

## The Next Wave Of Class Action Lawsuits

I frequently refer to the various, sometimes nefarious, creatures pursuing car dealers as Sharks. You know who I mean...Aspiring Governors, Plaintiff's Attorneys, Federal and State Regulators, Special Interest Groups and the Media.

The members of the Plaintiff's Attorneys Shark Club are getting their surfboards out to start riding the next wave of class action litigation: Negative equity.

All of the ingredients for successful Sharks' class action litigation are in place.

The Law Has Been Around For Seven Years The changes to Regulation Z that provides for the proper disclosure of negative equity has been in effect for seven years now. Yet, many dealers do not comply with the reg.

Consumers Know It The majority of consumers are buried in their trades, and worse yet, know what the terms upside down and negative equity mean.

Sharks Know It Plaintiff's attorneys have been attending 20 Sharks meetings (similar to dealers 20 group meetings) and are now prepared with templates of briefs to start filing class action litigation.

Judges Know It The appellate court in California recently ruled against the dealer in a case involving the rolling of negative equity into line one, stating in its opinion that such a practice is a violation of both state and federal disclosure laws.

Some Creditors Don't Care Some creditors are not permitting dealers to properly disclose negative equity on the Retail Installment Sales Contract. These shortsighted companies just don't seem to understand that dealers look to them for guidance on all things credit related. GMAC, however, recently announced that it would accept negative equity on contracts in all states except Vermont. Hopefully, the rest of the lending community will follow GMAC's lead.

Disclosure and Advertising Not only is it a potential violation of disclosure laws, but rolling negative equity could lead to false advertising claims by disclosing a sale price on the Retail Installment Sales Contract that is substantially higher than the advertised price.

Disclosure and Taxation Additionally, rolling negative equity into the purchase price could lead to charging a higher sales tax in those states that tax on the purchase price and not the trade difference.

### **How Can You Protect Yourself?**

1. Immediately require that the appropriate trade allowance is properly reflected on your Buyer's Orders. Lenders can't dictate how your Buyer's Orders are prepared and this will give you at least one document that accurately reflects the transaction.

2. Call every lender you do business with and ask, "How do you want me to disclose negative equity?" Get it in writing so that you do not unnecessarily increase your CIT's.
3. If necessary, stop doing business with those creditors that refuse to allow you to properly disclose negative equity. After all, the dealers are the ones being bit by the Sharks on the negative equity issue, not the lenders. Eventually the lenders who haven't seen the 21<sup>st</sup> Century light will get past worrying about Y2K issues.

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