

# AUTO FRAUD

# RESOURCES

See National Consumer Law Center ("NCLC") manuals on "Automobile Fraud", and "Unfair and Deceptive Acts and Practices", "Repossessions" and "Consumer Warranty Law"

# “UDAP”

Merchandising Practices Act (“MPA”) - § 407.020  
RSMo prohibits unfair and deceptive practices

*Ports Petroleum Company, Inc. of Ohio v. Nixon*,  
37 S.W.3d 237 (Mo.banc 2001) (literal words cover  
every practice imaginable and every unfairness to  
whatever degree)

# NO TITLE ON DELIVERY

- It shall be **unlawful** for any person to buy or sell in this state any motor vehicle... **unless, at the time of the delivery thereof**, there shall **pass** between the parties [the **Title**].
- The sale of any motor vehicle or trailer registered under the laws of this state, **without the assignment of such certificate of ownership**, shall be fraudulent and void.
  - § 301.210.4 R.S.Mo.

# 100,000 BOND EXCEPTION

Dealers takes out the larger bond

+

1. power of attorney from prior owner to obtain duplicate or replacement title
2. no liens or sales tax owed
3. signed agreement to provide title within 60 days

# NO TITLE ON DELIVERY

Dealer fails to deliver title

Sells trade-in

Installment contract assigned to finance co.

Consumer cannot register car; cannot get her trade-in back; and told she must continue to pay finance co.

# NO TITLE ON DELIVERY

## Finance Company & Auto Dealer

Master agreement incentivizes large batches of assignments from dealer to finance co.

Finance co. accepts assignment from dealers with no questions asked re title transfer to consumer

# NO TITLE ON DELIVERY Consumer Trap

Floor Plan Bank – “Floorplanner”

Loans money to dealer to purchase  
auto inventory

Retains titles to autos as security



# NO TITLE ON DELIVERY Responsibility

Floorplanner – holding titles

Assignee Finance Co. – demanding payment

Auto Dealer - gone

Consumer - ?

# NO TITLE - CASES

*Brockman v. Regency Financial Corp.*, 124 S.W.3d 43 (Mo.App.W.D. 2004) (suit by assignee finance company on void installment contract resulted in verdict for actual and punitive damages against finance company for malicious prosecution)

*State ex rel. General Motors Acceptance Corp. v. Standridge*, 181 S.W.3d 76 (Mo. 2006) (counterclaim for malicious prosecution procedurally proper in suit by assignee finance company on void installment contract)

# NO TITLE - CASES

*Peel v. Credit Acceptance Corp.*, 408 S.W.3d 191  
(Mo.App.W.D. 2013) (substantial punitive damages against assignee finance company for improperly forcing consumer to pay on void contract, in violation of MPA)

# NO TITLE ON DELIVERY Collection – Consumer Trap

“[Carrie Peel] continued to drive the car without proper registration because she needed it to get to work and pick up her children. She also continued to make monthly payments because she was trying to protect her credit rating and was afraid the car would be repossessed, leaving her family without transportation.

*Id. At 196-97.*

# NO TITLE ON DELIVERY Consumer Protection

“To blame the consumer for not being given something that the seller is required to produce is absurd.”

*Peel – Id. at 203*

# SAFETY INSPECITON

- At the seller's expense every vehicle of the type required to be inspected by section 307.350, whether new or used, shall **immediately prior to sale be fully inspected.**

- § 307.380 R.S.Mo.

# SAFETY INSPECITON

## Salvage Exception

- No safety inspection if the vehicle is being sold for **junk, salvage, or rebuilding**
- The purchaser shall give to the seller an **affidavit**, on a form prescribed by the superintendent of the Missouri state highway patrol, stating that the vehicle is being purchased for one of the reasons stated herein.
  - § 307.380 R.S.Mo.

# **E-ZZ AUTO SALES INC.**

2828 Gravois  
St. Louis, MO 63118  
314/865-3900  
Fax: 314/865-1174

## **AFFIDAVIT**

I understand that the automobile or truck which I am buying has not been inspected and is in an unsafe mechanical condition. The vehicle is being purchased for junk, salvage or for the purpose of rebuilding, I understand that the vehicle cannot be operated in its present condition, therefore, I agree that the vehicle will either be towed or hauled from the place of purchase. I further understand that the vehicle cannot be registered and operated upon a public highway until I have the vehicle inspected. If any defects are discovered in the vehicle's brakes, lights, turn signals, steering mechanism, horn, mirrors, windshield wipers, tires, wheels, exhaust system, glass, or fuel tank, during the inspection, they must be repaired at my own expense. I certify I have read the above statement or the above statement has been read to me, and that I fully understand the conditions under which the vehicle is being purchased.

**THIS VEHICLE HAS NOT BEEN INSPECTED**



# SAFETY INSPECITON

## Cannot Be Waived

- “Nowhere does the statute indicate that a buyer, by closing a sale after receiving knowledge that he is not going to receive the Missouri safety inspection, relieves the seller of the duty imposed by the statute.
  - [Veine v. Concoors Auto Sales, Inc., 787 S.W.2d 824, 815 \(Mo. Ct. App. 1990\).](#)

# SAFETY INSPECITON Facts

- Facts Inconsistent with Salvage Purchase
  - Told seller wanted a reliable car
  - Test drive
  - Temporary tags
  - Seller's representations - car runs well
  - Drove it off the lot
  - Affidavit never notarized

# MOTOR VEHICLE TIME SALES LAW

Overcharges for official fees, attorney fees, other violations of § 365.070 RSMo requirements result in bar, under § 365.150 RSMo, against collection of interest (“time price differential”) and refund of interest collected.

*See Mitchell v. Residential Funding Corp.*, 334 S.W.3d 477 (Mo.App.W.D. 2010) (decided under Second Mortgage Loan Act provision, § 408.236 RSMo, with language virtually the same as that in § 365.150 RSMo)

# MOTOR VEHICLE TIME SALES LAW

Per § 365.145 RSMo, violations of MVTSL trigger the remedies under § 408.562 RSMo for actual and punitive damages and attorney fees

# EXCESSIVE LATE FEES

- A charge for late payment on each installment or minimum payment in default for a period of not less than fifteen days in an amount **not to exceed five percent of each installment due or the minimum payment due or \$25, whichever is less;**

- § 365.100 R.S.Mo.

# EXCESSIVE LATE FEES

Balance increased due to improperly assessed late charges

365.100 – no late fee prior to 15 days after default

# BUYER'S RIGHT TO CURE

- After a borrower has been in default for **ten days** for failure to make a required payment and has not voluntarily surrendered possession of the collateral, a lender may give the borrower [**a right to cure**]
  - [§ 408.554](#)

# BUYER'S RIGHT TO CURE required prior to repo

- After a default consisting only of the borrower's failure to make a required payment, a lender, because of that default, may neither:
  - accelerate maturity of the unpaid balance nor
  - take possession of or otherwise enforce a security interest
- until twenty days after a notice of the borrower's right to cure is given both to the borrower and to all cosigners.
  - 408.555 R.S.Mo.



# **E-ZZ AUTO SALES INC.**

2828 Gravois  
St. Louis, MO 63118  
314/865-3900  
Fax: 314/865-1174

## **REPOSSESSION AFFIDAVIT**

- 1) If payments are not made as agreed on the contract, we will repossess the car.
- 2) If payment is not received at this office within five (5) calendar days from the date due, seller may commence repossession process and repossess vehicle immediately.
- 3) The buyer agrees to surrender the car, regardless of time, (day or night), and also agrees to allow the collection agency to come on his or her private property to repossess the car.
- 4) If the car is repossessed, the buyer will have five (5) calendar days to redeem the car. At this time the buyer will be required to bring the payments up to date and pay the repossession charge of **\$350.00**, plus Ten dollars a day late fee starting the first day past the due date. No partial payments will be accepted. Seller reserves the right to call in the balance if payment is not made on due date.
- 5) If your car is repossessed and not recovered by you, it will be sold for not more than balance due after 5 days from date of repossession, or the car may be scrapped and sold for salvage and/or parts.
- 6) We are not responsible for any lost, damaged or stolen articles after the repossession has been made.
- 7) I have read the information printed and agree to it as part of this contract.

# BUYER'S RIGHT TO CURE

- Repo mills do not provide Right to Cure
  - In fact many admit the violation:

- 1) If payments are not made as agreed on the contract, we will repossess the car.
- 2) If payment is not received at this office within five (5) calendar days from the date due, seller may commence repossession process and repossess vehicle immediately.

# BUYER'S RIGHT TO CURE

## Conversion (MMPA Violation)

- The repossession of Plaintiff's car was unlawful and amounted to **Conversion** of her property.
- Missouri Merchandising Practices violation

*See e.g., §§60-8.020, .090*

# BUYER'S RIGHT TO CURE Cannot Be Waived

- Missouri Motor Vehicle Time Sales Law:
- “Sections 408.551 to 408.562, RSMo, shall apply to any retail installment transaction made pursuant to sections 365.010 to 365.160.”
- **“Any waiver of the provisions of this chapter is unenforceable and void.”**
  - [§ 365.145 and 365.160.](#)

# DISCLOSURE STATEMENT OF LOAN AND PROMISSORY NOTE

A-19

ACCOUNT NUMBER

DATE OF LOAN  
3/20/2008

3 OF BORROWER  
N

LENDER'S NAME AND ADDRESS

53420

LOU BUDKE'S ARROW FINANCE COMPANY  
3528 HAMPTON AVE.  
ST. LOUIS, MO 63139

**ANNUAL PERCENTAGE RATE**

The cost of your credit as a yearly rate.

49.9755 %

**FINANCE CHARGE**

The dollar amount the credit will cost you.

\$ 292.21

**Amount Financed**

The amount of credit provided to you or on your behalf.

\$ 1,004.63

**Total of Payments**

The amount you will have paid after you have made all payments as scheduled.

\$ 1,296.84

**FEEES**

(a) FILING \$ \_\_\_\_\_

(b) ..... \$ \_\_\_\_\_

(c) ..... \$ \_\_\_\_\_

(d) ..... \$ \_\_\_\_\_

**Itemization of Amount Financed**

Amount given to me directly	\$	0.00	(a)
Amount paid on my account	\$		(b)
Amounts paid to others on my behalf			
To Property Insurance Company	\$		(c)
To Credit Life Insurance Company	\$	7.13	(d)
To Disability Insurance Company	\$	0.00	(e)
To Public Officials	\$	2.50	(f)
<b>PIGGY'S PREOWNED</b>	\$	995.00	(g)
	\$		(h)
	\$		(i)
	\$		(j)
	\$		(k)
Prepaid Finance Charge	\$	50.00	(l)
AMOUNT FINANCED (a through k - l)	\$	1004.63	(m)
Finance Charge (include prepaid)	\$	292.21	(n)
Total of Payments (m + n)	\$	1296.84	(o)

My Payment Schedule will be:

Number of Payments	Amount of Payments	When Payments Are Due
12	108.07	Beginning 4/19/2008 MONTHLY
	\$	

Security: I am giving a security interest in:

(brief description of other property)

the goods or property being purchased.

**Late Charge:** If a payment is not paid in full within 15 days after it is due, I will pay a late charge of 5% of the late payment, with a minimum charge of \$15 (not to exceed \$50.)

**Prepayment:** If I pay off this loan early, I may be entitled to a refund of part of the finance charge. I can see my contract documents for any additional information about nonpayment default, any required repayment before the scheduled date, and prepayment refunds and penalties.

# RETAIL INSTALLMENT CONTRACT

DATE: JANUARY 25th 2008

Account No. \_\_\_\_\_

Buyer's Name: [REDACTED]

Buyer's Address: [REDACTED] BATES

City: ST. LOUIS State: MISSOURI Zip: 63111

Home Telephone No. 314 [REDACTED] Business Telephone No. \_\_\_\_\_

This agreement covers my installment purchase from you of the motor vehicles described below. In this agreement, the words I, me, and my mean each and all of the Buyers. The words you, your, and yours refer to the Seller. These words mean the same thing in the Security Agreement on the back.

I understand that you will assign this agreement to \_\_\_\_\_ and I will make my installment payments directly to them.

**Vehicle Purchased:**

Used/Year/Make/Model/Cylinders/Body Type/Serial No.  
Used / 1989 / PONTIAC / BONNEVILLE / 6 / 4DR / 158K4441200277115

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	AMOUNT FINANCED	TOTAL OF PAYMENTS	TOTAL SALE PRICE
The cost of my credit as a yearly rate.	The dollar amount the credit will cost me.	The amount of credit provided to me or on my behalf.	The amount I will have paid after I have made all payments as scheduled.	The total cost of my purchase on credit, including my downpayment of \$ <u>250.00</u>
<u>11.93%</u>	<u>\$ 8.00</u>	<u>\$ 2,295.00</u>	<u>\$ 2,295.00</u>	<u>\$ 3,845.00</u>

My payment schedule will be

Number of Payments	Amount of Payments	When Payments are Due
<u>9</u>	<u>250.00</u>	Monthly beginning <u>3/1/08</u> P.1
<u>1</u>	<u>45.00</u>	<u>12/09/08</u> <u>ABT</u>

**SECURITY:** I am giving a security interest in the vehicle being purchased.

**FILING FEES:** \$ \_\_\_\_\_

**LATE CHARGE:** If a payment is 10 days late, I may be charged \$ 5.00 or 5% of the payment, whichever is less, or a \$ 1.00 minimum charge.

**PREPAYMENT:** If I pay off early, I may have to pay a penalty, but may be entitled to a refund of part of the finance charge.

See the contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

**INSURANCE: Property Insurance**

I understand that property insurance (covering loss of or damage to the vehicle described above) is required and may be obtained from any source I choose, subject to your right to disapprove an insurer for reasonable cause. I have decided I want you to provide the property insurance, if any, indicated below:

- \$ 100 Deductible Collision Term \_\_\_\_\_ Mos. Cost \$ 14.00
- \$ 50 Deductible Trip Collision Term \_\_\_\_\_ Mos. Cost \$ 14.00
- Fire and Theft Term \_\_\_\_\_ Mos. Cost \$ 14.00
- Combined Additional Coverage Term \_\_\_\_\_ Mos. Cost \$ 14.00
- Personal Effects Term \_\_\_\_\_ Mos. Cost \$ 14.00
- Vendor's Single Interest Term \_\_\_\_\_ Mos. Cost \$ 14.00

**LIABILITY INSURANCE COVERAGE FOR BODILY INJURY AND PROPERTY DAMAGE CAUSED TO OTHERS IS NOT INCLUDED.**

**Personal Insurance**

Credit life insurance and credit disability insurance are not required to obtain credit, and will not be provided unless I sign and agree to pay the additional cost I have decided I want the personal insurance, if any, which is indicated below:

- Credit Life Only Term \_\_\_\_\_ Mos. Cost \$ \_\_\_\_\_
- Credit Life - A&H Term \_\_\_\_\_ Mos. Cost \$ \_\_\_\_\_

I understand that if there is more than one signer of this note, only the signer(s) of this insurance request will be covered by credit life, and if there are two, only the first signer of this insurance request will be covered by accident and health. I acknowledge that you filled in the blank spaces to show the cost and term of the insurance before I signed.

Signature \_\_\_\_\_

Signature \_\_\_\_\_

**PREPAYMENT:** I have the right to prepay the whole outstanding

# Finance price minus cash price = Finance charge

- Undisclosed Finance Charge violates TILA
- Violates MMPPA
- Statutory damages of \$1,000
- Actual damages.
  - Finance charge in sale price = increased sales tax and property tax

# MISREPRESENTATION (of fact)

- "A given representation can be an expression of opinion or a statement of fact depending upon the circumstances surrounding the representation."
- ...salesperson's statement that car was "good" and "reliable" was misrepresentation of fact.
  - [Carpenter v. Chrysler Corp., 853 S.W.2d 346, 358 \(Mo. Ct. App. 1993\).](#)
- ...here, we believe that [dealer's] representation that the Jimmy was "very nice" could reasonably be taken as a statement of fact as to the condition of the Jimmy.
  - [Grabinski v. Blue Springs Ford Sales, Inc., 136 F.3d 565, 569 \(8th Cir. Mo. 1998\)](#)



# MISREPRESENTATION

- The car is a "good running car"
- One owner
- Never been wrecked
- We have done work on the car and it is in good running order

# MISREPRESENTATION

Vehicle is a good car, reliable

- Reality is the vehicle is a rebuilt wreck
- Actionable misrepresentation regardless of salesperson's knowledge re rebuilt wreck – no way the statement is true
- Subjects dealership to punitive damages

*See e.g., Cohen v. Express Financial Services, Inc.*, 145 S.W.2d 857 (Mo.App.W.D. 2004)

# ACTIONABLE MISREPRESENTATIONS

## MPA Claims

Lack of Good Faith in making misrep's

Factually Erroneous

Look to regulations - 15 C.S.R. §§60-8.010, et seq., 15 C.S.R. §§60-9.010, et seq.

# MISREPRESENTATION

## As Is Clause

- The “as is clause” is a contractual defense, it does not apply to fraud or violations of the Merchandising Practices Act.
  - [DeLong v. Hilltop Lincoln-Mercury, Inc., 812 S.W.2d 834, 841 \(Mo.App.1991\);](#)
  - [Slusher v. Jack Roach Cadillac, Inc., 719 S.W.2d 880, 882 \(Mo.App.1986\).](#)

# EXPRESSSIONS OF WARRANTY

Magnuson-Moss Act 15 U.S.C. §2310

Express Warranty §400.2-313

Implied Warranty §400.2-314

# ADDITIONAL MPA VIOLATIONS

Violations of other laws such as Time Sales Law, Title Statute, etc.

15 C.S.R. §§60-8.020, et seq., *Ward v. West County Motor Co., Inc.*, 403 S.W.3d 82, 86 (2013)

# COMMON LAW FRAUD & UDAP

The purpose of these statutes is to supplement the definitions of common law fraud in an attempt to preserve fundamental honesty, fair play and right dealings in public transactions.

*State ex rel. Danforth v. Independence Dodge, Inc., 494 S.W.2d 362, 368 (Mo.App.W.D. 1973)*

# COMMON LAW FRAUD & UDAP

## Misrepresentations Frequently Are Both

If there were no more involved here than mere silence, the failure of defendant to disclose these facts in face of knowledge of their existence could be held to be fraudulent...



# COMMON LAW FRAUD & UDAP

But here, mere silence does not stand alone. In addition, defendant's salesmen affirmatively represented...that the car had been driven only by the defendant's general manager and "was a new car in every respect" except that it had been driven for approximately 3,000 miles. Even if Veatch and Scott did not have the specific knowledge... guilty of fraudulent conduct in making affirmative statements while conscious that they were actually without knowledge as to the truth or falsity of the statements so made.

*State ex rel. Danforth v. Independence Dodge, Inc. – Id. at 369*

# PATTERN EVIDENCE

*BMW of North America, Inc. v. Gore*, 517 U.S. 559, 575 (1996) - increased the necessity for a plaintiff alleging fraud and seeking punitive damages to seek pretrial discovery of similar alleged acts of misconduct by the defendant, in that the United States Supreme Court stated: "Perhaps the most important indicium of the reasonableness of a punitive damages award is the degree of reprehensibility of the defendant's conduct."

See Annotation: Admissibility of Evidence of Other Crimes, Wrongs, or Acts Under Rule 404 (b) of Federal Rules of Evidence, in Civil Cases, 64 A.L.R. Fed 648)

# PATTERN EVIDENCE

*Brockman v. Regency Financial Corp.*, 124 S.W.3d 43 (Mo.App.W.D. 2004) (evidence of other transactions in which consumers who did not get titles were wrongfully sued was admissible to show intent and absence of mistake and to support punitive damages)

*Peel v. Credit Acceptance Corp.*, *supra* (evidence of other transactions in which consumers who did not get titles were told they had to pay anyway was admissible to show intent and absence of mistake and to support punitive damages)

# PATTERN EVIDENCE

*Bird v. John Chezik Homerun, Inc.*, 152 F.3d 1014 (8th Cir. 1998) (rebuilt wreck fraud case, pattern evidence admitted for multiple purposes under Missouri law)

*Edgar v. Fred Jones Lincoln-Mercury of Oklahoma City, Inc.*, 524 F.2d 162 (10th Cir. 1975) (reversal in car fraud case based in part on refusal to admit evidence of other odometer rollbacks)

# PATTERN EVIDENCE

Pattern evidence sources – court filings, AG complaints, open records requests, department of revenue records (dealer monthly sales reports, vehicle title histories), former employees, Better Business Bureau complaints, auction records, UCC-1 filings, regular discovery (interrogatories, requests for production, dealer depositions)

# DAMAGES

*Grabinski v. Blue Springs Ford Sales, Inc.*, 136 F.3d 565, 570 (8th Cir. 1998) (actual and punitive damages against dealer and salesmen for misrepresentation of rebuilt wreck and misrepresenting legal effect of junk affidavit)

*Chong v. Parker*, 361 F.3d 455 (8th Cir. 2004) (trial court reversed for refusal to submit punitive damages to jury)

*Moore v. Courtesy Chevrolet, Inc.*, 854 S.W.2d 13 (Mo.App.W.D. 1993) (misrepresentation as executive car supports punitive damages)

*Williams v. Finance Plaza, Inc.*, 78 S.W.3d 175 (Mo.App.W.D. 2002) (treble actual damages and attorney's fees under federal odometer act for misrepresenting mileage)

# DAMAGES

*Scott v. Blue Springs Ford Sales, Inc.*, 176 S.W.3d 140 (Mo.banc 2005) (plaintiff can “mix and match” awards under different theories based on the same misconduct, i.e., obtain a judgment for actual damages and attorney’s fees under MPA claim, and punitive damages under common law fraud claim)

# PUNITIVE DAMAGES

Defendant's financial condition - focus not necessarily on "net worth", but on gross sales or income or revenue - *Mathias v. Accor Economy Lodging, Inc.*, 347 F.3d 672, 677-8 (7th Cir. 2003); *Barnett v. La Societe Anonyme Turbomeca France, S.A.*, 963 S.W.2d 639, 654-5 (Mo.App.W.D. 1997)



# PUNITIVE DAMAGES

Despite *State Farm v Campbell* 9:1 ratio dicta, support for high-ratio punitive damages remains

*Estate of Overbey v. Chad Franklin National Auto Sales North, LLC*, 361 S.W.3d 364 (Mo.banc 2012) (\$4,500 actuals, \$500,000 punitives);

*Krysa v. Payne*, 176 S.W.3d 150, 162 (Mo.App. 2005) (\$18,449 actuals, \$500,000 punitives);

*Peel v. Credit Acceptance, supra* (\$11,000 actual damages, \$881,000 punitive damages).

# PUNITIVE DAMAGES

§ 510.265 RSMo caps punitive damages at five times net amount of judgment – attorney fee award is included in the net amount of the judgment for purposes of the multiplier - *Hervey v. Missouri Department of Corrections*, 379 S.W.3d 156 (Mo. 2012)

# Dealer Bond

Dealer Bond 301.560 RSMo

\$25,000

Multiple Consumers without title (or ability to get their trade-in back)

# DEALER BOND

*Webb v Hartford Casualty Ins. Co.*, 956 S.W.2d 272 (Mo.App.W.D. 1998) (\$25,000 bond dealers are required to post to get a license covers actual damages and attorney fees awarded to consumer)

# UCC REQUIREMENTS

Non-compliance triggers “absolute bar rule”  
– creditor failure to comply with UCC  
requirements bars collection of deficiency.

*Consumer Finance Corp. v. Reams*, 158 S.W.3d 792  
(Mo.App.W.D. 2005)

# UNIFORM COMMERCIAL CODE REQUIREMENTS

Presale notice requirements set out in §§ 400.9-611, 400.9-613 and 400.9-614 RSMo

Safe harbor form notice in § 400.9-614 ever since 2001 – many creditors still use non-compliant notices

# UCC Violations

Party seeking claimed deficiency must plead and prove compliance with UCC requirements

*Ford Motor Credit Co. v. Updegraff*, 218 S.W.3d 617 (Mo.App.W.D. 2007); § 408.556 RSMo

# UCC VIOLATIONS

Party seeking deficiency held to strict compliance with notice requirements; non-compliance triggers the statutory damages provided in § 400.9-625(c)(2) RSMo

*Boulevard Bank v. Malott*, 397 S.W.3d 458, (Mo.App.W.D. 2013)



# UCC VIOLATIONS

Deficiency bar and statutory damages are cumulative

*McKesson Corp. v. Colman's Grant Village, Inc.*, 938 S.W.2d 631 (Mo.App.E.D. 1997)

# UCC VIOLATIONS

Statute of limitations for creditor's deficiency action is four years

*D.A.N. Joint Venture, III v. Clark*, 218 S.W.3d 455 (Mo.App.W.D. 2007)

Suit against debtor after statute of limitations has run can subject attorney and/or third-party debt buyer to claim for violation of Fair Debt Collection Practices Act

*Freyermuth v. Credit Bureau Services*, 248 F.3d 767 (8th Cir. 2001)

# NOTICE OF SALE

- Repo mills often do not bother with notice of sale:
  - Make money on down payments.
  - Make no attempt at a commercially reasonable sale and do not send notice
  - Sell the car off the lot
    - often for price same as/close to the previous sale.

# COMMERCIAL REASONABLENESS

(b) Every aspect of a disposition of collateral, including the method, manner, time, place, and other terms, must be commercially reasonable...

§400.9-610(b) RSMo

# COMMERCIAL REASONABLENESS

In any action brought by a lender against a borrower arising from default, the petition shall allege the facts of the borrower's default, facts sufficient to show compliance with the provisions of sections 400.9-601 to 400.9-629, RSMo

§408.556 RSMo

# COMMERCIAL REASONABLENESS

Hence, to state a cause of action for a deficiency judgment, the respondent, inter alia, had to plead compliance with the mandate of §400.9-610(b).  
And, the failure to do so would require dismissal...

*Ford Motor Co. v. Updegraff, supra*

# REPO MILL VERSION

Repossess vehicle (that was misrepresented and broke down)

Haul car back to your own lot

Book "sale" to your company at self-selected NADA price

Dress up same lemon and sell for thousands more

# REPO MILL VERSION

*Auto Acceptance Finance, LLC v. Barnard*

10JO-CV00430

Sale to Mr. Barnard for \$8,995.00

Post-repo "sale" booked at \$1,625.00

Actual sale to next consumer for \$5,995.00

Repeat



# STATUTORY DAMAGES

- If the collateral is consumer goods, a person that was a debtor or a secondary obligor at the time a secured party failed to comply with this part may recover for that failure in any event an amount not less than the credit service charge plus ten percent of the principal amount of the obligation or the time-price differential plus ten percent of the cash price.
  - § 400.9-625 R.S.Mo.

# LOSS OF SURPLUS

- (d) A debtor whose deficiency is eliminated under section 400.9-626 may recover damages for the loss of any surplus.
  - § 400.9-625 R.S.Mo.

# POST SALE NOTICE Required

- Explanation of calculation of surplus or deficiency
  - § 400.9-616 R.S.Mo.

# POST SALE NOTICE

## Not Providing = Statutory Damages

- In addition to any damages recoverable under subsection (b), the debtor, consumer obligor, or person named as a debtor in a filed record, as applicable, may recover five hundred dollars in each case from a person that:
  - (5) Fails to comply with section 400.9-616(b)(1) and whose failure is part of a pattern, or consistent with a practice, of noncompliance; or
    - § 400.9-625 R.S.Mo.

# FREE MARKETS REQUIRE ENFORCEMENT

“[D]ishonest dealings tend to drive honest dealings out of the market. The cost of dishonesty, therefore, lies not only in the amount by which the purchaser is cheated; the cost also must include the loss incurred from driving legitimate business out of existence.”

Akerlof, George, “The Market For Lemons”, 1970

Nobel Memorial Prize in Economic Sciences, 2001