

Coloring Inside the Lines

November 21, 2017 | [Thomas B. Hudson](#) and [Eric L. Johnson](#)

We've written this article at least a half dozen times over the course of the last 20 years or so. We suppose we shouldn't complain. After all, it is summer, and I'd prefer not to actually work when we can just recycle one of those earlier articles.

But, it is frustrating. Just when you think a compliance message encouraging a straightforward fix for a simple problem might finally have gotten through to dealers, along comes a case that seems to show that dealers just don't get it.

The topic here is a pretty basic one. How do you accurately fill out a form retail installment contract ("RIC")? How careful do you need to be with lining up the numbers and other contract entries with the printed document?

In doing RV and auto dealership compliance and deal jacket reviews, we've seen misalignments of data entries and printed forms ranging from "a little bit off" to ones that were so bad they were completely indefensible.

Here's another case involving a dealership that evidently didn't read any of the earlier articles.

After buying a car from a dealership, the buyer sued the dealership for violating the Truth in Lending Act (TILA) by failing to accurately disclose the finance charge in the RIC. The buyer argued that the dealership should have disclosed a premium for vendor's single interest (VSI) insurance as part of the finance charge, instead of as part of the amount financed. The trial court granted summary judgment for the buyer, and the federal appeals court affirmed.

The dealership argued that it provided the buyer with sufficient notice under TILA to exclude the premium from the finance charge. The financing agreement contained a VSI provision with a checkbox, and that provision stated that vendors single interest, or "VSI", insurance was required, the premium amount, and that the buyer could choose her insurance company.

The appellate court rejected the dealership's argument, finding that the dealership did not comply with the TILA notice requirement because the VSI provision was not properly checked. While there was an "XX" indicator in the general vicinity of the VSI provision, it was not close enough for a reasonable jury to conclude that the box was checked.

Further, the court noted that even if there was ambiguity about whether the box was checked, it could not constitute a "clear and specific" disclosure, as required by TILA. The court gave short shrift to the dealership's argument that the provision provided notice that VSI insurance was required, even if the box was unchecked.

So, this dealer gets nailed for a TILA/Regulation Z violation. The agreement between the dealership and its financing source will contain a representation and warranty by the dealership that all of the RICs the dealership sells to the finance company comply with TILA and Reg. Z, so the finance company can demand that the dealer repurchase the RIC, possibly indemnify the finance company for any losses as well as pay their attorneys' fees and costs.

Because this is a forms-completion problem, the chances are that all of the dealership's RICs will suffer from this same deficiency, so the finance company can demand that the dealership buy back all RICs that have been completed erroneously. That's going to be a bad day for the dealership.

Add to this mix the increasing pressure that finance companies are feeling as a result of recent actions by state attorneys general forcing the companies to increase their oversight of dealer compliance, and dealerships may begin to feel even more forms completion heat.

Once more, repeat after us, "The printer and the contract must be properly aligned so that data is entered on the paper form precisely where it belongs." If you even suspect that the documents rolling out of your computer are "off," don't even think of trying to argue to your finance sources or to a judge or jury that they were "close enough."

See Franco v. A Better Way Wholesale Autos, Inc., 2017 U.S. App. LEXIS 8689 (2d Cir. (D. Conn.) May 18, 2017).

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