

**F&I**

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## Naivety is not a Defense

Someone who knows someone who knows someone told me this story about someone. Even though this someone is three persons removed from my source, I believe the story is more than urban legend.

A nurse at a hospital spotted a five-year-old with a mullet haircut. Yup, circa Billy Ray Cyrus 1980's style. She thought it was cute, so she snapped a photo with her cell phone and then posted it on her Facebook page for all her friends to see. She received more than a few comments. She also received a pink slip from the hospital administrator.

Apparently someone complained to the hospital about the nurse potentially violating the medical industry's privacy laws. The HIPPA Act is to the medical industry as the Gramm Leach Bliley Act is to auto dealers.

Anyway, this nurse's defense was "I didn't realize that it was a violation of HIPPA." The defense did not hold up. The nurse had signed an acknowledgement form saying she had been trained in HIPPA and agreed to abide by the rules.

Naivety is not a defense.

### Case studies

Here are a few case studies from some of the complaints and depositions I have reviewed or stories that have been reported in the industry publications. Keep in mind that the complaints are one-sided and typically formulaic; but still, can point out how some salespeople or managers can be naïve to the laws and regulations that govern our business.

Defendant is dealership employee, plaintiff is consumer.

#### Case study #1:

*Allegation* – Defendant represented to the plaintiff that the used vehicle had a lifetime warranty for anything that goes wrong with the vehicle. Further, the only warranty disclosure made on the Used Car Buyer's Guide (UCBG) is that the warranty box is checked and no further limitations to the warranty, such as systems covered or duration are made.

*Tip* – A properly completed UCBG will overcome most allegations. Review a dealer's disclosure requirements at [www.ftc.gov](http://www.ftc.gov).

***I don't care if the customer is being closed on a factory 0% APR, do not let the word 'best' ever enter into or become part of a salesperson's, sales manager's or F&I manager's lexicon.***

#### Case study #2:

*Allegation* – Plaintiff asserts that the defendant assured her that the 8% annual percentage rate was the best rate available, when in fact the defendant retained 2% as a kickback from the lender.

*Tip* – Never, ever, ever represent that the customer rate is the best rate. I don't care if the customer is being closed on a factory 0% APR, do not let the word 'best' ever enter into or become part of a salesperson's, sales manager's or F&I manager's lexicon.

#### Case study #3:

*Allegation* – Defendant agreed to a purchase price of \$10,000 and delivered the vehicle to the plaintiff. Two weeks later, the defendant contacted the plaintiff to rewrite the contract. Defendant explained to the plaintiff that, because of plaintiff's poor credit history, the only lender who would approve the plaintiff's loan charges a \$3,500 fee and the defendant could only sell and finance the vehicle if the plaintiff agreed to a purchase price of

\$13,500. Plaintiff reluctantly agreed, having already told everyone that he had bought a car.

*Tip* – Increasing the vehicle sale price to absorb a sub-prime acquisition fee is a potential violation of the Truth in Lending Act. The sub-prime acquisition fee must be taken as a cost of goods sold, not as an increase in the vehicle cash price.

#### Case study #4:

*Allegation* – Plaintiff traded in a 1999 vehicle in which she owed more on her loan than the 1999 was worth. Defendant increased the vehicle cash price and the trade-in allowance to hide the disclosure of negative equity on the retail installment sales contract.

*Tip* – In my travels, I have found only one credit union (whose branch manager must still be wearing a 1980's mullet to match his 1980's understanding of the auto finance business) who will not allow the proper disclosure of negative equity. If one of your lenders is taking a similar stance, have a conversation at the highest possible level within the organization, and if the lender continues to require you to violate a federal law, seriously consider cutting that lender off.

Being naïve to the laws and regulations is not a defense in any court, whether a federal, state or court of public opinion. Ensure that your salespeople, sales managers and F&I managers understand their obligations and help to keep you out of trouble. 🛠️

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