME OF JURISDICTION? I THINK IT DOES --

5 MR. BECKER: YES.

6 THE COURT: -- UNTIL THEY SEND IT BACK TO ME.

7 MR. BECKER: RIGHT.

8 THE COURT: AND, ALSO, I THINK UNLESS YOU APPEAL IT
9 THAT IF I RULE LIKE I'M THINKING OUT LOUD I WANT THE
10 DISCOVERY TO GO AHEAD AND START ON THOSE SEVEN CASES. I
11 THINK IT'S TIME TO FISH OR CUT BAIT ON THAT, BUT IF YOU
12 APPEAL IT, THEN, YOU KNOW --

13 MR. BECKER: RIGHT.

14 THE COURT: -- IT GETS IT OUT OF MY HAIR FOR A LITTLE
15 WHILE ANYWAY.

16 MR. BECKER: THAT'S RIGHT. OKAY.

17 THE COURT: YOU UNDERSTAND.

18 MR. BECKER: I DO UNDERSTAND.

19 THE COURT: OF COURSE, ON THE OTHER TWO CASES OF THE
20 BIG CASE AND THE THREE-PARTY CASE, ADAMS AND --

21 MR. BECKER: WEST-COX.

22 THE COURT: I JUST THINK WE NEED TO GET ALL OF THIS
23 RESOLVED BEFORE WE GO INTO ALL OF THOSE UNLESS ANYBODY HAS
24 SIGNIFICANT PROBLEMS WITH THAT.

25 MR. BECKER: I THINK THEY'VE OFFERED TO STAY AND

1 WE'VE SUGGESTED THAT WOULD BE APPROPRIATE. SO, THAT'S --
2 I THINK THAT WOULD BE APPROPRIATE.

3 THE COURT: SURE.

4 MR. BECKER: ESPECIALLY IF THE HERRON --

5 THE COURT: THAT KEEPS IT SIMPLE.

6 MR. BECKER: -- GOES UP ON APPEAL.

7 THE COURT: ALL RIGHT. ANYTHING ELSE ON THAT ISSUE?
8 IF YOU DON'T MIND, I WOULD LIKE TO BE ABLE TO CALL YOU AND
9 MR. HAMM AND MR. MARTIN, MR. LEWIS, WHOEVER ELSE YOU WANT
10 ON YOUR SIDE, WITH A CONFERENCE CALL IN THE NEXT WEEK OR
11 10 DAYS AND I CAN GIVE YOU MY VERBAL WHAT I AM GOING TO
12 DO.

13 MR. BECKER: THAT WILL BE FINE.

14 MR. HAMM: THAT WILL BE FINE, YOUR HONOR.

15 THE COURT: NOW, WE -- I'M SORRY. GO AHEAD.

16 MR. VANGRACK: I WANTED TO ARGUE THE MOTION TO COMPEL
17 ARBITRATION ON BEHALF OF CENTURY BMW.

18 THE COURT: I WAS GETTING READY TO DO THAT, BUT MY
19 COURT REPORTER MIGHT NEED A LITTLE BREAK.

20 YOU OKAY?

21 THE COURT REPORTER: DEPENDS ON HOW LONG HE IS.

22 THE COURT: IT'S NOT GOING TO BE NEARLY AS LONG AS
23 THE LAST ONE. IT'S 12:30. DO YOU WANT TO GO AHEAD AND DO
24 THEM THIS MORNING?

25 MR. VANGRACK: YES. WE PREFER TO GO AHEAD AND DO IT.

1 YOUR HONOR.

2 THE COURT: EVERYBODY READY TO GO? MRS. ROSEN, MR.
3 GRIMBALL? YOU HAD SOME COUNTERCLAIMS THAT --

4 MR. GRIMBALL: I DID, BUT IF THAT CASE IS GOING TO BE
5 STAYED THAT WOULD STOP IT AT THE MOMENT, AND I ASSUME
6 THAT'S WHAT IS GOING TO HAPPEN.

7 THE COURT: IT IS. AND BEING SO CONGENIAL, I WON'T
8 HOLD YOU IN CONTEMPT FOR YOUR PHONE GOING OFF.

9 MR. GRIMBALL: IT ACTUALLY WAS FOR YOU.

10 THE COURT: YOU SHOULDN'T TELL THE JUDGE A LIE.

11 OKAY. IF EVERYBODY IS AGREEABLE, WE'LL GO AHEAD AND HEAR
12 THE MOTION TO COMPEL ARBITRATION.

13 MR. GRIMBALL: MAY I ASK WHAT CASE HE'S IN, YOUR
14 HONOR?

15 THE COURT: HERRON?

16 MR. GRIMBALL: THANK YOU.

17 THE COURT: HOLD ON A SECOND. IT IS CENTURY BMW?

18 MR. VANGRACK: THAT'S CORRECT, YOUR HONOR.

19 THE COURT: NOW, BEFORE YOU START, IDENTIFY YOURSELF
20 FOR THE RECORD.

21 MR. VANGRACK: RYAN VANGRACK. I AM HERE PRO HAC VICE
22 APPLICATION. STEVE HAMM IS OUR LOCAL COUNSEL.

23 THE COURT: WHERE DO YOU PRACTICE?

24 MR. VANGRACK: WASHINGTON, D.C.

25 THE COURT: NICE TO HAVE YOU WITH US.

1 MR. VANGRACK: THANK YOU, YOUR HONOR.

2 THE COURT: WOULD YOU SPELL YOUR LAST NAME FOR ME?

3 MR. VANGRACK: SURE. IT'S V AS IN VICTOR,

4 A-N-G-R-A-C-K. NO SPACE BETWEEN THE N AND THE G.

5 THE COURT: VANGRACK. IS THAT HOW YOU SAY IT?

6 MR. VANGRACK: YES, SIR.

7 THE COURT: ALL RIGHT. MR. VANGRACK, I HAVE READ THE
8 MEMORANDUM, THE SUPPLEMENTAL MEMORANDUM THAT HAS BEEN
9 FILED. I HAVE READ, OBVIOUSLY, SIMPSOM VERSUS MYRTLE
10 BEACH. I HAVE READ THE ARBITRATION AGREEMENT. I HAVE
11 READ PLAINTIFF'S ORIGINAL MEMORANDUM AND THEIR
12 SUPPLEMENTAL MEMORANDUM AS WELL AS THEIR ATTACHMENTS
13 INCLUDING THE AFFIDAVIT OF --

14 MR. VANGRACK: CHRISTINE WATTS, YOUR HONOR.

15 THE COURT: THE LADY'S NAME, WHATEVER HER NAME IS.
16 AND I'VE READ SOME OF THEIR ATTACHMENTS OTHER THAN THE
17 AFFIDAVIT. SO, I'LL BE GLAD TO HEAR FROM YOU.

18 MR. VANGRACK: THANK YOU, YOUR HONOR. I WANT TO
19 FIRST JUST IDENTIFY --

20 THE COURT: WELL, LET ME -- BEFORE YOU -- I HAD A
21 NOTE HERE TO ASK YOU, I'LL BE GLAD TO HEAR IT BASED ON
22 WHAT I'VE GOT. IF YOU THINK THAT YOU NEED LIMITED
23 DISCOVERY ON THE ARBITRATION ISSUE, I'LL GIVE YOU 30 DAYS
24 OR 45 DAYS TO DO THAT IF YOU WANT IT.

25 MR. VANGRACK: WELL, YOUR HONOR, NOT SO MUCH AS I

1 WOULD ADDRESS IT AS LIMITED DISCOVERY ON ARBITRATION
2 ISSUE. WE WOULD REQUEST HAVING JUST RECEIVED THIS
3 AFFIDAVIT TWO DAYS BEFORE THE HEARING THE LIMITED
4 OPPORTUNITY TO DEPOSE CHRISTINE WATTS.

5 THE COURT: IF YOU WANT THAT OPPORTUNITY, I'LL GIVE
6 IT TO YOU.

7 MR. VANGRACK: FOR THE VERY LIMITED PURPOSE OF ASKING
8 HER QUESTIONS REGARDING THE CIRCUMSTANCES SURROUNDING HER
9 ARBITRATION AGREEMENT.

10 THE COURT: WELL, DO YOU WANT TO MAKE YOUR ARGUMENT
11 SINCE WE'RE ALL HERE TODAY AND I'LL GIVE YOU THAT RIGHT TO
12 TAKE HER DEPOSITION STRICTLY LIMITED TO THE ARBITRATION
13 AGREEMENT?

14 MR. VANGRACK: AND, YOUR HONOR, I WOULD ALSO REQUEST
15 THAT IN THAT BOTH CHRISTINE WATTS AND MICHAEL WATTS, I
16 BELIEVE HER FATHER, WAS A PART OF THAT AGREEMENT. SO, WE
17 WOULD REQUEST AGAIN TO BE ABLE TO DEPOSE BOTH OF THEM ON
18 THAT VERY LIMITED ISSUE.

19 THE COURT: ANY OBJECTION TO THAT?

20 MR. LEWIS: AS LONG AS WE GET THE ABILITY TO DEPOSE
21 THE GENERAL MANAGER OF THE DEALERSHIP OR WHOEVER IS AT THE
22 DEALERSHIP.

23 THE COURT: AS TO THE ARBITRATION AGREEMENT?

24 MR. LEWIS: YES.

25 THE COURT: TIT FOR TAT?

1 MR. VANGRACK: WELL, YOUR HONOR, I DON'T KNOW I WOULD
2 IDENTIFY IT TIT FOR TAT. THERE'S ONLY BEEN AN AFFIDAVIT
3 SUBMITTED ON BEHALF OF --

4 THE COURT: NO, SIR. I AM HERE TO GIVE YOU THE
5 OPPORTUNITY TO TAKE THE DEPOSITION OF THE PERSON WHO
6 BOUGHT THE CAR AND HER DAD LIKE YOU WANT FOR THE LIMITED
7 PURPOSE OF TALKING ABOUT THE ARBITRATION AGREEMENT. I
8 CAN'T LET YOU DO THAT WITHOUT LETTING THE PLAINTIFF TAKE
9 LIKE A 30(B)(6) OF WHOEVER OF THE DEALERSHIP WHO DEALT
10 WITH THE ARBITRATION. WHAT'S GOOD FOR THE GOOSE IS GOOD
11 FOR THE GANDER. I'LL LET YOU MAKE THAT CHOICE --

12 MR. VANGRACK: FOR --

13 THE COURT: AND I'LL TELL YOU WHAT. I'LL LET YOU
14 MAKE IT AT THE END OF THE ARGUMENT. HOW ABOUT THAT?

15 MR. VANGRACK: MAKE THE CHOICE AT THE END OF THE
16 ARGUMENT?

17 THE COURT: OR NOW. WHENEVER YOU WANT TO.

18 MR. VANGRACK: WELL, I WOULD JUST, FOR THE RECORD, I
19 WOULD LET YOU KNOW THAT IT'S THE PLAINTIFF'S BURDEN TO
20 ESTABLISH UNCONSCIONABILITY. SO, WE DON'T HAVE ANY BURDEN
21 TO MAKE ANY SORT OF AFFIRMATIVE STANCE REGARDING -- ONLY
22 FOR THE RECORD, YOUR HONOR, AND, SO, THERE APPEARS TO BE
23 NO NEED BECAUSE THERE IS NO NEED TO PROFFER ANY STATEMENT
24 AT THE BEGINNING FROM --

25 THE COURT: VERY WELL.

1 MR. VANGRACK: -- FROM CENTURY BMW.

2 THE COURT: GO ALONG WITH YOUR ARGUMENT.

3 MR. VANGRACK: THANK YOU, VERY MUCH, YOUR HONOR. I
4 WANT TO FIRST CLARIFY WHAT'S NOT BEFORE THIS COURT. THERE
5 IS NO DISPUTE THAT CHRISTINE WATTS SIGNED THE ARBITRATION
6 AGREEMENT. THERE IS NO DISPUTE THAT THE FEDERAL
7 ARBITRATION AGREEMENT OR ACT -- EXCUSE ME -- APPLIES TO
8 HER AGREEMENT. THERE IS NO DISPUTE THAT HER CLAIMS FALL
9 WITHIN THE SCOPE OF THE AGREEMENT.

10 THE SOLE ISSUE HERE IS WHETHER THE PLAINTIFFS HAVE
11 DEMONSTRATED THAT THE AGREEMENT IS UNCONSCIONABLE. NOW,
12 THE U.S. SUPREME COURT HAS HELD THAT ARBITRATION IS AN
13 ATTRACTIVE METHOD OF RESOLUTION BECAUSE OF IT'S
14 SIMPLICITY, IT'S INFORMALITY, IT'S EXPEDIENCE, AND WHAT'S
15 HAPPENED WITH MS. WATT'S CLAIM IS A PERFECT EXAMPLE OF THE
16 VIRTUE OF ARBITRATION. HAD SHE PURSUED ARBITRATION
17 PURSUANT TO HER AGREEMENT BACK IN 2006, IT IS ALMOST
18 CERTAIN HER CLAIM WOULD HAVE BEEN RESOLVED BY NOW WITH
19 CENTURY BMW. INSTEAD, SHE'S LOCKED INTO THIS -- STUCK IN
20 THIS CASE WITH HUNDREDS OF DEALERSHIPS, HUNDREDS OF
21 PLAINTIFFS, HUNDREDS OF THOUSANDS OF TRANSACTIONS, DOZENS
22 OF ATTORNEYS.

23 SO, THIS IS A PERFECT EXAMPLE OF WHY AND HOW
24 ARBITRATION CAN BE USEFUL, WHY THE U.S. SUPREME COURT AND
25 SOUTH CAROLINA VIEWS IT --

1 THE COURT: WELL, IT IS USEFUL AS LONG AS THE
2 AGREEMENT COMPLIES WITH THE CASELAW OF THE STATE.

3 MR. VANGRACK: ABSOLUTELY, YOUR HONOR. ALL I WOULD
4 LIKE TO SAY THAT ARBITRATION CAN'T BE VIEWED AS A BAD
5 THING. IT'S NOT SUPPOSED TO BE VIEWED WITH SKEPTICISM.

6 THE COURT: I CERTAINLY DON'T VIEW IT AS A BAD THING.

7 MR. VANGRACK: ABSOLUTELY, YOUR HONOR. ALONG WITH
8 THOSE SAME LINES TO THE EXTENT THAT THERE IS ANY
9 CONFUSION, ARBITRATION CAN'T BE VIEWED AS A LESS
10 BENEFICIAL FORM OF DISPUTE RESOLUTION. IT'S SUPPOSED TO
11 BE ON EQUAL FOOTING WITH THE JUDICIAL FORUM, AND THE U.S.
12 SUPREME COURT HAS REPEATEDLY ENFORCED ARBITRATION
13 AGREEMENTS WHERE THE UNDERLYING PURPOSE OF THE STATUTE IS
14 TO PROTECT THE CONSUMERS OR TO PROMOTE SOME SORT OF SOCIAL
15 POLICY. EVEN IN CIRCUMSTANCES WHERE A PARTY COULD NOT
16 PURSUE A CLASS ACTION WHICH I'LL GET TO IN THE GREENTREE
17 VERSUS BAZZLE CASE WHICH WENT UP TO THE U.S. SUPREME COURT
18 AND ADDRESSED THE SOUTH CAROLINA CONSUMER PROTECTION
19 CODE -- EVEN THOUGH CLASS ACTIONS MIGHT NOT HAVE BEEN
20 ALLOWED IN ARBITRATION, THE U.S. SUPREME COURT HAD NO
21 PROBLEM WITH THAT GOING INTO ARBITRATION, BUT I WILL GET
22 BACK TO THAT.

23 I WANT TO QUICKLY JUST GO OVER THE CONTENTS OF THE
24 AGREEMENT. I KNOW YOU SAID YOU VIEWED IT. I HAVE A COPY
25 IN CASE --

1 THE COURT: NO, SIR. I GOT IT RIGHT HERE.

2 MR. VANGRACK: DO YOU HAVE ONE?

3 THE COURT: I DO. I REVIEWED IT. SO I HAVE TO HAVE
4 IT.

5 MR. VANGRACK: THIS IS A CONSUMER FRIENDLY AGREEMENT,
6 YOUR HONOR.

7 THE COURT: CONSUMER FRIENDLY?

8 MR. VANGRACK: CONSUMER FRIENDLY AGREEMENT. NOW, IN
9 PLAINTIFF'S OPPOSITION MEMO THEY LABEL --

10 THE COURT: I DON'T THINK -- THAT IS DISPUTED, WOULD
11 YOU AGREE?

12 MR. VANGRACK: OH, THAT IS DISPUTED. ABSOLUTELY,
13 YOUR HONOR, BUT EVEN IN THEIR OPPOSITION MEMO THEY
14 IDENTIFIED VARIOUS THEY CALL IT OPPRESSIVE TERMS OR
15 ONE-SIDED TERMS. THE ONLY TERM THAT THEY LABEL AS
16 OPPRESSIVE OR ONE-SIDED IS THE CLASS ACTION WAIVER. THERE
17 IS NO OBJECTION. THERE IS NO ALLEGATION THAT ANYTHING
18 ELSE IN THIS ARBITRATION AGREEMENT IS OPPRESSIVE OR
19 ONE-SIDED. THAT IS NOT IN DISPUTE. WHEN I CALLED IT
20 CONSUMER FRIENDLY, THEY DON'T OBJECT TO THESE TERMS
21 BECAUSE THERE ARE MANY CONSUMER FRIENDLY TERMS.

22 CONSUMER HAS THE OPTION -- IF YOU LOOK AT THE SECOND
23 PARAGRAPH, THE LAST SENTENCE -- TO CONDUCT THE HEARING AT
24 THEIR OPTION IN THE DISTRICT WHERE THEY RESIDE OR WHERE
25 THE DEALERSHIP IS. THE THIRD PARAGRAPH, FIRST SENTENCE,

1 THE PARTY HAS THE RIGHT TO REQUEST ARBITRATION -- TO WAIVE
2 THEIR REQUEST TO ARBITRATE IF THEY DECIDE TO PURSUE A
3 CLAIM IN SMALL CLAIMS COURT. PARAGRAPH SIX, FIRST
4 SENTENCE, THE DEALER AGREES TO PAY THE PORTION OF THE
5 INITIAL FILING FEE WHICH EXCEEDS THE LESSER OF THE COURT
6 FILING FEE FOR THE STATE OR FEDERAL COURT.

7 ADDITIONALLY, THIS AGREEMENT IS SUBJECT TO THE RULES
8 OF THE AMERICAN ARBITRATION ASSOCIATION, AND UNDER THOSE
9 RULES THE DEALER IS REQUIRED TO PAY ALL ARBITRATOR FEES TO
10 THE EXTENT IT EXCEEDS \$125.

11 YOUR HONOR, I HAVE A COPY OF THOSE RULES IF YOU WOULD
12 LIKE TO SEE THEM.

13 THE COURT: YOU CAN MAKE THEM A PART OF THE RECORD.
14 HOW ABOUT THAT?

15 MR. VANGRACK: THANK YOU, YOUR HONOR. SO, THE
16 DEALERSHIP IS REQUIRED TO PAY ALMOST ALL THE ARBITRATOR
17 FEES. ADDITIONALLY, THE DEALER AGREES TO PAY ANY FEES OR
18 COSTS THAT THE ARBITRATOR AWARDS THAT ARE IN ACCORDANCE
19 WITH THE APPLICABLE LAW, AND THEN, FINALLY, AND THIS IS
20 CRITICAL IN THIS MOTION TO COMPEL, THE AGREEMENT EXPRESSLY
21 DOES NOT LIMIT THE REMEDIES AVAILABLE FOR MS. WATTS. AN
22 ARBITRATOR HAS AUTHORITY TO AWARD FEES, COSTS, INJUNCTIVE
23 OR EQUITABLE RELIEF, AND CAN AWARD ANY DAMAGES ALLOWED BY
24 THE APPLICABLE LAW.

25 THAT BEING SAID, I WANT TO KIND OF TOUCH BASE ON THE

1 SIMPSON CASE WHICH YOUR HONOR KNOWS IS WHY WE, I BELIEVE,
2 POSTPONED THIS HEARING ORIGINALLY. THAT'S WHY THERE WAS A
3 SUPPLEMENTAL MEMO BECAUSE THE SIMPSON CASE IS CRITICAL.
4 THE SIMPSON CASE INTERPRETED THE ARBITRATION AGREEMENT IN
5 THE CONTEXT OF THE DEALER ACT, NO LESS. IT GAVE US A
6 GREAT ROAD MAP WHEN DECIDING AND INTERPRETING AN AGREEMENT
7 TO DETERMINE IF IT'S UNCONSCIONABLE.

8 THE COURT: AND IT'S CERTAINLY INTERESTING HOW YOU
9 AND MR. LEWIS READ THAT ROAD MAP ENTIRELY DIFFERENT.

10 MR. VANGRACK: ABSOLUTELY. AND I AM HERE TO
11 ENLIGHTEN YOU AS TO WHY OUR READING IS THE SOLE READING --

12 THE COURT: THANK YOU.

13 MR. VANGRACK: -- FOR THE SIMPSON CASE. THERE IS NO
14 DISPUTE, CERTAINLY, THAT SIMPSON LAYS OUT TWO PARTS, TWO
15 PRONGS THAT THE PARTY MUST MEET. THERE IS THE LACK OF
16 MEANINGFUL CHOICE AND WHETHER THEY'RE OPPRESSIVE ONE-SIDED
17 TERMS. IN SIMPSON THERE ARE FIVE CIRCUMSTANCES THAT HAD
18 TO BE ESTABLISHED IN ORDER TO MEET A LACK OF MEANINGFUL
19 CHOICE. IT IS A CONTRACT OF ADHESION, PRIMARY FORM OF
20 TRANSPORTATION, LACK OF BUSINESS JUDGMENT, HASTILY
21 PRESENTED, AND MOST IMPORTANTLY IT WAS INCONSPICUOUS
22 AGREEMENT.

23 HERE NONE OF THOSE FIVE CIRCUMSTANCES ARE PRESENT.
24 IT'S NOT A CONTRACT OF ADHESION. IT'S NOT CLEAR IT'S HER
25 PRIMARY FORM OF TRANSPORTATION, NOT CLEAR SHE LACKED

1 BUSINESS JUDGMENT, NOT CLEAR IT WAS HASTILY PRESENTED, AND
2 COMPARED TO THE SIMPSON CLAUSE, THIS IS NOT AN
3 INCONSPICUOUS AGREEMENT. THE SIMPSON CLAUSE, IF YOU
4 RECALL, YOUR HONOR, WAS ON THE BACK OF A BUYER'S ORDER
5 EMBEDDED IN 16 OTHER CLAUSES. THIS IS A STAND-ALONE
6 AGREEMENT THAT REQUIRES HER INDEPENDENT SIGNATURE. IT'S
7 LABELED ARBITRATION AGREEMENT. SEVERAL TIMES IT DESCRIBES
8 INCLUDING IN ALL CAPITALS THAT YOU GIVE UP YOUR RIGHT TO A
9 TRIAL BY THE COURT OR BY A JURY, AND EVEN AT THE END IN
10 BOLD IT SAYS THAT THE PARTIES ACKNOWLEDGE THEY HAVE READ
11 AND AGREED TO THE TERMS OF THE ARBITRATION AGREEMENT.

12 SO, COMPARED TO THE SIMPSON CLAUSE, I THINK IT'S EVEN
13 -- IT WOULD BE A STRETCH TO SAY THIS IS INCONSPICUOUS,
14 BUT, NOW, I KNOW THIS AFFIDAVIT -- WE TALKED ABOUT THIS,
15 YOUR HONOR. THIS WAS AN AFFIDAVIT THAT WAS JUST ENTERED
16 TWO DAYS AGO. IT WAS SIGNED EIGHT MONTHS AGO, BUT IT WAS
17 JUST PRESENTED TO US TWO DAYS AGO. SO, THE AFFIDAVIT I
18 BELIEVE MR. LEWIS CAN ATTEST TO IS TRYING TO ESTABLISH
19 SOME OF THESE LACK OF MEANINGFUL CHOICE FACTORS, AND WE'LL
20 BE ABLE TO FLUSH THOSE OUT IN LIMITED DISCOVERY AS WE
21 SAID. SO, I'LL SKIP OVER THAT.

22 THE COURT: IF YOU ALLOW YOUR GUY TO BE DEPOSED.

23 MR. VANGRACK: FAIR ENOUGH, YOUR HONOR.

24 THE COURT: GO AHEAD.

25 MR. VANGRACK: BUT SKIPPING OVER THAT ISSUE FOR THE

1 MOMENT, AND, AGAIN, IF WE DON'T GET OVER THAT HURDLE -- IF
2 THEY HAVEN'T ESTABLISHED SHE LACKED MEANINGFUL CHOICE, WE
3 DON'T EVEN GET TO THE OPPRESSIVE TERMS. THEY MUST BE
4 BOTH. SO, IF SHE DIDN'T LACK MEANINGFUL CHOICE, IT DOESN'T
5 MATTER WHAT THE TERMS ARE IN TERMS OF UNCONSCIONABILITY.

6 NOW, IN TERMS OF OPPRESSIVE TERMS, THE COURT FOUND
7 THAT THERE ARE THREE TERMS IN SIMPSON OPPRESSIVE -- NONE
8 OF WHICH ARE HERE. THERE WAS A LIMITATION ON STATUTORY
9 REMEDIES, DOUBLE TREBLE OF PUNITIVE DAMAGES WERE
10 PROHIBITED EVEN THOUGH THEY WERE REQUIRED BY THE STATUTES.
11 THE DEALERS REMEDIES WEREN'T STAYED. THEY COULD PURSUE
12 ACTIONS IN COURT WHILE THE CONSUMER WAS STUCK IN
13 ARBITRATION, AND THERE WAS A VIOLATION OF THE MAGNETS AND
14 MOSS WARRANTY ACT. ALTHOUGH, THERE WAS NO ALLEGATION OF
15 WARRANTY, THE COURT STILL FOUND THAT THE PARTIES SIMPLY
16 COULDN'T AGREE TO ARBITRATION A WARRANTY CLAIM -- A
17 WRITTEN WARRANTY CLAIM.

18 NONE OF THOSE TERMS ARE HERE, NOR HAS MS. WATTS
19 IDENTIFIED THAT ANY OF THOSE TERMS ARE HERE. THERE IS NO
20 LIMITATION ON THE REMEDIES AVAILABLE TO MS. WATTS. NO
21 REMEDIES ARE RESERVED TO THE DEALER, AND THERE ARE NO
22 WRITTEN WARRANTIES THAT ARE ALLEGED IN THEIR COMPLAINT.
23 BUT SIMPSON IS EVEN MORE CRITICAL FOR WHAT THE COURT DID
24 NOT FIND. THE SIMPSON CLAUSE HAD A CLASS ACTION WAIVER
25 AND THE COURT DID NOT FIND THAT CLAUSE UNCONSCIONABLE. IT

1 PURPORTED TO LIST ALL THE PROVISIONS THAT IT FOUND
2 UNCONSCIONABLE. IT SCRUTINIZED OVER THIS AGREEMENT.

3 AS I JUST MENTIONED THERE WAS NO ALLEGATION ABOUT
4 WRITTEN WARRANTIES. BUT THE COURT SAID THAT YOU SIMPLY
5 CANNOT AGREE TO ARBITRATE A WRITTEN WARRANTY CLAIM. BY
6 THAT SAME LOGIC IF THE COURT BELIEVED YOU CANNOT WAIVE
7 YOUR CLASS ACTION RIGHT IN THE CONTEXT OF THE DEALERS ACT,
8 IT COULD HAVE SAID SO, BUT IT DIDN'T. IT CLEARLY STATED
9 THERE WERE ONLY THREE UNCONSCIONABLE PROVISIONS -- NONE OF
10 WHICH WITH THE CLASS ACTION WAIVER. BY DOING SO THE SOUTH
11 CAROLINA SUPREME COURT ALIGNED ITSELF WITH THE U.S.
12 SUPREME COURT AND CASES ACROSS THE COUNTRY.

13 IN THE CASE OF GREENTREE VERSUS BAZZLE THE U.S.
14 SUPREME COURT IMPLICITLY UPHELD THE VALIDITY OF THE CLASS
15 ACTION WAIVER. THIS WAS IN THE CONTEXT OF A SOUTH
16 CAROLINA CONSUMER PROTECTION CODE. THE GREENTREE COURT
17 HELD THAT AN ARBITRATOR MUST DECIDE WHETHER THE
18 ARBITRATION AGREEMENT PRECLUDED CLASS ACTIONS. BY
19 ALLOWING AN ARBITRATOR TO DECIDE IF THE AGREEMENT
20 PRECLUDED CLASS ACTIONS THEY RECOGNIZED THAT IT IS
21 PERMISSIBLE TO PRECLUDE CLASS ACTIONS. OTHERWISE, THERE
22 WOULD HAVE BEEN NOTHING FOR THE ARBITRATOR TO DECIDE IN
23 THE FIRST PLACE, AND THERE ARE OTHER CASES THROUGHOUT THE
24 COUNTRY THAT HAVE SIMILARLY UPHELD A CLASS ACTION WAIVER.

25 I AM JUST GOING TO GO OVER TWO OF THEM VERY BRIEFLY

1 BECAUSE THEY'RE APPLICABLE HERE. THE FOURTH CIRCUIT COURT
2 OF APPEALS IN SNOWDEN VERSUS CHECKPOINT CASHING ALSO
3 ENFORCED A CLASS ACTION WAIVER. THAT WAS IN THE CONTEXT
4 OF THE MARYLAND CONSUMER PROTECTION CODE AND THE TRUTH IN
5 LENDING ACT. IN THAT CASE THE FOURTH CIRCUIT REJECTED
6 PLAINTIFF'S EXACT ARGUMENT HERE THAT A PLAINTIFF WITH
7 NOMINAL DAMAGES CAN'T MAINTAIN LEGAL REPRESENTATION
8 WITHOUT THE CLASS ACTION RIGHT. THE COURT THERE FOUND AS
9 HAS BEEN FOUND IN CASES ACROSS THE COUNTRY THAT IT IS
10 SUFFICIENT THAT ATTORNEYS' FEES WERE RECOVERABLE IN
11 ARBITRATION. THE COURT IN THAT CASE ALSO REJECTED THE
12 IDEA THAT A CLASS ACTION WAIVER VIOLATES THE PUBLIC POLICY
13 BEHIND A CONSUMER PROTECTION STATUTE.

14 AGAIN, IT WAS INTERPRETING THE MARYLAND CONSUMER
15 PROTECTION STATUTE. IT SAID THAT SUCH LOGIC FAILS TO PUT
16 ARBITRATION ON EQUAL FOOTING WITH THE COURT BECAUSE WHAT
17 IT FOUND SO SIGNIFICANT IS THAT THERE WERE NO REMEDIES
18 LIMITED TO THE INDIVIDUAL BRINGING THEIR CLAIM AND THERE
19 WAS NO EVIDENCE THAT PURSUING A CLAIM UNDER THE CONSUMER
20 PROTECTION ACT AS AN INDIVIDUAL WAS INCONSISTENT WITH THE
21 PURPOSE OF CONSUMER PROTECTION.

22 I BRING UP THE FOURTH CIRCUIT CASE NOT JUST BECAUSE
23 IT COUNTERS THE EXACT ARGUMENT AND PLANS WE'RE MAKING, BUT
24 ALSO TO NOTE THE IDEA THAT WERE THIS COURT TO FIND THAT
25 CLASS ACTION WAIVER IS INVALID FOR THOSE VERY REASONS YOU

1 WOULD END UP HAVING DIFFERENT RESULTS IN THE STATE OF
2 SOUTH CAROLINA BASED UPON WHETHER YOU DECIDE TO ENFORCE
3 YOUR AGREEMENT IN A FEDERAL COURT OR STATE COURT.

4 ADDITIONALLY, IN TILLMAN VERSUS COMMERCIAL CREDIT
5 LOANS THE NORTH CAROLINA COURT OF APPEALS ALSO UPHELD A
6 CLASS ACTION WAIVER AND, AGAIN, REJECTED PLAINTIFFS' EXACT
7 ARGUMENTS HERE THAT ATTORNEYS LACK THE INCENTIVE TO BRING
8 A CLAIM -- A NOMINAL CLAIM -- WITHOUT THE CLASS ACTION.
9 MECHANISM. AGAIN, THE COURT THERE FOUND THAT SINCE
10 ATTORNEYS' FEES AND COSTS WERE RECOVERABLE, ATTORNEYS HAD
11 SUFFICIENT INCENTIVES TO BRING SUCH CLAIMS.

12 NOW, I JOKE THAT MAYBE THOSE INCENTIVES AREN'T ENOUGH
13 FOR MAYBE MR. LEWIS AND HIS COLLEAGUES TO REPRESENT
14 MS. WATTS INDIVIDUALLY, BUT THESE COURTS FOUND THAT AS
15 LONG AS ATTORNEYS' FEES AND COSTS WERE RECOVERABLE AND AS
16 LONG AS THERE ARE REMEDIES THEY'RE ALLOWED TO BRING WITH
17 THEM INTO ARBITRATION, THERE IS SUFFICIENT INCENTIVE FOR
18 BOTH THE CLAIMANT TO BRING THE CASE AND FOR THE ATTORNEY
19 TO REPRESENT THEM.

20 NOW, THERE'S BEEN A LOT OF DISCUSSION AS YOUR HONOR
21 JUST HEARD PERHAPS AD NAUSEUM ABOUT WHETHER 110(2)
22 SIMPLIFIED IS SUBSTANTIVE OR PROCEDURAL. THAT DOESN'T
23 MATTER HERE. HOW YOU LABEL THAT RIGHT IS IRRELEVANT TO
24 THIS DISCUSSION. THE PLAINTIFFS HAVE PROVIDED NO CASE
25 THAT YOU CAN WAIVE A PROCEDURAL RIGHT, BUT YOU CAN'T WAIVE

1 -- EXCUSE ME -- WAIVE A SUBSTANTIVE RIGHT. IN FACT, THE
2 SIMPSON COURT IN THAT DECISION SAID PARTIES ARE ALWAYS
3 FREE TO CONTRACT AWAY THEIR RIGHTS. THE CONCERN THAT
4 COURTS HAVE IS WITH REMEDIES WHETHER A LITIGANT IS
5 PROVIDING SUFFICIENT REMEDIES TO EFFECTIVELY VINDICATE
6 THEIR CLAIMS.

7 AGAIN, AS I WILL CONTINUE TO DO, LET'S GO BACK TO THE
8 SIMPSON CASE. IN THE SIMPSON CASE THEY'RE REQUIRED TO
9 FOREGO REMEDIES THAT WERE REQUIRED BY THE STATUTE.
10 SIMPSON COURT SAID YOU CAN'T DO THAT. YOU CAN'T FOREGO
11 YOUR REMEDIES. THAT VIOLATES THE STATUTE. AND THE
12 MINORITY OF COURTS THAT HAVE INVALIDATED CLASS ACTION
13 WAIVERS SOME OF WHICH PLAINTIFFS MENTIONED, IN THOSE CASES
14 AS WELL GENERALLY THE ARBITRATION AGREEMENT AT ISSUE
15 LIMITS OR REMOVES CERTAIN REMEDIES. SOMETIMES IT'S YOUR
16 ABILITY TO RECOUP ATTORNEYS' FEES AND COSTS OTHER TIMES
17 IT'S DOUBLE DAMAGES OR TREBLE DAMAGES OR PUNITIVE DAMAGES.
18 AGAIN, IN THOSE CASES THE CONCERN IS THAT BY GOING INTO
19 ARBITRATION YOU'RE LOSING YOUR ABILITY TO VINDICATE YOUR
20 CLAIM BECAUSE YOU'RE NOT BRINGING WITH YOU ALL THE
21 REMEDIES THAT YOU'RE ENTITLED TO.

22 HERE MS. WATTS IS ENTITLED IN ARBITRATION TO ALL
23 REMEDIES THAT ARE PERMITTED UNDER THE APPLICABLE LAW. WE
24 JUST READ OVER THE AGREEMENT. IT SAYS THAT QUITE
25 SUCCINCTLY. YOU'RE ENTITLED TO UNDER THE APPLICABLE LAW

1 AN AWARDS OF ATTORNEYS' FEES, COST, INJUNCTIVE, EQUITABLE
2 RELIEF. WHATEVER IS ALLOWED UNDER THE APPLICABLE LAW, YOU
3 CAN BRING THOSE REMEDIES WITH YOU INTO ARBITRATION, AND
4 ALL OF THIS, YOUR HONOR, IS TO HIGHLIGHT THE POINT THAT
5 WAIVING A RIGHT THAT'S PROVIDED IN STATUTE DOESN'T MEAN
6 THAT A PLAINTIFF HAS WAIVED THEIR REMEDIES.

7 THE DEALERS ACT PROVIDES A PARTY WITH THE RIGHT TO,
8 QUOTE, SUE IN THE COMMON PLEAS, BUT WAIVING YOUR RIGHT TO
9 SUE IN COURT DOESN'T MEAN YOU'VE WAIVED YOUR RIGHT TO YOUR
10 REMEDIES. THE SAME LOGIC IS HERE. JUST BECAUSE YOU'VE
11 WAIVED YOUR RIGHT TO A CLASS ACTION DOESN'T MEAN YOU'VE
12 WAIVED AWAY YOUR REMEDIES.

13 I WAS TRYING TO THINK OF AN ANALOGY, AND I AM JUST
14 NOT CREATIVE ENOUGH. THE BEST I CAN THINK OF WHEN YOU'RE
15 IN COURT AND YOU HAVE A DEALERS ACT CLAIM YOU GOT A BAG OF
16 REMEDIES THAT YOU CARRY WITH YOU THAT YOU COULD POSSIBLY
17 GET -- BE IT -- I KNOW THE STATUTE MENTIONS DOUBLE DAMAGES
18 OR PUNITIVE DAMAGES, THE POSSIBILITY FOR ATTORNEYS' FEES.
19 THERE IS INJUNCTIVE RELIEF, EQUITABLE RELIEF. YOU CARRY
20 THAT BAG OF REMEDIES WITH YOU. THE CONCERN IS THAT WHEN
21 YOU WALK INTO ARBITRATION YOU'RE ABLE TO BRING THAT BAG
22 WITH YOU.

23 NOW, WHEN YOU MOVE FROM THE COURT TO ARBITRATION
24 YOU'RE WAIVING CERTAIN PROCEDURES AND RIGHTS. THERE IS NO
25 DOUBT ABOUT IT. YOU'RE WAIVING YOUR RIGHT TO GO BEFORE A

1 COURT. YOU'RE WAIVING YOUR RIGHT TO HAVE A JURY TRIAL..
2 YOU'RE WAIVING VARIOUS PROCEDURES. YOU'RE WAIVING CERTAIN
3 DISCOVERY RULES. THE WAIVER OF THE RIGHT IS WHAT'S
4 SIGNIFICANT. WHAT'S SIGNIFICANT IS THAT YOU CARRY THAT
5 BAG WITH YOU, AND CLASS ACTION FALLS UNDER THAT SAME IDEA.
6 YOU'RE WAIVING THAT RIGHT TO CLASS ACTION, BUT AS LONG AS
7 YOU'RE CARRYING THAT BAG OF REMEDIES WITH YOU, YOU'RE
8 FINE.

9 IN FACT, THE SUPREME COURT HAS SAID THAT JUST BECAUSE
10 YOU WAIVE YOUR PROCEDURES AND RIGHTS -- CERTAIN PROCEDURES
11 AND RIGHTS WHEN YOU GO INTO ARBITRATION, THAT IS EXACTLY
12 WHY ARBITRATION IS A GOOD THING AS WE STARTED OUT FOR
13 BECAUSE IT'S SIMPLER, EASIER, MORE INFORMAL. IT EXPEDITES
14 THE PROCESS. SO, IT'S COMPLETELY ACCEPTABLE. IN FACT,
15 IT'S CONSISTENT WITH THE CONCEPT OF ARBITRATION TO WAIVE
16 AWAY CERTAIN RIGHTS AND PROCEDURES. THAT'S COMPLETELY
17 ACCEPTABLE AS LONG AS YOU GET TO CARRY THAT SAME BAG WITH
18 YOU.

19 NOW, PLAINTIFFS ARGUE THAT THROUGH THE ARBITRATION
20 AGREEMENT -- ACTUALLY, MORE SPECIFICALLY THROUGH THE CLASS
21 ACTION WAIVER -- THEY CAN'T VINDICATE OR THEY CAN'T
22 RECEIVE INJUNCTIVE RELIEF. WE JUST TALKED ABOUT REMEDIES.
23 THEY SAID YOU DON'T GET THAT REMEDY. WELL, THAT'S NOT
24 TRUE. ON THE FACE OF THE AGREEMENT IT SAYS QUITE CLEARLY
25 PARAGRAPH SIX THE ARBITRATOR THAT'S SIGNING THE CLAIMS

1 WILL HAVE THE AUTHORITY TO AWARD FEES, COSTS, INJUNCTIVE
2 OR EQUITABLE RELIEF.

3 ON THE FACE OF THE AGREEMENT MS. WATTS WHEN SHE WALKS
4 INTO ARBITRATION IS ENTITLED TO INJUNCTIVE RELIEF, AND
5 THAT INJUNCTIVE AND EQUITABLE RELIEF IS ENTITLED TO THE
6 SAME RESPECT AS IT WOULD IF SHE'S SUCCESSFUL IN RECEIVING
7 INJUNCTIVE OR EQUITABLE RELIEF. IT'S ENTITLED TO THE SAME
8 RESPECT IF SHE RECEIVED INJUNCTIVE OR EQUITABLE RELIEF IN
9 COURT.

10 PLAINTIFFS HAVE NOT SHOWN WHY ARBITRATION SOMEHOW IS
11 UNABLE TO FULFILL THAT REMEDY OF HERS. YOU CAN'T -- AS WE
12 STARTED OFF AGAIN, YOUR HONOR, YOU CAN'T HOLD ARBITRATION
13 WITH GENERALIZED SUSPICION. THAT'S WHAT THE FEDERAL
14 ARBITRATION ACT IS ALL ABOUT. YOU'RE SUPPOSED TO BE ON
15 EQUAL FOOTING. THE AGREEMENT SAYS SHE'S ENTITLED TO
16 INJUNCTIVE -- NOT ENTITLED, BUT THE ARBITRATOR CAN AWARD
17 INJUNCTIVE RELIEF AND SHE'S ABLE TO BRING THAT BAG WITH
18 HER INTO ARBITRATION.

19 NOW, YOUR HONOR, TO THE EXTENT THERE IS ANY
20 QUESTION -- AGAIN, AS I SAY IT'S CLEAR CUT. IT'S ON THE
21 AGREEMENT, BUT IF THERE IS A QUESTION AS TO WHETHER OR NOT
22 SHE'S ENTITLED TO INJUNCTIVE RELIEF, THAT'S A QUESTION FOR
23 THE ARBITRATOR TO DECIDE. IN GREENTREE VERSUS BAZZLE THE
24 CASE SAID THAT ONLY THRESHOLD GATEWAY ISSUES SHOULD BE
25 DECIDED FROM THE COURT. IT IS VERY LIMITED.

1 THE REASON WE'RE HERE IS BECAUSE ONE OF THOSE
2 THRESHOLD ISSUES IS THE VALIDITY OF THE AN AGREEMENT, BUT
3 IN CAROLINA CARE PLAN VERSUS UNITED HEALTHCARE SERVICES
4 SOUTH CAROLINA COURT HELD THAT QUESTIONS OF THE
5 LIMITATIONS OR AVAILABILITY OF REMEDIES SHOULD BE DECIDED
6 BY THE ARBITRATOR. IN THAT CASE I BELIEVE THERE WAS A
7 QUESTION OF WHETHER PUNITIVE DAMAGES WERE FORBIDDEN BY THE
8 AGREEMENT. THEY SAID THAT'S A QUESTION -- TO THE EXTENT
9 THAT IT'S AN ISSUE, THAT'S A QUESTION FOR THE ARBITRATOR.
10 AGAIN, I DON'T THINK THERE IS A QUESTION. THE AGREEMENT
11 ITSELF ON ITS FACE TELLS YOU THAT SHE'S ENTITLED -- EXCUSE
12 ME; I KEEP SAYING THAT -- THAT SHE HAS THE ABILITY TO
13 RECEIVE INJUNCTIVE OR EQUITABLE RELIEF AS ALLOWED BY THE
14 APPLICABLE LAW.

15 YOUR HONOR, THE U.S. SUPREME COURT HAS REJECTED THIS
16 EXACT ARGUMENT. IN 50 U.S. 20 GILMER VERSUS
17 INTERSTATE/JOHNSON LANE CORPORATION. IN THE GILMER CASE
18 PLAINTIFFS ARGUE THAT AN ARBITRATION AGREEMENT WAS INVALID
19 BECAUSE THE ARBITRATOR COULD NOT PROVIDE BROAD EQUITABLE
20 RELIEF AND CLASS ACTIONS WEREN'T ALLOWED. THE COURT
21 DISAGREED. THE COURT FOUND THAT AN ARBITRATOR IS FULLY
22 CAPABLE OF PROVIDING EQUITABLE RELIEF; THAT THE
23 ARBITRATION RULES ALLOWED THE ARBITRATOR TO PROVIDE
24 EQUITABLE RELIEF; AND THAT THE INDIVIDUAL ABILITY TO
25 RECEIVE A REMEDY OR THE REMEDIES WAS SUFFICIENT TO

1 VINDICATE THE PERSON'S CLAIMS.

2 THAT LANGUAGE IS IMPORTANT BECAUSE WHEN WE TALK ABOUT
3 CLASS ACTION WAIVERS AND WHETHER IT'S PERMISSIBLE OR NOT
4 AND WHETHER IT'S JUST SOMEHOW WAIVING SOMETHING, BUT THE
5 LANGUAGE IN THAT CASE SAID SO LONG AS A LITIGANT -- A
6 LITIGANT EFFECTIVELY MAY VINDICATE HIS OR HER STATUTORY
7 CAUSE OF ACTION IN ARBITRATION, THE STATUTE SERVES ITS
8 FUNCTION. THE COURT -- THIS IS THE U.S. SUPREME COURT --
9 WAS CONCERNED ABOUT WHETHER THE LITIGANT CAN EFFECTIVELY
10 VINDICATE HIS OR HER CAUSE OF ACTION. I KNOW I AM
11 BELABORING THIS POINT, YOUR HONOR, AND I APOLOGIZE, BUT
12 THE CONCERN IS NOT WHETHER SHE CAN VINDICATE THE CAUSES OF
13 ACTIONS OF OTHER UNNAMED PARTIES. THE FOCUS IS ON THE
14 LITIGANT, AND AS LONG AS THE INDIVIDUAL CAN BRING THEIR
15 CLAIM IN ARBITRATION AND HAS THAT BAG OF REMEDIES, THEN
16 THERE IS ABSOLUTELY NO PROBLEM WITH A CLASS ACTION WAIVER.

17 THE LAST ISSUE I WANT TO TOUCH UP ON IS THE ARGUMENT
18 THAT THEY MAKE IN THEIR OPPOSITION THAT ARBITRATION IS TOO
19 EXPENSIVE. THEIR WORDS WERE ECONOMICALLY IMPRACTICAL AS
20 SPENDING TOO MUCH TIME AND MONEY. I WOULD FIRST NOTE THAT
21 IN GREENTREE VERSUS RANDOLPH THE U.S. SUPREME COURT SAID
22 THAT THE BURDEN IS ON THE PLAINTIFFS -- ON THE OPPOSING
23 PARTY TO SHOW THAT ARBITRATION WOULD BE PROHIBITIVELY
24 EXPENSIVE. AGAIN, YOU CAN'T RELY ON GENERALIZED
25 SUSPICION. YOU MUST SHOW ON THE RECORD THAT PLAINTIFF

1 WILL BEAR CERTAIN COSTS THAT WILL MAKE IT PROHIBITIVE TO
2 BRING A CLAIM.

3 PLAINTIFFS HAVE NOT DONE SO. THEY CAN'T DO SO
4 BECAUSE, AGAIN, WE LOOK AT THE AGREEMENT. THE DEALER IS
5 REQUIRED TO PAY ALMOST ALL OF THE COSTS. SHE'S ELIGIBLE
6 OR THE POTENTIAL THAT SHE CAN RECOVER ATTORNEYS' FEES IN
7 ARBITRATION ALLOWED UNDER THE APPLICABLE LAW, AND AS I'LL
8 AGAIN BELABOR THE POINT, YOUR HONOR, ANY REMEDY AVAILABLE
9 UNDER COURT WOULD STILL BE AVAILABLE UNDER ARBITRATION.

10 LAST, YOUR HONOR, TO THE EXTENT THAT THERE IS ANY
11 DISAGREEMENT BETWEEN OUR INTERPRETATION BETWEEN MYSELF AND
12 MR. LEWIS AND BETWEEN OUR BRIEFS AND BETWEEN THE VARIOUS
13 CASES THAT WE'VE ALL THROWN AT YOU, I WOULD ASK THE COURT
14 TO FOCUS ON THOSE CASES THAT ARE DIRECTLY APPLICABLE AND
15 BINDING, AND THAT'S THE U.S. SUPREME COURT'S CASE IN
16 BAZZLE VERSUS GREENTREE AND THE SOUTH CAROLINA SUPREME
17 COURT CASE IN SIMPSON.

18 IN BAZZLE AS I'VE ALREADY SAID THE COURT IMPLICITLY
19 UPHOLD A CLASS ACTION WAIVER IN A CONSUMER PROTECTION
20 STATUTE. THE ARBITRATOR COULD DECIDE IF CLASS
21 PRECLUSION -- IF THE AGREEMENT PRECLUDED CLASS ACTIONS.
22 SO, THE U.S. SUPREME COURT HAD NO PROBLEM WITH AN
23 ARBITRATION AGREEMENT PRECLUDING CLASS ACTIONS, AND,
24 AGAIN, IN THE SIMPSON CASE THE COURT HAD BEFORE IT IN THE
25 CONTEXT OF A DEALERS ACT A CLASS ACTION WAIVER AND IT DID

1 NOT FIND IT UNCONSCIONABLE.

2 AND, SO, BECAUSE THERE ARE NONE OF THE OPPRESSIVE
3 TERMS THAT THE COURT FOUND IN SIMPSON OR IN THIS
4 ARBITRATION AGREEMENT AND ALL REMEDIES THAT CHRISTINE
5 WATTS IS ENTITLED TO SHE'S ALLOWED TO BRING WITH HER INTO
6 ARBITRATION, WE WOULD REQUEST THAT THE COURT ENFORCE THIS
7 ARBITRATION AGREEMENT, DISMISS MS. WATTS' CLAIMS CURRENTLY
8 PENDING BEFORE THE COURT.

9 THE COURT: THANK YOU, MR. VANGRACK.

10 MR. VANGRACK: THANK YOU, YOUR HONOR.

11 THE COURT: MR. LEWIS, ET AL?

12 MR. LEWIS: IN THE SIMPSON CASE, YOUR HONOR, THE
13 COURT SAID SECOND UNCONDITIONALLY PERMITTING THE WEAKER
14 PARTY TO WAIVE THE STATUTORY REMEDIES PURSUANT TO AN
15 ADHESION CONTRACT RUNS CONTRARY TO THE UNDERLYING STATUTE
16 OF PUNISHING ACTS THAT ADVERSELY AFFECT THE PUBLIC
17 INTEREST. IN THIS CASE WE GO BACK TO OUR STATUTORY RIGHTS
18 UNDER THE FACT THAT WE HAVE THE RIGHT TO BRING AN ACTION
19 ON BEHALF OF OTHER PEOPLE IN ORDER TO MAKE SURE THAT THE
20 ACTS PROVISIONS -- THAT IS, 56-15-43(C) AND THE OTHERS
21 ONES THAT ARE FOUND IN 56-15-110(1), WE HAVE THE RIGHT TO
22 ENFORCE THOSE AS A REMEDY FOR THEIR ACTIONS -- A REMEDY
23 FOR THEIR ACTIONS.

24 BUT HE IS RIGHT. THERE ARE TWO TESTS. ABSENCE OF
25 MEANINGFUL CHOICE AND I THINK THE THING THAT WE DID TO TRY

1 TO COMPARE SIMPSON WHICH IS THE CONTROLLING CASE TO THIS
2 CASE IS WE WENT DOWN AND WE LOOKED AT THE FACTS OF SIMPSON
3 VERSUS THE FACTS OF THIS CASE. SAME AS SIMPSON, SAME
4 FACTS, STANDARD FORM CONTRACT. I DON'T KNOW WHERE HE GOT
5 HIS INFORMATION, BUT THE STATUTE -- I MEAN, THE AFFIDAVIT,
6 THE VEHICLE WAS FOR PRIMARY SOURCE OF TRANSPORTATION. SHE
7 DIDN'T UNDERSTAND THE IMPLICATIONS OF THE ARBITRATION
8 AGREEMENT, DID NOT HAVE A LAWYER PRESENT, HASTILY
9 PRESENTED THE AGREEMENT TO HER FOR SIGNATURE. WE'VE
10 ALREADY SAID IT TAKES AWAY THE STATUTORY RIGHTS UNDER THE
11 DEALER ACT; THAT IF YOU READ IT YOU HAVE -- TO READ IT YOU
12 HAVE TO GET IT RIGHT UP TO YOUR NOSE TO READ IT. IT IS
13 VERY SMALL FONT; DRAFTED BY A SUPERIOR PARTY THAT TAKES
14 TAKES AWAY RIGHTS OTHERWISE AVAILABLE BY LAW AND SHE'S NOT
15 A SOPHISTICATED BUSINESS PERSON SO THAT THE ARRANGEMENT
16 WAS NOT AT ARM'S LENGTH.

17 THOSE ARE ALL THE SAME AS SIMPSON.

18 THE COURT: MR. VANGRACK, WOULD THEY HAVE SOLD HER
19 THE CAR IF SHE HAD SAID, HEY, I AM NOT GOING TO SIGN THIS
20 AGREEMENT?

21 MR. VANGRACK: YOUR HONOR, AS FAR AS WE UNDERSTAND,
22 SHE NEVER ASKED WHETHER OR NOT --

23 THE COURT: I DIDN'T ASK YOU THAT.

24 MR. VANGRACK: MY UNDERSTANDING IS THAT IT IS
25 POSSIBLE. IT IS POSSIBLE TO PURCHASE A CAR --

1 THE COURT: THAT THIS YOUNG LADY --

2 MR. VANGRACK: -- WITHOUT HAVING TO SIGN THE
3 AGREEMENT.

4 THE COURT: DID THIS YOUNG LADY -- I ASSUME IT WAS A
5 YOUNG LADY. YOU SAID HER DADDY WAS WITH HER. COULD SHE
6 HAVE BOUGHT THE CAR IF SHE SAID, I AM NOT GOING TO SIGN
7 THIS ARBITRATION AGREEMENT? I AM WILLING TO PAY THE
8 PURCHASE PRICE, BUT I AM NOT GOING TO SIGN THE ARBITRATION
9 AGREEMENT.

10 MR. VANGRACK: MY UNDERSTANDING IS THAT IF A PARTY
11 REFUSES TO SIGN AN ARBITRATION AGREEMENT IT IS STILL
12 POSSIBLE TO PURCHASE THE VEHICLE.

13 MR. LEWIS: POSSIBLE.

14 MR. VANGRACK: WELL, I JUST DON'T KNOW THE
15 CIRCUMSTANCES UNDER WHICH THAT WOULD HAPPEN. I AM SAYING
16 THAT IT IS POSSIBLE TO STILL PURCHASE THE VEHICLE WITHOUT
17 HAVING TO SIGN THE ARBITRATION AGREEMENT. WE DON'T KNOW
18 IF SHE OBJECTED. WE DON'T KNOW WHAT HAPPENED.

19 THE COURT: YOU'VE ANSWERED MY QUESTION. DO YOU KNOW
20 OF ANY CARS YOUR DEALERSHIP HAS SOLD THAT THEY DIDN'T
21 REQUIRE THE ARBITRATION AGREEMENT TO BE SIGNED?

22 MR. VANGRACK: I DON'T KNOW OFFHAND. I HAVE NOT
23 SPOKE TO MY CLIENT IN THAT REGARD.

24 MR. MARTIN: YOUR HONOR, IF I MAY --

25 THE COURT: WAIT A MINUTE. DO YOU REPRESENT THIS

1 CLIENT?

2 MR. MARTIN: I DON'T.

3 THE COURT: WELL, THEN IT'S NOT YOUR DOG. I DON'T
4 WANT ANY ANSWERS BY MR. MARTIN'S CARS.

5 MR. VANGRACK: YOUR HONOR, IF WE COULD CALL A WITNESS
6 WHO HAS PURCHASED A VEHICLE WITHOUT SIGNING AN ARBITRATION
7 AGREEMENT.

8 THE COURT: CAREFUL NOW.

9 MR. VANGRACK: WE'RE HAPPY TO DEPOSE HIM OR ALLOW CAM
10 TO DEPOSE HIM.

11 MR. LEWIS: EVERYTHING IS POSSIBLE. THEN WE WENT
12 THROUGH AND WE SAID WHAT WAS -- WHAT WAS DIFFERENT ABOUT
13 OUR SIMPSON. IT WAS ON A SEPARATE DOCUMENT WHICH WAS
14 POINTED OUT. IT DOES NOT LIMIT PUNITIVE DAMAGES. IT HAD
15 A LIMITATION ON ABILITY TO GO TO COURT, AND MS. WATTS IS
16 NOT BRINGING A BREACH OF WARRANTY CLAIM.

17 THOSE ARE THE ONLY REAL DIFFERENCES THAT ONE CAN
18 POINT TO. AND THEN WE SAID WHAT DO WE HAVE IN OUR
19 AGREEMENT THAT MAKES IT WORSE THAN SIMPSON? AND WE HAD
20 THE ONE WHERE THE DOCUMENT WAS STUCK IN WITH OTHER PAPERS
21 AND SHE WAS REQUIRED TO SIGN. THE CONTRACT SHE SAYS THAT
22 WAS GIVEN TO HER ON A TAKE-IT-OR-LEAVE-IT BASIS. THE
23 CONTRACT WAS NOT EXPLAINED, AND SHE'S A 24-YEAR-OLD GIRL
24 WHO WAS BUYING A CAR FROM A MULTI-MILLION DOLLAR
25 CORPORATION.

1 SO, YOU HAVE TO SAY, OKAY, I THINK WE MET THE ABSENCE
2 OF MEANINGFUL CHOICE, AND THEN YOU TURN TO THE NEXT TEST
3 AND THAT IS WAS IT A OPPRESSIVE AND ONE-SIDED, AND THEY
4 WON'T ENFORCE IT IF IT'S VIOLATIVE OF PUBLIC POLICY OR
5 STATUTORY LAW. IT'S INTERESTING IN THIS CONTRACT, IF I
6 MIGHT JUST REGRESS A SECOND, OR IN THE ARBITRATION
7 AGREEMENT IT SAYS THAT THEY ARE REQUIRED TO FOLLOW LOCAL,
8 STATE, OR FEDERAL LAW, AND IN THAT REGARD THAT'S WHAT
9 WE'RE TRYING TO ESTABLISH HERE IS THE LAW WITH THE
10 ARBITRATOR IS REQUIRED TO FOLLOW BECAUSE THERE IS NO LAW
11 RIGHT NOW FOR HIM TO FOLLOW.

12 BUT IN ANY EVENT, OPPRESSIVE AND ONE-SIDED TERMS. I
13 POINTED OUT THERE IS A TEST IN SIMPSON. IT IS A LONG
14 TEST. IT SAYS, THIS ARBITRATION CLAUSE VIOLATES STATUTORY
15 LAW BECAUSE IT PREVENTS SIMPSON FROM RECEIVING THE
16 MANDATORY STATUTORY REMEDIES TO WHICH SHE MAY ENTITLE IN
17 HER DEALERS ACT CLAIM. WELL, IN THIS CASE THE REMEDIES
18 ARE UNDER -- WE'VE TALKED AND TALKED ABOUT THEM, AND THEY
19 SAY THEY ELIMINATE THEM. I DON'T THINK THAT THEY SAY WHEN
20 THEY SAY YOU CAN'T HAVE CLASS ACTIONS THAT YOU'LL SAY,
21 OKAY, SINCE IT'S NOW A STATUTORY RIGHT, YOU CAN HAVE
22 THOSE. IF THAT WERE TRUTH, IT WOULD CHANGE THE ENTIRE
23 AGREEMENT, AND OUR ARGUMENT MIGHT BE SOMEWHAT DIFFERENT,
24 BUT RIGHT NOW THEY'RE TAKING THE POSITION THAT WHEN THEY
25 SAY CLASS ACTION WE HAVE ELIMINATED THE RIGHT OF MS. WATTS

1 UNDER THE STATUTORY REMEDIES THAT SHE HAS AVAILABLE.

2 OF COURSE, THEY SAY THAT SHE CAN GET INJUNCTION
3 RELIEF. WELL, DOES THAT MEAN INJUNCTIVE RELIEF JUST AS TO
4 HER OR CAN SHE HAVE INJUNCTIVE RELIEF AS TO EVERYBODY AND
5 SAY YOU CAN'T DO IT TO ANYBODY? I THINK THEY'VE SAID SHE
6 CAN'T DO IT JUST INJUNCTIVE RELIEF THAT'S JUST FOR HER.
7 THIS ARBITRATOR CAN'T BIND THEM SO THAT YOU CAN'T GET
8 EVERYBODY.

9 WHEN YOU LOOK AT THE SIMPSON CASE, IT JUST CRIES OUT
10 THAT THIS IS THE SAME, AND YOU LOOK AT THE LAW ON THE
11 DEALERS ACT, AND IT SAYS IT WAS CREATED BECAUSE CONSUMER
12 REMEDIES AT COMMON LAW WERE DEEMED INADEQUATE. NOW
13 THEY'RE TAKING AWAY SOME OF THOSE REMEDIES, AND,
14 THEREFORE, BY TAKING THEM AWAY -- THE DEALERS ACT -- IT
15 WOULD BE AGAINST PUBLIC POLICY BY TAKING THE REMEDIES.

16 THE PURPOSE OF THE DEALERS ACT IS TO PUNISH ACTS THAT
17 ADVERSELY AFFECT THE PUBLIC INTEREST. THAT'S WHAT OUR
18 COURTS HAVE SAID. THE ONLY WAY TO DO THAT IS THROUGH THE
19 STATUTORY RIGHTS GIVEN IN SOUTH CAROLINA 56-15-110 WHICH
20 THEY SAY THEY NOW HAVE TAKEN AWAY FROM MS. WATTS, AND I
21 KIND OF AMAZED. WHY DO THEY SAY IT'S STILL ECONOMICALLY
22 VIABLE FOR ONE LITTLE LADY TO BRING AN ACTION FOR HER
23 ADMINISTRATIVE FEE OF \$400 AND TO HAVE AN INJUNCTION FOR
24 HER NOT TO -- THAT THEY CAN'T CHARGE HER \$400 IN THE
25 FUTURE? THAT MAKES NO SENSE, BUT THAT'S WHAT THEY SAY WE

1 CAN GET AND THAT'S ADEQUATE. WE CAN GET OUR \$400 AND WE
2 CAN HAVE AN INJUNCTION THAT SHE CAN'T BE CHARGED \$400
3 ANYMORE.

4 THE SOUTH CAROLINA SUPREME COURT SAID IN BAZZLE
5 PRECLUSION OF WHAT CLASS WIDE OR CONSOLIDATED ARBITRATION
6 IN AN ADHESION CONTRACT WHICH THIS IS EVEN IF EXPLICIT
7 UNDERMINES PRINCIPALS FAVORING EXPEDITIOUS AND EQUITABLE
8 CASE DISPOSITION ABSENT DEMONSTRATION OF PREJUDICE TO THE
9 DRAFTER OF THE ADHESION CONTRACT. SO, THE SUPREME COURT
10 IN BAZZLE SAYS THAT THIS TYPE OF LIMITATION EVEN IF IT
11 WERE PROCEDURAL AND UNDER THE RULES WOULDN'T BE LOOKED ON
12 AND WOULDN'T BE FAVORED, AND NOW WE LOOK AT IT AS PART OF
13 A STATUTORY SCHEME, AND THEY WANT TO JERK OUT OF THE
14 STATUTORY SCHEME WHICH WAS DESIGNED TO MAKE THE CAR
15 DEALERS ACT HAVE TEETH SO THE CAR DEALERS WOULDN'T PREY
16 UPON THE PUBLIC, AND THEY SAY THAT GIVING THAT UP IS
17 SOMETHING THAT'S OKAY, AND, AGAIN, I SAY THAT IS NOT
18 OKAY -- THAT BY THE CAR DEALERS HAVING TO FACE A LINCOLN
19 WHO HAS THE ABILITY AND REMEDIES AS PROVIDED IN 15-56 --
20 56-15-110 IS A FAR GREATER DETERRENT AND IS FOR THE
21 PURPOSE OF THE ACT IN MAKING SURE THAT THEY ARE PUNISHED
22 FOR ACTS THAT ADVERSELY AFFECT THE PUBLIC INTEREST.

23 NO OTHER WAY TO DO IT, AND, AGAIN, I SAY UNDER THEIR
24 INTERPRETATION IT'S GOING TO BE -- THIS ACTS' PURPOSE IS
25 GOING TO BE PUT FORTH AND OKAYED BY AN ACTION TO GET \$400

1 BACK AND AN INJUNCTION NOT TO CHARGE 400 IN THE FUTURE.
2 WE'VE CITED IN OUR BRIEF OTHER CASES THAT SAY THE
3 JURISDICTION -- OTHER JURISDICTIONS THAT AGREE WITH OUR
4 ARGUMENTS. THERE ARE JURISDICTIONS THAT DON'T AGREE WITH
5 OUR ARGUMENTS. SURPRISE, SURPRISE.

6 SO, THOSE I THINK DON'T HELP YOU. I THINK WHAT HELPS
7 YOU AND THE CASE THAT CENTERS ON IT IS THE SIMPSON CASE
8 AND THAT TO ENFORCE THIS AGREEMENT AND ALLOW THEM TO HAVE
9 THIS AGREEMENT WITHOUT THE ABILITY TO HAVE THE REMEDIES
10 AND THE PROVISIONS OF 56-15-110 IS CONTRARY TO THE STRONG
11 PUBLIC POLICY REASONS BEHIND THE ENACTMENT OF THE DEALERS
12 ACT AND SHOULD, THEREFORE, BE FOUND TO BE UNENFORCEABLE
13 JUST LIKE IN SIMPSON.

14 THE COURT: THANK YOU. MR. VANGRACK, ANYTHING IN
15 RESPONSE BRIEFLY?

16 MR. VANGRACK: VERY BRIEFLY IN RESPONSE, YOUR HONOR.
17 FIRST, YOU CAN CALL A CIRCLE A SQUARE. THAT DOESN'T MAKE
18 IT SO. HE KEEPS LABELING THIS CLASS ACTION RIGHT A
19 REMEDY. IT'S NOT A REMEDY. IT IS A RIGHT. IT IS THE WAY
20 WE'RE ABLE TO -- IT IS A WAY YOU CAN BRING A CLAIM, BUT
21 IT'S NOT A REMEDY. WHEN WE TALK ABOUT REMEDIES, WE'RE
22 TALKING ABOUT DAMAGES. WE'RE TALKING ABOUT RECOUPING FEES
23 OR COSTS, INJUNCTIVE OR EQUITABLE RELIEF. THERE IS
24 NOTHING THAT SAYS A CLASS ACTION RIGHT IS A REMEDY. IT IS
25 A MEANS, BUT IT'S NOT A REMEDY.

1 ON THAT SAME VEIN, THEY USE THE LANGUAGE FROM SIMPSON
2 THAT SAYS THAT IT'S MANDATORY STATUTORY REMEDIES. WELL,
3 THEY GO ONE THROUGH THREE WITH THOSE THREE WORDS. FIRST
4 OF ALL, THIS WASN'T MANDATORY. THIS CLASS ACTION RIGHT IS
5 NOT MANDATORY. IN SIMPSON, THE SIMPSON COURT FOUND THAT
6 THE REMEDIES IN THAT CASE -- THE DOUBLE AND TREBLE DAMAGES
7 WERE REQUIRED BY THE STATUTE. THIS CLASS ACTION RIGHT
8 ISN'T REQUIRED. IT DOESN'T SAY YOU SHALL BRING A GROUP
9 SUIT. IT SAYS YOU MAY BRING A GROUP SUIT. IT IS A WAY.
10 YOU CAN BRING IT INDIVIDUALLY OR YOU HAVE A RIGHT TO BRING
11 IT AS A GROUP, BUT IT'S NOT MANDATORY, AND AS I SAID
12 BEFORE THE OTHER THING -- MANDATORY STATUTORY REMEDIES.
13 THIS IS NOT A REMEDY.

14 YOU KNOW, THE OTHER TWO POINTS, YOUR HONOR, TO THE
15 EXTENT THAT YOU TALK ABOUT IT NOT BEING ECONOMICALLY
16 FEASIBLE, SHE'S ENTITLED TO THE STATUTE TO DOUBLE DAMAGES,
17 TO PUNITIVE DAMAGES, TO ATTORNEYS' FEES AND COSTS. SO,
18 THE FACT THAT THIS IS \$400 AND THIS IS FOR \$300, WHATEVER
19 IS THE CASE, MISREPRESENTS WHAT'S ACTUALLY AT ISSUE, NOT
20 TO MENTION THAT THE DEALER HAS TO PAY FOR THE ARBITRATION
21 FEES.

22 AND, LAST, YOUR HONOR, THEY MENTION A FOOTNOTE IN
23 BAZZLE, BUT THAT'S THE SOUTH CAROLINA SUPREME COURT IN
24 BAZZLE. THAT CASE WAS VACATED. THE QUOTE THAT HE BRINGS
25 YOU -- THE FOOTNOTE IN BAZZLE -- THAT'S THE SOUTH CAROLINA

1 SUPREME COURT'S CASE. THAT WAS VACATED BY THE U.S.
2 SUPREME COURT IN THE BAZZLE DECISION THAT I MENTIONED FOR
3 YOU -- THE BAZZLE DECISION WHERE THE SUPREME COURT SAID
4 THE ARBITRATOR COULD DECIDE WHETHER OR NOT AN AGREEMENT
5 PRECLUDED CLASS ACTIONS.

6 AND I JUST WANT TO HIGHLIGHT AS A LAST POINT WHAT
7 MR. LEWIS DOES NOT SAY. HE DOESN'T ADDRESS THE FACT THAT
8 THE SIMPSON COURT DID NOT FIND A CLASS ACTION WAIVER
9 UNENFORCEABLE, AND HE'S NOT MENTIONED THIS U.S. SUPREME
10 COURT CASE OF BAZZLE VERSUS GREENTREE -- THE TWO CASES
11 THAT I ASK, YOUR HONOR, IF YOU'RE GOING TO FOCUS ON TWO
12 CASES THOSE ARE THE TWO THAT ARE BINDING UPON THIS COURT
13 AND DIRECTLY APPLICABLE.

14 THE COURT: THANK YOU. IS THERE ANY OTHER MATTER WE
15 NEED TO DISCUSS? HEARING NONE, WE'LL BE ADJOURNED. ALL
16 RIGHT.

17 (WHEREUPON, END OF TRANSCRIPT OF RECORD.)
18
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

I, LISA H. HICKLIN, OFFICIAL COURT REPORTER FOR THE
SECOND JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO
HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND
COMPLETE TRANSCRIPT OF RECORD OF THE PROCEEDINGS HAD AND
EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE,
RELATIVE TO APPEAL, IN THE COURT OF COMMON PLEAS FOR AIKEN
COUNTY, SOUTH CAROLINA, ON THE 30TH DAY OF NOVEMBER, 2007.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL NOR INTEREST TO ANY PARTY HERETO.

MARCH 8, 2008

LISA H. HICKLIN, COURT REPORTER

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF AIKEN

HERRON, et al.,

Plaintiffs,

Case No.

2006-CP-02-1230

vs.

DICK DYER & ASSOCIATES, INC., et al,

Defendants.

DEPOSITION OF: MICHAEL WATTS

DATE: January 29, 2008

TIME: 9:08 a.m.

LOCATION: LEATHERWOOD WALKER TODD & MANN, P.C.
300 East McBee Avenue, Suite 500
Greenville, South Carolina

TAKEN BY: Counsel for Defendant,
CENTURY BMW

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18 ALSO PRESENT:

19 MELANIE BLEASE, Paralegal

20 (Index at rear of transcript)

STIPULATION

It is stipulated by and between Counsel that this deposition is being taken in accordance with the South Carolina Rules of Civil Procedure, Rule 30; that all objections as to Notice of this deposition are hereby waived; that all objections except as to form are reserved until the time of trial; and that the deponent does not waive reading and signing of this deposition.

* * * * *

MICHAEL WATTS,

being first duly sworn, testified as follows:

EXAMINATION

BY MR. BLACK:

Q. Good morning, Mr. Watts. Could you state your name and address for the record.

A. Michael M. Watts. 210 Providence Square, Greenville, South Carolina 29615.

Q. And, Mr. Watts, my name is Dennis Black. I'm from a law firm called Williams & Connolly. And do you understand I represent Century BMW in this case?

A. Correct.

Q. Okay. The other counsel at the table, just so you know, also represent others, either Century

1 BMW or other defendants in the case. And you have
2 your counsel here?

3 A. Yes.

4 Q. Okay. Have you ever had your deposition
5 taken before?

6 A. One time.

7 Q. And when was that?

8 A. About 20 years ago.

9 Q. And was that in a business dispute, a
10 personal dispute?

11 A. It was a workers' comp dispute.

12 Q. Just to give you a little refresher course
13 after 20 years, I'll be asking a series of questions
14 today. Hopefully you'll be answering them. If you
15 can try to answer the questions aloud and with
16 words, because the court reporter can't take down
17 nods and shakes and shrugs.

18 A. Okay.

19 Q. Is that acceptable?

20 A. It's -- yes.

21 Q. And try to avoid saying uh-huh or huh-uh in
22 response to my questions, because they look very
23 similar on the transcript, and it will be hard to
24 decipher later. Is that --

25 A. Yes, sir.

1 Q. If you don't understand any of my
2 questions, please ask me to clarify or explain any
3 problem you have with the question. And if you have
4 a problem or need clarification, please direct your
5 request for clarification to me and not to your
6 counsel.

7 A. Yes, sir.

8 Q. Is that okay?

9 A. (Witness nods head.)

10 Q. And under the rules, just so you know,
11 you're not allowed to talk to your counsel about
12 this deposition or the case from now until when we
13 conclude the deposition, even if we take a break.
14 Is that acceptable?

15 A. Yes, sir.

16 Q. And if -- this isn't an endurance contest,
17 so if at any time you need to take a break for any
18 reason, feel free to ask, and we'll take a break.

19 A. Yes, sir.

20 Q. Okay. What did you do to prepare for your
21 deposition today?

22 A. I met with counsel on Sunday night. I got
23 the time and place where we were going to meet, and
24 we briefly looked at the paperwork.

25 Q. And what -- when you say the paperwork,

1 what paperwork was that?

2 A. The sale paperwork. The information for
3 the bill of sale when we bought the car.

4 Q. How many documents would you say you looked
5 at?

6 A. 20. Approximately 20.

7 Q. And without getting into the substance of
8 what was said, did you have a chance to discuss
9 those documents with your counsel?

10 A. Briefly.

11 Q. Had you seen all the documents you were
12 shown before?

13 A. No, sir.

14 Q. Did it include -- I sent over last week to
15 your counsel a -- the dealership's file on the
16 transaction. Were those the documents you reviewed?

17 A. Yes, sir.

18 Q. Okay. And did you review any of them
19 outside the presence of your counsel?

20 A. No, sir.

21 Q. Okay. So to the extent you had discussions
22 about the documents, it was only with your counsel?

23 A. Yes, sir.

24 Q. How long was your meeting on Sunday night
25 with your counsel?

1 A. Approximately 30, 35 minutes.

2 Q. And where did it take place?

3 A. Took place at my wife's office. Land
4 America.

5 Q. And there's Christine Watts that's also a
6 plaintiff in this case. Is that your daughter?

7 A. Yes, sir.

8 Q. And have you talked with her about the case
9 or your transaction in preparation for the
10 deposition?

11 A. Yes, sir.

12 Q. Uh-huh. And when was that?

13 A. Sunday night when we met.

14 Q. Okay. Was -- was she present for your
15 meeting with counsel?

16 A. Yes, sir.

17 Q. Was anyone else present?

18 A. Melanie Blease.

19 Q. And is that the young lady sitting over
20 here?

21 A. Yes, sir.

22 Q. Is she also a plaintiff in the case --

23 A. No, sir.

24 Q. -- do you know? No? The -- anyone else?

25 A. No, sir.

1 Q. Did you have any discussions with your
2 daughter, Christine Watts, outside the presence of
3 your counsel about the transaction or this case?

4 A. Yes, sir.

5 Q. Oh, okay. And when was that?

6 A. Sunday night, on the way home.

7 Q. All right. And what did you discuss with
8 her on the way home?

9 A. We discussed primarily the taking of a
10 deposition, what it involved and, you know, you
11 would be asking me questions. And I was trying to
12 rehash the deposition process.

13 Q. Uh-huh.

14 A. And --

15 Q. And has Christine had her deposition taken
16 before?

17 A. No, sir.

18 Q. Did you dis- -- rehash any of the details
19 of the negotiation of the car deal or the
20 transaction at Century BMW in this conversation
21 outside the presence of your counsel?

22 A. Yes, sir.

23 Q. And tell me about that. What was said on
24 that subject?

25 A. We discussed -- I could not remember what

1 we bought the car for, the purchase of the car,
2 because it was primarily for her as a graduation
3 present. And all the steps.

4 Q. And by all the steps, you mean all the
5 steps --

6 A. All the steps in the process, trying to
7 review the purchase of the car.

8 Q. And did the two of you refresh each other's
9 recollections as to what went on?

10 A. She told me how much money we paid for the
11 car. We were talk-- -- I couldn't even remember the
12 purchase price.

13 Q. Uh-huh. Did she refresh your recollection
14 about any other details of the transaction?

15 A. No. It was pretty much the conversation
16 was towards the purchase price and how we financed
17 the car.

18 Q. Was there anything that she didn't remember
19 that you were able to refresh her recollection
20 about?

21 A. I'm thinking of the conversation, because
22 it was brief. She just mentioned that on the last
23 page, the -- the commission statement on the car,
24 you know, how much profit was made on the car.

25 Q. And I take it that was something you didn't

1 know until --

2 A. I had no idea. That's not my business.

3 Q. And the dealership didn't provide you with
4 that information at the time of the transaction?

5 A. No, sir.

6 Q. Okay. And what did she have to say on that
7 subject?

8 A. That was -- they did pretty good.

9 Q. Did you have any other discussions about
10 the transaction or the case in this ride home with
11 your daughter on Sunday night?

12 A. The only other thing that I can remember
13 was that I told her I couldn't remember some of the
14 paperwork that we had looked at.

15 Q. And that was some of the paperwork you had
16 had the opportunity to discuss with counsel earlier
17 in the evening?

18 A. Yes, sir.

19 Q. Okay. And since that drive home Sunday
20 night, have you talked to her any further about the
21 case or the transaction?

22 A. The only thing that we talked about was
23 last night, that we both were nervous about the
24 deposition.

25 Q. No need to be nervous.

1 A. Yeah.

2 Q. Okay. And prior to Sunday night, within
3 the last couple of months, have you had any
4 discussions with your daughter about the case or the
5 deposition?

6 A. We have not really talked about it.

7 Q. Does she live at the same address as you?

8 A. No, sir.

9 Q. I'd like to talk a little about your
10 educational background. Could you describe any
11 education you've had since high school?

12 A. I graduated the University of South
13 Carolina with a major in journalism.

14 Q. And what year did you graduate?

15 A. '78.

16 Q. And that's the University of South Carolina
17 in Columbia?

18 A. Columbia.

19 Q. And was that a bachelor's degree?

20 A. Yes, sir.

21 Q. And since getting your bachelor's degree in
22 1978, have you done any further education?

23 A. No, sir.

24 Q. Could you -- starting with when you
25 graduated from University of South Carolina, could

1 you just -- what was your first job after college?

2 A. First job was working for Wallace Business
3 Forms as a salesman. Oh, I worked for J.M. Fields
4 as an appliance manager prior to Wallace Business
5 Forms, while I was looking for a full-time job.

6 Q. Okay. And J.M. Fields is what type of
7 business?

8 A. It was a retail store, similar to like a
9 Sears. They're out of business now.

10 Q. Okay. And your job was with respect to
11 appliances?

12 A. I was selling appliances.

13 Q. Okay. And was that selling appliances to
14 consumers rather than businesses?

15 A. Consumers.

16 Q. Did you also sell like extended warranties
17 and the like?

18 A. No, sir.

19 Q. And then you went to work for Wallace
20 Business Forms?

21 A. Correct.

22 Q. And what was your position there?

23 A. Sales rep.

24 Q. And what was the business of Wallace
25 Business Forms?

1 A. They designed and sold computer forms to
2 companies.

3 Q. And by computer forms, that would be what
4 type of forms?

5 A. Continuous custom-made business forms, such
6 as invoices.

7 Q. And how long did you remain in the position
8 as a sales rep for them?

9 A. Approximately two years.

10 Q. So up to about 1980?

11 A. Yes, sir.

12 Q. And what was your next job position?

13 A. I worked for Spartan Express. They're a
14 transportation company. As a sales rep.

15 Q. And what would you have been selling?

16 A. Transportation services.

17 Q. Is that like trucking or --

18 A. Trucking.

19 Q. And how long did you remain in that
20 position?

21 A. Approximately two, two and a half years.

22 Q. So we're up to about 1983ish?

23 A. Give or take, yes, sir.

24 Q. And what was your next job position?

25 A. I went to work for AAA Cooper

1 Transportation, trucking company, sales rep.

2 Q. And were you again selling trucking
3 services?

4 A. Yes, sir.

5 Q. And how long were you in that position?

6 A. I was in that position for four to five
7 years.

8 Q. So we're up to 1988ish?

9 A. Yeah.

10 Q. And then what did you do?

11 A. I moved to Columbia with AAA Cooper. I was
12 still working for AAA Cooper.

13 Q. Oh, okay. And when you moved to Columbia,
14 did you take on a different position?

15 A. I was primarily in sales for the first
16 year. It was a new territory.

17 Q. And you said for the first year. Did
18 you -- did you change positions after a year?

19 A. They opened a terminal, and I became
20 terminal manager.

21 Q. And that was about 1989?

22 A. Yes, sir. Approximately, you know.

23 Q. What were your job responsibilities as
24 terminal manager?

25 A. To hire employees.

1 Q. Did you also manage them --

2 A. I man- --

3 Q. -- once you hired them?

4 A. I managed the employees. I was responsible
5 for the entire operation.

6 Q. And how many employees were you responsible
7 for at the terminal?

8 A. 45.

9 Q. And how long did you remain in the position
10 as terminal manager?

11 A. Until nineteen-ninety- -- 1999.
12 Approximately.

13 Q. And what did you -- what position did you
14 take on in 1999?

15 A. Sales manager for environmental
16 accessories.

17 Q. And what type of environmental accessories
18 are you referring to?

19 A. Environmental accessories, we sold -- we
20 were a broker, and we sold services to industry for
21 handling their non-haz and hazardous materials.

22 Q. And how long were you in that position?

23 A. To 2004. Approximately.

24 Q. Okay. And what was your next position?

25 A. I went to work for W.W. Grainger.

1 Q. And what business are they in?

2 A. Industrial sales.

3 Q. And what was your position with W.W.
4 Grainger?

5 A. Government sales.

6 Q. And what would you have been selling?

7 A. Nuts, bolts. Industrial maintenance
8 supplies.

9 Q. And I thought I had heard you say before
10 that you still work for AAA Cooper today.

11 A. No, sir.

12 Q. Okay. I misheard. How long were you
13 with -- or are you still with W.W. Grainger?

14 A. No, sir.

15 Q. Okay. What was your next position?

16 A. Next position, I left W.W. Grainger, and I
17 presently work for Bilt Rite Corporation.

18 Q. Bilt Rite?

19 A. Bilt Rite. Yeah.

20 Q. And how do you spell Bilt Rite?

21 A. B-I-L-T, R-I-T-E.

22 Q. Two words?

23 A. Two words.

24 Q. And what was your first position with Bilt
25 Rite?

1 A. I'm a sales rep, and manager in Greenville.

2 Q. And what is the business of Bilt Rite?

3 A. I call on contractors and sell garage
4 doors.

5 Q. And is that garage doors for residential?

6 A. Residential.

7 Q. And that's your position today?

8 A. Correct.

9 Q. Aside from working for Bilt Rite, do you do
10 any other work?

11 A. I teach fly fishing.

12 Q. And where do you teach that?

13 A. Clemson University.

14 Q. And how long have you done that?

15 A. Two weeks.

16 Q. Aside from your recent two-week stint
17 teaching fly fishing, have you ever taught any
18 courses before?

19 A. Not besides fly fishing.

20 Q. Okay. But you've taught fly fishing
21 before?

22 A. I've taught fly fishing classes.

23 Q. And what department is fly fishing in at
24 Clemson?

25 A. Leisure Skills.

1 Q. And I think you said you're married?

2 A. Yes, sir.

3 Q. And your wife's name is Phyllis?

4 A. Correct.

5 Q. And is she employed?

6 A. She is employed with Land America.

7 Q. And what does she do?

8 A. She's a branch manager.

9 Q. And what business is Land America in?

10 A. Title insurance.

11 Q. How did you first come to meet the lawyers
12 who are representing you in this case?

13 A. Melanie Blease was my daughter's roommate
14 at the College of Charleston.

15 Q. And Ms. Blease is, I understand, a
16 paralegal for the Plaintiff's law firm?

17 A. Yes, sir.

18 Q. So did your introduction to the lawyers
19 come through your daughter?

20 A. Yes, sir.

21 Q. And as you understand it, your daughter's
22 introduction to the lawyers came through Ms. Blease?

23 A. Correct.

24 Q. When was the first time you purchased an
25 automobile?

1 A. In high school.

2 Q. And how many automobiles have you purchased
3 in your life?

4 A. Approximately 10, 12.

5 Q. And have those all been from automobile
6 dealerships?

7 A. Yes.

8 Q. And in this 10 to 12 car purchases you've
9 made in your life, did you negotiate the price in
10 each of them?

11 A. Yes, sir.

12 Q. And did you always realize when you were
13 buying the car that, you know, the price is
14 negotiable at a car dealership?

15 A. I try to make it negotiable.

16 Q. Have you ever been -- have you ever had an
17 automobile transaction which the dealership refused
18 to negotiate on the price?

19 A. They refused up to a point.

20 Q. In other words, the negotiations reached a
21 point where they said, we won't take a penny less.

22 A. Correct.

23 Q. But up to that point, they negotiated.

24 A. Correct.

25 Q. And then you had the choice as to whether

1 you were going to buy the car or not.

2 A. Yes, sir.

3 Q. In connection with -- putting aside your
4 transaction at Century BMW, is the transaction that
5 brings us here today the only time you've ever had a
6 deal with Century BMW?

7 A. Yes, sir.

8 Q. Okay. Prior to Century BMW, had you ever
9 signed an arbitration agreement in connection with a
10 car purchase?

11 A. I do not remember.

12 Q. Did you, also, in the relatively recent
13 past, buy a car at Toyota of Greenville?

14 A. Yes, sir.

15 Q. And do you know if there was an arbitration
16 agreement included with that transaction?

17 A. No, sir.

18 Q. You don't know or --

19 A. I don't remember. I --

20 Q. Okay. Prior to your transaction at Century
21 BMW, had you ever signed an arbitration agreement in
22 any context?

23 A. I don't believe I have.

24 Q. Have any of your employers ever asked you
25 to sign an arbitration agreement?

1 A. I don't remember. I don't think so.

2 Q. Okay. When you were the terminal
3 manager for -- was it AAA Cooper?

4 A. Yes, sir.

5 Q. -- did they have arbitration agreements
6 with their employees; do you know?

7 A. No, sir.

8 Q. In any of your various sales representative
9 jobs -- where I assume you entered into contracts
10 with people to sell them products; is that --

11 A. Not -- there were very few contracts. It
12 was more on a purchase order basis.

13 Q. Were there ever arbitration agreements
14 involved in those deals, to your knowledge?

15 A. No, sir.

16 Q. Have you ever been asked to sign an
17 arbitration agreement and refused to do so?

18 A. No, sir.

19 Q. Do you have an understanding of what
20 arbitration is?

21 A. No, sir.

22 Q. Do you understand it's another way of
23 resolving a dispute other than going to court?

24 A. I've kind of got -- I've got that idea,
25 yes, sir.

1 Q. But beyond that very basic idea, you don't
2 know the details of it?

3 A. I've never been involved, no, sir.

4 Q. So I take it you have no either good or bad
5 impressions of the process.

6 A. No, sir.

7 Q. I think you just answered this, but have
8 you ever participated in an arbitration, either as a
9 witness or a party?

10 A. No, sir.

11 Q. I think you testified the vehicle you
12 purchased at Century BMW was a graduation present
13 for your daughter?

14 A. Yes, sir.

15 Q. To the extent there was a search for a
16 vehicle to purchase for your daughter, who conducted
17 it primarily; was it you or her?

18 A. She did.

19 Q. And what, briefly, do you understand she
20 did in that process?

21 A. Looked on the internet, told her friends,
22 asked her friends, and just looked at body styles in
23 the internet.

24 Q. Were you specifically looking for a used
25 vehicle?

1 A. No, sir.

2 Q. Were you specifically looking in a certain
3 price range?

4 A. She wanted a convertible.

5 Q. And did you pretty much leave the search
6 for the convertible to her?

7 A. Yes, sir.

8 Q. Okay. And did you understand in the market
9 for used vehicles, there are a number of different
10 places you can buy a used vehicle from?

11 A. Yes, sir.

12 Q. You understand that you don't even have to
13 go to a car dealership; you can buy it from a
14 private individual?

15 A. Correct.

16 Q. And there are ads in the newspaper you can
17 look to for vehicles?

18 A. Yes, sir.

19 Q. There are internet sites, like Craig's List
20 and others, that -- where people post cars they're
21 selling?

22 A. Yes, sir.

23 Q. Specialized publications like -- in D.C.,
24 it's called Auto Trader, but where they have nothing
25 but car ads in them?

1 A. Yes, sir.

2 Q. You can also go to new car dealerships.

3 A. Yes, sir.

4 Q. And I take it there are a number of new car
5 dealerships in the Greenville area?

6 A. Yes, sir.

7 Q. So you weren't limited to going to Century
8 BMW by any --

9 A. No, sir.

10 Q. Also, are you familiar with used car
11 dealerships like CarMax?

12 A. Yes, sir.

13 Q. And do you know where -- did you go to any
14 other dealerships in the search for a graduation
15 present?

16 A. Reluctantly.

17 Q. Okay. How many dealerships did you visit?

18 A. Two.

19 Q. And is that two in addition to Century BMW
20 or two --

21 A. Yes.

22 Q. Okay. What were the other two?

23 A. Fairway Ford and CarMax.

24 Q. And did you do anything other than look at
25 cars at either of those dealerships?

1 A. We made an offer.

2 Q. At both?

3 A. No, sir. At Fairway Ford.

4 Q. And is Fairway Ford here in the Greenville
5 area?

6 A. Yes, sir.

7 Q. And do you remember what type of vehicle
8 you made an offer on?

9 A. Ford Mustang.

10 Q. I take it that it was a convertible?

11 A. It was a convertible.

12 Q. And did you engage in price negotiation
13 back and forth?

14 A. Yes, sir.

15 Q. And I take it you didn't buy the car.

16 A. No, sir.

17 Q. And why was that?

18 A. We had -- I'm going -- we had -- I had
19 talked to a gentleman at a Greenwood Ford dealership
20 first on a car, told him what my daughter was
21 looking for. And I do not remember how I engaged in
22 conversation with him. And he found one, and he was
23 negot- -- we were negotiating price. And my
24 daughter had gone by Fairway Ford and driven the
25 car. And they came up with a less -- a cheaper

1 price, the dealership in Greenwood, than we could
2 have bought it at Fairway Ford. And then when they
3 found out my daughter had driven the car, they
4 wouldn't sell it to me, so I walked.

5 Q. They said --

6 A. It --

7 Q. Okay. You engaged in price negotiations
8 with the Greenwood dealership?

9 A. Yes, sir.

10 Q. And when they found out you had test driven
11 a car at a different dealership, they wouldn't sell
12 you a vehicle at their dealership; is that --

13 A. Pretty much, in a nutshell.

14 Q. Did they give you a reason for that?

15 A. Pretty -- they were trying to protect the
16 other dealership, Fairway Ford.

17 Q. Did they co-own or --

18 A. I don't know. I -- you know, I walked.

19 Q. Okay.

20 A. I didn't get into any of the specifics. I
21 just -- I left.

22 Q. And did you -- had you engaged in any price
23 negotiations at Fairway Ford?

24 A. I hadn't. I --

25 Q. So how did you know the deal was cheaper at

1 the Greenwood dealership?

2 A. I went on the internet and was just looking
3 at cars. And naturally, I got tagged from the
4 dealership in Greenwood when -- in my search.

5 Q. Okay. So you gave like contact
6 information, and they called you?

7 A. Yes, sir.

8 Q. How long did you spend doing research on
9 the internet?

10 A. Very little.

11 Q. Had you ever been to Century BMW before you
12 bought the car?

13 A. We had test driven a car there.

14 Q. And was that in connection with the same
15 search, or was it a prior vehicle?

16 A. No, sir, it was a prior vehicle.

17 Q. Okay. And when was that?

18 A. Six months or a year prior to buying the
19 vehicle.

20 Q. So was that in connection with the search
21 for the car you ended up buying at Toyota of
22 Greenville?

23 A. No, sir.

24 Q. For whom were you looking for a car when
25 you test drove the car at Century BMW six months

1 ago?

2 A. Nobody. My daughter wanted to test drive
3 the four-door convertible, so we did.

4 Q. Did you engage in any price negotiations
5 the six months earlier?

6 A. No, sir.

7 Q. And was that a new or used vehicle she --

8 A. It was --

9 Q. -- wanted to test drive?

10 A. It was new.

11 Q. When you came to Century BMW in connection
12 with the purchase of the 2004 Z4, had your daughter
13 already been there?

14 A. No, sir.

15 Q. Did you come together?

16 A. Yes, sir.

17 Q. Okay. And when you came, did you already
18 have a car in mind?

19 A. No, sir.

20 Q. Once you got to the dealership, did you
21 walk around the lot and look at a lot of different
22 cars?

23 A. Yes, sir.

24 Q. Okay. Tell me about that. How many cars
25 did you look at?

1 A. I don't remember. We didn't test drive --
2 I don't remember if we test drove any besides the
3 Z4.

4 Q. And did you walk around the lot on your
5 own, or were you accompanied by someone else other
6 than your daughter?

7 A. We were accompanied by a salesperson.

8 Q. Okay. Was that a male or a female?

9 A. Female.

10 Q. Do you remember her name?

11 A. No, sir.

12 Q. And did she describe the various cars to
13 you?

14 A. Yes, sir.

15 Q. Did you like her?

16 A. She was nice.

17 Q. Okay. So I take it she didn't put undue
18 pressure on you as you were touring the lot?

19 A. No, sir.

20 Q. Okay. How did you come to -- I think you
21 said you test drove the Z4.

22 A. Correct.

23 Q. Did you test drive it, or your daughter, or
24 both?

25 A. We both test drove it.

1 Q. And did the salesperson accompany you?

2 A. I think she -- if I -- I think she
3 accompanied my daughter, and I think my daughter and
4 I drove it.

5 Q. After test driving the vehicle, did you
6 determine you wanted to buy it?

7 A. I let my daughter make the decision.

8 Q. Okay. Did she express an interest in
9 purchasing the car?

10 A. Yes, sir.

11 Q. Okay. Did she like the car?

12 A. Yes, sir.

13 Q. And at that point, did you engage in any
14 price negotiations with anyone at the dealership?

15 A. Not right then. We went back and talked
16 about it.

17 Q. Okay. So you test drove the car and
18 decided you liked it, and left.

19 A. Correct.

20 Q. Okay. And why did you leave rather than
21 stick around and negotiate the purchase right then?

22 A. We wanted to think about it, talk about it,
23 and I wanted to call the credit union and check on
24 financing.

25 Q. And how long after you test drove the car

1 was it before you returned to negotiate the deal?

2 A. Probably -- I think -- I can't remember.

3 It was within a day.

4 Q. Were you aware that the dealership would
5 likely offer you financing on the vehicle?

6 A. Yes, sir.

7 Q. But you preferred to finance it elsewhere?

8 A. Yes, sir.

9 Q. So I take it you understood you didn't have
10 to enter into a financing agreement with the car
11 dealership in order to purchase the car.

12 A. Yes, sir.

13 Q. Is it your general practice to finance car
14 purchases through your own credit union --

15 A. Yes, sir.

16 Q. -- rather than the dealership?

17 A. Yes, sir.

18 Q. Have you ever financed the terms of a --
19 have you ever financed a car through the car
20 dealership?

21 A. Yes, sir.

22 Q. And did you engage in negotiations on the
23 terms of the financing?

24 A. No, sir.

25 Q. You realized you were free to ask for a

1 lower interest rate than what they offered you, I
2 take it.

3 A. I figured they would offer me the lowest.
4 I didn't know that their finance rate would be
5 negotiable.

6 Q. But in any event, you determined you were
7 going to get financing away from Century BMW for
8 this transaction.

9 A. Right.

10 Q. When you came back to the dealership to
11 negotiate the purchase, who did you meet with?

12 A. The saleslady.

13 Q. And was it the same saleslady you dealt
14 with previously?

15 A. Yes, sir.

16 Q. And when you came back, did you come back
17 alone or with your daughter?

18 A. We negotiated via telephone.

19 Q. Okay. So you didn't come into the
20 dealership?

21 A. I did not come -- I called, and we
22 negotiated over the telephone.

23 Q. Okay.

24 A. And then once the price was agreed upon, we
25 went from there.

1 Q. And is the reason you dealt with them by
2 phone, was it because you felt more comfortable
3 being at home rather than being at the dealership
4 with the employees?

5 A. You know, I don't know why we did it from
6 the house.

7 Q. Who was on the phone when you were
8 negotiating the price?

9 A. The saleslady and I.

10 Q. Okay. Was Christine on an extension, or
11 was it just you and the salesperson?

12 A. It was just me and the salesperson.

13 Q. Okay. Who called --

14 A. Christine was in the room.

15 Q. Okay. So she may have overheard -- I take
16 it the salesperson wasn't on a speakerphone in your
17 house.

18 A. No, sir.

19 Q. Okay. So Christine may have overheard your
20 side of the conversation, but she wouldn't have
21 heard the other side?

22 A. Correct.

23 Q. Okay. Who initiated the phone call?

24 A. I did.

25 Q. Okay. And did you ask to speak to the

1 saleslady?

2 A. Yes, sir.

3 Q. And did -- when you called, did you tell
4 her you were interested in getting the Z4?

5 A. Yes, sir.

6 Q. And did you make an offer on the vehicle?

7 A. Yes, sir.

8 Q. Had there been a -- any sort of price on
9 the car?

10 A. Yes, sir. I don't remember what it was.

11 Q. Okay. Do you remember how it was posted on
12 the car? Was it written in shoe polish, or was it
13 on some sort of sticker?

14 A. I don't remember.

15 Q. Okay. And had you discussed that price at
16 all with the salesperson when you were back at the
17 dealership?

18 A. No, sir.

19 Q. So you called -- I think her name is
20 Elizabeth Courtney; does that ring a bell?

21 A. Sounds familiar.

22 Q. Well, whoever it was, you called --

23 A. Yes.

24 Q. -- the salesperson, and you made an initial
25 offer.

1 A. Correct.

2 Q. And what did she say? Do you remember what
3 your initial offer was?

4 A. No, sir.

5 Q. Was it, I take it, less than you ended up
6 paying?

7 A. More than likely.

8 Q. But you don't recall?

9 A. I do not remember.

10 Q. Okay. And did you have -- when you made
11 the call, did you have a bottom-line figure in mind
12 that you wouldn't pay more than?

13 A. Yes, sir.

14 Q. Do you remember what that was?

15 A. I'm feeling my brain. 30 --- it was 31, 32,
16 somewhere right in there.

17 Q. Okay.

18 A. I do not remember exactly.

19 Q. And you knew -- you knew that if the
20 dealership, for whatever reason, didn't offer terms
21 that you were comfortable with, you could hang up
22 the phone, and you weren't under any obligation to
23 purchase the vehicle from them; is that fair?

24 A. That's fair.

25 Q. Okay. And that would include terms other

1 than the price, such as if they refused to offer you
2 a warranty on the car, you could hang up the phone
3 and not have to deal with them; is that fair?

4 A. Yes, sir.

5 Q. Okay. Do you recall what Ms. Courtney's
6 response was to your offer?

7 A. There was negotiation. I don't remember
8 the interaction.

9 Q. Was it all in one phone call or multiple
10 phone calls?

11 A. No, sir, there were multiple phone calls.

12 Q. Okay. After you made your offer, did she
13 say, I'll have to get back with you and call you
14 back?

15 A. All I remember is there were multiple phone
16 calls back and forth.

17 Q. Okay. And did all of this take place in
18 one day?

19 A. Yes, sir.

20 Q. Okay. Do you generally recall over what
21 time period, how many hours or --

22 A. It was late afternoon.

23 Q. Was it a weekend?

24 A. It was a Friday afternoon.

25 Q. And did you talk with anyone other than

1 Ms. Courtney?

2 A. No, sir.

3 Q. And eventually in this back and forth phone
4 calls, did you reach an agreement on price?

5 A. Yes, sir.

6 Q. And then did you come into the dealership
7 to finalize the paperwork?

8 A. After I did my credit ap and got my
9 financing in order.

10 Q. From the credit union?

11 A. Correct.

12 Q. So did you come into the dealership with a
13 cashier's check from the credit union?

14 A. I came in with some paperwork that they
15 needed to fill out, and the credit union verified
16 the funds would be sent to them.

17 Q. The credit union --

18 A. Verified the funds would be sent.

19 Q. So you didn't have a check?

20 A. I did not have a check.

21 Q. And I assume you signed a promissory note
22 or financing agreement with the credit union?

23 A. Yes, sir.

24 Q. Do you maintain -- still have a copy of
25 that?

1 A. Probably so.

2 Q. Are you still making payments on it?

3 A. She is, yes, sir.

4 Q. So your daughter is making the payments?

5 A. Yes, sir.

6 Q. Who was the -- were you the borrower on the
7 financing agreement, or were both of you, or how was
8 that arranged?

9 A. She co-signed with me.

10 Q. Okay. Do you recall whether -- did you
11 enter into any other agreements with the credit
12 union? Did they offer you any sort of service
13 agreement on the car or anything like that?

14 A. No, sir.

15 Q. Did the financing agreement that you signed
16 with the credit union contain any arbitration
17 clause?

18 A. I do not know.

19 Q. Did you check with the dealership as to
20 whether they could give you a better interest rate
21 than the credit union was giving you?

22 A. I like my credit union, and past
23 experience, their rates have always been very, very
24 competitive.

25 Q. When you came into the dealership with your

1 paperwork from the credit union, did you engage in
2 any further negotiations with Ms. Courtney, or had
3 that been resolved at that point?

4 A. It had been resolved, to the best of my
5 knowledge.

6 Q. And was your daughter with you?

7 A. Yes, sir.

8 Q. And was this -- how many days after the
9 back and forth on the phone was this, or was it the
10 same day?

11 A. I think we came in like Monday, Tuesday of
12 the following week. I can't remember exactly.

13 Q. And do you recall whether -- how many
14 dealership employees did you deal with when you came
15 into the dealership on the following Monday or
16 Tuesday; do you recall?

17 A. One. There was the finance and insurance
18 guy.

19 Q. Okay. Did you -- was Ms. Courtney there?

20 A. I don't remember.

21 Q. Okay. So you -- as best you recall, the --
22 you went back and dealt with the F and I manager?

23 A. Yes, sir.

24 Q. And was that a male or a female?

25 A. Male.

1 Q. Do you remember his name?

2 A. No, sir.

3 Q. Did that gentleman attempt to sell you any
4 further products beyond the car?

5 A. Yes, sir.

6 Q. Did he attempt to sell you a number of
7 products beyond the car?

8 A. I think so.

9 Q. Let me show you a document I'll have marked
10 as Michael Watts Exhibit 1. It's actually a
11 collection of documents.

12 (Defendant's Exhibit 1, Dealership
13 transaction documents, was marked for
14 identification.)

15 BY MR. BLACK:

16 Q. And Watts Exhibit 1 is Bates Numbered CBM
17 501 through 45. And if you could thumb through that
18 exhibit, Mr. Watts, can you confirm that those are
19 the documents you were shown Sunday night?

20 A. Yes, sir.

21 Q. If you could turn to the second page of the
22 Exhibit, which is CBM-00002. Five 0's. Do you
23 see -- and this is a document entitled Century BMW
24 Menu of Investment Enhancements. Do you see that?

25 A. Yes.

1 Q. And is that your signature down at the
2 bottom right-hand corner?

3 A. Yes, sir.

4 Q. And were you shown this document by the F
5 and I manager?

6 A. Yes, sir.

7 Q. Does the name Corey James ring a bell as to
8 the name of the F and I manager?

9 A. I don't remember, sir.

10 Q. And did Mr. James go through this document
11 with you?

12 A. I don't remember.

13 Q. Do you -- you said you recalled him trying
14 to sell you some products. Do you recall him trying
15 to sell you a service contract/extended warranty?

16 A. We wanted that, yes, sir.

17 Q. You wanted an extended warranty?

18 A. Yes, sir.

19 Q. Did you purchase one?

20 A. Yes, sir.

21 Q. Did you purchase it from the dealership?

22 A. Yes, sir.

23 Q. Okay. You sure?

24 A. I thought we did.

25 Q. If you turn to the next page, you see the

1 car was still covered by the BMW warranty?

2 A. We bought -- excuse me. We bought the
3 extended warranty after the car was -- came out of
4 warranty. I knew we had an extended warranty.

5 Q. Okay.

6 A. I apologize there.

7 Q. So in the -- when Mr. James or the F and I
8 manager went through the products with you, you
9 didn't buy an extended warranty on the day you
10 purchased the car?

11 A. Correct.

12 Q. But you did buy an extended warranty
13 sometime thereafter.

14 A. Yes, sir.

15 Q. And from -- did you buy it from the
16 dealership?

17 A. Yes, sir.

18 Q. Okay. But at the time of your sale, you
19 turned him down on buying it.

20 A. Yes, sir.

21 Q. Okay. So I take it you knew it wasn't a
22 requirement of purchasing a vehicle at Century BMW
23 that you enter into a service agreement with the
24 dealership.

25 A. Correct.

1 Q. Did he also try and sell you this tire and
2 wheel guaranty that's referenced on the form?

3 A. That's the one I remember.

4 Q. Okay.

5 A. Yes, sir.

6 Q. And you didn't purchase that?

7 A. No.

8 Q. Okay. Did he try and sell you this
9 upgraded maintenance agreement referenced here in
10 the middle column, the top?

11 A. I don't think -- the upgraded maintenance
12 agreement, he discussed it, and it's the one we came
13 back and bought later.

14 Q. Okay. And I notice here that someone has
15 scratched through the 1695 and written 1395 by hand.
16 Do you see that?

17 A. Yes, sir.

18 Q. And in trying to convince you to purchase
19 this item, did he offer to lower the price from what
20 was on the menu?

21 A. He must have.

22 Q. So I take it you understood that these
23 various items, the price was negotiable on them?

24 A. No, sir, not really.

25 Q. But you did understand that it wasn't a

1 requirement of purchasing a vehicle that you enter
2 into any of these agreements referenced on the form.

3 A. Yes, sir.

4 Q. And down at the bottom of the page, is that
5 your handwriting that says, declined coverage, or is
6 that the F and I manager's?

7 A. That's the F and I manager.

8 Q. And you signed next to that?

9 A. Yes, sir.

10 Q. Do you recall how long after you purchased
11 the car you came in to buy the service agreement?

12 A. It was before the 50,000-mile warranty ran
13 out.

14 Q. So it was some number of months after you
15 purchased the car?

16 A. A good number of months, yes, sir.

17 Q. How long do you recall him pitching these
18 products to you for?

19 A. I can't remember how long.

20 MR. BLACK: Can we take a break?

21 MR. THOMAS: Yeah, I was about to ask.

22 (A recess transpired.)

23 BY MR. BLACK:

24 Q. You mentioned that your daughter was
25 roommates with Ms. Blease. That was in college?

1 A. Yes, sir.

2 Q. And did your daughter graduate from college
3 in 2005?

4 A. Christy graduated in 2004, I believe.

5 Q. Okay. So it was the year -- it was a year
6 after she graduated that you purchased the car?

7 A. She graduated -- she finished -- she stayed
8 down there and finished her master's, so maybe it
9 was 2005.

10 Q. Okay. And had she been rooming with
11 Ms. Blease up until she got her master's degree?

12 A. Yes, sir.

13 Q. Was she --

14 A. Up to a point. She -- I don't exactly
15 remember. I think her last year, she lived by
16 herself.

17 Q. So as you understood it, she had been a
18 roommate of Ms. Blease up to sometime in -- when did
19 she stop being Ms. Blease's roommate, as you
20 understand it?

21 A. Christy had roommates, and the biggest
22 thing I remember is having to move her all the time.
23 Okay? I think Christy roomed with Melanie Blease
24 2003, 2002, somewhere like that.

25 Q. And did they remain friends after they

1 stopped being roommates?

2 A. Yes.

3 Q. And are they still friends?

4 A. As far as I know, yes.

5 Q. And do you know if Ms. Blease -- do you
6 know when she graduated, if she's graduated?

7 A. No, sir.

8 Q. Okay. Do you know, while she was at school
9 with your daughter, was she working for the law firm
10 at the same time?

11 A. I don't think so. I know Melanie has
12 always held jobs, but I don't know where she was
13 working.

14 Q. Okay. So she may have been working for the
15 law firm; you don't know one way or the other?

16 A. I don't know.

17 Q. Okay. You said you purchased the service
18 agreement after you purchased the car.

19 A. Right.

20 Q. And I think you said you purchased it
21 before the car hit the 50,000-mile mark?

22 A. Correct.

23 Q. At the time you purchased it, was the car
24 approaching the 50,000-mile mark?

25 A. Yes, sir.

1 Q. If you turn to Page 000005, do you see
2 that's an Affidavit and Notification of Sale of
3 Motor Vehicle?

4 A. Yes, sir.

5 Q. And do you see that there's a certification
6 that the odometer, at the time you purchased the
7 vehicle, read 15,514?

8 A. Yes, sir.

9 Q. So I take it if the car was approaching
10 50,000 miles at time you bought the service
11 agreement, it was a significant period of time after
12 you purchased the car.

13 A. Yes, sir.

14 Q. And someone had put approaching 30,000
15 miles on the car in the interim?

16 A. Yes, sir.

17 Q. So I take it it was over a year after you
18 bought the car?

19 A. Yes, sir.

20 Q. So it was after this litigation was filed.

21 A. Before the litigation was filed.

22 Q. Well, you bought the car in June of '05; is
23 that right?

24 A. Yeah.

25 Q. And this litigation was filed in August of

1 '06?

2 A. Okay. It had to have been. I'm not good
3 on dates. I apologize. I don't -- I am not good on
4 dates, trying to time line everything.

5 Q. Okay. It -- but would you agree that it's
6 likely you bought the service agreement after you --
7 after the litigation was filed?

8 A. Yes, sir.

9 Q. When you met with the F and I manager,
10 where in the dealership did you meet with him?

11 A. In his office.

12 Q. And was that a cubicle-type office off the
13 showroom floor?

14 A. Yes, sir.

15 Q. And did you meet with him alone, or was
16 Christine with you?

17 A. Christine was with me.

18 Q. And was she there the whole time?

19 A. With the F and I manager?

20 Q. Yes.

21 A. Yes, sir.

22 Q. And do you recall how much time elapsed
23 from the moment you walked into the F and I office
24 until you left?

25 A. I do not remember.

1 Q. Was it over an hour?

2 A. I tried to keep it as short as possible.

3 Q. Okay.

4 A. So I don't -- I don't remember.

5 Q. You wanted to get in and out as quickly as
6 possible?

7 A. Correct. Yes, sir.

8 Q. So was it likely less than an hour?

9 A. Yes, sir.

10 Q. And what was your impression of the F and I
11 manager? Was he a nice guy?

12 A. He seemed like an all right guy.

13 Q. He didn't put any undue pressure on you?

14 A. No, sir.

15 Q. And to the extent he tried to sell you
16 things, you didn't buy them, at least at the time.

17 A. Correct.

18 Q. Did you sign some documents while you were
19 in the F and I office?

20 A. Yes, sir.

21 Q. Do you know how many?

22 A. No, sir.

23 Q. Do you have an estimate of how many?

24 A. Five, six.

25 Q. So it wasn't some huge stack of documents

1 you had to sign; it was just a handful.

2 A. There were copies and stuff. That's all I
3 can remember.

4 Q. Okay. But you don't remember having to
5 traipse through some enormous stack of documents?

6 A. Not a huge stack of documents.

7 Q. And were the documents such things as
8 transferring title to the vehicle and the like?

9 A. Yes, sir.

10 Q. And those documents, you understood, were
11 required by law?

12 A. Yeah, they were all -- all the documents
13 were right there together.

14 Q. And the documents you were given to sign,
15 did Mr. James do anything to prevent you from
16 reading them?

17 A. No, sir.

18 Q. And if you'd turn to Page -- the page that
19 ends in 14. And do you see that that's a document
20 that is titled, in all caps and bold print at the
21 top, Arbitration Agreement?

22 A. Yes, sir.

23 Q. And would you agree with me that the
24 heading of the document is easy to read?

25 A. Yes, sir.

1 Q. And the -- at the bottom of the page, have
2 you signed the document?

3 A. Yes, sir.

4 Q. And right -- right above you, where your
5 signature is, do you see in bold, all caps, it says:
6 By signing below, the parties acknowledge that they
7 have read and agreed to the terms of this
8 arbitration agreement?

9 A. Yes, sir.

10 Q. And do you agree with me that that's easy
11 to read?

12 A. Correct.

13 Q. And immediately above that, there are a
14 number of bullet points that are also in all caps?

15 A. Yes, sir.

16 Q. And that's in perfectly readable type?

17 A. Yes, sir.

18 Q. And, in fact, the entire document, while
19 the other type on the page may be somewhat smaller,
20 none of it is difficult to read if one wanted to?

21 A. Correct.

22 Q. I think we said that's your signature in
23 the bottom left-hand corner in the top signature
24 line?

25 A. Yes, sir.

1 Q. And is that your daughter's signature below
2 that?

3 A. Yes, sir.

4 Q. And that's the -- Mr. James' signature to
5 your right?

6 A. I would assume so, yes, sir.

7 Q. And this document was presented to you at
8 the dealership when you were meeting with Mr. James?

9 A. Yes, sir.

10 Q. What, if anything, did Mr. James say to you
11 when he presented you with this document?

12 A. I don't remember if he said anything.

13 Q. Did you see, when he handed you this, that
14 it said arbitration agreement at the top?

15 A. I did not really pay it any attention,
16 because they weren't doing any financing for me. We
17 were eager to get the car.

18 Q. So you were here to just get out of there.

19 A. Yes, sir. All the papers were together,
20 and he handed me all the papers.

21 Q. Okay. But he didn't do anything to prevent
22 you from reading what he handed to you.

23 A. No, sir.

24 Q. Do you recall one way or another whether
25 you did read it?

1 A. I did not read it, no, sir.

2 Q. Did you glance your way down and at least
3 read the things in all caps?

4 A. I don't even remember signing it. Because
5 all the papers were together.

6 Q. So I take it you don't remember him telling
7 you that you had to sign this document in order to
8 purchase the vehicle?

9 A. No, sir.

10 Q. And I take it, from what you've said, you
11 didn't object to signing the document at the time.

12 A. I didn't know I didn't have to.

13 Q. But you didn't say, I don't want to sign
14 this, to Mr. James; is that fair?

15 A. No, I did not say that.

16 Q. Okay.

17 A. No, sir.

18 Q. And you didn't raise any complaint about
19 the document at the time?

20 A. No, sir.

21 Q. And you didn't ask any questions about
22 whether it was required that you sign the document?

23 A. No, sir.

24 Q. And I take it the same -- all of those
25 questions, same is true of your daughter?

1 A. Yes, sir.

2 Q. Okay. She didn't ask any questions about
3 the document?

4 A. No, sir. She wanted the keys.

5 Q. Okay. The credit union you financed the
6 transaction through, what was the name of the credit
7 union?

8 A. Carolina Collegiate Federal Credit Union.

9 Q. Did you finance the purchase at Toyota of
10 Greenville through the same credit union?

11 A. Yes, sir.

12 MR. BLACK: Can we take a break?

13 MR. THOMAS: Yeah.

14 (A recess transpired.)

15 BY MR. BLACK:

16 Q. At the time of your purchase from Century
17 BMW, how many cars did you and your wife and your
18 daughter collectively own?

19 A. We owned -- we bought this car. We owned
20 two.

21 Q. Two in addition to this car?

22 A. Yes, sir.

23 Q. Okay. And what cars are those?

24 A. One was a Honda.

25 Q. And who primarily drove the Honda?

1 A. My wife.

2 Q. And what other car was there?

3 A. I'm trying to think what I was driving.

4 Because I've had so many company cars over the
5 years, and they change those out so much that --

6 Q. Who drove the vehicle you purchased at
7 Toyota of Greenville?

8 A. I did.

9 Q. Okay.

10 A. I'm trying to remember the dates, if I had
11 that car or not at that particular time, or if I had
12 a company car. I think I had the Toyota.

13 Q. Okay. Was Christine driving a car prior to
14 the --

15 A. Christy had a Montero Sport.

16 Q. That's a Mitsubishi?

17 A. Correct.

18 Q. And how long had she been driving that car?

19 A. Three years. Four years.

20 Q. And was that car still in working order at
21 the time of the Century BMW --

22 A. Yes, sir.

23 Q. -- transaction?

24 A. Yes, sir.

25 Q. Okay. So aside from wanting a nice -- I

1 realize it's a used vehicle, but a nice new vehicle,
2 she wasn't under any pressure to replace her car
3 because she didn't have a working car at the time.

4 A. Correct.

5 Q. And you didn't trade that car in.

6 A. No, sir.

7 Q. What did -- what did you do with that
8 Montero Sport?

9 A. Sold it to an individual.

10 Q. Okay. And you did that through the
11 internet or something?

12 A. Through a little car lot.

13 Q. And would you agree that if all that you
14 needed was transportation around town, while that
15 might be necessary here in South Carolina, there's
16 no necessity of buying a luxury BMW automobile?

17 A. For just transportation, I agree.

18 MR. BLACK: That's all I have.

19 THE WITNESS: Okay.

20 MR. THOMAS: I don't have anything.

21 MR. BLACK: Okay.

22 (The deposition was concluded at 10:36
23 a.m.)

24

25

SIGNATURE OF DEPONENT

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

PAGE	LINE	CHANGE	REASON

MICHAEL WATTS

DATE

CERTIFICATE OF REPORTER

I, Kathy P. Taylor, Registered
Professional Reporter and Notary Public for the
State of South Carolina at large, do hereby certify
that the foregoing transcript is a true, accurate
and complete record.

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

WITNESS MY HAND, I have hereunto
affixed my official seal this 31st day of
January, 2008, at Greenville County, South Carolina.

KATHY P. TAYLOR
REGISTERED PROFESSIONAL REPORTER
MY COMMISSION EXPIRES
JUNE 13, 2017

I N D E X

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