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Stuff I read in depositions – Having a process

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 the having a process and making the deal jacket your best defense witness.

Background

The basis for this lawsuit was that the dealership sold three products in the F&I department and did not disclose them on the Retail Installment Sales Contract. The F&I Manager thought she was going to help the dealership win the case with her testimony in the deposition.

Interrogation

Attorney: Ms. Finance Manager, are you familiar with this deal?

FIM: Yes, I remember doing this deal.

Attorney: How many transactions do you handle on a monthly basis?

FIM: It varies, based on how many cars we sell.

Attorney: On the average, how many transactions do you handle on a monthly basis?

FIM: Probably 75 a month.

Attorney: Looking at Exhibit A, the Retail Installment Sales Contract, can you tell me what date this transaction took place.

FIM: March 5, 2004.

Attorney: That would be over four years ago, right?

FIM: Right.

Attorney: And you remember this specific transaction.

FIM: Yes, I do and we didn't do anything wrong.

Attorney: Let me understand this. You remember this specific transaction, you remember my client on this transaction, from four years ago after you have closed over 3,500 transactions?

FIM: Yes, I do.

Attorney: What color shirt was my client wearing on March 5, 2004?

FIM: Um, I don't know.

Attorney: Was the sun shining or was it raining on March 5, 2004?

FIM: I don't remember.

Attorney: Did anyone accompany my client to your dealership on March 5, 2004?

FIM: I'm not sure.

Attorney: So, to recap: You don't know what my client was wearing or what the weather was like or even if someone was with my client on March 5, 2004, but you want me to believe that you remember every detail of this specific transaction?

FIM: ...

Solution

There is no way that anyone would be expected to remember details of transactions from four weeks ago, let alone four years ago. Trying to assert that you do opens you up to ridicule.

Instead, you must have a process in place so that the paper trail in your deal jacket is your best defense witness. The paperwork must show that the transaction was completed in a transparent, completely above board manner.

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