

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

DONALDSON TWYMAN,
Plaintiff,

v.

S&M AUTO BROKERS, INC., SAED
IHMOUD, and MOHAMMED IHMOUD,
Defendants.

Case No.: 16-cv-04182

Hon. Virginia M. Kendall
Magistrate Judge Sheila Finnegan

**PLAINTIFF'S RESPONSE TO DEFENDANTS'
MOTION TO DISMISS ON JURISDICTIONAL GROUNDS**

We conclude that punitive damages were appropriate, given Ogden [Chrysler's] reckless disregard of Ciampi's rights. ... [T]he amount of punitive damages is not excessive. Relevant circumstances in reviewing an award of punitive damages include, among other things, the nature and the enormity of the wrong, the financial status of the defendant ... As to the nature and enormity of the wrong, Ogden's statements were clearly intended to induce Ciampi to purchase the LeBaron at a price considerably more than the car's worth. Ciampi paid even more for the LeBaron than the manufacturer's suggested retail price for the vehicle without 13,000 miles of usage. We conclude that the award of \$100,000 [in punitive damages with a \$5,000 actual damage award] is both appropriate and proportionate to the nature and the enormity of the wrong.

Ciampi v. Ogden Chrysler Plymouth, Inc., 262 Ill. App. 3d 94, 113 (2nd Dist. 1994)

I. Introduction

Subject Matter jurisdiction exists in this case with or without the Federal Odometer Act claim. Plaintiff's principal basis for asserting federal jurisdiction is that he meets the \$75,000 diversity jurisdiction threshold. Defendant's motion to dismiss ignores the "legal certainty" standard required to dismiss a punitive damages case for lack of subject matter jurisdiction. It cannot be said to a "legal certainty" that Plaintiff, whose actual damages are between \$35,000 and \$40,000, will not be awarded at least an additional \$40,000 to \$45,000 in punitive damages thus meeting the diversity threshold.

This is a used car fraud case. As proven by auction listing and body shop records obtained in third party discovery, Defendants knowingly sold Plaintiff a dangerous rebuilt wreck following the same fraudulent pattern and practice that caused them to be sued by at least three other customers. Punitive damages are properly pled here given: (a) Defendants' egregious conduct in concealing that the car was a dangerous rebuilt wreck in order to earn inflated margins; (b) Defendants' recidivist behavior (which already warranted a \$40,000 punitive damages award in a recent Cook County trial involving identical misconduct); and (c) Defendants' likely substantial net worth.¹

The Manheim auction listing for the car, which Defendants tellingly failed to produce in discovery, put Defendants on notice that the car was in "Rough" condition meaning it had been in a serious accident. Exhibits A-B. This listing also notified Defendants that the car had substandard body work and bald tires and would be expected to have frame and structural damage. *Id.* Defendants repeatedly misrepresented to Plaintiff that the car was accident free and omitted to disclose in the internet advertisement and sales documents the many material defects. See Complaint (Dkt. 1) at pp. 1-2, 3-5, 7-9. If Plaintiff had known the truth he wouldn't have purchased the car. *Id.* This is part of pattern and practice by Defendants warranting enhanced punitive damages. *Id.* at pp. 1-2, 6-7. They have been sued 3 times in the past for the same fraud. *Id.*; Exhibits D-G.

Plaintiff will also present expert testimony that any knowledgeable car dealer would have seen that the car had major accident and frame damage. Defendants' all too convenient

¹ Defendant has refused to answer net worth discovery. "Most courts 'do not require a prima facie showing of merit on a claim for punitive damages before permitting discovery of a defendant's financial net worth.' *Countryman v. Cmty. Link Fed. Credit Union*, No. 1:11-CV-136, 2012 WL 1143572, at *6 (N.D. Ind. Apr. 3, 2012).

interrogatory answer claiming that they did not inspect the car after purchasing it sight unseen at auction is not credible and part of the same type of cover up attempts they have employed in the other lawsuits further justifying a punitive damages award. *See Totz v. Cont'l Du Page Acura*, 236 Ill. App. 3d 891, 904 (2nd Dist. 1992) (“a cursory inspection would have revealed to one experienced in the automobile business that the Accord had been extensively damaged in an accident. The trial judge could reasonably have concluded that Buonauro was aware of this fact at the time he and Delvin sold the car to the Totzes despite his denial.”)

Plaintiff has a reasonable expectation that punitive damages will exceed the \$100,000 awarded in *Ciampi*. The actual damages claimed in this case of \$35,000 to \$40,000 are a lot greater than the \$5000 at stake in *Ciampi*. In *Ciampi* there was also no evidence of recidivist conduct. Defendants’ willful misrepresentations and omissions, established pattern of dishonest dealing and anticipated substantial net worth calls out for an enhanced punitive damages award larger than the \$100,000 awarded in *Ciampi*. The realistic potential for such an award takes this case, where the actual damages are \$35,000 to \$40,000, well over the \$75,000 jurisdictional threshold. The evidence obtained to date, even before any deposition discovery and without completion of third party document discovery, proves that there is not a “legal certainty” that subject matter jurisdiction does not exist.

II. Basis for Actual Damages Sought in the Complaint

Although attempting to cast doubt on Plaintiff’s actual damage claims through innuendo, in their motion to dismiss, Defendants do not contest the at least \$30,000 in actual damages alleged in the Complaint. Defendants simply try to sow doubt. They offer no valuation testimony. As a car with a 1.9 “Rough” rating from Manheim Auction and as rebuilt wreck with

frame damage that had bald tires and was in a dangerous condition to drive at the time of sale, a 70% reduction in the sales price is consistent with standard valuation models. See Exhibits A-E.

Expert testimony is needed to prove the diminished value at the time of sale in a car fraud case. *Kim v. Mercedes-Benz, U.S.A., Inc.*, 353 Ill. App. 3d 444, 457 (1st Dist. 2004), opinion modified on reh'g (Oct. 21, 2004). An expert report is not due and cannot yet be prepared. Plaintiff still needs to obtain inspection records from Infiniti leasing and to obtain answers from a New Jersey car dealer who serviced the car. The following questions remain unanswered: Why does a car with only 17,000 miles have oil sludge in the engine with notations on the warranty records that it had been abused? Does the New Jersey dealer know anything about the accident that caused the frame damage? Why are there mileage discrepancies in the warranty service records with the mileage going up and down? Did the odometer get rolled back in the course of accident repairs as can happen?

In casting aspersions on Plaintiff's actual damages claims, Defendants also ignore that Plaintiff's damages include excess car loan interest payments, sales tax and aggravation and inconvenience damages. Aggravation and inconvenience damages are available as consequential damages in car fraud cases where Plaintiff has lost use of the car and suffered other inconvenience. *Jones v. Fleetwood Motor Homes*, 127 F. Supp. 2d 958, 965 (N.D. Ill. 2000); *McGrady v. Chrysler Motors Corp.*, 46 Ill. App. 3d 136, 140–41 (4th Dist. 1977); *Roche v. Fireside Chrysler-Plymouth, Mazda, Inc.*, 235 Ill. App. 3d 70, 86 (2nd Dist. 1992).

After the conclusion of fact discovery, Plaintiff expects to present expert testimony that he suffered \$35,000 to \$40,000 in actual damages consistent with the allegations in the Complaint. Actual damages will be calculated based on the benefit of the bargain damages

model. The Court in *Giammanco v. Giammanco*, 253 Ill. App. 3d 750, 759 (2nd Dist. 1993) described that method:

[O]ne method of calculating damages in cases of fraudulent misrepresentation or concealment is the difference between the value that the property would have had at the time of sale if the defects did not exist and the value the property actually had at the time of the sale due to the defects.

Plaintiff anticipates proving \$35,000 to \$40,000 in actual damages: (a) \$24,500 overcharge (the difference between the excessive \$35,000 price Plaintiff paid due to the fraud and the car's actual diminished value at the time of sale as a dangerous rebuilt wreck with frame damage and a short life expectancy); (b) \$4,500 in added car loan interest payments and sales tax due to the overcharge; and (c) \$5,000-\$10,000 in aggravation and inconvenience damages.

III. Argument

A. It Cannot be Said to a “Legal Certainty” that Plaintiff Will Not Obtain in Excess of \$45,000 in Punitive Damages on his Common Law Fraud and Consumer Fraud Claims.

It certainly cannot be said to a “legal certainty” that Plaintiff could not obtain in excess of \$40,000 to \$45,000 in punitive damages on his common law fraud and consumer fraud claims. This is the only way federal jurisdiction can be defeated, even under the heightened standard of jurisdictional review used in *LM Ins. Corp. v. Spaulding Enterprises Inc.*, 533 F.3d 542, 550 (7th Cir. 2008).

In *LM Ins. Corp.*, the Seventh Circuit found an expectation of \$55,000 in punitive damages could not be eliminated to a “legal certainty” when there were \$20,000 in actual damages at stake and the complaint alleged egregious conduct warranting punitive damages. *Id.* A similarly sized or larger punitive damages award is certainly no less improbable here to a “legal certainty”. In fact, a larger punitive damages award than was predicted in *LM Ins. Corp.* cannot be ruled out. In this case, actual damages are \$10,000 to \$15,000 larger than in *LM Ins.*

Corp. Also there is compelling and clear cut evidence of recidivist conduct (lawsuits and a punitive damages awards along with cover up attempts) that warrants enhanced punitive damages. Recidivist conduct was absent in *LM Ins. Corp.*

This case involves an egregious fraud. Defendants put the safety of Plaintiff, his family, and the public at risk in violation of the Motor Vehicle Code by putting a dangerous car on the road. Contrary to Defendants' misstatement of the law, car dealers are not entitled to special immunities and protections from punitive damages awards in consumer fraud suits. Defendants fail to apprise the Court that they rely upon and quote from a punitive damages provision in the Illinois Consumer Fraud Act that the Illinois Supreme Court found unconstitutional as special interest legislation. *Allen v. Woodfield Chevrolet, Inc.*, 208 Ill. 2d 12, 33, 802 (2003). In striking down that provision, the Illinois Supreme Court held:

Rather than protecting consumers from unethical business practices of vehicle dealers, the amendments protect vehicle dealers from legitimate claims that the consumers of their products may possess. *Id.*

What punitive damages will be awarded depends, not on the type of businessman who commits a consumer fraud, but on the reprehensible nature of the wrong and the facts of the case. *Gehrett v. Chrysler Corp.*, 379 Ill. App. 3d 162, 179 (2nd Dist. 2008). An award of punitive damages should be in an amount sufficient to punish and deter wrongdoing, if it was intentional, oppressive or evidences reckless disregard for the truth or the safety of others. *Id.*

Punitive damages may be awarded where the wrongful act committed by the Defendant is characterized by wantonness, malice, or other circumstances of oppressiveness and aggravation. *Los Amigos Supermarket, Inc. v. Metro. Bank & Trust Co.*, 306 Ill. App. 3d 115, 128 (1st Dist. 1999). Punitive damages are also proper where there is a reckless indifference to the rights or safety of others "to punish the offender and to deter that party and others from committing similar acts of wrongdoing in the future." *Loitz v. Remington Arms Co.*, 138 Ill.2d 404, 414-415

(1990). Defendants fail to mention reckless indifference as a basis for awarding punitive damages.

Defendants also neglect to apprise this Court that, as in *Ciampi*, juries regularly award substantial punitive damages in used car fraud cases, where as here, frame damage and accident history or other material facts are knowingly or recklessly suppressed or misrepresented. See *Gehrett*, 379 Ill. App. 3d at 179 (\$59,695.79 punitive damage award for misrepresentation of a four-wheel availability, where plaintiff obtained \$8,500 in actual damages); *Totz*, 236 Ill. App. 3d at 909 (\$5000 in punitive damages for concealing rebuilt wreck with \$400 in actual damages); *Crowder v. Bob Oberling Enterprises Inc.*, 148 Ill. App. 3d 313, 318–19 (4th Dist. 1986) (\$9000 in punitive damages for hidden accident and frame damage arising out of a \$5,500 actual damages award). In these cases and *Ciampi*, unlike here, the car dealers had not repeatedly been sued for the same misconduct yet continued to cheat and endanger later customers such as Plaintiff.

It is plainly obvious that using fraudulent means to knowingly or recklessly sell a dangerous rebuilt wreck, capable of causing serious bodily injury or death and doing so repeatedly warrants entry of a six figure punitive damage award. As the Court in *Crowder* held, concealing the accident history of a used car is exactly the type of misconduct that calls out for a judge or jury to award punitive damages:

Our review of the record thus far illustrates clearly the egregious scheme of deceit and fraud perpetrated by [car salesmen] Oberling and Fierge against plaintiff and against the public generally. Their false representations and omissions of material fact were made wantonly and by design. The trial court acted wisely in recognizing this to be a proper case in which to award punitive damages in order to punish Oberling and Fierge and to deter others from similar conduct. *Id.* at 318–19.

Falsely feigning ignorance and pretending they didn't know the car was a rebuilt wreck "illuminates [a used car dealer's] culpability" thus justifying a enhanced punitive damage award.

Id. at 317. Yet that is exactly what Defendants do under oath in discovery answers and again in their motion to dismiss. They falsely assert that the car was not in an accident. They have the chutzpah to do this in the face of: (a) a Manheim auction listing (which they viewed during the auction but failed to produce in discovery) proving the car was in a major accident (Exhibit B); and (b) a body shop estimate listing the frame damage and many other structural problems with the car (Exhibit C).

That Defendants are now engaged in a cover up and are lying in pleadings and interrogatory answers, warrants an enhanced punitive damages award (just as it did in the Cook County case where they used the same sharp tactics). In that case, they concealed the existence of this case when cross-examined at trial on pattern and practice issues.

Plaintiff knows of at least three other cases where Defendants' customers sued them for fraud. See Complaint (Dkt. No. 1) and Exhibits D-F. In response to Plaintiff's interrogatories, Defendants have refused to disclose other customer complaints of fraud that did not become lawsuits. Even worse, they perjured themselves and failed to identify in their interrogatory answers one of the similar customer lawsuits.

In the case that went to trial, a jury awarded \$40,000 in punitive damages and \$6,000 in actual damages (\$4,000 diminished value and \$2,000 in aggravation and inconvenience) against Defendant S&M Auto Brokers, Inc.² Exhibit G. In that case, as here, the Manheim auction listing disclosed to S&M that the car had frame damage and had been in a serious accident yet S&M denied knowledge of the listing and claimed there was no frame damage. See Exhibit D. As in *Totz*, 236 Ill. App. 3d at 904, expert testimony demonstrated there, as it will here, that any

² Plaintiff's counsel in that case was restricted by the Cook County Municipal Court damage cap from asking for more than \$40,000 in punitive damages. Plaintiff received the full amount of punitive damages requested in closing argument.

car dealer who inspected the car would have instantly known it had been in an accident and had frame damage given the major damages and substandard report work. *Id.* The expert also testified at trial that the car presented a danger to the customer and the driving public. Similar expert testimony in this case will prove that Defendants acted willfully and wantonly.

In this case, as in the three previous cases, Defendants knew that they were selling Plaintiff a dangerous rebuilt wreck. Defendants repeatedly lied to Plaintiff that the car was in good condition and had never been in an accident as they continue to do in their motion to dismiss brief. Exhibits D-F. The advertisement for the car and the sales documents also failed to disclose frame damage and the accident history in violation of the Consumer Fraud Act's disclosure requirements. The Act requires disclosure of all material facts known to Defendants including frame damage. 236 Ill. App. 3d at 904. Defendants' claim that by selling the car "as is" they are immunized from the consumer fraud claims is contrary to law. *Eisenberg v. Goldstein*, 29 Ill. 2d 617, 621 (1963); *Napcor Corp. v. JP Morgan Chase Bank, NA*, 406 Ill. App. 3d 146, 149, 152-53 (2nd Dist. 2010); *Bauer v. Giannis*, 359 Ill. App. 3d 897, 908 (2nd Dist. 2005) ("as is" clause is not a defense to fraud). Any reference to "as is" at trial would be improper as a victim is under no obligation to discover defendants' fraud.

The Court in *Hanson-Suminski v. Rohrman Midwest Motors, Inc.*, 386 Ill. App. 3d 585, 592-94 (1st Dist. 2008) rejected the same non-defenses advanced here. The Court rejected defendant's incredible claim that it did not know about the accident finding that "[d]efendant had access to such information, but did not provide it for plaintiff." *Id.* at 594. It also rejected defendant's "blame the victim" defense. *Id.* at 593. "[U]nder the Consumer Fraud Act, plaintiff was under no obligation to ascertain the accuracy of [defendant's] statement claiming the car had not been in any accidents." *Id.* at 593.

Plaintiff will prove through expert testimony that Defendants must have known that the car was in an accident and dangerous to drive. The substandard and extensive body work and bald tires (even if they hadn't been red flagged in the auction listing) would have been readily apparent to any experienced car wholesale buyer. Plaintiff also anticipates submitting expert testimony that it is established custom and practice for used car dealers to carefully review auction listings and inspect all cars purchased on line upon delivery. This custom and practice evidence will further undermine Defendants' patently false testimony that they didn't inspect the car after purchasing it sight unseen and didn't know it had been in accident.

The auction listing Plaintiffs recently obtained from Manheim Auction by way of subpoena (which Defendants withheld from discovery), conclusively proves that Defendants knowingly committed fraud just as the Complaint alleges. The car received an auction rating of 1.9 (out of 5) or "Rough." Exhibit B. This is a failing test score of 38% or an F when an A+ is 100%. The auction listing sheet also itemizes the substantial substandard body work and bald tires. *Id.* A 1.9 or "Rough" rating means that the car has "existing collision damage". Exhibit A. Mannheim further defines a 1.9 or "Rough" rating to mean:

This vehicle has been severely abused or has sustained major collision damage but may be drivable. It is cost prohibitive to extensively recondition the vehicle by automotive industry standards. The frame/structure is not expected to measure to published specifications. Although operable, this vehicle is near the end of its useful life. *Id.*

Defendants are simply incorrect in asserting that Plaintiff could not obtain more than \$75,000 in damages (with at least \$40,000 in punitive damages in addition to \$35,000 to \$40,000 in actual damages). Defendants' conduct is egregious. They knowingly cheated Plaintiff by selling him a dangerous rebuilt wreck at a grossly inflated price and then cheated him again on his trade-in giving him well under what his Mercedes E series was worth thus further inflating their ill-gotten gains. In order to earn excessive margins, Defendants endangered Plaintiff, his

family, and the public by putting a dangerous car on the road. The car had a bent frame and bald tires that did not meet the standards set by the Motor Vehicle Code.³ Exhibits B-C. The Code obligated Defendant to inspect the car and fix these safety issues before selling it.

To make matters worse, this was part of a pattern and practice which warrants enhanced punitive damages. *BMW of North America v. Gore*, 517 U.S. 559, 576-577 (1996) (“Our holdings that a recidivist may be punished more severely than a first offender recognize that repeated misconduct is more reprehensible than an individual instance of malfeasance.”); *O’Neill v. Gallant Ins. Co.*, 329 IllApp3d 1166, 1182 (5th Dist. 2002).

Defendants’ anticipated large net worth justifies a large punitive damages award. Net worth evidence can be admitted so the jury can set punitive damages commensurate with Defendants’ wealth sufficient to adequately punish them. *Tague v. Molitor Motor Co.*, 139 Ill. App. 3d 313, 318 (5th Dist. 1985) (“\$17,000 in punitive damages arising from \$1000 in actual damages justified due to Defendant’s net worth”). Plaintiff has not yet obtained net worth

³ The Code prohibits dealers from putting unsafe cars on the road and requires them to change out bald tires:

It is unlawful for any person to drive or move or for the owner to cause **or** knowingly **permit to be driven** or moved on any highway any vehicle or combination of vehicles which is in such **unsafe condition** as to endanger any person or property ***.

625 ILCS 5/2-101(a) (emphasis added)

No person or organization shall sell, lease, or offer for sale or lease, for highway use, **any pneumatic tire, or any vehicle equipped with a pneumatic tire**, which has a **depth of tread groove less than 3/32 of an inch**; except a pneumatic tire on a motorcycle or truckster may have a depth of tire groove of not less than 2/32 of an inch. Groove depth shall not be measured where a tie bar, tread wear indicator, hump or fillet is located.

625 ILCS 5/12-405 (emphasis added)

evidence because Defendants have improperly refused to answer net worth discovery.⁴

The sole case relied upon by Defendant, *Anthony v. Sec. Pac. Fin. Servs., Inc.*, 75 F.3d 311, 315 (7th Cir. 1996), to defeat jurisdiction has no bearing on this case. Unlike here, the plaintiffs in *Anthony* made no allegations, let alone presented evidence, when jurisdiction was challenged, to support a punitive damages award. *Id.* at 316. No willful, wanton or other misconduct warranting punitive damages was even alleged in the Complaint in *Anthony*. *Id.*

Here, Plaintiff not only alleged a pattern of reprehensible conduct entitling him to punitive damages, the very elements found wanting in *Anthony*, he has also submitted documents proving that Defendants acted willfully and wantonly in knowingly selling him a rebuilt wreck that was a safety hazard. Defendants continue to withhold more evidence supporting entry of a substantial punitive damage award, such as evidence of incidents where they have defrauded other customers and net worth discovery. Plaintiff also has not yet presented expert testimony.

This is not a case like *Anthony* where there can be no punitive damage award. It is the poster child for entry of a six figure punitive damage award based on a multiplier of at least 2, 3 or 4 times the \$35,000 to \$40,000 in actual damages. *LM Ins. Corp.*, 533 F.3d at 552 (2.75 multiplier appropriate in setting punitive damages to meet diversity threshold). Accordingly, it cannot be said to a “legal certainty” that Plaintiff will not obtain actual and punitive damages over \$75,000. *Id.* This Court should therefore deny Defendants’ motion to dismiss for lack of subject matter jurisdiction.

⁴ In the Cook County case, taking the exact opposite position to its objection here, S&M is arguing that the failure to introduce net worth evidence requires throwing out the punitive damages verdict. Plaintiff in that case relied on the large number of cars sold by S&M as evidence that a large punitive damage award was warranted.

B. Plaintiff Should be Permitted to Take Discovery on his Odometer Fraud Claim.

Federal jurisdiction for this case is also based on the Federal Odometer Act. Plaintiff has not yet completed discovery on this claim and depending on discovery obtained from the New Jersey car dealer that recorded the mileage discrepancy may take the depositions of Defendants.

Contrary to Defendants' misstatement of the law, a defendant need not *know* that the odometer reading is not the actual reading to be liable under the Federal Odometer Act. The correct law is:

- "Plaintiffs do not have to prove that the defendant actually knew he was supplying false or inaccurate information." *Ray Kim Ford, Inc. v. Daoud*, 750 F. Supp. 327, 327 (N.D. Ill. 1990). An "intent to deceive" is found where the "defendant's statements were made carelessly or recklessly, without knowledge of their truth or falsity, or without reasonable grounds for belief in their truth, especially in a case where defendant was under a duty to have the knowledge in question." *Buechin v. Ogden Chrysler-Plymouth*, 159 Ill. App. 3d 237, 252 (2nd Dist. 1987).
- A transferor "has a statutory duty to ascertain the true odometer reading and so state on the statement." *Id.* at 252. Transferors "cannot insulate themselves from liability by deliberately blinding themselves to the facts." *Ray Kim Ford, Inc.*, 750 F. Supp. at 327. "[S]ellers who reasonably should know that a vehicle's odometer reading has been changed but who close their eyes to that fact can be held liable under the Act." *Weatherby v. J.J. Wright Oldsmobile, Inc.*, 1986 WL 2610, at *3 (N.D. Ill. Feb. 21, 1986).
- A transferor who disregards his statutory duty and makes an "odometer statement [that] is inconsistent with the true odometer reading," acts recklessly. *Buechin*, 159 Ill. App. 3d at 253 (finding that defendant violated odometer fraud statutes by certifying odometer statement that inaccurately reported odometer reading at the time of sale without verifying the accuracy of the statement). Likewise, a transferor acts recklessly by certifying the accuracy of an odometer reading when it has access to information that would cast doubt on the truth of the statement. See, e.g., *Hall v. Riverside Lincoln Mercury-Sales*, 148 Ill. App. 3d 715, 720-21 (2nd Dist. 1986) (finding dealer liable for odometer fraud where it certified the accuracy of the odometer reading despite having documents accessible which refuted the accuracy of the reading).

Plaintiff is still seeking to obtain discovery from the New Jersey car dealer who made the mileage entry supporting the Complaint's rollback allegations. It is the custom and practice of servicing dealers to carefully make accurate mileage entries in the service record as inaccurate

entries harm their customers and interfere with obtaining service payments from the manufacturers. The New Jersey dealer made an entry for in excess of 19,000 with the next entry many months later going down to just over 17,000. Mileage roll backs often occur for various reasons such as when a car has been in a serious accident as this one was. The dealer who made the entry has not yet responded to third party document discovery. Plaintiff has not yet been able to interview employees of the dealer to find out the basis for the inconsistent mileage listings in the warranty service records. Such interviews often occur in conjunction with document subpoena responses which trigger witness cooperation that otherwise would not occur.

It is customary for many used car dealers to obtain warranty service records for cars they purchase. If the New Jersey dealer confirms the roll back issue, Plaintiff will depose Defendants on the issue of access to the service records showing the mileage discrepancy. Plaintiff should be permitted time to complete discovery on the odometer issues. Plaintiff will then determine if the odometer claim should remain or be voluntarily dismissed.

IV. Conclusion

For the foregoing reasons, Defendants' motion to dismiss for lack of subject matter jurisdiction should be denied.

DONALDSON TWYMAN

By: /s/ Peter Lubin
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CERTIFICATE OF SERVICE

I, Peter Lubin, the undersigned attorney, hereby certify that I served the foregoing **PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION TO DISMISS ON JURISDICTIONAL GROUNDS** upon the below counsel via the Court's CM/ECF system:

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Dated: August 15, 2016

/s/ Peter S. Lubin

EXHIBIT A

<div> <div>Manheim</div> <div>Vehicle Condition Grading Scale</div>  </div>									
Grade	Body Defects	Previous Repairs	Parts	Interior	Frame	Powertrain	Acces.	Fluids	Tires
5 Extra Clean	PDR Only	High Quality	Ok	No Damage	Ok (No Previous)	Ok	Ok	Full/Clean	Near New
4 Clean	Minor Defects	High Quality	Minor Missing	Minimal Wear	Ok (No Previous)	Ok	Ok	May Need Service	Good
3 Average	Some Repairs	Acceptable Quality	Missing Broken	Normal Wear	Ok (No Previous)	Ok	Minor Repairs	May Need Service	Average
2 Below Average	Substantial Repairs	Substandard	Missing Broken	Worn, Burns, Cuts, Stains	Possible Previous Substandard Repair	Operable, Poor Condition	Some Inoperable	Low/Dirty	Worn
1 Rough	Existing Collision Damage	Poor	Missing Broken	Worn, Burns, Cuts, Stains	Probable Damage	Runs Under Own Power	Many Inoperable	Low/Dirty	Worn
0 Extra Rough	Scrap-Parts?	Poor	Missing Broken	Severe Damage	Bent	Inoperable	Inoperable	Low/Dirty	Flat

Manheim



Inspections

CONSISTENCY. ACCURACY. DELIVERED.

MANHEIM

VEHICLE CONDITION GRADING SCALE

Grade 5, Extra Clean – Vehicle is in excellent condition, with only minor defects in panel surfaces as noted in the condition information for each vehicle. The body panels require no conventional body or paint work, but may have had limited high quality repairs performed. There are no missing, broken, or damaged parts that require replacement. The interior compartment has no cuts, tears or burns that require repair and does not show signs of wear. The vehicle's frame/structure has not been repaired or altered, and is expected to measure to published specifications. Vehicle is mechanically sound and all accessories are operable. All fluid levels are full and clean; all tires will be near new or better.

Grade 4, Clean – A better than average unit with minor chips or scratches in panel surfaces as noted in the condition information for each vehicle. This vehicle may require minor conventional body and paint work or removal of small dents that have not broken the paint using Paintless Dent Repair. The body of the vehicle may have had high quality conventional repairs. A minor missing or broken part may require replacement as noted. The interior is clean and will show minimal wear. The vehicle may have sustained cosmetic or light collision damage and been repaired to collision industry standards. The frame/structure has not been damaged or repaired and is expected to measure to published specifications. Vehicle is mechanically sound, and all accessories are operable. Vehicle may need fluids serviced, or tires rotated. Only scheduled maintenance will be necessary. Tires will be good or better.


Grade 3, Average – The average vehicle will have normal wear and tear (for example, parking lot dings, small scratches, chips and/or minor broken parts). It may require some conventional body and paint work or replacement of parts as noted in the condition information for each vehicle. The interior will show signs of normal wear and usage, requiring repair or replacement of parts as noted. Prior repairs may have been performed on this vehicle at an acceptable quality level. The vehicle may have sustained cosmetic or light collision damage and been repaired to collision industry standards. The frame/structure has not been damaged or repaired and is expected to measure to published specifications. Vehicle is mechanically sound, but may require maintenance or minor repair accessories. The fluid level may be low or require replacement. Tires will be average or better.



Grade 2, Below Average – Vehicle shows signs of abnormal wear and tear. The body has dents, scratches, and body panels that may require replacement as noted in the condition information for each vehicle. Broken and missing parts are to be expected. The interior shows signs of excess wear with burns, cuts or tears, and non-removable stains as noted. This vehicle may have multiple prior repairs performed at substandard levels, which may include repaired or unrepaired collision and/or frame/structure damage. The frame/structure is not expected to measure to published specifications. Vehicle may have mechanical damage that prohibits vehicle from operating properly. Repairs can be made, but engine and/or transmission may be in poor condition. Operability of accessories is questionable. Fluids are low or require replacement. Worn tires are to be expected.

Grade 1, Rough – This vehicle has been severely abused or has sustained major collision damage, but may be drivable. It is cost prohibitive to extensively recondition this vehicle by automotive industry standards. The frame/structure is not expected to measure to published specifications. Although operable, this vehicle is near the end of its useful life. Operability of accessories is doubtful.

Grade 0, Extra Rough – Vehicle is inoperative. Unit is good for parts only. Mechanical and body parts may be inoperable, disconnected, damage or missing.

EXHIBIT B















		Learn ? More	MANHEIM ARENA ILLINOIS 200 W. OLD CHICAGO DRIVE BOLINGBROOK, IL 60440 (630)759-3800
powered by  Manheim			
VEHICLE DETAILS - 2013 INFINITI FX37 AWD			
VIN:	JN8CS1MW8DM170265	Body Style:	SUV
Ext Color:	WHITE- QAA	Int Color:	BLK- G
Work Order:	1589331	Seller:	TDAF REMARKETING
Sale Number:	32	Lane Number:	7
Inspector:	JBANKS2 07/28/2015	InService Date:	N/A
Top Type:	Moon Roof		
Odometer:	17,137		
Received Date:	07/27/2015		
Run Number:	92		

	<div style="text-align: center;"> GRADING  AutoGrade Grade 1.9 Rough More About Auto Grade </div> <ul style="list-style-type: none"> • MSRP-Not Available • Engine Starts-Yes • Drivable-Yes <p style="font-size: small;">*Process protected under U.S. Patent No. 8,320,362</p>
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VALUE ADDED OPTIONS			
<ul style="list-style-type: none"> • Back-Up Camera • Bluetooth Connection • Cooled Front Seat(s) 	<ul style="list-style-type: none"> • Dual Zone A/C • HID Headlights • Heated Seats-Front(s) 	<ul style="list-style-type: none"> • Leather Seats • Moonroof • Navigation System 	<ul style="list-style-type: none"> • Rear Parking Aid • Satellite Radio - XM • Seat Memory

VEHICLE INFORMATION			
OPTIONS			
<ul style="list-style-type: none"> • 50 State Emissions • A/C • ABS Brakes • Automatic Headlights • Auxiliary Pwr Outlet • CD Player • Child Safety Locks • Cruise Control • Daytime Running Lights • Dual Air Bags • Fog Lamps • Front Floor Mats 	<ul style="list-style-type: none"> • Front Reading Lamps • Intermittent Wipers • Keyless Entry • Keyless Start • Leather Steering Wheel • Park Assist • Power Folding Mirrors • Power Locks • Power Mirrors • Power Telescopic Steering • Power Tilt Steering • Power Trunk Release 	<ul style="list-style-type: none"> • Power Windows • Privacy Glass • Push Button Start • Pwr Seats - Both • Pwr Steering • Rear Defrost • Rear Floor Mats • Rear Reading Lamps • Remote Trunk Release • Security System • Side Air Bags • Steering Wheel Audio Control 	<ul style="list-style-type: none"> • Tire Pressure Monitor System • Traction Control • Trip Computer • Trip Counter • US EPA Label • Universal Garage Door Opener
MECHANICAL <ul style="list-style-type: none"> • 6 Cylinder Gas • Automatic • AWD • Pwr Brakes • Automatic Transmission • 3.7 L 		INTERIOR <ul style="list-style-type: none"> • Odometer - 6 Digits Digital -Operable • Regular Dash • Leather - G • Int Odor: OK 	
TIRES AND WHEELS		KEYS	
Tire Condition:	Wheels: Alloy	• Remote Key/Fob - 1	
Tire	Tread Depth	Brand	Size
OTHER			

Left Front:	9/32"	IOTA	265/50R20	• Title State: VA
Left Rear:	9/32"	IOTA	265/50R20	• Title Received Date: 08/05/2015
Right Front:	6/32"	BRIDGESTONE	265/50R20	• Org Mfg Basic Warranty: 4 Years/60,000 Miles
Right Rear:	5/32"	BRIDGESTONE	265/50R20	• Org Mfg Powertrain Warranty: 6 Years/70,000 Miles
Spare:	N/A	(Mini)	N/A	*Manheim is not responsible for voided warranties
ADDITIONAL INFORMATION				
BRIAN SCOTT AUTOS/GL/TA,,				

CHARGEABLES		ITEM DESCRIPTION	CONDITION	SEVERITY	SUGGESTED REPAIR	TOTAL LABOR HOURS	COST	REPAIRED
HIDE	PIC LINE							
<input type="checkbox"/>	<input type="checkbox"/>	0021 Front Bumper Cover	Misaligned	Repair Required	Align/Adjust	1.00	\$40.00	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	 0021 Front Bumper Cover	Prev Repair	SubStd Sand Marks	Repair	7.90	\$316.00	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	0050 Hood	Misaligned	Repair Required	Align/Adjust	1.00	\$40.00	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	 0050 Hood	Prev Repair	SubStd Sand Marks	Repair	7.80	\$312.00	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	 0060 Roof	Dent/No Paint Dmg	GR 12"	Repair	13.30	\$532.00	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	0060 Right Drip Rail	Dent/No Paint Dmg	PDR/2	PDR	.00	\$45.00	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	 0110 LF Fender	Prev Repair	SubStd Dirt	Repair	6.90	\$276.00	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	0110 LF Fender Molding	Loose	Repair Required	Align/Adjust	1.00	\$40.00	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	0120 LF Wheel	Curb Rash	5" to 6"	Repair	.00	\$65.00	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	 0120 LF Tire	Cut	Replacement Required	Replace	.00	\$261.00	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	 0130 LF Door	Prev Repair	SubStd Dirt	Repair	7.10	\$284.00	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	 0160 LR Door	Prev Repair	SubStd Wavy	Repair	7.10	\$284.00	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	 0180 L Qtr Panel	Prev Repair	SubStd Wavy	Repair	7.10	\$284.00	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	0190 LR Wheel	Curb Rash	5" to 6"	Repair	.00	\$65.00	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	 0241 Rear Bumper Cover	Prev Repair	SubStd Sand Marks	Repair	7.90	\$316.00	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	 0241 R Bumper Cover Lower	Scratch Heavy	8" to 9"	Replace	.10	\$282.17	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	 0310 RF Fender	Prev Repair	SubStd Wavy	Repair	6.90	\$276.00	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	0320 RF Wheel	Curb Rash	5" to 6"	Repair	.00	\$65.00	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	 0330 RF Door	Prev Repair	SubStd Wavy	Repair	7.10	\$284.00	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	 0360 RR Door	Prev Repair	SubStd Wavy	Repair	7.10	\$284.00	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	 0380 R Qtr Panel	Prev Repair	SubStd Sand Marks	Repair	7.10	\$284.00	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	0390 RR Wheel	Curb Rash	5" to 6"	Repair	.00	\$65.00	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	0450 LF Carpet	Burn Hole	3" to 4"	Replace	.00	\$100.00	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	0480 Warranty Books	Missing	Replacement Required	Replace	.00	\$15.00	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	0480 Owners manuals	Missing		Replace	.00	\$15.00	<input type="checkbox"/>

<input type="checkbox"/>	<input type="checkbox"/>			Replacement Required				<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	0480 Maintenance Book	Missing	Replacement Required	Replace	.00	\$15.00	<input type="checkbox"/>
TOTALS						96.40	\$4,845.17	

NON-CHARGEABLES AND ADDITIONAL IMAGES								
HIDE PIC LINE	ITEM DESCRIPTION	CONDITION	SEVERITY	SUGGESTED REPAIR	TOTAL LABOR HOURS	COST	REPAIRED	
<input type="checkbox"/>	 0000 Overall Picture-FRONT/LFT FRNT	Overall Picture			.00	\$0.00	<input type="checkbox"/>	
<input type="checkbox"/>	 0000 Overall Picture-REAR/RGT REAR	Overall Picture			.00	\$0.00	<input type="checkbox"/>	
<input type="checkbox"/>	 0000 Overall Picture - Wheel	Overall Picture			.00	\$0.00	<input type="checkbox"/>	
<input type="checkbox"/>	 0000 Overall Picture - Interior	Overall Picture			.00	\$0.00	<input type="checkbox"/>	
<input type="checkbox"/>	 0000 Overall Picture - Dash	Overall Picture			.00	\$0.00	<input type="checkbox"/>	
<input type="checkbox"/>	 0000 Overall Picture - Odometer	Overall Picture			.00	\$0.00	<input type="checkbox"/>	
<input type="checkbox"/>	 0000 Overall Picture VIN/ID Sticker	Overall Picture			.00	\$0.00	<input type="checkbox"/>	
<input type="checkbox"/>	 0000 Overall Picture - Cargo Area	Overall Picture			.00	\$0.00	<input type="checkbox"/>	
<input type="checkbox"/>	0010 Windshield	Chipped	< 1/8"	No Action Required	.00	\$0.00	<input type="checkbox"/>	
<input type="checkbox"/>	0125 L "B" Pillar	Dent/No Paint Dmg SEATBELT	< 1/8"	No Action Required	.00	\$0.00	<input type="checkbox"/>	
TOTALS						.00	\$0.00	

REPAIRED							
HIDE PIC LINE	ITEM DESCRIPTION	CONDITION	SEVERITY	SUGGESTED REPAIR	TOTAL LABOR HOURS	COST	REPAIRED
TOTALS						.00	\$0.00

RECON CHARGES				
DATE	QTY	PART	DESCRIPTION	RETAIL
07/28/2015			INSPECTION FEE	\$35.00
TOTAL CHARGES				
Chargeables				\$4,845.17
Non-Chargeables				\$0.00
Repaired				\$0.00
Deductibles				\$0.00
Recon Charges				\$35.00

Total Charges		\$4,880.17
MANUFACTURER PACKAGE INFORMATION INFORMATION SET FORTH HEREIN IS BASED SOLELY ON INFORMATION PROVIDED BY THE VEHICLE MANUFACTURER AT THE TIME OF MANUFACTURE AND MAY NOT BE ACCURATE OR COMPLETE. MANHEIM HAS NOT UNDERTAKEN STEPS TO CONFIRM THE ACCURACY OF ANY SUCH INFORMATION, AND ANY INFORMATION DISCLOSED HEREIN IS PROVIDED "AS IS".		
▾ <u>Open All Packages</u> ▴ <u>Close All Packages</u>		
▴ Premium Pkg - P01		
<ul style="list-style-type: none"> • Reverse Tilt-Down Feature For Exterior Mirrors • Voice Recognition For Audio & Navigation Controls • XM NavTraffic • Hard Drive-Based Navigation System • Front/Rear Sonar System • Exterior Mirrors w/memory • XM NavWeather • 2-Position Driver Seat Memory 	<ul style="list-style-type: none"> • 8" Color Touch Screen w/compass • Bluetooth Streaming Audio • Zagat Restaurant Guide • Pwr Tilt/Telescopic Steering Column w/memory • in-Dash DVD Player • Aluminum Roof Rails • Around View Monitor 	
▴ Deluxe Touring Pkg - K01		
<ul style="list-style-type: none"> • Quilted Leather-Appointed Seat Trim • 20" 5-Spoke Aluminum-Alloy Wheels • Climate-Controlled Front Seats • Maple Wood Trim 	<ul style="list-style-type: none"> • Tonneau Cover • Aluminum Pedals • P265/50VR20 All-Season Performance Tires 	
▴ OTHER OPTIONS		
<ul style="list-style-type: none"> • Splash Guards • 50 State Emissions • Cargo Net & First Aid Kit • HomeLink Universal Garage Door Opener • Pwr Folding Pwr Body Color Heated Mirrors w/Courtesy Lights • 10-Way Pwr Driver Seat w/Pwr Lumbar • ATTESA E-TS All-Wheel Drive w/Snow Mode • Heated Front Bucket Seats w/Active Head Restraints • 3.7L DOHC SMPI V6 Engine • Leather Seat Trim • 8-Way Pwr Passenger Seat • Vehicle Speed-Sensitive Variable Pwr Rack & Pinion Steering • Bluetooth Hands-Free Phone System -inc: Bluetooth Streaming Audio • Dual Level Center Console w/12V Pwr Outlet, (2) Cup Holders • 4-Wheel Pwr Vented Disc Brakes • Rear Privacy Glass • 	<ul style="list-style-type: none"> • Stainless Steel Rear Bumper Protector • Stainless Steel Illuminated Kick Plates • Dual-Stage Driver/Front Passenger Airbags w/Passenger Occupancy Sensor • (4) Aux 12V Pwr Outlets • Auto On/Off High Intensity Discharge (Hid) bi-Xenon Headlamps • Integrated Front Fog Lights • 60/40 Split Remote-Folding Reclining Rear Bench Seat • Speed-Sensitive Variable Intermittent Front Wipers • Bose Sound System -inc: AM/FM Stereo w/CD/MP3 Player, (9) Speakers, (2) subwoofers, Radio Data System (RDS), Speed-Sensitive Volume Control, Aux Audio Input Jack • USB Connection Port w/Infiniti iPod Interface System • Front Tow Hook • P265/60VR18 All-Season Tires • T175/90D18 Temporary Use Spare Tire • Front/Rear Carpeted Floor Mats • 18" x 8" Split 10-Spoke Silver-Painted Aluminum Alloy Wheels • XM Satellite Radio 	

7-Speed Automatic Transmission w/OD -inc: Manual Shift Mode, Down Shift Rev-matching, Adaptive Shift Control (ASC)

- Vehicle Dynamic Control (VDC)
- Driver/Front Passenger Seat-Mounted Side-Impact Airbags
- Roof Mounted Front/Rear Curtain Side-Impact Airbags w/Rollover Sensor
- Auto-Dimming rearview Mirror w/Compass
- RearView Monitor
- Child Safety Rear Door Locks
- Tire Pressure Monitoring System
- Dual-Zone Auto Climate Control System
- Electric Rear Window Defroster w/Timer
- Dual Front Map Lights & Rear Reading Lights
- Manual Tilt/Telescoping Steering Wheel
- Leather-Wrapped Steering Wheel w/Cruise & Audio Controls

- Pwr Tilt/Sliding Tinted Glass Sunroof w/One-Touch Open/Close & Safety Reverse
- Vehicle Info System -inc: 7" LCD Screen w/Infiniti Controller, Trip Computer, Exterior Temp Display, Vehicle Maintenance Information
- Pwr Windows w/Front Auto up/Down & Safety Reverse
- Pwr Door Locks w/Selective Unlocking
- Intelligent Key System w/Remote Keyless Entry, Push Button Ignition
- Cruise Control
- Pwr Cargo Door Release w/Electric Closure Assist
- Vehicle Security System w/Vehicle Immobilizer
- Rear Seat HVAC Vents
- Dual Illuminated Visor Vanity Mirrors w/Sunshade Extensions
- 4-Wheel Anti-Lock Braking System (ABS)
- Electric Brake Force Distribution (EBD) w/Brake Assist
- Traction Control System (TCS)

VIN: JN8CS1MW8DM170265, Work Order: 1589331











EXHIBIT C

MOOREHOUSE BODY SHOP, INC.

939 E TROY AVE, INDIANAPOLIS, IN 46203

Phone: (317) 780-1860

FAX: (317) 780-1865

Workfile ID: 0801b64a

Federal ID: 351933111

State ID: 351933111

Preliminary Estimate**Customer: TWYMAN, DONALDSON****Job Number:**

Insured: TWYMAN, DONALDSON

Policy #:

Claim #:

Type of Loss:

Date of Loss:

Days to Repair: 0

Point of Impact:

Owner:

TWYMAN, DONALDSON

9057 MERCER DR

FISHER, IN 46038

(317) 315-7371 Business

Inspection Location:

MOOREHOUSE BODY SHOP, INC.

939 E TROY AVE

INDIANAPOLIS, IN 46203

Repair Facility

(317) 780-1860 Day

Insurance Company:**VEHICLE**

2013 INFI FX37 4X4 4D UTV 6-3.7L-FI WHITE

VIN: JN8CS1MW8DM170265

Interior Color:

Mileage In: 18,634

Vehicle Out:

License: PAPERPLATE

Exterior Color: WHITE

Mileage Out:

State:

Production Date: 6/2012

Condition:

Job #:

TRANSMISSION

Automatic Transmission

Overdrive

4 Wheel Drive

POWER

Power Steering

Power Brakes

Power Windows

Power Locks

Power Mirrors

Heated Mirrors

Power Driver Seat

Power Passenger Seat

DECOR

Dual Mirrors

Privacy Glass

Console/Storage

Overhead Console

CONVENIENCE

Air Conditioning

Intermittent Wipers

Tilt Wheel

Cruise Control

Rear Defogger

Keyless Entry

Alarm

Message Center

Steering Wheel Touch Controls

Rear Window Wiper

Telescopic Wheel

Climate Control

Backup Camera w/Parking Sensors

Home Link

RADIO

AM Radio

FM Radio

Stereo

Search/Seek

CD Player

Auxiliary Audio Connection

Premium Radio

Satellite Radio

SAFETY

Drivers Side Air Bag

Passenger Air Bag

Anti-Lock Brakes (4)

4 Wheel Disc Brakes

Traction Control

Stability Control

Front Side Impact Air Bags

Head/Curtain Air Bags

Rear Side Impact Air Bags

Hands Free Device

Xenon Headlamps

ROOF

Electric Glass Sunroof

SEATS

Bucket Seats

Leather Seats

Heated Seats

WHEELS

Aluminum/Alloy Wheels

PAINT

Three Stage Paint

OTHER

Fog Lamps

TRUCK

Power Trunk/Gate Release

Preliminary Estimate

Customer: TWYMAN, DONALDSON

Job Number:

2013 INFI FX37 4X4 4D UTV 6-3.7L-FI WHITE

Line	Oper	Description	Part Number	Qty	Extended Price \$	Labor	Paint
1		FRONT BUMPER & GRILLE					
2		O/H front bumper				3.0	
3	Repl	Upper cover w/park sens.	FBM223EV1H	1	546.33	Incl.	2.3
4		Add for Three Stage					1.6
5		Add for park sensor				0.4	
6	R&I	Grille assy w/o "Around View"				Incl.	
7	Repl	Prep unprimed bumper		1			0.6
8		FRONT LAMPS					
9	R&I	RT Headlamp assy w/o adaptive				0.3	
10	R&I	LT Headlamp assy w/o adaptive				Incl.	
11		HOOD					
12	Repl	Hood (ALU)	FEA0M1CAMA	1	1,116.04	1.7	2.8
13		Add for Three Stage					2.0
14		Add for Underside(Complete)					1.4
15	Repl	Insulator clip	658464Z000	6	11.58	Incl.	
16	Repl	Rubber strip	658101CA0A	1	43.96	Incl.	
17	Repl	Front seal	658201CA1A	1	32.47	Incl.	
18		FENDER					
19	Refn	RT Fender					2.2
20		Overlap Major Adj. Panel					-0.4
21		Add for Three Stage					0.7
22	R&I	RT Fender liner front				0.2	
23	R&I	RT Fender liner rear				0.2	
24	R&I	RT Air vent grille FX37				0.2	
25	R&I	RT Wheel opng mldg				0.3	
26	Repl	LT Fender	FCA011CAMA	1	480.40	3.0	2.2
27		Overlap Major Adj. Panel					-0.4
28		Add for Three Stage					0.7
29		Add for Edging					0.5
30	R&I	LT Fender liner front				Incl.	
31	R&I	LT Air vent grille FX37				Incl.	
32	R&I	LT Wheel opng mldg				0.3	
33		FRONT DOOR					
34	Repl	LT Door shell	HMA0A3WYMA	1	883.04	5.1	3.2
35		Overlap Major Adj. Panel					-0.4
36		Add for Three Stage					1.1
37	Repl	LT Applique	802D31CA0A	1	66.00	Incl.	
38	Repl	LT Belt molding	808211CA0A	1	115.37	Incl.	
39	Repl	LT Upper molding	802831CA0C	1	146.21	0.2	
40	R&I	LT R&I mirror				Incl.	
41	R&I	LT Door glass Infiniti				Incl.	
42	R&I	LT Handle, outside				Incl.	

Preliminary Estimate**Customer: TWYMAN, DONALDSON****Job Number:**

2013 INFI FX37 4X4 4D UTV 6-3.7L-FI WHITE

43	R&I	LT R&I trim panel				Incl.	
44	#	Refn	UPPER DOOR RAME BLACK OUT				1.0
45	REAR DOOR						
46		Repl	LT Door shell (ALU)	HBA0A1CAMA	1	798.09	4.5
47			Overlap Major Adj. Panel				-0.4
48			Add for Three Stage				1.1
49		Repl	LT Upper molding	822831CA0B	1	129.54	0.2
50		Repl	LT Front w'strip	828391CA1C	1	47.57	Incl.
51	QUARTER PANEL						
52		Refn	LT Quarter panel				2.2
53			Overlap Major Adj. Panel				-0.4
54			Add for Three Stage				0.7
55		R&I	LT Wheel opng mldg				0.3
56		R&I	LT Quarter glass Infiniti				1.5
57	#	R&I	INTERIOR FOR GLASS ACCESS				1.5
58	REAR LAMPS						
59		R&I	LT Tail lamp assy				0.3
60	REAR BUMPER						
61		R&I	R&I bumper cover				1.4
62	ROOF						
63		R&I	LT Roof molding				0.3
64	#	Rpr	ROPE W/S MLDG				0.2
65	#	Refn	MASK JAMS				0.5
66	#	Repl	MISC-CLIPS AND RETAINERS		1	40.00	
67	#		SETUP AND MEASURE		1		2.0 F
68	#	Rpr	RT & LEFT RAILS				4.0 F
			Note: FRAME TIME WAS BY VISUAL INSPECTION ONLY AND MAY REQUIRE MORE REPAIR TIME AFTER MEASURING.				
69	#		RESTORE RUST PROTECTION		1	20.00 X	
70	#	Algn	CORE SUPPORT AND SHEET METAL				6.0
71	#		COVER CAR		1	T	0.2
72	#		THIS IS AN ESTIMATE BASED ON VISUAL INSPECTION ONLY.		1		
73	#		MAY HAVE ADDITIONAL DAMAGE AND REQUIRE ADDITIONAL		1		
74	#		PARTS AND MATERIALS.		1		
75	#		VEHICLE HAS HAD INCORRECT PRIOR REPAIRS.		1		
SUBTOTALS						4,476.60	36.9
							28.4

Preliminary Estimate**Customer: TWYMAN, DONALDSON****Job Number:**

2013 INFI FX37 4X4 4D UTV 6-3.7L-FI WHITE

ESTIMATE TOTALS

Category	Basis		Rate	Cost \$
Parts				4,456.60
Body Labor	30.9 hrs	@	\$ 46.00 /hr	1,421.40
Paint Labor	28.4 hrs	@	\$ 46.00 /hr	1,306.40
Frame Labor	6.0 hrs	@	\$ 65.00 /hr	390.00
Paint Supplies	28.4 hrs	@	\$ 34.00 /hr	965.60
Body Supplies	25.5 hrs	@	\$ 7.00 /hr	178.50
Miscellaneous				20.00
Subtotal				8,738.50
Sales Tax	\$ 5,600.70	@	7.0000 %	392.05
Grand Total				9,130.55
Deductible				0.00
CUSTOMER PAY				0.00
INSURANCE PAY				9,130.55

A PERSON WHO KNOWINGLY AND WITH INTENT TO DEFRAUD AN INSURER FILES A STATEMENT OF CLAIM CONTAINING ANY FALSE, INCOMPLETE, OR MISLEADING INFORMATION COMMITS A FELONY.

Customer: TWYMAN, DONALDSON**Job Number:**

2013 INFI FX37 4X4 4D UTV 6-3.7L-FI WHITE

Estimate based on MOTOR CRASH ESTIMATING GUIDE and potentially other third party sources of data. Unless otherwise noted, (a) all items are derived from the Guide ARA3851, CCC Data Date 8/1/2016, and potentially other third party sources of data; and (b) the parts presented are OEM-parts manufactured by the vehicles Original Equipment Manufacturer. OEM parts are available at OE/Vehicle dealerships. OPT OEM (Optional OEM) or ALT OEM (Alternative OEM) parts are OEM parts that may be provided by or through alternate sources other than the OEM vehicle dealerships. OPT OEM or ALT OEM parts may reflect some specific, special, or unique pricing or discount. OPT OEM or ALT OEM parts may include "Blemished" parts provided by OEM's through OEM vehicle dealerships. Asterisk (*) or Double Asterisk (**) indicates that the parts and/or labor data provided by third party sources of data may have been modified or may have come from an alternate data source. Tilde sign (~) items indicate MOTOR Not-Included Labor operations. The symbol (<>) indicates the refinish operation WILL NOT be performed as a separate procedure from the other panels in the estimate. Non-Original Equipment Manufacturer aftermarket parts are described as Non OEM, A/M or NAGS. Used parts are described as LKQ, RCY, or USED. Reconditioned parts are described as Recond. Recored parts are described as Recore. NAGS Part Numbers and Benchmark Prices are provided by National Auto Glass Specifications. Labor operation times listed on the line with the NAGS information are MOTOR suggested labor operation times. NAGS labor operation times are not included. Pound sign (#) items indicate manual entries.

Some 2017 vehicles contain minor changes from the previous year. For those vehicles, prior to receiving updated data from the vehicle manufacturer, labor and parts data from the previous year may be used. The CCC ONE estimator has a list of applicable vehicles. Parts numbers and prices should be confirmed with the local dealership.

The following is a list of additional abbreviations or symbols that may be used to describe work to be done or parts to be repaired or replaced:

SYMBOLS FOLLOWING PART PRICE:

m=MOTOR Mechanical component. s=MOTOR Structural component. T=Miscellaneous Taxed charge category. X=Miscellaneous Non-Taxed charge category.

SYMBOLS FOLLOWING LABOR:

D=Diagnostic labor category. E=Electrical labor category. F=Frame labor category. G=Glass labor category. M=Mechanical labor category. S=Structural labor category. (numbers) 1 through 4=User Defined Labor Categories.

OTHER SYMBOLS AND ABBREVIATIONS:

Adj.=Adjacent. Algn.=Align. ALU=Aluminum. A/M=Aftermarket part. Blnd=Blend. BOR=Boron steel. CAPA=Certified Automotive Parts Association. D&R=Disconnect and Reconnect. HSS=High Strength Steel. HYD=Hydroformed Steel. Incl.=Included. LKQ=Like Kind and Quality. LT=Left. MAG=Magnesium. Non-Adj.=Non Adjacent. NSF=NSF International Certified Part. O/H=Overhaul. Qty=Quantity. Refn=Refinish. Repl=Replace. R&I=Remove and Install. R&R=Remove and Replace. Rpr=Repair. RT=Right. SAS=Sandwiched Steel. Sect=Section. Subl=Sublet. UHS=Ultra High Strength Steel. N=Note(s) associated with the estimate line.

CCC ONE Estimating - A product of CCC Information Services Inc.

The following is a list of abbreviations that may be used in CCC ONE Estimating that are not part of the MOTOR CRASH ESTIMATING GUIDE:

BAR=Bureau of Automotive Repair. EPA=Environmental Protection Agency. NHTSA= National Highway Transportation and Safety Administration. PDR=Paintless Dent Repair. VIN=Vehicle Identification Number.

EXHIBIT D

P.J.G.
Consulting and Appraisal



“Have camera will travel”

**EXPERT TRANSPORTATION AND MARINE
APPRAISAL CONSULTATION AND ADJUSTING**

Phillip J. Grismer

Experience since 1970

A.S.E. Master Automobile Technician

II. State Board of Education Certified

Automotive Instructor.

Past President Chicago land VW Service

Managers Organization.

Certified Member International Automobile

Appraisers Association Member #

1003180004

807 East Main Street

Genoa, Illinois 60135

E-mail

amertek1@gmail.com

CAGA Certified

Certified Personal Property Appraiser

Certified Appraisers Guild of America

U.S.A.A.P. Certified

**APPRAISAL REPORT SECTION 1.
VEHICLE AND CONDITION DETAILS**

<i>File No.:</i> 122613-1	<i>Client Name</i> Mary M. Tate
<i>Date of Inspection :</i> 12-26-2013	<i>Time of Appraisal:</i> 3:10 p.m. to 4:00 p.m.
<i>Weather Conditions:</i> Clear 18 F.	<i>Documents Reviewed:</i> I have reviewed supplied purchase documents, repair order history, and all documents attached as support documents for this case.

P.J.G. Consulting and Appraisal**Appraisal Report Section 1 File # 122613-1 Page 2.****VEHICLE SPECIFICATIONS**

<i>Year of Vehicle:</i> 2011	<i>Make/Model:</i> Chevrolet Malibu LS
<i>VIN:</i> 1G1ZASEU1BF197508	<i>Mileage:</i> 124,415
<i>Engine Specifications:</i> 2.3 Liter ECO 4 cylinder	<i>Other Specifications:</i> 4 door sedan, automatic transmission, full power, cloth seating.
<i>Condition of Vehicle/Comparison Category based on sale price :</i> Good/Clean	<i>Fluid Levels:</i> all checkable fluids are full and in good condition.

Conditions of Inspection Appraisal Location: The vehicle was inspected at the vehicle owner's residence and road tested on the surrounding streets and roadways.

P.J.G. Consulting and Appraisal and/or Phil Grismer attest to having no financial interest in this vehicle beyond the inspection fee.

Complaint Issues : Vehicle unmerchantable at time of retail sale as a Good condition vehicle. Prior accident damage history. Structural damage reported.

P.J.G Consulting and Appraisal Section 2.
File # 122613-1 VIN 1G1ZASEU1BF197508

Observation & Opinion Appraisal Report Prepared For: Mary M. Tate 6550 South Greenwood Ave. Chicago, Illinois 60637.

The vehicle was inspected, road tested and photographed.

The vehicle is diminished in value from the comparison category due to the following historic and ongoing conditions.

The provenance and history supplied, consists of purchase documents, vehicle owner's statement of the chain of events and a Car Fax vehicle history report.

Provenance: The vehicle was sold on 11-21-2012 at 97,435 miles. The vehicle was sold for \$11,995.00 placing it in the Good/Clean Vehicle category for valuation purposes. MSRP \$21,975.00 when new.

Summary of History Reviewed:

The bill of sale and reviewed purchase documents do not show any disclosure to the vehicle purchaser that the vehicle was sub-standard in any way. There is no signed and accepted statement by the vehicle purchaser from the selling dealer informing the vehicle owner that the vehicle was sub standard at the time of retail sale as a Good/Clean vehicle.

The Carfax vehicle history report alerts immediately to an accident collision history listing a rear end collision from another vehicle hitting the subject vehicle in the rear.

The Car fax report also alerts to Structural/Frame damage to the vehicle disclosed at time of sale at auction. On 11-3-2010 the vehicle was sold by Bocker Chevrolet in Freeport Illinois. On 8-18-2011 at 47,043 miles the vehicle was reported as damaged in a collision. On 10-4-2011 the vehicle was reported as repaired for the rear collision damage. On 11-1-2012 the vehicle was sold at auction and was disclosed as structural rear end damage present. On 11-2-2012 the vehicle was

listed as for sale in dealer inventory. The title was processed as sold to a Fleet Management Company. This may have been an attempt to wash the title. The vehicle was again offered for sale on 11-8-2012. The vehicle was reported as sold to the vehicle owner on 11-21-2012.

Conclusion Opinion of Reviewed History

The reviewed history shows clearly that the vehicle was damaged, with disclosed structural damage present at the time of wholesale purchase. the dealer was fully advised of the prior collision damage and structural damage present on the vehicle at the time of wholesale dealer purchase. Indicating the dealer knew exactly what they were buying and subsequently selling.

The history shows that the dealer sold the vehicle to a fleet management company and then re-offered the vehicle for sale to the public. This may have been an attempt to wash a branded title. Therefore I would recommend a title history search be done through the Secretary of State office for Illinois.

Inspection Observations.

The initial inspection began with visual inspections that revealed that the vehicle air bag system warning light was immediately illuminated in the dash panel and the message "service air bag system" was displayed in the dash panel message display. After start up and going through the normal self check mode. This takes the air bag system off line and it will not deploy in the case of a subsequent collision. The check engine light was not illuminated in the dash panel.

The on board diagnostic system was scanned using a Cen-Tech code scanner with CANS. The system exhibited a stored and current code 7EA and 7E8. These codes indicate a defective catalytic converter assembly. These are stored hard codes and not transient codes. The converter rattles internally at idle.

The paint thickness was measured with a digital NFE/FE paint thickness device. The base line for the paint thickness was established using the forward section of the roof panel and front panels as 4.5 to 6.0 mils. Consistent with a factory finish. The rear section of the vehicles roof panel, both rear ¼ panels and rear trunk panel measure 7.5 mils and 8.5 mils. The right side ¼ panel paint thickness is 6.0 mils. in

front of the wheel near the rear door dog leg and 9.5 mils from the fuel door rearward down the ¼ panel length. This indicates straightening and refinishing of the rear of the vehicle.

The rear bumper has been replaced evidenced by tool marks on the attaching bolts and the inside trunk lid paint is obviously aftermarket. The right inside section of the trunk lid is damaged, partially straightened and painted over. The paint on the inside of the trunk lid is peeling off in areas on both sides of the inside of the trunk lid, due to poor preparation and poor adhesion.

The trunk floor and weld point attaching sections to the rear ¼ panels have obviously been damaged and straightened and covered over with rubberized spray on under coating. This is the structural damage that has been pounded out and refinished subsequent to the rear end collision. The trunk lid and the rear bumper do not fit properly and do not properly line up with the ¼ panels. The right rear door gap at the ¼ panel is uneven, it is larger at the bottom than at the top.

The vehicle was road tested and found to exhibit a rattle over minor bumps from the rear of the vehicle. This condition is caused by defective rear sway bar links and bushings.

Safety Recall Involvement Review.

Additionally this vehicle year, make and model, is not listed as involved in Safety Recall Campaigns per the National Highway Transportation Safety Agency. Exhibit "A".

This data is supplied for information purposes only and may not apply to this specific vehicle. However, involvement of a vehicle in a Safety Recall Campaign is a direct indication of manufacturing defects present in the specific vehicle.

Author's Opinion of Merchantability of Vehicle.

It is my opinion that this vehicle was defective and unmerchantable at the time of retail sale to the current vehicle owner. This is evidenced by and resulting in, the accumulated history reviewed, as well as the ongoing unacceptable conditions observed during the inspection. It is my opinion that the average purchaser, having been fully informed and considering this make and model for purchase, would

reject this vehicle as a candidate for purchase based on its history and the ongoing abnormal conditions observed.

Required Further Diagnostics and/or Service

All of the abnormal conditions complained of require extensive invasive diagnostic and service repair operations that are beyond the scope of this inspection.

Author's Opinion of Value.

It is my opinion that the value of this vehicle is drastically diminished. This is a rebuilt wrecked vehicle with severe rear end collision damage that has been repaired to less than industry standard acceptable condition. How this vehicle will respond in a subsequent collision is highly questionable. The catalytic converter may have been damaged during the collision and is currently defective internally the vehicle cannot pass the state required emission test as a result since the OBD II system is scanned as part of the emission test. The cost to true for a converter is approximately \$1,100.00.

Having inspected this vehicle and reviewed its service history, it is my opinion that the value of this vehicle was below ***the Original Purchase Price at time of Retail Sale***, by 70 percent. Sale Price \$11,995.00. ***Actual Value at time of Retail Sale/Purchase***, due to diminished value appraisal \$3,598.50.

Current Good Condition Comparison Vehicles Market Value.

The Current good valuation category per Black Book USA \$6,425.00 Exhibit "B". Current Good valuation NADA Guide \$9,775.00 Exhibit "C". Average current valuation between both guides, \$8,100.00. Diminished value of **subject** vehicle in **its** current condition, \$3,240.00.

Methodology

I arrived at this number first by determining the vehicle's condition through my review of the purchase documents, then by determining the average values between high and low retail from the above-referenced standard valuation guides for a vehicle in the similar condition category, then determining the average between the guide values, then by determining the vehicle's true condition through my

inspection and my review of the service history and other relevant documentation, then by expressing this condition by a percentage by which the vehicle's value was diminished due to its condition, then expressing this percentage as an actual dollar value, and then deducting it from the claimed value at the time of sale, thus arriving at the Diminished Value figure.

Appraisal Margin of Error.

This appraisal allows for a margin of error of 5 percent either way due to market fluctuations. Therefore, 65 Percent DV of \$11,995.00 equals \$4,198.25. 75 percent DV of \$11,995.00 equals \$2,998.75.

Availability of Comparison Replacement Vehicles and Effect on Value.

This make and model of vehicle is readily available in the automotive market place, without the serious defects present in this specific vehicle, and can be acquired without defects and meeting the Good condition criteria as defined by all published major valuation guides. This fact has the effect of drastically devaluing this vehicle.

USAAP Certification.

I hereby certify that I have no bias with respect to the vehicle that is the subject of this appraisal report, or to the parties involved with this assignment. My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value, or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of the appraisal report. My analysis, opinions and conclusions were developed and this appraisal report has been prepared; in conformity with the Uniform Standards for Automobile Appraisal Procedure.

Perjury Statement.

Under penalties as provided by law pursuant to section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this affidavit are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes to be true.

Phillip J. Grismer B.B.A.

A.S.E. Certified Master Automobile Technician

Certified Member International Automobile Appraisers Association

Member # 1003180004.

CAGA Certified Personal Property Appraiser

Certified Appraisers Guild of America.

Uniform Standards for Automobile Appraisal Procedure Certified.

Heavy equipment, Ag. equipment commercial truck Certified Inspector.

Sent via E-Mail, USPS, Fed EX, UPS,

Fax, hand delivery, or any combination of same.

VERDICT FORM A

WE, THE JURY, find for Mary Tate and against S&M Auto Brokers, Inc., on the claim for common law fraud (fraudulent concealment). We assess the damages itemized as follows:

a. Difference in value of the vehicle
as represented and as it was:

\$ 4,000;

Aggravation and inconvenience

b. ~~Incidental and consequential damages~~: \$ 2,000;

c. Punitive damages:

\$ 40,000;

~~_____~~

~~_____~~

~~_____~~

Signed:

Brian J. [Signature]

[Signature]

Jeanne [Signature]

Amy H. [Signature]

[Signature]

[Signature]

Marie Dilemud

Sandra Martin

Edwarda



Foreperson

Dated: March 23, 2016

Desmond Smith

Edwina May

21. TOTAL DAMAGES = [19] + [20]

[d] = \$ _____

WE, THE JURY, AWARD \$ _____

[e] = \$ _____

Continue on with your verdict and sign Verdict C at the end of this verdict.

Either Verdict C or Verdict D must be signed by each juror.

VERDICT C

WE, THE JURY, FIND FOR S&M AUTO BROKERS, INC., AND AGAINST MARY TATE.

VERDICT D

WE, THE JURY, FIND FOR MARY TATE AND AGAINST S&M AUTO BROKERS, INC.

Brian R.
LD
Joanna R.
Hung W.
John D.
KB W.

Marie Delcand
Sandra Martin
Edmundo
Dominic Smith
Eladec
W.

EXHIBIT E

P.J.G.
Consulting and Appraisal



“Have camera will travel”

**EXPERT TRANSPORTATION AND MARINE
APPRAISAL CONSULTATION AND ADJUSTING**

Phillip J. Grismer

Experience since 1970

A.S.E. Master Automobile Technician

Illinois State Board of Education Certified

Automotive Instructor.

Past President Chicago land VW Service
Managers Organization.

Certified Member International Automobile
Appraisers Association Member #
1003180004

807 E. Main Street

Genoa, Illinois 60135

E-mail

amertek1@gmail.com

www.pjgappraisal.com

CAGA Certified

Certified Personal Property Appraiser

Certified Appraisers Guild of America

U.S.A.A.P. Certified

Certified Heavy Equipment, Ag. Equipment
& Heavy Commercial Truck Inspector.
Certified Inspections Association.

**APPRAISAL REPORT SECTION 1.
VEHICLE AND CONDITION DETAILS**

<i>File No.:</i> 122614-1	<i>Client Name</i> Joshua Campell-Burgess
<i>Date of Inspection :</i> 12-26-2014	<i>Time of Appraisal:</i> 1:00 p.m.
<i>Weather Conditions:</i> Clear 54 F.	<i>Documents Reviewed:</i> I have reviewed supplied purchase documents repair order history and all documents attached as support documents for this subject matter.

P.J.G. Consulting and Appraisal

Appraisal Report Section 1 File # 122614-1 Page 2.

VEHICLE SPECIFICATIONS

<i>Year of Vehicle:</i> 2011	<i>Make/Model:</i> Ford Explorer XLT
<i>VIN:</i> 1FMHK7D8X GA57480	<i>Mileage:</i> 86,695
<i>Engine Specifications:</i> 3.5 Liter V6	<i>Other Specifications:</i> Automatic transmission, full power, front wheel drive
<i>Condition of Vehicle/Comparison Category based on sale price :</i> Good/Clean	<i>Fluid Levels:</i> All checkable fluids are full and in good condition.

Conditions of Inspection Appraisal Location: P.J.G. Consulting & Appraisal facility.

Photographs were taken for confirmation purposes.

P.J.G. Consulting and Appraisal and/or Phil Grismer attest to having no financial interest in this vehicle beyond the inspection fee.

Complaint Issues : Vehicle unmerchantable at time of sale. Undisclosed prior collision damage. Prior rental history. Rebuilt vehicle.

P.J.G Consulting and Appraisal Section 2.
File # 122614-1 VIN 1FMHK7D8XBGGA57480

Inspection Report Prepared for Joshua Campbell Burgess 948 Austin Blvd.
Chicago, Il. 60302.

The vehicle was inspected at the PJG Consulting & Appraisal Office, 807 East Main Street Genoa, Illinois 60135. The vehicle was road tested on the surrounding streets and roadways. The vehicle was driven for approximately 5 miles.

The vehicle is diminished in value from the comparison category due to the following historic and ongoing conditions.

The provenance and history supplied, consists of purchase documents and Carfax Vehicle history report e mail correspondence from Attorney Feofanov.

Provenance: The vehicle was sold on 12-23-2014 at 86,123 miles. The vehicle was sold for \$19,998.00 placing it in the Good/Clean Vehicle category for valuation purposes.

History Reviewed:

The reviewed bill of sale from S and M Motors shows that the vehicle was sold as is without any disclosures of defects present signed by the purchaser.
The Buyer's Guide shows that the vehicle was sold As-Is.

An e mail was reviewed from attorney Dmitry Feofanov stating that the parameters of the inspection were to resolve any question in favor of the dealer. Exhibit "A".

The vehicle was presented at Jiffy-Lube on 12-24-2014 at 86,253 miles. The vehicle needed the oil and filter changed, the air filter and cabin air filter were replaced and the rear brake pads were worn out and replaced. The shop noted per the vehicle owner that the rear brake calipers were defective and would need to be replaced.

The shop representative informed the vehicle that the vehicle was drastically sub standard, per the vehicle owner's statement.

On 12-26-2014 the vehicle owner ran a Carfax Vehicle History Report on the vehicle. Immediately the reviewed report alerts to accident/collision damage reported. At least 1 open safety recall. The vehicle was originally sold in Texas on 4-15-2011 at 5 miles and registered as a rental vehicle. Damage as a rental vehicle was reported between 4-2001 and 6-2011, noting rear damage to the vehicle. The vehicle was sold at auction in Illinois on 5-14-2012 at 27,430 miles. The vehicle was sold as certified pre-owned vehicle on 5-25-2012 at 27,544 miles in Roanoke Illinois. On 6-4-2013 at 58,167 miles the oil and filter was changed. On 11-11-2013 the vehicle was involved in another collision serious damage to front and rear of the vehicle. The vehicle was disabled. The vehicle was sold at auction again on 8-15-2014 in the Midwest region, at 86,024 miles. The vehicle was purchased by S and M Motors and offered for sale on 10-31-2014 at 86,123 miles.

Conclusion Opinion of reviewed history:

Clearly, the vehicle is not a good condition quality vehicle based on it's history of rental usage and collision damage. The vehicle is a rebuilt wrecked vehicle that needed reconditioning to qualify for the price range charged for the vehicle that had not been done prior to sale. The vehicle would not pass without objection in the trade in my opinion.

Inspection Observations.

The vehicle was inspected and was obviously a rebuilt, repainted vehicle based on the color shade differences visible to the naked eye. The front end has been replaced and rebuilt. The hood was replaced and the right side fender, grille and front bumper were replaced. The vehicle was measured for paint thickness using a digital FE/NFE paint thickness meter. The base line was established at 6.0 mils. The vehicle right front fender measures 3.0 mils indicating a replaced part. The hood is painted with exterior paint on the inside. The hood measures 7.5 mils. The right doors and rear quarter panel measures 7.5 to 10.5 mils. This is consistent with aftermarket repainting. The core support has been repaired and repainted.

The vehicle was road tested and found to pull hard to the left from the center of the roadway within 100 feet at 25 miles per hour. This is caused by defective steering and suspension components, defective steering/suspension geometry.

The front hub bearing assemblies exhibit loud metallic grinding noises. This is caused by defective hub bearings.

The vehicle tires are mismatched. The front tires are Cooper tires, the rear tires are Michelin tires. This causes unmatched tire treads and control issues.

Safety Recall Involvement Review.

Additionally this vehicle year, make and model, is listed as involved in 3 Safety Recall Campaigns per the National Highway Transportation Safety Agency. Safety Recall # 14V286000 defective steering. Safety Recall # 14E001000 defective steering gear. Safety Recall # 11V063000 defective seats. Exhibit "B".

Author's Opinion of Merchantability of Vehicle.

This vehicle is a rebuilt repainted wrecked vehicle with a rental vehicle history. This fact makes the vehicle makes the vehicle drastically less desirable and valuable in the open market when compared to Good/Clean vehicles without these deficiencies.

Required Further Diagnostics and/or Service

All of the abnormal conditions complained of require extensive invasive diagnostic and service repair operations that are beyond the scope of this inspection.

Author's Opinion of Value.

It is my opinion that the value of this vehicle is that of a rebuilt wrecked vehicle with rental vehicle history.

Having inspected this vehicle and reviewed its service history, it is my opinion that the value of this vehicle was below ***The Original Purchase Price at time of Retail Sale***, by 50 percent. MSRP \$31,190.00. Sale Price \$19,998.00. ***Actual Value at time of Retail Sale/Purchase***, due to diminished value appraisal \$9,999.00.

Current Good Condition Comparison Vehicles Market Value.

The Current good valuation category per Black Book USA \$21,025.00 Exhibit "C".

Current Good valuation NADA Guide \$21,025.00 Exhibit "D".
averaged between. Average current valuation between both guides, \$21,025.00.
Diminished value of **subject** vehicle in **its** current condition, \$10,512.50.

Methodology

I arrived at this number first by determining the vehicle's condition through my review of the purchase documents, then by determining the average values between high and low retail from the above-referenced standard valuation guides for a vehicle in the similar condition category, then determining the average between the guide values, then by determining the vehicle's true condition through my inspection and my review of the service history and other relevant documentation, then by expressing this condition by a percentage by which the vehicle's value was diminished due to its condition, then expressing this percentage as an actual dollar value, and then deducting it from the claimed value at the time of sale, thus arriving at the Diminished Value figure.

Appraisal Margin of Error.

This appraisal allows for a margin of error of 5 percent either way due to market fluctuations. Therefore, 45 Percent DV of \$19,998.00 equals \$10,998.90. 55 percent DV of \$19,998.00 equals \$8,999.10.

Availability of Comparison Replacement Vehicles and Effect on Value.

This make and model of vehicle is readily available in the automotive market place, without the serious defects present in this specific vehicle, and can be acquired without defects and meeting the Good condition criteria as defined by all published major valuation guides. This fact has the effect of drastically devaluing this vehicle.

USAAP Certification.

I hereby certify that I have no bias with respect to the vehicle that is the subject of this appraisal report, or to the parties involved with this assignment. My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value, or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the

intended use of the appraisal report. My analysis, opinions and conclusions were developed and this appraisal report has been prepared; in conformity with the Uniform Standards for Automobile Appraisal Procedure.

Perjury Statement.

Under penalties as provided by law pursuant to section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this affidavit are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes to be true.

Phillip J. Grismer B.B.A.
A.S.E. Certified Master Automobile Technician
Certified Member International Automobile Appraisers Association
Member # 1003180004.
CAGA Certified Personal Property Appraiser
Certified Appraisers Guild of America.
Uniform Standards for Automobile Appraisal Procedure Certified.

Sent via E-Mail, USPS, Fed EX, UPS,
Fax, hand delivery, or any combination of same.

Purchase Contract
Bill of Sale**S&M AUTO SALES, INC**5801 S. WESTERN AVE
CHICAGO, IL 60636

Phone: (773)434-1201 Fax: (773)434-9191

Email Address: sendmauto1@gmail.com



Sale Date: 12/23/2014 2:07 PM

Invoice ID: 6006

Buyer's Name JOSHUA CAMPBELL-BURGESS			Cobuyer's Name		
Date Of Birth 3/9/1994	Social Security No. On File	Drivers License No.	Date Of Birth	Social Security No.	Driver's License No.
Street Address 948 N. AUSTIN BLVD			Street Address		
City, State, Zip OAK PARK, IL 60302			City, State, Zip		
Home Phone No.	Work Phone No.	Cell Phone No. (708) 252-1905	Home Phone No.	Work Phone No.	Cell Phone No.

S&M Auto Brokers hereby Sells and Buyers, jointly and severally, hereby purchase the following motor vehicle for the Total Sale Price and upon the terms and conditions set forth on this contract of sale. Buyers acknowledge delivery and actual receipt and acceptance of the motor vehicle in good running condition.

Year	Make	Model	Body Style	Color	Vehicle Identification Number	Mileage	Stock No.
2011	FORD	EXPLORER XLT	SUV	GREY	1FMHK7D8XBG A57480	86123	6132

Description of Trade-In and Terms of Trade.			Detailed credits to purchaser.		Detailed Terms of Sale.	
Trade Year	Trade Make	Trade Model	Previous Deposits:	\$0.00	Cash Price of Vehicle:	\$19,998.00
Trade VIN			Cash Received:	\$0.00	Documentary Fee:	\$166.00
Body Style	Color	Mileage	Check No.: 9169133407	\$10,000.00	Less Trade Allowance:	\$0.00
Trade Allowance:			Credit Card Approval No.	\$0.00	Taxable Cash Price:	\$20,164.00
Estimated Balance Owed:			Debit Card Approval No.	\$0.00	IL State Sales Tax: @ 7.25%	\$1,461.89
Net Allowance on Trade:	\$0.00		Trade Net Allowance:	\$0.00	Cook County Sales Tax: @ 1.00%	\$201.64
I certify that the above information about my trade in is true and accurate; and I agree to trade in the vehicle described above upon the terms above, and if the balance owed is greater than above, I agree to pay the additional amount in cash upon request.			Other:	\$0.00	City of Chicago Sales Tax: @ 0.00%	\$0.00
Signature (x)			Total Credit:	\$10,000.00	Total Sales Tax: @ 8.25%	\$1,664.00
					Title Registration Fee:	\$95.00
					License Plates Fee:	\$101.00
					Total Registration Fees Paid to IL SOS:	\$196.00
					MECHANICAL REPAIR WARRANTY	\$3,000.00
						\$0.00
					Total Sale Price:	\$25,024.00

NO PUBLIC LIABILITY INSURANCE ISSUED WITH THIS TRANSACTION.**Unpaid Cash Balance Due: \$15,024.00**

JCB DEALER ARRANGED FINANCING. In the event of a time sale, S&M Auto Brokers SHALL NOT BE OBLIGATED TO SELL UNTIL AND UNLESS a finance source approves this order and agrees to purchase of a retail installment contract between Customer and Dealer based on this order. As part of obtaining financing, Customer agrees to provide Dealer with a true, correct and complete credit application and cooperate fully in obtaining financing including the providing of any supporting documentation. This agreement may be cancelled by the Dealer if it determines that it cannot obtain a third party approval for customer on the agreed terms within 7 business days of the date of this agreement. If the Contract is terminated due to the inability to obtain third party financing, Customer agrees to return the vehicle within 24 hours of notice from Dealership, and Dealer agrees to return the Customer's trade and down payment if applicable. S&M Auto Brokers may repossess the vehicle if Customer refuses to return it. After the return of the vehicle, Customer acknowledges that he/she remains liable to Dealer for any damage to the vehicle or for loss suffered by Dealer, including reasonable attorney's fees as a result of Customer's failure to timely return the vehicle, or as a result of false statements contained in the credit application or by Customer's failure to cooperate in obtaining financing.

JCB IMMEDIATE DELIVERY SHORT TERM FINANCING. I accept immediate delivery and possession of the subject vehicle. In exchange for such possession, I promise to pay S&M Auto Brokers the remainder of the unpaid cash balance in accordance with the SHORT TERM FINANCING agreement attached hereto and made a part hereof. If I do not pay pursuant to the terms of the SHORT TERM FINANCING agreement, I understand that I am in default, and that I have breached this contract and will be liable to Dealer for damages set out herein, and agree to pay reasonable attorney's fees in addition to any other recovery by S&M Auto Brokers. **SHORT TERM FINANCING AS FOLLOWS**

No. of Payment	Amount of Payment	Duration of Payment	Payment Due Date
1	15024	once	12/24/14

Customer agrees to pay delinquency charge of \$50.00 on each payment that is not paid in full when due. If any payment made by check and did not clear through the bank, then a fee of \$50.00 is charged for each check. Upon occurrence of any default of this contract S&M Auto Brokers may accelerate and declare due all of the remaining balance, cash price, and Customer authorizes Dealership to repossess the vehicle and shall pay a minimum of \$500.00 repossession fee, a storage fee of \$50.00 per day plus any additional charges incurred by S&M Auto Brokers due to Customer's default on terms or breach of contract.

JCB USED VEHICLE. "AS IS" "No Warranty": S&M Auto Brokers TO THE FULLEST EXTENT PERMITTED BY LAW, EXPRESSLY DISCLAIMS AND EXCLUDES ANY AND ALL WARRANTIES, WHETHER EXPRESSED OR IMPLIED, WITH RESPECT TO THE USED VEHICLE SOLD HEREUNDER, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND STATES THAT THIS IS AN "AS IS" SALE.

FTC WINDOW STICKER. THE INFORMATION YOU SEE ON THE WINDOW FORM FOR THIS VEHICLE IS PART OF THIS CONTRACT. INFORMATION ON THE WINDOW FORM (BUYER'S GUIDE) OVERRIDES ANY CONTRARY PROVISIONS IN THE CONTRACT OF SALE.

THIS TRANSACTION IS NON-CANCELLABLE AFTER THE SIGNING OF THIS AGREEMENT EXCEPT AS PROVIDED HEREIN. IF YOU FAIL TO COMPLY WITH YOUR OBLIGATIONS UNDER THIS CONTRACT, YOU WILL BE LIABLE FOR THE REASONABLE ATTORNEY'S FEES INCURRED BY S&M AUTO BROKERS IN THE ENFORCEMENT OF THE CONTRACT, AS WELL AS ANY OTHER CHARGES.

I ACKNOWLEDGE THAT S&M AUTO BROKERS AND ITS AGENTS HAVE MADE NO REPRESENTATIONS, AGREEMENTS OR PROMISES, CONCERNING THE CONTRACT, FINANCING OR THE VEHICLE BEING PURCHASED HEREUNDER, THAT DO NOT APPEAR IN WRITING. I CERTIFY THAT I AM 18 YEARS OR OLDER. I ACKNOWLEDGE THAT I HAVE READ THE TERMS OF THIS CONTRACT AND THAT I HAVE RECEIVED A COPY OF IT.

Signature of S&M Auto Brokers agent.

Signature of Customer

JB008

(X)

Signature of Customer

For Personal Use Only

CARFAX® Vehicle History Report™
An independent company established in 1986

US \$29.99

Vehicle Information:
 2011 FORD EXPLORER XLT
 VIN: 1FMHK7D8XBGA57480
 4 DOOR WAGON/SPORT UTILITY
 3.5L V6 SFI DOHC 24V
 FRONT WHEEL DRIVE
Standard Equipment | Safety Options

Accident / Damage reported

2 Previous owners

At least 1 open recall

1 Service record available

86,123 Last reported odometer reading

\$370 Above retail book value

This CARFAX Vehicle History Report is based only on information supplied to CARFAX and available as of 12/26/14 at 12:34:17 PM (EST). Other information about this vehicle, including problems, may not have been reported to CARFAX. Use this report as one important tool, along with a vehicle inspection and test drive, to make a better decision about your next used car.

Price Calculator™

Adjust the value of this 2011 Ford Explorer XLT based on the information available in this report

1) Retail Book Value	2) CARFAX Price Adjustment™	3) Adjusted Retail Value
<div style="border: 1px solid black; padding: 5px; display: flex; align-items: center;"> \$ 0 </div> <p style="font-size: small; margin-top: 5px;">Enter retail book value here</p>	<div style="font-size: 48px; margin: 0 10px;">+</div> <div style="font-size: 36px; margin: 0 10px;">+ \$370</div> <p style="font-size: small; margin-top: 5px;">Above retail book value</p>	<div style="border: 1px solid black; padding: 5px; display: flex; align-items: center;"> <div style="flex: 1; border-right: 1px solid black; margin-right: 5px;"> <div style="border: 1px solid black; height: 20px; width: 100%;"></div> </div> <div style="flex: 1; border-right: 1px solid black; margin-right: 5px;"> <div style="border: 1px solid black; height: 20px; width: 100%;"></div> </div> <div style="border: 1px solid black; height: 20px; width: 100%;"></div> </div> <p style="font-size: small; margin-top: 5px;">Begin by entering the retail book value</p>

Start by entering the retail book value from a pricing guide website.


This vehicle is worth more than average, based on information in this report.



Compare adjusted retail value to seller's asking price when making your decision.

CARFAX Ownership History		
The number of owners is estimated		
	Owner 1	Owner 2
Year purchased	2011	2012
Type of owner	Rental	Personal
Estimated length of ownership	1 year	2 yrs. 1 mo.
Owned in the following states/provinces	Texas, Illinois	Illinois
Estimated miles driven per year	25,346/yr	21,726/yr
Last reported odometer reading	27,544	86,123

JB009

Ex. 2

Title History		
CARFAX guarantees the information in this section		
Salvage Junk Rebuilt Fire Flood Hail Lemon	Guaranteed No Problem	Guaranteed No Problem
Not Actual Mileage Exceeds Mechanical Limits	Guaranteed No Problem	Guaranteed No Problem
 GUARANTEED - None of these major title problems were reported by a state Department of Motor Vehicles (DMV). If you find that any of these title problems were reported by a DMV and not included in this report, CARFAX will buy this vehicle back. Register View Terms View Certificate		

CARFAX Additional History		Owner 1	Owner 2
Not all accidents / issues are reported to CARFAX			
Total Loss No total loss reported to CARFAX.	<input checked="" type="checkbox"/> No Issues Reported	<input checked="" type="checkbox"/> No Issues Reported	
Structural Damage No structural damage reported to CARFAX.	<input checked="" type="checkbox"/> No Issues Reported	<input checked="" type="checkbox"/> No Issues Reported	
Airbag Deployment No airbag deployment reported to CARFAX.	<input checked="" type="checkbox"/> No Issues Reported	<input checked="" type="checkbox"/> No Issues Reported	
Odometer Check No indication of an odometer rollback.	<input checked="" type="checkbox"/> No Issues Indicated	<input checked="" type="checkbox"/> No Issues Indicated	
Accident / Damage Accident reported on 11/11/2013.	 Accident Reported	 Accident Reported	
Manufacturer Recall At least 1 manufacturer recall requires service. Locate an authorized <u>Ford or Lincoln Mercury dealer</u> or call 866-436-7332 to obtain more information about this recall.	<input checked="" type="checkbox"/> No Recalls Reported	Recall Reported	
Basic Warranty <u>Original warranty</u> estimated to have expired. Interested in an <u>extended warranty</u> ?	Warranty Expired	Warranty Expired	

Tell us what you know about this vehicle

View other FORD EXPLORER XLT vehicles with FREE CARFAX Reports

			
2011 Ford Explorer \$27,577 12,066 miles	2012 Ford Explorer \$27,499 12,820 miles	2012 Ford Explorer 23,410 miles	2011 Ford Explorer \$29,687 36,715 miles

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 Al Piemonte Super Car Outlet**





[Glossary](#)

JB010

CARFAX

Detailed History

Owner 1		Date:	Mileage:	Source:	Comments:
Purchased:	2011	04/12/2011		NICB	Vehicle manufactured and shipped to original dealer
Type:	Rental	04/15/2011		Texas Motor Vehicle Dept. Dallas, TX	Titled or registered as rental vehicle
Where:	Texas, Illinois	05/16/2011	5	Texas Motor Vehicle Dept. Dallas, TX Title #22031940667151848	Title issued or updated First owner reported Loan or lien reported
Est. miles/year:	25,346/yr	Not Reported		Damage Report	Accident reported Vehicle involved in a rear-end collision with another motor vehicle Minor rear damage reported Airbags did not deploy CARFAX began reporting this information on 12/31/2012.
Est. length owned:	4/15/11 - 5/14/12 (1 year)	 <div style="border: 1px solid black; padding: 5px; display: inline-block;"> The date of this accident was not reported to CARFAX, but it likely occurred between Apr. 2011 and Jun. 2011. </div>			
		04/01/2012		Texas Motor Vehicle Dept. Dallas, TX Title #22031940667151848	Registration issued or renewed Loan or lien reported Passed safety inspection
		05/14/2012	27,430	Auto Auction Illinois	Sold at auction  <div style="border: 1px solid black; padding: 5px; display: inline-block;"> Millions of used vehicles are bought and sold at auction every year. </div>
		05/25/2012	27,544	Dealer Inventory	Vehicle offered for sale
		07/26/2012		Illinois Motor Vehicle Dept.	Vehicle purchase reported
		07/30/2012		Ford Certified Dealer Roanoke, IL	Sold as a Ford Certified Pre-Owned vehicle
		08/09/2012		Illinois Motor Vehicle Dept. Mackinaw, IL	Registration issued or renewed

Owner 2		Date:	Mileage:	Source:	Comments:
Purchased:	2012	08/14/2012		Illinois Motor Vehicle Dept. Mackinaw, IL Title #X2227690865	Title issued or updated New owner reported Loan or lien reported Vehicle color noted as Gray
Type:	Personal	01/22/2013		Illinois Motor Vehicle Dept. Mackinaw, IL	Registration issued or renewed
Where:	Illinois	06/04/2013	58,167	Speed Lube #5 Bloomington, IL	Maintenance inspection completed Oil and filter changed Fluids checked
Est. miles/year:	21,726/yr				
Est. length owned:	8/14/12 - 9/15/14 (2 yrs. 1 mo.)				

JB011

309-828-3394 speedlube.net			
11/11/2013	Alabama Damage Report	Accident reported Vehicle involved in a rear-end collision Involving front impact with another motor vehicle Damage reported to: Front Major damage reported Vehicle disabled Airbags did not deploy	
01/31/2014	Illinois Motor Vehicle Dept. Peoria, IL	Registration issued or renewed Registration updated when owner moved the vehicle to a new location	
05/29/2014	Ford Motor Company	Manufacturer Safety recall Issued Recall #14S06 ELECTRIC POWER STEERING Locate an authorized Ford or Lincoln Mercury dealer or call 866-436-7332 to obtain more information about this recall	
09/15/2014	86,024 Auto Auction Midwest Region	Sold at auction	
09/19/2014	Dealer Inventory	Vehicle offered for sale	
10/31/2014	86,123 Dealer Inventory	Vehicle offered for sale	
Print this CARFAX Report and take it to your pre-purchase inspection			

Tell us what you know about this vehicle

Have Questions? Please visit our Help Center at www.carfax.com.



Glossary

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Accident / Damage Indicator

CARFAX receives information about accidents in all 50 states, the District of Columbia and Canada. Different information in a vehicle's history can indicate an accident or damage, such as: salvage auction, fire damage, police-reported accident, crash test vehicle, damage disclosure, collision repair facility and automotive recycler records. Not every accident or damage event is reported and not all reported are provided to CARFAX. Details about the accident or damage event when reported to CARFAX (e.g. severity, impact location, airbag deployment) are included on the Vehicle History Report. CARFAX recommends you obtain a vehicle inspection from your dealer or an independent mechanic.

- According to the National Safety Council, Injury Facts, 2007 edition, 7% of the 245 million registered vehicles in the U.S. were involved in an accident in 2005. Over 75% of these were considered minor or moderate.
- CARFAX depends on many sources for its accident / damage data. CARFAX can only report what is in our database on 12/26/14 at 12:34:17 PM (EST). New data will result in a change to this report.

Alabama Damage Reports:

- Provide an estimate of the extent of damage in its accident reports for the following:
 - MAJOR: The accident damage was major and may affect the operation of the vehicle.
 - DISABLED: The vehicle cannot be driven from the accident scene due to severe damage or an injury.
 - FUNCTIONAL: The accident damage is moderate and may affect the operation of the vehicle and/or its parts. Examples include broken windows, trunk lids, doors, bumpers and tires.
 - NO DAMAGE: The vehicle was not damaged.
- Are required if the estimated damage exceeds \$500

CARFAX Price Adjustment™

JB012

1 STATE OF ILLINOIS)

) ss:

2 COUNTY OF C O O K)

3
4 IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
5 MUNICIPAL DEPARTMENT, FIRST DISTRICT

6 MARY M. TATE,)

7 Plaintiff,)

8 -vs-) No. 2014 M1 132291

9 S & M AUTO BROKERS, INC.,)

Defendants.)

10
11
12 Evidence deposition of JOSHUA OSBAY
13 CAMPBELL-BURGESS, taken before MARINA MOGILEVSKY,
14 C.S.R., and Notary Public, pursuant to the provisions of
15 the Illinois Code of Civil Procedure and the Rules of
16 the Supreme Court thereof, pertaining to the taking of
17 depositions for evidentiary purposes, at 11 East Hubbard
18 Street, Suite 202, Chicago, Illinois, commencing at
19 3:00 o'clock p.m. on the 4th day of February, 2016.
20
21
22

23 * * o O o * *
24

1 There were present at the taking of this
2 deposition the following counsel:
3
4

5 CHICAGO LEMON LAW.COM, P.C. by
6 MR. DMITRY N. FEOFANOV
7 404 Fourth Avenue West
8 Lyndon, Illinois 61261
9 (815) 986-7303
10 feofanov@ChicagoLemonLaw.com
11 appeared on behalf of the Plaintiff;
12

13 O'ROURKE & MOODY by
14 MR. MICHAEL O'ROURKE
15 55 West Monroe Street
16 Suite 1400
17 Chicago, Illinois 60601
18 (312) 849-2020
19 morourke@orourkeandmoody.com
20 appeared on behalf of the Defendants.
21
22

23 MR. DWIGHT A. WHITE, Esquire
24 11 East Hubbard Street
Suite 202
Chicago, Illinois 60611
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appeared on behalf of the Deponent.

* * o O o * *

DEPOSITION OF
Joshua Osbay Campbell-Burgess

February 04, 2016

EXAMINATION BY:	PAGE
Mr. Dmitry N. Feofanov	04, 43, 47
Mr. Michael O'Rourke	32, 45

* * * * *

EXHIBITS

	PAGE
Deposition Exhibit 1 (S&M Auto Purchase Contract/Bill of Sale)	08
Deposition Exhibit 2 (CARFAX Report for 2011 Ford Explorer XLT)	20

* * * * *

1 JOSHUA OSBAY CAMPBELL-BURGESS,
2 called as a witness herein, having been first duly
3 sworn, was examined upon oral interrogatories and
4 testified as follows:

5 DIRECT EXAMINATION

6 by Mr. Feofanov:

7 MR. FEOFANOV: Q Good afternoon, sir.

8 A Good afternoon.

9 Q You understand this is your evidence deposition?

10 A Yes, sir.

11 Q That we are taking because you would not be able
12 to attend the trial of this matter?

13 A Yes, sir.

14 Q Okay. Would you please tell us --

15 MR. O'ROURKE: Counsel, this is being taken in
16 the Tate case, right?

17 MR. FEOFANOV: Right.

18 Q Would you please tell us your name.

19 A Joshua Osbay Campbell-Burgess.

20 Q At this point I understand you live in Chicago?

21 A Yes, sir.

22 Q Would you give us a thumbnail sketch of your
23 educational background?

24 A I graduated high school from Oak Park River
25 Forest High School.

26 Q When did you do that?

27 A I graduated 2012.

28 Q Okay. And after that?

29 A I attended Triton College for a short time, and
30 I attended Heartland Community College for a short time
31 as well.

32 MR. O'ROURKE: I'm sorry, what was the name?

33 THE WITNESS: Heartland Community College.

34 MR. FEOFANOV: Q And what did you study there?

35 A Criminal justice.

36 Q Does it mean you were thinking of the career as
37 a police officer?

38 A Yes, sir.

39 Q Did you complete your studies at Heartland
40 Community College?

41 A No, sir.

42 Q How much studying did you do there, one year?

43 A Yes, sir.

44 Q Okay. And I take it at a certain point you had
45 a change of plans?

46 A Yes, sir.

47 Q And what new plans did you make?

48 A I enlisted in the U.S. Army.

49 Q And when did that happen?

50 A Just recently, actually.

51 Q And when -- Obviously you are not in the Army
52 yet. But you are going to be very soon, I understand?

53 A Yes, sir.

54 Q As of when?

55 A I leave February 8th.

56 Q In three days?

1 A Yes, sir.

2 Q And do you know where you're going?

3 A I'm going to Fort Sill in Oklahoma for basic
4 training.

5 Q Which will last how long, as far as you know?

6 A Nine weeks.

7 Q And after that?

8 A I come home for a short time, and then I go to
9 AIT for another seven weeks.

10 Q And what is AIT?

11 A Advanced Individual Training.

12 Q And obviously this is why you will not be able
13 to participate in person in the trial in this matter,
14 which is going to be in March, right?

15 A Yes, sir.

16 Q Okay. Well, if I can bring your attention to
17 the time when you bought your Ford in December of 2014,
18 okay.

19 A Yes, sir.

20 Q Why did you need a car at the end of 2014?

21 A Well, the vehicle I had at the time was
22 undependable; and I needed a new vehicle.

23 Q Which presumably would be dependable?

24 A I would assume so.

25 Q You didn't come there and say, I want an equally
26 undependable car as before, right?

27 A Right.

28 Q Okay. And how did you go about looking for a
29 dependable car?

30 A I Google searched for that model and make of the
31 vehicle.

32 Q You had that model and make in mind?

33 A Yes, sir.

34 Q Why?

35 A Ford trucks are usually dependable. I've had a
36 previous Ford truck, and it lasted me quite a while.

37 Q And how did you zero in on that particular
38 dealer?

39 A They popped up. It was one of the first options
40 on Google. They looked very reliable, so.

41 Q And did you or did you not find the model and
42 the car that you -- or truck, I should say, that met
43 your specifications?

44 A Yes, sir.

45 Q What about the price?

46 A It seemed reasonable as well.

47 Q Okay. Did you look for other cars, or you were
48 looking for this particular model and make?

49 A That particular model and make.

50 Q Okay. And so is that why you eventually in
51 December of 2014 went to S & M Auto?

52 A Yes, sir.

53 Q When you went there, did you look at any other
54 cars; or just this one?

55 A Just that particular car.

56 Q Okay. I'm marking this as Burgess Exhibit

1 No. 1, and I am giving a copy to opposing counsel and to
2 my co-counsel.

3 (Exhibit 1 marked as requested.)

4 MR. FEOFANOV: Q Sir, showing you what's been
5 marked as Exhibit No. 1, what is that?

6 A It's the bill of sale, I assume.

7 Q Pertaining to what?

8 A The vehicle that I purchased.

9 Q So that's the contract that you signed as a
10 result of your buying that Ford?

11 A Yes, sir.

12 Q Okay. And bringing your attention to the
13 signature at the bottom of this document, is that your
14 signature?

15 A Yes, sir.

16 Q Okay. Is that the contract -- Is that a fair
17 and accurate copy of the contract that you received when
18 you signed the papers?

19 A Yes, sir.

20 MR. FEOFANOV: I move to admit Deposition
21 Exhibit No. 1 into evidence.

22 MR. O'ROURKE: I have no objection. But just
23 for everyone's sake, was this a two-sided -- was
24 there a reverse side to this contract?

25 MR. FEOFANOV: I believe not. But if there is
26 one, we will supplement.

27 MR. O'ROURKE: Okay. With that reservation, I
28 have no objection.

29 MR. FEOFANOV: Q Okay. When you were looking
30 for a car at S & M, did you speak to anybody?

31 A Yes, sir.

32 Q Who did you speak to?

33 A A salesman.

34 Q Do you remember his name?

35 A No, sir.

36 Q Do you remember how he looked?

37 A Yes, sir.

38 Q How did he look?

39 A Middle-aged, seemed to be of Arabic descent.

40 Q A man or a woman?

41 A Male.

42 Q Okay. How did you address him, sir?

43 A Yes, sir.

44 Q Okay. And so would it be fair to say that you
45 and the gentleman at S & M had a conversation about the
46 car before you bought it?

47 MR. O'ROURKE: Objection, leading.

48 THE WITNESS: Yes.

49 MR. FEOFANOV: Q Could you tell us whether or
50 not you and the gentleman at S & M had any
51 conversations about the car before you bought it?

52 A Yes, sir.

53 Q Okay. Where was that conversation?

54 A There was a conversation via phone and inside of
55 the actual dealership.

56 Q Via phone, I assume that was before you came

1 there?

2 A Yes, sir.

3 Q Okay. And inside the dealership is when you did
4 come there?

5 A Yes, sir.

6 Q And when you had a conversation inside the
7 dealership, was anyone else present?

8 A Yes, sir.

9 Q Do you know who?

10 A There were some sales representatives inside,
11 and my wife was actually there as well.

12 Q Okay. And where did this conversation take
13 place?

14 A At the salesman's desk.

15 Q Inside the dealership?

16 A Yes, sir.

17 Q Okay. The conversation on the phone that you
18 referenced before, did you discuss anything substantive
19 about the car; or not?

20 A It was a very brief conversation. I just wanted
21 to confirm that the vehicle was actually there and the
22 price of the vehicle.

23 Q Because you wanted to find out before you
24 actually took the trip?

25 A Yes, sir.

26 Q Okay. Well, so we'll skip that conversation.
27 And let's talk about the conversation which you had at
28 the dealership.

29 Could you tell us whether or not you discussed
30 the car and the car's condition?

31 MR. O'ROURKE: Objection, no foundation. It
32 lacks foundation and leading.

33 MR. FEOFANOV: Q Could you tell us whether or
34 not you discussed the car?

35 A Yes, sir.

36 Q What about the car did you discuss?

37 A I asked about the vehicle, asked to see the
38 vehicle, asked what condition the vehicle was in.

39 Q Okay. Well, let's stop right there.

40 What was the answer to the question about the
41 condition of the vehicle?

42 MR. O'ROURKE: Objection, lack of foundation.

43 Go ahead. You can answer.

44 MR. FEOFANOV: Q Did you have a conversation
45 with the salesman?

46 A Yes, sir.

47 Q Where was that conversation?

48 A At the desk.

49 Q Who else was present?

50 A Sales associates and my wife.

51 Q What did he say about the condition of the
52 vehicle?

53 A It was in perfect condition.

54 Q Was that exactly his words?

55 A Yes, sir.

56 Q What were his words?

1 A Perfect condition.

2 Q Perfect condition.

3 MR. O'ROURKE: Same objection.

4 MR. FEOFANOV: Q Were you interested in buying
5 a car that was --

6 A Yes, sir.

7 Q Let me finish.

8 Were you interested in buying a car that was in
9 perfect condition, or were you interested in buying a
10 car that was not in perfect condition?

11 MR. O'ROURKE: Objection, leading.

12 THE WITNESS: Perfect condition.

13 MR. FEOFANOV: Q Let me ask another question.

14 What kind of condition car were you interested
15 in buying?

16 A A car with no problems.

17 Q Okay. Did you take the car for a test drive?

18 A Yes, sir.

19 Q Did you have any -- Did you notice any issues
20 with the car during the test drive?

21 A Yes, sir. During the initial driving of the
22 vehicle, there was a noise coming from the rear end of
23 the vehicle. And I brought that to the attention of the
24 sales associate that accompanied me on the drive.

25 Q Okay. Any warning lights?

26 A No, sir.

27 Q Okay. You mentioned the noise at the end of the
28 car, and you said that you brought it to the attention
29 of the salesman. What was the result of your bringing
30 it to the attention of the salesman?

31 MR. O'ROURKE: Objection to form.

32 MR. FEOFANOV: Q Do you know if the salesman
33 did anything as a result of you bringing it to their
34 attention?

35 MR. O'ROURKE: Objection, speculation.

36 MR. FEOFANOV: Q Do you know?

37 A No, sir.

38 Q Okay. Did you observe the salesman -- What did
39 the salesman do to the car? What, if anything, did the
40 salesman do to the car after you brought it to their
41 attention?

42 A I saw the vehicle get pulled into their garage,
43 but I didn't see anything.

44 Q Okay. Did the salesman say anything about why
45 they were pulling the car in the garage?

46 MR. O'ROURKE: Objection, leading.

47 THE WITNESS: No.

48 MR. FEOFANOV: Q Could you tell us whether or
49 not the salesman said why they were pulling the
50 garage in the garage?

51 MR. O'ROURKE: Objection, leading.

52 THE WITNESS: No, sir.

53 MR. FEOFANOV: Q What was the answer?

54 A No, sir.

55 Q Okay. And could you tell us whether after -- At
56 a certain point the car was released from the garage?

1 A Yes, sir.

2 Q Was the noise still there?

3 A No, sir.

4 Q Okay. When you heard -- You testified just a
5 moment ago that the salesman said that the car was in
6 perfect condition. Do you remember that?

7 A Yes, sir.

8 Q Okay. When the salesman told you about this
9 condition of the car, did you -- what, if anything, did
10 you think about the accident history of the car; did it
11 have it, or did it not have it?

12 MR. O'ROURKE: Objection, leading.

13 THE WITNESS: I wasn't informed of any
14 accidents.

15 MR. FEOFANOV: Q Okay. I'll ask it another
16 way.

17 Could you tell us whether or not the salesman
18 said anything about the prior accident history of the
19 car?

20 A No, sir.

21 MR. O'ROURKE: Objection, leading.

22 MR. FEOFANOV: Q What, if anything, did the
23 salesman say about the prior accident of the car?

24 MR. O'ROURKE: Objection, assumes facts not in
25 evidence.

26 THE WITNESS: Nothing.

27 MR. FEOFANOV: Q Could you tell us what the
28 salesman told you, as far as you remember, before
29 you bought the car?

30 MR. O'ROURKE: Lack of foundation.

31 MR. FEOFANOV: Q Did you have a conversation
32 with the salesman?

33 A Yes, sir.

34 Q Who else was present?

35 A The associates and my wife.

36 Q Where was that conversation?

37 A At the desk.

38 Q What did the salesman tell you about the
39 condition of the car?

40 A That it was in perfect car.

41 Q Other than that, did he say anything else?

42 A No, sir.

43 Q Okay. If you knew about the accident history of
44 the car, would you have bought it?

45 MR. O'ROURKE: Objection; leading, speculation.

46 MR. FEOFANOV: Q Answer the question.

47 A Absolutely not.

48 MR. O'ROURKE: Can you read back the question
49 real quick, please.

50 (From the record above, the reporter read
51 the following:

52 "Q: If you knew about the accident history
53 of the car, would you have bought it?")

54 MR. O'ROURKE: Speculation and leading.

55 MR. FEOFANOV: Q Did you subsequently find
56 anything at all about the accident history of the

1 car or lack of accident history of the car?

2 MR. O'ROURKE: Objection, calls for hearsay.

3 MR. FEOFANOV: Q Did you find out or did you
4 not find out?

5 A No, I was not told.

6 Q Later on did you find out?

7 A Yes, sir.

8 Q Okay. Based on the fact of what you found out,
9 would you have bought the car?

10 A No, sir.

11 MR. O'ROURKE: Objection, leading.

12 MR. FEOFANOV: Q Okay. Let's talk about after
13 you bought the car.

14 Did anything unusual happen on your drive home
15 from the dealership?

16 A Yes, sir.

17 Q What?

18 A There was an air bag light that actually
19 activated, and the noise actually came back.

20 Q Okay. Other than those two things, in the next
21 day or two, was the car operating okay or not okay?

22 A I had some issues with the vehicle.

23 Q Like what kind of issues?

24 A I had to take it to Jiffy Lube. I got the
25 brakes, the rotors replaced. Apparently they were in
26 terrible condition.

27 MR. O'ROURKE: Objection. It's commentary.

28 Go ahead.

29 THE WITNESS: There was another small detail
30 that the mechanic told me, but I forget right now.

31 I also noticed that the -- I forget what you
32 call it, when the wheels are -- Not the axles, but you
33 know how when you're driving you can tell the car is
34 veering to the left or the right, the balance was
35 actually off on the vehicle.

36 MR. FEOFANOV: Q All these things
37 cumulatively, did they make you wonder about the car
38 or did they not make you wonder about the car?

39 MR. O'ROURKE: Objection, leading. Suggesting
40 an answer.

41 THE WITNESS: They made me wonder.

42 MR. FEOFANOV: Q As a result of those
43 things -- I'll rephrase it.

44 As a result of those cumulative things,
45 problems with the car, what, if anything, did you do.

46 A I got a CARFAX report.

47 Q Why did you decide to get a CARFAX for this car?

48 A I wanted to see if there were any accidents or
49 anything I should know about that happened to the
50 vehicle.

51 Q Okay. And when did you get this CARFAX report?

52 A I believe it was within 48 hours.

53 Q Okay. I am marking this document as Exhibit 2.

54 (Exhibit 2 marked as requested.)

55 MR. FEOFANOV: Q I'm giving you what's been
56 marked as Exhibit 2 to this deposition. Is this the

1 CARFAX that you got?

2 A Yes, sir.

3 Q How did you get this CARFAX?

4 A I bought it online.

5 Q It cost you 20 bucks or something?

6 A It was actually a little bit more than that.

7 Q Oh, okay.

8 And so how does it work; you buy it online, you
9 pay with a credit card?

10 A Yes, sir.

11 Q And they give you access or something?

12 A Yes, sir. It lists all previous owners. Not
13 the names, but --

14 Q Hold on. I'm not there yet. I'm just going
15 through the procedure of how you got it.

16 Okay. So you got the CARFAX on the screen of
17 the computer?

18 A Yes, sir.

19 Q How did you get the paper copy?

20 A The library.

21 Q What did you do at the library?

22 A I accessed one of their computers and logged on.

23 Q And then what did you do?

24 A Went to the website CARFAX.com and requested the
25 report.

26 Q Okay. But how did you get the paper copy?

27 A Clicked print and went to the printer.

28 Q Okay. So the Exhibit 2 that is in front of you
29 is what was printed as a result of you clicking the
30 button print?

31 A Yes, sir.

32 Q In the library?

33 A Yes, sir.

34 Q After you bought the CARFAX?

35 A Yes, sir.

36 Q Okay. Did you in any way change this document?

37 A No, sir.

38 Q Like photoshop it?

39 A No, sir.

40 Q Is that the exact copy of what came out on the
41 printer after you pressed the button to print?

42 A Yes, sir.

43 Q Okay.

44 Subject to foundation for hearsay, which will
45 be established by a different witness, I move to admit
46 this document based on the foundation of authenticity
47 into evidence.

48 MR. O'ROURKE: Well, I will state my objection.
49 As you know, this is hearsay. So I'm going to
50 object having the document admitted. But go ahead.

51 MR. FEOFANOV: As I said, subject to
52 establishing foundation for hearsay by a different
53 witness.

54 MR. O'ROURKE: I understand.

55 MR. FEOFANOV: Q So, sir, when you got the
56 CARFAX, what, if anything, did you find out?

1 A The car had been in two accidents.

2 MR. O'ROURKE: Well, I'll object. It's
3 reporting hearsay.

4 MR. FEOFANOV: Q Did it make you happy?

5 A Not at all.

6 MR. O'ROURKE: Objection to relevance.

7 MR. FEOFANOV: Actually, state of mind exception
8 to hearsay, not hearsay.

9 MR. O'ROURKE: Same objection as hearsay.

10 MR. FEOFANOV: Q Could you describe your state
11 of mind to us when you found out whatever you found
12 out from the CARFAX?

13 MR. O'ROURKE: Objection, irrelevant.

14 THE WITNESS: Quite honestly, I was quite
15 pissed.

16 MR. FEOFANOV: Q Okay. What, if anything, did
17 you do about it?

18 A I contacted the salesman from the dealership.

19 Q Oh, okay. The same middle-aged gentleman we
20 talked about?

21 A Yes, sir.

22 Q How did you contact him?

23 A I gave the dealership a phone call.

24 Q And how did you know it was him on the other
25 side of the phone?

26 A I asked to speak to him specifically.

27 Q Okay. And it was by phone?

28 A Yes, sir.

29 Q Where were you when you called?

30 A I believe I was at home.

31 Q Okay. And could you please tell us what the
32 substance of that conversation was with the gentleman
33 from the dealership?

34 MR. O'ROURKE: Objection; foundation, lack of
35 foundation.

36 THE WITNESS: He was actually quite rude about
37 it. And then I proceeded to actually go to the
38 dealership to talk to --

39 MR. FEOFANOV: Q Let me interrupt you, sir.
40 Which number did you call?

41 A The actual number of the dealership.

42 Q Did somebody answer with the dealership name?

43 A Yes, sir.

44 Q And could you tell us whether you asked for the
45 gentleman who was your salesman?

46 A Yes, sir.

47 Q Now please tell us what the conversation was.

48 A Well, I called him, stated my name, the vehicle
49 that I had purchased; and I told him that I found out
50 some things, and that I was unsatisfied with the
51 vehicle. And he immediately got -- I don't want to say
52 belligerent, but rude, I would think the word is.

53 MR. O'ROURKE: Objection, characterization.

54 THE WITNESS: So I actually just stopped into
55 the dealership the same day as the conversation on
56 the phone.

1 MR. FEOFANOV: Q Well, let's talk about the
2 conversation.

3 When you say rude, how do you figure -- what
4 did he say that makes you say he was rude?

5 A Well, when I asked him if I could, you know,
6 stop in to just see if we could --

7 MR. O'ROURKE: Standing objection on foundation.

8 THE WITNESS: -- if we could, you know, just I
9 guess return the vehicle; and I could just get the
10 down payment that I put back.

11 MR. FEOFANOV: Q And he said?

12 A His reply was, this isn't Wal-Mart. You can't
13 just return items here.

14 Q This is not Wal-Mart?

15 A Yes, sir.

16 Q Okay. Was that the essence of the conversation
17 on the phone, or was there more?

18 A No, that was essentially it. And then I hung
19 up.

20 Q And then you went to the dealership?

21 A Yes, sir.

22 Q Did you speak to the same gentleman or to a
23 different one?

24 A Yes, sir.

25 Q Okay. Now, when you went to the dealership,
26 when was that?

27 A The same day.

28 Q The same day.

29 Where in the dealership was that conversation?

30 A Inside the dealership at his desk.

31 Q In his office?

32 A Yes, sir.

33 Q Who else was present during the conversation?

34 A The associate that I did the test drive with,
35 and I guess their secretary. A young woman that worked
36 in there as well.

37 Q Okay. Now please tell us exactly what the
38 salesman told you.

39 Well, first of all, what did you tell him?

40 A I told him that I didn't appreciate the way he
41 was dealing with the matter. I told him I just simply
42 wanted to forget all this happened. I just wanted to
43 take the vehicle back, get the down payment back, and he
44 did not want to do that at all.

45 Q And of course your down payment was \$10,000, was
46 it not?

47 A Yes, sir.

48 Q Was it pretty much your entire savings?

49 MR. O'ROURKE: Objection, leading.

50 MR. FEOFANOV: Q Could you tell us what
51 portion of your savings did your down payment
52 represent.

53 MR. O'ROURKE: No foundation, assumes facts not
54 in evidence.

55 MR. FEOFANOV: Q Sir, would you look at your
56 contract please and point at the down payment part.

1 A (indicating).

2 Q And how much is that?

3 A 10,000.

4 Q Okay. And is it your testimony that you paid a
5 \$10,000 down payment for the Ford?

6 A Yes, sir.

7 Q Okay. And could you tell us where that money
8 came from?

9 A It was a lot of my savings. I actually saved up
10 for it for a while. The great majority of it came from
11 my Comcast job. I saved up for it with the 401(k) that
12 I had.

13 Q So did you have -- After paying the \$10,000, did
14 you have any other savings?

15 A No, sir.

16 MR. O'ROURKE: Objection, relevance.

17 MR. FEOFANOV: Q So continue, please. I believe
18 you were mentioning that you asked for your down payment
19 back. And what did the salesman say?

20 A He repeated the same statement about the
21 Wal-Mart and items thing. And he was actually the whole
22 time talking on his phone, didn't really make eye
23 contact with me at all; and after a while just stopped
24 replying to me and, you know, simply told me there's
25 nothing I can do. I sold you the vehicle, that's it.

26 MR. O'ROURKE: Objection, nonresponsive.

27 MR. FEOFANOV: Q In your conversation with
28 him, did you mention the accident history?

29 A Yes, sir.

30 Q And what was his response to that?

31 A No reply.

32 Q Okay. Did you know about this accident history
33 when you were buying that Ford?

34 A No, sir.

35 Q Were you surprised at what you found?

36 A Very much so.

37 Q Did you expect S & M, the dealer, to tell you
38 about it?

39 A Yes, sir.

40 MR. O'ROURKE: Objection, leading.

41 MR. FEOFANOV: Q Could you tell us what you
42 expected S & M to do with respect to accident
43 history?

44 MR. O'ROURKE: Same objection, leading.

45 THE WITNESS: I would expect them to tell me
46 about something like that.

47 MR. FEOFANOV: Q Okay. Now let's talk about
48 the money issue.

49 Would you as a consumer agree or disagree that
50 cars with accident history are worth less than identical
51 cars without an accident history?

52 MR. O'ROURKE: Objection; asks for an expert
53 opinion, leading, no foundation.

54 MR. FEOFANOV: Q Sir, you researched the
55 values of cars before you went to buy your Ford?

56 A Yes, sir.

1 Q Okay. And how did you research the value of the
2 cars?

3 A Kelly Blue Book.

4 Q Okay. Did you notice in Kelly Blue Book that
5 there were different categories of cars depending on
6 condition?

7 A Yes, sir.

8 Q By the way, did you notice whether or not in
9 Kelly Blue Book there was a special category for cars
10 with prior accidents?

11 MR. O'ROURKE: Objection, that's leading. And
12 it's asking for hearsay.

13 MR. FEOFANOV: Q Did you see such a category
14 in the Kelly Blue Book, or did you not see it?

15 A Yes, sir.

16 MR. O'ROURKE: Objection, leading.

17 MR. FEOFANOV: Q Was there a category?

18 A Yes, sir.

19 MR. O'ROURKE: Hearsay.

20 MR. FEOFANOV: Q Okay. Now, as far as you
21 were concerned -- Well, tell me whether you thought
22 that you were getting a fair deal based on the car
23 condition, as you knew it.

24 MR. O'ROURKE: Objection; speculative, asks for
25 opinion, leading.

26 MR. FEOFANOV: Q Could you tell us whether or
27 not you thought you were getting your money's worth
28 based on the car as was represented to you?

29 A Yes, sir.

30 MR. O'ROURKE: Objection, vague.

31 MR. FEOFANOV: Q Okay. And now that you sit
32 here and you know about the history of the car, do
33 you think that you got your money's worth?

34 A No, sir.

35 MR. O'ROURKE: Objection, leading.

36 MR. FEOFANOV: Q Could you tell us whether or
37 not you think that the accident history had an
38 impact on the value of your car?

39 A Yes, sir.

40 MR. O'ROURKE: Objection, leading.

41 MR. FEOFANOV: Q Okay. And after you learned
42 about the history, could you tell us whether you
43 think your car was worth 10 grand or was not worth
44 10 grand?

45 MR. O'ROURKE: Objection; asks for opinion, no
46 foundation. The question is vague, leading.

47 THE WITNESS: I'm sorry, can you repeat?

48 MR. FEOFANOV: Q After you learned about the
49 accident history on the car, do you personally think
50 that your car was worth \$10,000 or not worth \$10,000
51 that you paid for it?

52 MR. O'ROURKE: Same objection.

53 THE WITNESS: Not worth 10,000.

54 MR. FEOFANOV: Q As a consumer, do you want to
55 buy a car that was in prior accident?

56 A No, sir.

1 MR. O'ROURKE: Objection; leading, vague.

2 MR. FEOFANOV: Q What kind of car as a
3 consumer do you want to buy?

4 A A car with no prior accidents and no issues.

5 Q Would you want to sell your car to someone else?

6 A No, sir.

7 MR. O'ROURKE: Objection; leading, speculative.

8 MR. FEOFANOV: Q If you had to sell your car
9 to someone else, could you tell us whether or not
10 you would do it?

11 A No, sir.

12 MR. O'ROURKE: Objection; leading, no
13 foundation, speculative.

14 MR. FEOFANOV: And that's all I have. Your
15 witness.

16 CROSS EXAMINATION

17 by Mr. O'Rourke:

18 MR. O'ROURKE: Q Mr. Burgess, you are not an
19 expert in automobile repair, are you?

20 A No, sir.

21 Q You're not an expert in -- You don't consider
22 yourself or would not regard yourself or represent
23 yourself as being an expert in automobile valuation,
24 would you?

25 A No, sir.

26 Q Okay. You have no knowledge whatsoever of any
27 other vehicle sale at the automobile dealership S & M
28 than the transaction that you were involved in; is that
29 correct?

30 A Yes, sir.

31 Q Okay. So you have no idea about any other
32 dealership purchasers' experience at S & M aside from
33 yourself, correct?

34 A That's correct.

35 Q You have no knowledge of any of the
36 circumstances of any particular purchase of vehicle at
37 S & M by an individual by the name of Mary Tate?

38 A No, sir.

39 Q Have no knowledge at all of the circumstances of
40 her transaction at S & M whatsoever, do you?

41 A No, sir.

42 Q And you don't profess to have any information or
43 render any opinions with respect to what happened with
44 Mary Tate at S & M, would you, sir?

45 A No, sir.

46 Q Okay. You have no knowledge of any transaction
47 by S & M with an individual by the name of Carmen Romo?

48 Let me make sure I've got the name right. Do
49 you know an individual by the name of Carmen Romo?

50 A No, sir.

51 Q So you have no personal knowledge whatsoever of
52 an individual by the name of Carmen Romo?

53 A No, sir.

54 Q So you obviously have no information with
55 respect to any vehicle purchase or transaction that
56 Carmen Romo would have had with S & M, correct?

1 A No, sir.

2 Q Okay. If you look at your Exhibit 1, which is
3 the sales contract, can you tell us whether your
4 initials are inscribed or are placed on the bottom of
5 the document where it says used vehicle, as is?

6 A Yes, sir.

7 Q Okay. You signed that?

8 A Yes, sir.

9 Q Okay. Those are your initials?

10 A Yes, sir.

11 Q All right. So what's your first name?

12 A Joshua.

13 Q Joshua. I'm sorry.

14 Joshua, so when you purchased the vehicle at
15 S & M, you read the contract that you were asked to
16 sign, correct?

17 A Yes, sir.

18 Q And you read all the terms, and you were not
19 rushed in any way in reviewing the terms. Would that be
20 correct?

21 A Yes, sir.

22 Q Okay. I mean, they didn't say you have to sign
23 this right now, don't read it, anything like that?

24 A No.

25 Q So you had plenty of time to read the contract
26 and understand the terms of the contract before you
27 signed, correct?

28 A Yes, sir.

29 Q And you are a high school graduate. You went to
30 Oak Park River Forest. Good school, right?

31 A Yes, sir.

32 Q It is a good school.

33 When you see the language in the contract used
34 vehicle as is no warranty, you understand that you were
35 taking the vehicle as is; and there was no
36 representations as to the actual condition of the car?

37 MR. FEOFANOV: Objection, misrepresents the
38 legal effect of as is, which is not a defense to
39 fraud, which merely disclaims implied warranties and
40 which has nothing to do with representations. And,
41 therefore, move to strike the entire inquiry.

42 MR. O'ROURKE: Q But the fact of the matter
43 is, you initialed the phrase used vehicle as is,
44 correct?

45 A Yes, sir.

46 Q And you understood what used vehicle as is meant
47 when you initialed that paragraph, correct?

48 MR. FEOFANOV: Objection, asks for legal
49 conclusion from the witness.

50 MR. O'ROURKE: Q Well, what did you understand
51 that language to mean that you signed, used vehicle
52 as is no warranty?

53 A Yes, sir.

54 Q What did you understand that to mean?

55 A That the vehicle was purchased by a different
56 individual and had been driven before.

1 Q All right. Okay. Now, did you have an
2 opportunity to have your own person or your own friend
3 or associate or automobile expert for you review or look
4 at the car before you bought it?

5 A No, sir.

6 Q I mean, did you want to have your own auto
7 mechanic look at the car before you purchased it?

8 A Well, I actually had a neighbor, but he wasn't
9 available.

10 Q Okay. But you could have gotten your
11 neighbor -- brought your neighbor in and had him look at
12 the vehicle before you took it off the lot, right?

13 A Well, he was actually active duty at the time.
14 So he wasn't around.

15 Q Okay. Why didn't you take it over to some
16 automobile repair shop just to make sure that everything
17 was fine?

18 A Well, after the purchase, I actually took it to
19 the Jiffy Lube. And they were the ones that told me
20 that there were a number of issues.

21 Q Okay. Now, did you think of doing a CARFAX
22 report prior to the time you actually signed the
23 contract?

24 A No, sir.

25 Q I mean, was there any pressure in having to sign
26 the contract that day; or could you have taken some time
27 and done some history of your own to check to see what
28 the car's accident history was?

29 A Yes, sir.

30 Q Okay. So you could have done that?

31 A Yes, sir.

32 Q Okay. Have you run CARFAX reports before?

33 A No, sir.

34 Q Okay. But you know it's out there, you know
35 it's available, correct?

36 A Yes, sir.

37 Q And that's something that you could have
38 checked, if you wanted to?

39 A Yes, sir.

40 Q But you were satisfied when you took the test
41 drive and drove the car off the lot that the car was,
42 from your standpoint, in an operative condition,
43 correct?

44 A Yes, sir.

45 Q All right. Did you purchase a warranty for this
46 car?

47 A Well, they told me it was --

48 MR. FEOFANOV: Objection, calls for legal
49 conclusion as to what a warranty is.

50 MR. O'ROURKE: Q Did you buy any coverage, any
51 type of other -- Let me strike that.

52 Did you sign any other contracts besides this
53 sales contract when you were at the dealership?

54 MR. FEOFANOV: Objection, calls for legal
55 conclusion with respect to what is a contract.

56 MR. O'ROURKE: Q Okay. Did you sign any other

1 papers at the dealership besides the purchase
2 contract, which is Exhibit 1?

3 A I believe so. I'm not totally sure.

4 Q Do you know what other papers you signed?

5 A I believe there was something that said
6 something about --

7 MR. FEOFANOV: If you know, say so. If you
8 don't --

9 THE WITNESS: Yeah, there was something that was
10 some form of a warranty that he told me about and
11 showed me a piece of paper and I signed for it, yes.
12 But I was told it was included in the price. That's
13 what I was told.

14 MR. O'ROURKE: Q Okay. Well, I'm just saying
15 did you sign another piece of paper?

16 A Yes, sir.

17 Q Okay. And did you in fact take your car at
18 times to a repair shop that was recommended by the party
19 that you signed the contract with?

20 A No, sir.

21 Q You didn't take the car to any other repair shop
22 besides Jiffy Lube?

23 A No, sir.

24 Q Okay. Now, were you contacted and asked if you
25 would be interested in filing a suit? Were you
26 contacted by anybody?

27 A No, sir.

28 MR. FEOFANOV: Objection, calls for --

29 MR. O'ROURKE: This is pre-attorney/client.

30 Q Were you contacted by anybody soliciting your
31 interest in filing a lawsuit?

32 A No, sir.

33 MR. FEOFANOV: And we object to that as
34 irrelevant.

35 MR. O'ROURKE: Q What kind of car are you
36 driving now?

37 A It's actually this one, but I just take cautions
38 actually being in the vehicle.

39 Q So you're still driving the Ford Explorer?

40 A Yes, sir.

41 Q Okay. So it's still operates?

42 A To a certain extent; yes, sir.

43 Q Well, what do you mean to a certain extent? Are
44 you able to drive it for the types of driving that you
45 normally do?

46 A Yeah, sure.

47 Q Okay. And how long have you been -- So you've
48 been driving it more than a year?

49 A It's on and off. Not the whole year; no, sir.

50 Q Okay. But you still drive it today?

51 A Yes, sir.

52 Well, I actually got a ride here today.

53 Q But I'm talking about normally you're still
54 driving it?

55 A Yes, sir.

56 Q Do you know an individual by the name of Phillip

1 Grizmer?

2 A No, sir.

3 Q Have you ever seen this consulting appraisal
4 that's been attached to your complaint?

5 A I'm sorry, what was the name again?

6 Q Grizmer.

7 A Was that the last name or the first name?

8 Q That's the last name, Phillip Grizmer.

9 A I do know the first name. I didn't know the
10 last name.

11 Q Oh, okay.

12 Did you ask someone to do an inspection of your
13 car?

14 A Well, I contacted him, yes.

15 Q Okay. And how did you get his name?

16 A I got it –

17 MR. FEOFANOV: Objection, calls for
18 attorney/client privilege. Instruct not to answer.

19 MR. O'ROURKE: Well, that's not your client, is
20 it?

21 MR. FEOFANOV: I instruct him not to answer.

22 MR. O'ROURKE: Q Okay. Prior to this lawsuit,
23 had you ever talked to Mr. Grizmer before?

24 A No, sir.

25 Q Okay. Have you ever talked with Mr. Grizmer in
26 any other capacity than in connection with this lawsuit?

27 A No, sir.

28 Q Okay. Did you consult at all with
29 Mr. Grizmer -- Well, let me ask it this way. Have you
30 had any extensive conversations with Mr. Grizmer?

31 A Yes, sir. He actually appraised the vehicle.

32 Q Okay, he appraised the vehicle. But I'm talking
33 about have you had any conversations with him?

34 A Yes, sir.

35 Q Okay. And when were those conversations?

36 A That day.

37 Q Which day?

38 A The day we met.

39 Q And what day was that?

40 A I don't recall the exact date.

41 Q How soon after you bought the car did you meet
42 with Mr. Grizmer?

43 A Probably within a week.

44 Q Okay. And how did you get Mr. Grizmer's name?

45 A I got it through Mr. Dmitry.

46 Q Okay. And he asked you to consult with
47 Mr. Grizmer?

48 MR. FEOFANOV: Objection, calls for
49 attorney/client privilege.

50 MR. O'ROURKE: Q Now, have you seen this
51 appraisal report that Mr. Grizmer prepared?

52 A Yes, sir.

53 Q Did you contribute any information to this?

54 A No, sir.

55 Q None?

56 A No.

1 Q Okay.

2 That's all I have.

3 REDIRECT EXAMINATION

4 by Mr. Feofanov:

5 MR. FEOFANOV: Q Very quickly.

6 Just so we are clear, did they tell you about
7 the accident history or did they not tell you about the
8 accident history before you bought the car?

9 A They did not tell me.

10 MR. O'ROURKE: Objection, leading.

11 MR. FEOFANOV: Q What, if anything, about the
12 accident --

13 MR. O'ROURKE: No foundation.

14 MR. FEOFANOV: Q What, if anything, about the
15 accident history did they tell you or not tell you?

16 A Nothing.

17 MR. O'ROURKE: No foundation.

18 MR. FEOFANOV: Q Okay. Do you think that when
19 you buy a car as is, which this one was, that allows
20 them to hide things from you?

21 A No, sir.

22 MR. O'ROURKE: Objection, leading.

23 MR. FEOFANOV: Q Could you tell us --

24 MR. O'ROURKE: Calls for a legal conclusion.

25 MR. FEOFANOV: Q Do you think when you buy a
26 car a car dealer is entitled to lie to you?

27 A No, sir.

28 MR. O'ROURKE: Objection; leading, no
29 foundation, calls for speculation, calls for a legal
30 conclusion.

31 MR. FEOFANOV: Q Did you trust S & M?

32 A Yes, sir.

33 Q Did you expect them to tell you everything of
34 importance about the car, or did you not?

35 MR. O'ROURKE: Objection, leading.

36 THE WITNESS: I did.

37 MR. FEOFANOV: Q Okay. What did you expect
38 them to tell you about the car?

39 A Everything about it.

40 MR. O'ROURKE: Objection; leading, no
41 foundation.

42 MR. FEOFANOV: Q What, if anything, did you
43 expect them to tell you about the car?

44 MR. O'ROURKE: Same objections.

45 THE WITNESS: Everything about the car,
46 including the past history.

47 MR. FEOFANOV: Q Okay. And regarding the fact
48 that you're still driving this car, can you buy
49 another car without your \$10,000?

50 A No, sir.

51 MR. FEOFANOV: Okay. Nothing further.

52 RECROSS EXAMINATION

53 by Mr. O'Rourke:

54 MR. O'ROURKE: Q You're still driving the car.
55 How many miles have you put on the last year?

56 A That I'm not sure. I'd have to check.

1 Q Okay. What kind of driving do you do with it,
2 Joshua?

3 A Very short drives, typically.

4 Q Okay. But you haven't replaced the car?

5 A No, sir.

6 Q Now, at the dealership, did you specifically ask
7 any of the sales representatives at S & M, does this
8 vehicle -- has this vehicle had any prior accidents?
9 Did you come out and ask anybody?

10 A Not in those words, no.

11 Q Okay. The car appeared to you to be in good
12 condition as far as the body is concerned and the
13 various equipment with the car?

14 A To the naked eye, yes.

15 Q Okay. There was no obvious damage on the car?

16 A No.

17 Q Okay. The steering worked fine, the engine
18 started?

19 A Yes.

20 Q And you could drive it out, the brakes worked?

21 A Yes.

22 Q And you're still driving it today, aren't you,
23 Joshua?

24 A Actually, no longer.

25 Q I thought you said you were still driving it?

26 A Well, not any more. I'm leaving.

27 Q Okay. So you're not driving it because you're
28 leaving for the service in a couple days, right?

29 A Right.

30 MR. O'ROURKE: Good luck in the service.

31 THE WITNESS: Thank you.

32 FURTHER REDIRECT EXAMINATION

33 by Mr. Feofanov:

34 MR. FEOFANOV: Q Do you know whether as a
35 result of those accidents -- Do you know whether or
36 not this car is safe to drive?

37 MR. O'ROURKE: Objection, asks for speculation.

38 THE WITNESS: Well, the air bag light is on. So
39 that means it's unsafe.

40 MR. O'ROURKE: Objection.

41 MR. FEOFANOV: Q Okay. As far as you know, do
42 you know or do you not know whether it's safe to
43 drive?

44 A No.

45 MR. O'ROURKE: Same objection.

46 MR. FEOFANOV: Q And so if it is not safe,
47 which you don't know, then it means things are worse
48 than you thought, right?

1 A Yes.

2 MR. O'ROURKE: Objection, leading.

3 MR. FEOFANOV: Okay. Nothing further.

4 MR. O'ROURKE: Thank you very much. Good luck
5 in the Army.

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1 STATE OF ILLINOIS)
2) ss:
3 COUNTY OF C O O K)
4
5

6 The within and foregoing deposition of the
7 aforementioned witness was taken before MARINA
8 MOGILEVSKY, C.S.R., and Notary Public, at the place,
9 date and time aforementioned.

10 There were present during the taking of the
11 deposition the previously named counsel.

12 The said witness was first duly sworn and was
13 then examined upon oral interrogatories; the questions
14 and answers were taken down in shorthand by the
15 undersigned, acting as stenographer and Notary Public;
16 and the within and foregoing is a true, accurate and
17 complete record of all of the questions asked of and
18 answers made by the aforementioned witness, at the time
19 and place hereinabove referred to.

20 The signature of the witness was waived by
21 agreement of counsel.

22 The undersigned is not interested in the
23 within case, nor of kin or counsel to any of the
24 parties.

1 Witness my official signature as Licensed
2 Certified Shorthand Reporter in and for Cook County,
3 Illinois, on this
4 _____ day of _____, _____.

5
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9 _____
10 MARINA MOGILEVSKY, C.S.R.,
11 CSR No. 084-004103
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EXHIBIT F

PhiJo Enterprises Inc. DBA
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Phillip J. Grismer

Experience since 1970

A.S.E. Master Automobile Technician

IL. State Board of Education Certified

Automotive Instructor.

Past President Chicago land VW Service
Managers Organization.

Certified Member International Automobile
Appraisers Association Member #
1003180004

807 East Main Street suite 109

Genoa, Illinois 60135

E-mail

amertek1@gmail.com

CAGA Certified

Certified Personal Property Appraiser

Certified Appraisers Guild of America

U.S.A.A.P. Certified

Certified Heavy & Ag .equipment and
Commercial Truck Inspector.

**APPRAISAL REPORT SECTION 1.
VEHICLE AND CONDITION DETAILS**

<i>File No.:</i> 112312-1	<i>Client Name</i> Carmen V. Romo
<i>Date of Inspection :</i> 11-23-2012	<i>Time of Appraisal:</i> 1:20 p.m. to 1:55 p.m.
<i>Weather Conditions:</i> Overcast 38 F.	<i>Documents Reviewed:</i> I have reviewed supplied purchase documents, repair order history, and all documents attached as support documents for this case.

P.J.G. Consulting and Appraisal**Appraisal Report Section 1 File # 112312-1 Page 2.****VEHICLE SPECIFICATIONS**

<i>Year of Vehicle:</i> 2002	<i>Make/Model:</i> Ford Explorer XLT
<i>VIN:</i> 1FMZU73K62ZC89008	<i>Mileage:</i> 144,794
<i>Engine Specifications:</i>	<i>Other Specifications:</i> Automatic transmission 4 wheel drive, full power, Leather seating, 4 door.
<i>Condition of Vehicle/Comparison Category based on sale price :</i> Good/Clean	<i>Fluid Levels:</i> all checkable fluids are full and in usable condition.

Conditions of Inspection Appraisal Location: P.J.G. Consulting & Appraisal facility.

Photographs were taken for confirmation purposes.

P.J.G. Consulting and Appraisal and/or Phil Grismer attest to having no financial interest in this vehicle beyond the inspection fee.

Complaint Issues : Unmerchantable vehicle at time of sale. Known to be unmerchantable vehicle by seller at time of sale.

PhiJo Enterprises Inc. DBA
P.J.G Consulting and Appraisal

Section 2.

File # 112312-1

Inspection Report Prepared For: Carmen V. Romo 2636 Desplaines Ave. North Riverside Illinois 60546:

The vehicle was inspected at the P.J.G. Consulting & Appraisal Facility 807 East Main Street Genoa, IL. 60135.

The vehicle is diminished in value from the comparison category due to the following historic and ongoing conditions.

The provenance and history supplied, consists of purchase documents, repair order, Car Fax vehicle history report, vehicle owner's statement of the chain of events.

Provenance: The vehicle was sold on 10-23-2012. The vehicle was sold for \$5,000.00 placing it in the Good/Clean Vehicle category for valuation purposes. MSRP \$30,500.00 when new.

Summary of History Reviewed:

The bill of sale and reviewed purchase documents do not show any disclosure to the vehicle purchaser that the vehicle was sub-standard in any way. There is no signed and accepted statement by the vehicle purchaser from the authorized selling dealer informing the vehicle owner that the vehicle was sub standard at the time of retail sale as a Good/Clean vehicle.

The Buyer's guide reviewed shows that the vehicle was sold as is with no warranty.

The vehicle owner's statement of the chain of events however, shows that the vehicle was immediately defective at the time that she drove away from the dealership. The service engine soon light, the overdrive light and air bag warning lights all illuminated in the dash panel. The vehicle owner called the dealership, talked to the salesman "Jimmy" and was told to bring the vehicle back the next day.

She returned the vehicle to the selling dealer, S and M Auto Sales inc. on 10-24-2012 at 10:00 a.m. The vehicle was serviced and the dealer salesman told the vehicle owner that only 1 part needed to be replaced and that "you will have no more problems".

The vehicle was returned to the vehicle owner at 1:30 and the service engine soon and air bag warning lights were still illuminated in the dash panel. The salesman "Jimmy" said that the gas cap was defective and that the vehicle owner should go buy a new one. The air bag defect was a sensor that was defective and it was safe to drive.

On the trip home, the overdrive light began flashing in the dash panel.

When the vehicle owner called Jimmy he stated that she just needed to push the button on the end of the shifter and the light would go out. It did not.

On 10-29-2012 the vehicle owner states that she called Jimmy and told him that something was seriously wrong with the vehicle. He stated that his mechanic was out of town.

On 10-31-2012, the mechanic was claimed to still not be available. The vehicle was presented for service at an independent auto repair facility at 63 rd and Komensky, in Chicago. The on board diagnostic system was interrogated and defect trouble code P0401 and P0775 a transmission code, were down loaded as active codes.

On 11-1-2012 Ollie at S and M auto sales was contacted and said that his mechanic was not in.

On 11-5-2012 Ollie was contacted at S and M auto Sales and stated that the vehicle owner should buy a warranty and then he would fix the vehicle and that Jimmy was fired for wrongdoing.

On 11-6-2012 The vehicle owner contacted Ollie again and he stated that he would contact a mechanic to fix the vehicle.

On 11-6 2012 the vehicle was presented for service at Trans-o-mex. Invoice # 15392 shows that the vehicle was inspected for transmission complaints of hard shifting and overdrive light flashing. The transmission was diagnosed as internally defective and required to be rebuilt completely. Diagnostic trouble codes P0401, P0732, P0735, P0775 were all recorded as downloaded. Additionally the repair order states that the rear suspension springs were broken.

On 11-7-2012 Ollie told the vehicle owner that he contacted a mechanic and had to provide him with documents. He further stated that he would pay one half of the expense of repairing the transmission and the vehicle owner would pay the other half approximately \$350.00.

On 11-9-2012 the vehicle owner again spoke with Ollie who stated that the owner of the dealership would not do any repairs on the vehicle because the vehicle owner had filed a complaint with the Better Business Bureau.

A review of the vehicle owner's print out of the Car Fax vehicle history report shows that the report first page immediately alerts to "accident/damage reported."

The vehicle was first sold and listed as a personal lease vehicle on 8-7-2002 at 115 miles. The vehicle was sold off at wholesale auto auction and listed as a dealer vehicle on 9-14-2005 at 55,157 miles. The vehicle is listed as registered in Indiana on 12-12-2005. On 4-3-2006 the vehicle is listed as having been involved in a collision in Indiana with damage reported. The vehicle is next listed as for sale as a dealer vehicle in South Bend Indiana on 10-27-2006 at 74,506 miles. On 8-3-2007 at 96,689 miles the vehicle was serviced in Michigan city Indiana. On 11-29-2007 at 96,971 miles the vehicle was listed as sold in Illinois.

Conclusion Opinion of Reviewed History

The vehicle was defective prior to retail sale to the vehicle owner. The obvious fact is that the lights were all turned off in the dash panel by clearing all the codes. The lights re-illuminated after the vehicle had been driven through the required drive cycle; allowing the system time to reanalyze for defects. When the defect diagnostic codes reappeared, the warning lights re-illuminated in the dash panel; as they should. These are referred to as "Hard Codes."

The vehicle has been involved in a previous collision. This fact will follow the vehicle from cradle to grave and diminish its value in the open market.

The vehicle has provided a very poor ownership experience. The dealer in my opinion knew exactly what was wrong with the vehicle prior to sale and simply ran the consumer around attempting to make her go

away.

Inspection Observations.

The initial inspection began with visual inspections that revealed that the vehicle on board diagnostic system warning lights, for service engine soon, air bag defect, were illuminated in the dash panel. In addition, the overdrive light was flashing in the dash panel.

The vehicle was road tested for approximately 4 miles and the transmission exhibited harsh shifting and a 2-3 up-shift flare and sluggish overdrive engagement.

The engine performance was sluggish on acceleration at speed. The rear suspension exhibited a creaking noise on turns.

The vehicle was hoisted and inspected. Both rear suspension springs, that support the rear weight of the vehicle, were broken in the coil sections.

The vehicle on board diagnostic system was interrogated using a Snap On MT 2500 diagnostic tool. Code P0401 and P0775 and P0735 and P0732 codes were retrieved. These are the same codes that have been present since before the vehicle was sold.

Diagnostic Trouble Code P0401 indicates a defect with the engine Exhaust Gas Recirculation valve, an important and expensive emissions device. Code P0775 indicates an internal defect in the transmission pressure control valve solenoid "B". Code P0732 indicates an internal transmission defect in the second gear pack, incorrect ratio, or slipping. Code P0735 indicates a defect in the 5th gear internal to the transmission. Incorrect ratio of fifth gear pack, slipping.

It is my opinion, based on these observations and the history reviewed that all of these diagnostic codes indicate a defective EGR valve and an internally defective transmission assembly. The approximate cost to true for these repairs is \$3,000.00.

Additionally the rear suspension springs have been broken in excess of 1 year or more, evidenced by the severity of the rust accumulation present on the break points of the spring coils on both sides. Approximate cost to true of \$800.00.

Additionally, the engine oil pan and the transmission pan and side seals are leaking fluids, as are the front transmission cooler and line assemblies. All these leaks are long term, in excess of 1 year and to a drip stage.

All of these defects in my opinion were present as pre-sale conditions and were completely known to the selling dealer at the time of retail sale.

Safety Recall Involvement Review.

Additionally this vehicle year, make and model, is listed as involved in 7 Safety Recall Campaigns per the National Highway Transportation Safety Agency. Safety Recall # PE0902 defective steering wheel lock. Safety Recall # EA09013 defective transmission lever and linkage. Safety Recall # DP05005 spark plug ejection from cylinder head. Safety Recall # PE05037 defective speed control, accelerator pedal. Safety Recall # PE04045 defective lift gate brackets. Safety Recall # EA02010 defective air bag clock spring.

This data is supplied for information purposes only and may not apply to this specific vehicle. However, involvement of a vehicle in a Safety Recall Campaign is a direct indication of manufacturing defects present in the specific vehicle.

Author's Opinion of Merchantability of Vehicle.

It is my opinion that this vehicle was defective and unmerchantable at the time of retail sale. This is evidenced by and resulting in, the accumulated history reviewed, as well as the ongoing unacceptable conditions observed during the inspection. The vehicle would not pass without objection in the trade. It is my opinion that the average purchaser, having been fully informed and considering this make and model for purchase, would reject this vehicle as a candidate for purchase based on its history and the ongoing abnormal conditions observed. The vehicle is not fit for the purposes intended.

Required Further Diagnostics and/or Service

All of the abnormal conditions complained of require extensive invasive diagnostic and service repair operations that are beyond the scope of this inspection.

Author's Opinion of Value.

It is my opinion that the value of this vehicle is drastically diminished. The vehicle is not safely operable on public roadways and therefore has only the value of a parts vehicle.

Having inspected this vehicle and reviewed its service history, it is my opinion that the value of this vehicle was below *the Original Purchase Price at time of Retail Sale*, by 80 percent. Sale Price \$5,000.00. *Actual Value at time of Retail Sale/Purchase*, due to diminished value appraisal \$1,000.00.

Current Good Condition Comparison Vehicles Market Value.

The Current good valuation category per Black Book USA \$5,625.00 averaged between high and low retail. Current Good valuation Kelley Blue Book \$3,495.00 averaged between high and low retail. Average current valuation between both guides, \$4,560.00. Diminished value of **subject** vehicle in **its** current condition, \$912.00.

Methodology

I arrived at this number first by determining the vehicle's condition through my review of the purchase documents, then by determining the average values between high and low retail from the above-referenced standard valuation guides for a vehicle in the similar condition category, then determining the average between the guide values, then by determining the vehicle's true condition through my inspection and my review of the service history and other relevant documentation, then by expressing this condition by a percentage by which the vehicle's value was diminished due to its condition, then expressing this percentage as an actual dollar value, and then deducting it from the claimed value at the time of sale, thus arriving at the Diminished Value figure.

Appraisal Margin of Error.

This appraisal allows for a margin of error of 5 percent either way due to market fluctuations. Therefore, 75 Percent DV of \$5,000.00 equals \$1,250.00. 85 percent DV of \$5,000.00 equals \$750.00.

Availability of Comparison Replacement Vehicles and Effect on Value.

This make and model of vehicle is readily available in the automotive market place, without the serious defects present in this specific vehicle, and can be acquired without defects and meeting the Good condition criteria as defined by all published major valuation guides. This fact has the effect of drastically devaluing this vehicle.

USAAP Certification.

I hereby certify that I have no bias with respect to the vehicle that is the subject of this appraisal report, or to the parties involved with this assignment. My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value, or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of the appraisal report. My analysis, opinions and conclusions were developed and this appraisal report has been prepared; in conformity with the Uniform Standards for Automobile Appraisal Procedure.

Perjury Statement.

Under penalties as provided by law pursuant to section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this affidavit are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes to be true.

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Sent via E-Mail, USPS, Fed EX, UPS,
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Under penalties as provided by law pursuant to section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this affidavit are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes to be true.

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Carmen Romo,

Plaintiff

S & M Auto Brokers Inc.,

Defendants.

No. 2013 MA 104952

Small Claims

JURY OF 12 DEMANDED

AGREED ORDER

This cause coming before the court for entry of the Agreed Order, counsel for Plaintiff Carmen Romo and Defendant S & M Auto Brokers, Inc., expressly representing to the Court that they have full authority to enter this Order and to enter into a binding settlement, and the Court having been fully advised in the premises,

It is hereby ordered:

1. This case is dismissed with prejudice, the Court retaining jurisdiction only to enforce the parties' settlement agreement, as memorialized in this Agreed Order.
2. Defendant S & M Auto Brokers shall pay the agreed-upon settlement amount by a check made payable to the Trust Account of ChicagoLemonLaw.com, within 7 days of the entry of this Agreed Order, and mailed by first class mail to the following address: ChicagoLemonLaw.com, 404 Fourth Avenue West, Lyndon, Illinois, 61261;
3. If Defendant's payment, as referenced in Paragraph 2 of this Agreed Order, is not received by ChicagoLemonLaw.com by August 15, 2013, Plaintiff, by his counsel, shall give notice of default to S & M Auto Brokers, Inc., by a letter to current counsel of Defendant, by first class mail and facsimile transmission.
4. If the default, referenced in Paragraph 3, is not cured within 10 calendar days after Plaintiff give Defendant notice of default, as described in Paragraph 3, Defendant consents to entry of a judgment for the unpaid amount.
5. If Defendant is in default of this agreement and if Plaintiff has to enter judgment as described in Paragraph 4, Defendant S & M Auto Brokers, Inc., agrees to pay Plaintiff actual attorney fees expended in enforcement, at the rate of \$450 per hour, which Defendant expressly acknowledges as customary and reasonable.
6. IRS Form 1099. Defendant may issue, in the ordinary course of reporting its payments to the Internal Revenue Service, a 1099-MISC form to Plaintiff's counsel's Trust Account and to no other person or entity, stating the payment amount, provided that it is tendered and negotiated, as "gross proceeds paid to an attorney" in box 14. Plaintiff's counsel will, on Defendants' request, provide Plaintiff's counsel's corporate TIN (tax identification number) either informally or on an IRS form.
7. Release. Upon dismissal of this case with prejudice, the following release shall govern: In consideration of Defendant's payment of the agreed-upon settlement amount, Plaintiff agrees to release, acquit, and discharge Defendant S & M Auto Brokers, Inc., from all claims and demands,

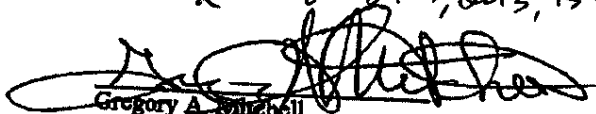
To: Page 5 of 5


2013-08-12 18:37:25 (GMT)

17063328608 From: Gregory Mitchell

actions and causes of action, known or unknown, which have arisen or which may ^{arise} ~~arise~~ from or may hereafter arise relating to the substance of this litigation. It is understood that Defendant denies liability, and the payment to be made under the terms of this Agreed Order is to be made without an admission of liability. It is understood that this release binds all of the parties to this litigation. S & M Auto Brokers, Inc., agrees that all amounts owing under his Agreed Order are payments for debts not subject to bankruptcy discharge under 11 U.S.C. §523(a)(6).

P, ^{statute} ~~date of Sept 3, 2013, is stricken,~~


Gregory A. Mitchell
counsel for S & M Auto Brokers, Inc.


Dmitry Feofanov
counsel for Plaintiff

Prepared by:

Dmitry N. Feofanov
CHICAGOLEMONLAW.COM, P.C.
404 Fourth Avenue West
Lyndon, IL 61261
815/986-7303

Judge Jim Ryan

SEP 03 2013

Enter:


Judge of the Circuit Court

Date:

9-3-13 Circuit Court - 1895

EXHIBIT G

VERDICT FORM A

WE, THE JURY, find for Mary Tate and against S&M Auto Brokers, Inc., on the claim for common law fraud (fraudulent concealment). We assess the damages itemized as follows:

a. Difference in value of the vehicle
as represented and as it was:

\$ 4,000;

Aggravation and inconvenience

b. ~~Confidential and consequential damages~~: \$ 2,000;

c. Punitive damages:

\$ 40,000;

~~_____~~

~~_____~~

~~_____~~

Signed:

Brian J.

Jeanne D.


Amy H. Pin

KBW

Marie Dileand

Sandra Martin

Edwina


Foreperson

Dated: March 23, 2016

Desmond Smith

Edwina

21. TOTAL DAMAGES = [19] + [20]

[d] = \$ _____

WE, THE JURY, AWARD \$ _____

[e] = \$ _____

Continue on with your verdict and sign Verdict C at the end of this verdict.

Either Verdict C or Verdict D must be signed by each juror.

VERDICT C

WE, THE JURY, FIND FOR S&M AUTO BROKERS, INC., AND AGAINST MARY TATE.

VERDICT D

WE, THE JURY, FIND FOR MARY TATE AND AGAINST S&M AUTO BROKERS, INC.

Brian R.
LD
Joanna R.
Hung W.
John D.
RP W.

Marie Delcino
Sandra Martinez
Edmundo
Dominic Smith
Eladec
W.