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## Stuff I read in depositions – acquisition fees

by Gil Van Over

I've read more than a few depositions over the last couple of years. Some of the questions asked by plaintiff's attorneys shed light on the risks faced in a dealership's operations. Today I will discuss subprime acquisition fees.

### Background

The basis for this lawsuit was that the dealership sold a used vehicle to a subprime consumer and increased the vehicle's sale price when it recontracted the deal to absorb the subprime acquisition fee.

### Interrogation

Attorney: Mr. F&I Manager (FIM), do you agree that Exhibit A is the original Retail Installment Sales Contract you executed with my client.

FIM: Yes.

Attorney: Do you agree that Exhibit B is the second Retail Installment Sales Contract you executed with my client.

FIM: Yup.

Attorney: Do you agree that the vehicle displayed in this newspaper advertisement noted as Exhibit C is the same vehicle that my client purchased and financed through your dealership?

FIM: Yes, it is.

Attorney: Is the vehicle used as collateral on Exhibit A the same vehicle that is used as collateral on Exhibit B?

FIM: Yes.

Attorney: What is the cash sales price for the vehicle on Exhibit A?

FIM: \$10,500.

Attorney: What price was this vehicle advertised for in Exhibit C?

FIM: \$10,500.

Attorney: What is the cash sales price for the vehicle on Exhibit B?

FIM: \$12, 400.

Attorney: Why is there a \$1,900 difference in price between the two contracts when the same vehicle is being financed?

FIM: We couldn't get an approval on the first deal with the lender we thought would buy the deal. We finally got an approval from a lender that charged a \$1,900 fee.

Attorney: So you increased the cash price by \$1,900 to cover the fee?

FIM: Yes.

Attorney: Why did you do that?

FIM: My Sales Manager told me to. He said that the customer is the one who screwed up his credit and we weren't paying any f'ing juice to get this deal done.

Attorney: Do you realize that increasing the cash price to cover a subprime acquisition fee is a violation of the Federal Truth in Lending Act?

FIM: Well, the customer agreed to it.

Attorney: What do you mean?

FIM: I told the customer that, because of his poor credit, that the lender we got an approval from was charging an extra \$1,900 to finance the car and we had to increase the price to pay the fee. He was OK with that.

Attorney: Really. How many other federal or advertising laws did you encourage my client to violate?

### **Solution**

One of the basic definitions of a finance charge in the Truth in Lending Act is a charge that is assessed to finance customers that cash customers do not pay. If this customer has paid cash for the car, he would have paid \$10,500. Increasing the sale price to absorb the acquisition fee meant the customer paid a fee that a cash customer would not have paid.

Subprime acquisition fees must be taken as a cost of goods sold. The cash price cannot be increased to cover an acquisition fee. Dealers that operate successful subprime operations understand that you must work subprime deals backwards.

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