

APPENDIX A

Auto-Sales Fraud Litigation Shows Rampant Consumer Abuse

The following cases are diverse in scope and claim, the companies which are accused of wrongdoing, and geographic location, and indicate that fraud and consumer abuse at auto dealerships is likely endemic to the industry. Many of the dealerships accused of wrongdoing are part of large chains and dealership conglomerates.

California:

- Seven former senior managers at Gunderson Chevrolet, which is owned by AutoNation, the largest auto-dealer chain in the nation, were convicted of defrauding their customers.¹ The seven employees who were convicted are:
 - 1) finance manager Donald Poteete,
 - 2) former general manager Jim Hoban,
 - 3) former finance director Michele Davis,
 - 4) former finance managers Ronald Crumer and Patrick Fischer,
 - 5) former used car manager Randolph Cooper, and
 - 6) former general sales manager Hamid Ghanian.²

The indictment alleged the seven committed 111 “overt acts” of defrauding customers by overcharging them for theft-protection packages and subsequent attempts to cover up illegal practices.³ Deputy district attorney in Los Angeles County Jeffrey McGrath handled the case,⁴ in which AutoNation also paid restitution in the amount of \$2.1 million.⁵

- On September 25, 2002, investigators with the Los Angeles County District Attorney’s office served search warrants on Honda of Santa Monica. The dealership, which is one of 187 dealerships in 15 states owned by Sonic Automotive Inc., was previously served with a draft of a class-action lawsuit complaint brought by two former customers on behalf of a potential class of former customers. Sonic executives admit to news reports that some Sonic dealerships had included hidden fees in auto loans, but claimed the allegations described actions of only a few “rogue employees.”⁶

Connecticut:

- Connecticut Attorney General Richard Blumenthal acted with 22 other states around the country to stop a sham in which auto dealerships advertised “No Money Down” but slapped customers with up-front acquisition fees, taxes and other charges that often added up to \$1,000 or more once they went to the dealership. Blumenthal sought to force five major automobile makers to adhere to strict new guidelines when advertising auto leases and collected penalties of nearly \$2 million for the misleading advertisements. The settlement

¹ “Driving Up Car Prices,” *Wall Street Journal*. (Author’s Name and Date of Publication Unavailable. Text on file with Public Citizen.)

² Sullivan, Dennis. “7 AutoNation Store Managers Accused of Fraud,” *Car Dealer Insider*. June 11, 2001.

³ *Id.*

⁴ “Driving Up Car Prices,” *Wall Street Journal*. (Author’s Name and Date of Publication Unavailable. Text on file with Public Citizen.)

⁵ Sullivan, Dennis. “7 AutoNation Store Managers Accused of Fraud,” *Car Dealer Insider*. June 11, 2001.

⁶ Lloyd, Mary Ellen. “Sonic Dealer Searched,” *Dow Jones Newswires*. Oct. 2, 2002.

with the companies required that the actual terms of the leasing agreement in advertisements be displayed in “clear and conspicuous” terms.⁷

- In a connected action, Attorney General Richard Blumenthal and Consumer Protection Commissioner Mark A. Shreffin sued Antonino Pontiac-Buick-GMC Truck for misleading advertisements. Allegations in the suit include advertising vehicles at a certain price when the dealership did not have the vehicles at that price and advertising “No Money Down” when some of the advertised cars required a cash payment or trade-in.⁸

Florida:

- Charges were brought against William Bennett for allegedly defrauding a financing company out of more than \$341,000. William Bennett, owner of several now-defunct Bennett used car dealerships in Pinellas County, Florida, pled guilty to conspiracy and was sentenced to 40 months in prison and three years of supervised release in May 2001. Investigators determined that Bennett altered paperwork to fabricate car deals which never occurred. His former chief financial officer, Donald Bender, was charged in July 2002 with grand theft in connection with the case. Federal authorities prosecuted both men.⁹
- Charles Gibson brought suit against Auto Way Honda in Clearwater, one of AutoNation’s local dealers, alleging the dealer inflated the price of his extended warranty by \$270.¹⁰ Gibson’s attorney, Christa Collins, further alleged that Auto Way Honda inflated the cost of warranties for customers and hid other features in contracts.¹¹ The case, for which attorneys are seeking class-action status on behalf of as many as tens of thousands of Sonic customers,¹² is being tried in Pinellas-Pasco Circuit Court.¹³
- L.C. “Pete” Kimbrell brought suit against Sonic-owned Clearwater Toyota, one of Sonic’s local dealers, alleging that his extended warranty was inflated by \$537. Kimbrell’s attorney, Christa Collins, is seeking class-action status on behalf of as many as tens of thousands of Sonic customers.¹⁴
- Ferman Motor Car Co. settled a class-action consumer-fraud lawsuit and agreed to provide about 1,000 customers with \$400 coupons. Although Ferman did not admit guilt in the settlement, it allegedly imposed extra charges when customers who leased cars attempted to exercise their right to purchase them at a previously determined price. Ferman owns more than 20 dealerships in Florida.¹⁵
- The Florida attorney general’s office investigated Clearwater Toyota and Clearwater Mitsubishi on allegations that the two dealerships illegally overcharged more than 100 customers.¹⁶ As noted on Dateline on Dec. 5, 2003, the case was settled for an attorney’s fees settlement of only \$64,000.

⁷ <http://www.cslib.org/attygen/mainlinks/tabindex3.htm>, “Auto Leasing Agreements.”

⁸ <http://www.cslib.org/attygen/mainlinks/tabindex3.htm>, “State Sues Auto Dealership Over Misleading Advertisements.”

⁹ Tisch, Chris. “Former Auto Dealer Accused of Fraud,” *St. Petersburg Times*. Nov. 8, 2002.

¹⁰ Levesque, William. “Suit Accuses Auto Dealers of Trickery on Warranties,” *St. Petersburg Times*. May 10, 2002.

¹¹ Helgeson, Lance. “F&I Practices Spur Additional Lawsuits Against Dealers,” *Car Dealer Insider*. May 13, 2002.

¹² Helgeson.

¹³ Levesque.

¹⁴ Helgeson.

¹⁵ Albright, Mark. “Tampa Auto Dealer Settles Fraud Suit,” *St. Petersburg Times*. March 27, 2002.

¹⁶ *Id.*

Illinois:

- In November 1998, Charles Allen filed suit against Woodfield Chevrolet, Inc., alleging that the auto dealer “advertised one price and then charged a different price for the same car.” In addition, Allen contended that certain amendments of the Consumer Fraud and Deceptive Business Practices Act were impermissible based on Illinois state constitutional protections against special legislation. While the initial fraud claim was dismissed only because Allen had failed to give Woodfield the statutorily required pre-suit notice, the Illinois Supreme Court affirmed Allen's interpretation of the state constitution, invalidating certain amendments of the Consumer Fraud Act as unconstitutionally favoring dealers.¹⁷

Minnesota:

- The Minnesota Attorney General's office and the Walser Automotive Group in Minneapolis settled a case alleging concerning what the Attorney General's office characterized as “industry-wide practices.” The case was based on complaints that stores sold contracts without consent, required service contracts as a condition of sale, and misrepresented the scope of warranty coverage. Provisions in the settlement requires car dealers to tape record all finance and insurance (F&I) transactions, and provide copies of the tapes to state officials upon request and offer a waiver to customers.¹⁸

Oregon:

- Oregon's largest auto dealership, Thomason Autogroup, and its parent companies settled a host of allegations of wrongdoing with Attorney General Hardy Myers for a sum of \$300,000. Myers said that Thomason had “accrued a multitude of complaints alleging violations of consumer protection laws.” Misrepresentation of sales prices, extended service contracts and financing are some of the many offenses alleged in the investigation. One of Thomason's most recent scams ran from 1996 to 2000 and affected more than 880 customers who had purchased vehicles from Thomason without being told the cars were on sale. Scammed customers ended up paying hundreds to thousands more each for their vehicles.¹⁹

Pennsylvania:

- Melvin Shaw, who operated used-car dealerships in New Jersey and Pennsylvania and sold cars through the Internet as well, was indicted in September 2003, by a federal grand jury in Philadelphia for purportedly defrauding customers and associates of more than three-quarters of a million dollars over a two-year period. According to the Assistant U.S. Attorney prosecuting the case, over thirty people who gave Shaw money for a car, or a car to sell, received nothing in return.²⁰

¹⁷ "Charles Allen et al., Appellees, v. Woodfield Chevrolet, Inc., Appellant." Supreme Court of Illinois. Filed Oct. 17, 2003.

¹⁸ Helgeson, Lance. “Deal Sets Precedent for Tougher F&I Enforcement,” *Car Dealer Insider*. May 20, 2002.

¹⁹ “Attorney General Announces \$300,000 Agreement With Oregon's Largest Auto Dealership,” Department of Justice, State of Oregon Media Release. April 9, 2001.

²⁰ “Briefly...CITY/REGION.” *Philadelphia Daily News* 26 Sept. 2003.

Tennessee:

- In spring 2003, Nissan Motor Acceptance Corp. agreed to pay two African American plaintiffs, Betty and Robert Cason, up to \$25,000 each and to offer financing at the buy rate to 625,000 approved minority consumers over five years.²¹
- An upcoming lawsuit brought by African American Addie Coleman alleges that Nissan General Motor Acceptance Corp.'s (GMAC) discretionary markup policy has a significant disparate impact on African Americans. Coleman bought a vehicle from a Tennessee dealership in 1995 and qualified for an 18.25 percent buy rate under GMAC's system. After the dealership markup, however, her annual percentage rate came to 20.75 percent.²²
- A lawsuit alleging racial discrimination was brought against United Auto Group's Covington Pike Toyota in Memphis.²³
- A class-action lawsuit was brought against Covington Pike Toyota, Memphis, in April 2001. It alleged that the dealer's F&I office routinely tricked new and leased car customers into buying a \$1,995 extended warranty package by using an illegal "tax bump." Attorney Richard Fields, who is trying the case, asserts that the class action may include as many as 5,000 customers. The suit asserts that the practice was systematic and points to audio tapes of Covington Pike's F&I director Richard Peros coaching F&I managers on how to operate the scam.²⁴
- Bill Heard Chevrolet, which claims to be the "world's largest Chevrolet dealer," has been the target of lawsuits ranging from outrageous conduct to identity theft. In one suit, a woman claims that Bill Heard stole her Social Security number to process another woman's credit application. Following the suit, more people came forward with complaints that the dealership had used their credit card information without their consent. Two later filed lawsuits.

Further, the Better Business Bureau has investigated the dealership, uncovering what it calls a pattern of "systematic sales practices." The dealership allegedly targets customers with bad credit, allowing them to take home cars before the deal is completed by leaving them with the impression that there are only a few more details to go over. Attorney Barry Weathers, who has four lawsuits pending against the dealership, has said that Bill Heard will let customers with credit that they know will be rejected take vehicles home regardless. The customers are then called a few weeks later, informed that their credit was not approved, and pressured to buy the car anyway. A former Bill Heard employee has recounted that the dealership's general manager Bill Crick allegedly told his staff: "Most of these people will never come back. This means you got only this one chance to f__ them."²⁵

Multi-State:

- AutoNation Inc., a Fort Lauderdale, Florida-based car retailer, and its Huntington Beach, California, Ford dealership were ordered to pay \$130,000 to a former salesman who was

²¹ Freedman, Eric. "Disparate Measures," *Automotive News Insight*. November 24, 2003.

²² *Id.*

²³ "UAG Store Faces Discrimination & Fraud Claims," *Car Dealer Insider*. May 14, 2001. (Author's name unavailable. Text on file with Public Citizen)

²⁴ *Id.*

²⁵ Pulle, Matt. "Like A Rock (Over the Head): The Better Business Bureau and a Barrage of Lawsuits Claim Bill Heard Chevrolet Engages in Fraud and Deception," *The Nashville Scene*. February 13-19, 2003.

fired after complaining that customers were being cheated. Arbitrator Ricardo A. Torres found the company punished Bruce Gillies for complaining about deals in which customers' interest rates were inflated without their knowledge. The award includes \$50,000 in punitive damages.²⁶

²⁶ "Firm Loses Arbitration," *Los Angeles Times*. (Name of author and date of publication unknown. Text on file with Public Citizen.)

APPENDIX B

Several cases brought by Attorneys General in two states, Minnesota and Oregon, offer remedies that could be instructive to enforcement authorities in other states or to legislative and regulatory authorities:

The Minnesota Attorney General's office settled in Spring 2002 with the Walser Automotive Group in Minneapolis, which allegedly sold contracts without consent, required service contracts as a condition of a sale, and misrepresented the scope of coverage offered by service contracts. Included in the settlement, in which Walser did not admit wrongdoing, were the following requirements for Walser dealerships:²⁷

- Tape recording of all transactions involving auto loan financing or optional service products sales, unless the consumer signs a waiver. The dealer must provide the tapes to state regulators, as well as the consumer, upon request.
- A letter sent to all consumers previously sold service contracts offering arbitration if consumers believe the contact was improperly sold to them. [Though unspecified in the press release regarding the settlement, please note that Public Citizen does not support the use of *binding* arbitration to resolve consumer protection or other issues.]
- All service contracts have a 60-day cancellation policy providing full refund to consumers who have not made a claim. The dealer must pay the refund within 14 days of the consumer's cancellation request.
- The dealership cannot sell its own service contracts unless it files its retail pricing with the state and notifies consumers that it retains all money used for claims.

The Oregon Attorney General's office settled a case in April, 2001, with Oregon's largest auto dealership, Thomason Autogroup, and its parent companies: Asbury Automotive Oregon LLC, Asbury Automotive Oregon Dealership Holdings LLC, and Asbury Automotive Oregon Management LLC. The dealership faced a wide range of complaints, including failure to disclose material defects, misrepresenting sales prices, and extending service contracts. As part of the settlement, the dealer admitted no wrongdoing but did agree to the following conditions for future business:²⁸

- The company must initiate a mandatory education program for all its employees within 60 days of the settlement, instructing employees on the settlement and on state consumer protection laws.
- Vehicles on sale are required to be identified by number and price both in advertisement and openly disclosed on the vehicle.
- If a consumer's financing for a vehicle is not possible on the terms set out in the sales agreement, the consumer must be quickly notified. The transaction is immediately terminated, and upon the return of the vehicle, the company must refund the buyer's down payment, minus possible vehicle use charges.

²⁷ Helgeson, Lance. "Deal sets precedent for tougher F&I enforcement." *Car Dealer Insider* May 2002.

²⁸ "Attorney General Announces \$300,000 Agreement With Oregon's Largest Auto Dealership." at <http://www.doj.state.or.us/releases/rel040901.htm>

- The dealership must return any trade-in vehicle to the buyer if financing for the buyer is not available. The dealership cannot sell the buyer's trade-in vehicle until receiving final credit approval.
- Buyers must be given copies of all documents associated with the vehicle sale.
- The dealer must notify the consumer during the sales transaction that any extra items such as credit life and extended service contracts are optional and not required to complete the vehicle purchase.
- Upon choosing to purchase additional products like extended warranties and service contracts, the consumer must be shown by the dealer both the sale price and monthly payments only, and the price and payments with the additional charges for extras. This allows the consumer to compare the two sets of figures.

In addition to the above conditions, the dealership had paid, as of early 2001, about \$1.5 million in restitution to Oregon victims, and \$300,000 to the Oregon Department of Justice consumer protection and education revolving account.