

H.2 Undisclosed Damage History

H.2.1 Introduction

These discovery materials are intended solely as examples to be adapted to the facts and circumstances of a particular case and to the requirements of local rules and practices. Appendices H.2.2 and H.2.3, *infra*, are respectively interrogatories and a document request to the dealer in a case involving concealed damage. While the particular case involved flood damage, the discovery materials are easily adaptable to other types of damage. Appendix H.2.4, *infra*, is a document request to the prior owner of the vehicle. Appendix H.2.5, *infra*, is a notice to take the deposition of a dealer. Finally, Appendix H.2.6, *infra*, is an outline for a deposition of the dealer. All of these materials are also found on the CD-Rom accompanying this manual.

In addition, the CD-Rom includes a number of other discovery materials for cases involving concealed wreck or other damage:

- * Two sample document requests and interrogatories to the dealer in cases involving rebuilt wrecks.[nn]5@
- * A sample deposition outline for a rebuilt wreck case.[nn]6@
- * A sample report from an expert who examined a rebuilt wreck.[nn]7@
- * Depositions of a used car manager, a former used car manager, and a business manager in cases alleging the resale of rebuilt wrecked cars.

H.2.2 Sample Interrogatories[nn]8@

IN THE CHANCERY COURT
FOR HAMILTON COUNTY, TENNESSEE

[plaintiff]TODD E. CONSUMER,
Plaintiff,

[vs.]

[defendant]LONG PONTIAC COMPANY, a domestic corporation, and AMSOUTH BANK, an Alabama chartered banking corporation,
Defendants.

[action]No. 97-1246
[action]JURY DEMAND

**PLAINTIFF'S FIRST SET OF INTERROGATORIES
TO DEFENDANT LONG PONTIAC COMPANY**

Pursuant to Rule 33, F.R.C.P., Plaintiff requests that Defendant Long Pontiac Company (Long Pontiac) by an officer or agent thereof, answer under oath the following interrogatories:

Instructions:

(a) Identify by date, sender, recipient, location and custodian each document relied upon or which forms a basis for the answer given or which corroborates the answer given or the substance of what is given in answer to these Interrogatories.

(b) State whether the information furnished is within the personal knowledge of the person answering and, if not, the name, if known, of each person to whom the information is a matter of personal knowledge.

(c) If you maintain that any document or record which refers to or relates to anything about which these interrogatories ask has been destroyed, set forth the content of said document, the location of any copies of said document, the date of such destruction and the name of the person(s) who ordered or authorized such destruction.

(d) All references to the "transaction" refer to the purchase on or about October 4, 1995, wherein plaintiff purchased from Defendant Long Pontiac a 1993 Honda Del-Sol automobile, vehicle identification number 0000.

(e) All references to the "vehicle," except as otherwise indicated, refer to the 1993 Honda Del-Sol automobile, vehicle identification number 0000.

1. State the name, title and, if the person is no longer employed by Long Pontiac, home address and telephone number of each person in the employ of Long Pontiac who, in any manner, participated in the transaction.

2. For each person identified in answer to Interrogatory No. 1, explain fully such person's participation in the transaction.

3. Identify and describe each document signed by plaintiff in connection with the transaction. For each such document, state:

a. the substance of the document;

b. the name of the person who prepared the document; and

- c. the date the document was signed by plaintiff.
4. Identify and describe each document signed or prepared by an employee of Long Pontiac in connection with the transaction. For each such document, state:
 - a. the substance of the document;
 - b. the name of the person who prepared the document; and
 - c. the date the document was prepared.
5. Was the vehicle inspected by Long Pontiac, its employees or agents prior to the sale to plaintiff?
6. If the answer to Interrogatory No. 5 is yes:
 - a. state the name of each individual who conducted the inspection(s);
 - b. state the date upon which each inspection occurred; and
 - c. identify each document (by date, substance and author) generated by the inspection.
7. Did Long Pontiac, or any of its employees or agents, perform any repairs to the vehicle prior to the sale to plaintiff?
8. If the answer to Interrogatory No. 7 is yes:
 - a. state the nature of the repair(s) performed;
 - b. state the date upon which such repair(s) were performed;
 - c. state the name and current work address and phone number of the individual(s) who performed the repairs;
 - d. state the cost to Long Pontiac to have such repairs performed; and
 - e. identify each document (by date, substance and author) generated by the repair(s).
9. Did Long Pontiac, or any of its employees or agents, perform any repairs to the vehicle after the sale to plaintiff?
10. If the answer to Interrogatory No. 9 is yes:

- a. state the nature of the repair(s) performed;
- b. state the date upon which such repair(s) were performed;
- c. state the name and current work address and phone number of the individual(s) who performed the repairs;
- d. state the cost to Long Pontiac to have such repairs performed; and
- e. identify each document (by date, substance and author) generated by the repair(s).

11. Did Long Pontiac obtain a title history to the vehicle (from the Tennessee Department of Safety, another state motor vehicle bureau or any other source) prior to the sale to plaintiff?

12. Did Long Pontiac obtain a Carfax report relating to the vehicle prior to the sale to plaintiff?[nn]10@

13. Did Long Pontiac obtain a “Vanguard” or similar report relating to the vehicle (from CCC Information Services, Inc. or any other database provider of insurance claim information) prior to the sale to plaintiff?

14. Identify all sources of information contacted (other than those identified in response to Interrogatories Nos. 11, 12 & 13) by Long Pontiac prior to the sale to plaintiff by which Long Pontiac attempted to ascertain accident history, insurance claim history, or salvage history. For each such source contacted:

- a. state the name, address and telephone number of the source contacted;
- b. state the date Long Pontiac contacted the source;
- c. state the substance of the information obtained; and
- d. identify each document (by date, substance and author) obtained from the source.

15. Does Long Pontiac now, or has Long Pontiac ever, obtained Carfax reports with respect to any vehicle other than the vehicle which is the subject of this action?
[nn]11@

16. If the answer to Interrogatory No. 15 is yes, state the date upon which Long Pontiac first started obtaining Carfax reports.

17. Does Long Pontiac now, or has Long Pontiac ever, obtained Vanguard reports with respect to any vehicle other than the vehicle which is the subject of this action?

18. If the answer to Interrogatory No. 17 is yes, state the date upon which Long Pontiac first started obtaining Vanguard reports.

19. If Long Pontiac alleges that it provided any disclosure relating to condition and/or accident and/or salvage history of the vehicle to plaintiff prior to, or upon consummation of, the transaction, state with specificity what was disclosed. For each such disclosure:

- a. state the substance of the disclosure;
- b. state the name of the individual who made the disclosure; and
- c. identify each document (by date, substance and author) evidencing such disclosure.

20. State the amount paid by Long Pontiac for the vehicle.

21. Identify all documents generated by Long Pontiac, Long Pontiac's transferor of the vehicle and any auction as a result of Long Pontiac's purchase of the vehicle. For each such document, state:

- a. the substance of the document;
- b. the date the document was generated; and
- c. the name and address of each individual or who authored, wrote on, or signed the document.

22. Identify and describe all work sheets, notes, records, memoranda and any other document reflecting Long Pontiac's calculations as to retail pricing of the vehicle. For each such document, state:

- a. the substance of the document;
- b. the name of the person who prepared the document; and
- c. the date the document was prepared.

23. With respect to the annual percentage rate of 10.75% set forth on the plaintiff's installment contract, state who determined such rate and how such rate was determined.

24. Identify and describe all documents not mentioned above which were included, at one time or another, in Long Pontiac's "deal file" in connection with Plaintiff's purchase of the vehicle. For each such document, state:

- a. the substance of the document;
- b. the name of the person who prepared the document; and
- c. the date the document was prepared.

25. Identify and describe all documents not mentioned above prepared or signed by any employee of Long Pontiac in connection with plaintiff's purchase of the vehicle. For each such document, state:

- a. the substance of the document;
- b. the name of the person who prepared the document; and
- c. the date the document was prepared.

26. Identify all other vehicles purchased by Long Pontiac from Long Pontiac's transferor of the subject vehicle during the period January 1, 1995, to the present. For each such other vehicle, state:

- a. the make, model and model year;
- b. the vehicle identification number;
- c. the date the other vehicle was purchased;
- d. the price paid by Long Pontiac upon purchase of the other vehicle;
- e. the date the other vehicle was sold by Long Pontiac;
- f. the name, address and phone number of Long Pontiac's buyer of the other vehicle;
- g. the price paid to Long Pontiac for the other vehicle; and
- h. whether, and the substance of, any disclosure provided by Long Pontiac to the buyer relating to condition and/or accident and/or salvage history of the other vehicle.

27. Identify all previously salvaged vehicles sold by Long Pontiac (wholesale and retail) from January 1, 1995, to the present. For each such salvaged vehicle, state:

- a. the make, model and model year;
- b. the vehicle identification number;

- c. the date the salvaged vehicle was purchased by Long Pontiac;
- d. the name, address and telephone number of the party from whom Long Pontiac purchased the salvaged vehicle;
- e. the price paid by Long Pontiac upon purchase of the salvaged vehicle;
- f. the date the salvaged vehicle was sold by Long Pontiac;
- g. the name, address and phone number of Long Pontiac's buyer of the salvaged vehicle;
- h. the price paid by Long Pontiac's buyer of the salvaged vehicle; and
- i. whether, and the substance of, any disclosure provided by Long Pontiac to the buyer relating to condition and/or accident and/or salvage history of the salvaged vehicle.

28. Identify each automobile body or collision repair facility and person with whom Long Pontiac has contracted with, and/or paid money to, for automobile body or collision repair from January 1, 1995, to the present. For each such facility or person, state:

- a. the make, model, model year and the vehicle identification number of the vehicle involved;
- b. the nature of the repairs performed; and
- c. the amount paid by Long Pontiac (or any insurer on behalf of Long Pontiac) to perform such repairs.

29. Identify all sheets, notes, records, memoranda, training manuals and other documents outlining, directing, mentioning or in any way instructing Long Pontiac's employees or its agents as to sales practices, pricing, appraising, or any other aspect of soliciting or selling motor vehicles to prospective customers or customers. For each such document, state:

- a. the substance of the document;
- b. the name of the person(s) who prepared the document; and
- c. the date the document was prepared.

30. Identify any experts you may call as witnesses in this case, and for each such expert state the subject matter on which the expert is expected to testify, and state the substance of the facts and opinions to which the expert is expected to testify, and a summary of the grounds for each opinion.

31. State the name, title and work address of each person who assisted or participated in preparing and/or supplying any of the information given in answer to, or relied upon, in preparing answers to these interrogatories.

Attorney for Plaintiffs

H.2.3 Sample Request for Production of Documents[nn]12@

IN THE CHANCERY COURT
FOR HAMILTON COUNTY, TENNESSEE

[plaintiff]TODD E. CONSUMER,
Plaintiff,

[vs.]

[defendant]LONG PONTIAC COMPANY, a domestic corporation, and AMSOUTH
BANK, an Alabama chartered banking corporation,
Defendants.

[action]No. 97-1246
[action]JURY DEMAND

**PLAINTIFF'S FIRST REQUEST FOR PRODUCTION OF
DOCUMENTS TO DEFENDANT LONG PONTIAC COMPANY**

Pursuant to Rule 34, T.R.C.P.,[nn]13@ Plaintiff requests that Defendant Long Pontiac Company (Long Pontiac) produce for inspection and copying, within thirty (30) days, the following documents:

1. All documents identified in response to Interrogatory No. 3.
2. All documents identified in response to Interrogatory No. 4.
3. All documents relating to inspection of the plaintiff's vehicle identified in response to Interrogatory No. 6c.
4. All documents relating to repair of the plaintiff's vehicle prior to sale identified in response to Interrogatory No. 8e.

5. All documents relating to repair of the plaintiff's vehicle after the sale identified in response to Interrogatory No. 10e.
6. Any title history obtained by Long Pontiac prior to sale of the vehicle to plaintiff.
7. Any Carfax report obtained by Long Pontiac prior to sale of the vehicle to plaintiff.[nn]14@
8. Any "Vanguard" or similar report relating to the vehicle (from CCC Information Services, Inc. or any other database provider of insurance claim information) obtained by Long Pontiac prior to sale of the vehicle to plaintiff.
9. All documents identified in response to Interrogatory No. 14d.
10. All disclosure documents identified in response to Interrogatory No. 19c.
11. All documents generated by Long Pontiac, Long Pontiac's transferor of the vehicle and any auction, as a result of Long Pontiac's purchase of the vehicle.
12. All work sheets, notes, records, memoranda and any other document reflecting Long Pontiac's calculations as to retail pricing of the vehicle.
13. All documents reflecting Long Pontiac's calculations used to determine the annual percentage rate of 10.75% charged plaintiff.
14. All documents identified in response to Interrogatory No. 24.
15. All documents identified in response to Interrogatory No. 25.
16. All documents identified in response to Interrogatory No. 29.

Attorney for Plaintiffs

H.2.4 Sample Request to Prior Owner for Production of Documents[nn]15@

IN THE CIRCUIT COURT
FOR MONTGOMERY COUNTY, MARYLAND

[plaintiff]WALTER C. CONSUMER,
Plaintiff,

[vs.]

[defendant]PETERSON AUTOPARK, INC., et al.,
Defendants.

[action]Civil Action No. 166498

**PLAINTIFF'S INITIAL REQUEST FOR PRODUCTION OF DOCUMENTS
BY BMW FINANCIAL SERVICES N.A., INC.**

To: BMW Financial Services N.A., Inc.
c/o Corporation Trust, Inc.

Plaintiff, pursuant to Maryland Rule 2-422,[nn]16@ requests that this defendant produce and permit the plaintiff and his counsel to inspect and copy the documents described below at offices made available to Plaintiff's Attorney at [address], on May 5, 1997 at 10:15 a.m. or at such other time and place as may be agreed.

INSTRUCTIONS

1. Please take notice that Rule 2-422 requires that you respond in writing within a period of forty-five days from the date of service of the requests set forth below and state with respect to each item or category that you will permit the inspection and related activities as requested unless you object, in which event, you must state the reasons for your objection. If you object to part of a request, you must specify that part.

2. These requests encompass all documents and tangible things as defined below which are in your possession, custody or control, including the possession, custody or control of any person acting currently or at a prior time as your employee, agent or representative.

3. These requests encompass the time period from January 1, 1993 to the date of your responses except where otherwise noted. Related documents prepared or received at an earlier time are also included.

4. Should you claim that any document within the scope of these requests is privileged from discovery, please describe the document and specify the privilege upon which your response is based.

5. The use in a request of a specific term or item by way of example or inclusion is not intended to limit the generality of the request or of the definition applicable to it.

6. Documents included within more than one of the requests need be produced only in response to the initial request.

7. You should produce documents as they are kept in the usual course of business or organize and label them to correspond with the categories in this request.

DEFINITIONS

As used in these requests, the following terms have the following meanings:

A. "Documents" includes tangible things and means the original and all non-identical copies of: accounts, agreements, appointment calendars, bills, bill of sale, blueprints, books, books of account, brochures, bulletins, certificates, charts, checkbooks, checks, check stubs, circulars, claims, colored cards, commentaries, communications reduced to tangible form, computer programs, disks, tapes, and printouts, contracts, correspondence, data sheets, deposit and withdrawal slips, desk pads, diaries, drafts of documents (whether or not used), engineering commentary, drawings or specifications, file memos, files, filings, film, financial statements, forms, graphs, headings, internal or external memoranda (including written, typed or printed memoranda of telephone conversations, other conversations, discussions, agreements, acts or activities of any kind), intra-office and inter-office communications, invoices, journals, laboratory reports, leases, ledges, letters, logs, magazine articles, notes, maintenance instructions, or manuals, marginals, memos, markings, microfilm, minutes, models, proposals, negatives, newspaper articles, operating instructions or manuals, papers, periodicals, plans, pleadings, photographs, photostats, prototypes, registers, requests or repair orders, repair instructions or manuals, reports, samples, scrapbooks, service requests or orders, shop drawings, sound recordings, specifications, spread sheets, statements, stickers, studies, tapes, technical drawings or reports, telegrams, telex printouts, test results, titles, trade journals, transcripts, warranty claims, way bills, work sheets (including, without limitation, accountants' work papers) and any other physical objects containing written or printed material of a visible image or sound.

B. "Recording" or "referring," when used to identify documents, means documents (a) the contents of which are themselves the means by which relevant information was noted, represented, reported or otherwise put into written form, as well as documents (b) which comment upon, mention, anticipate or respond to other documents which (c) list, summarize or otherwise relate to information presented elsewhere in written form.

C. "Relating to" or "related to" means documents the contents of which describe, refer to, comment upon, corroborate, question, support, contradict or otherwise contain information about the matter under inquiry.

D. "You" or "BMW Financial" means BMW Financial Services NA, Inc., including its agents, employees and representatives.

E. "Vehicle" means the 1994 BMW 530i plaintiff purchased from Peterson, as described in the Complaint.

F. "Trade-in" refers to the 1992 Nissan Maxima plaintiff traded in on the 1994 BMW 530i.

G. "Peterson" means Peterson Autopark, Inc., including its agents, employees and representatives.

DOCUMENTS

1. All documents you received from or sent to BMW of North America, Inc. (BMW) in connection with the vehicle at any time, including:
 - a. all correspondence, including recall notices or notices of goodwill programs or other customer satisfaction initiatives;
 - b. Technical Service Bulletins or other maintenance, service or repair advisories which refer to the power train (including engine and transmission) or the electrical system of the 1994 BMW 530i model;
 - c. all other documents which refer to potential problems with the V8 engine in the 1994 BMW 530i model;
 - d. any documents which constitute or refer to BMW's written warranty, or to warranty extensions or enhancements on the vehicle;
 - e. the factory invoice for the vehicle;
 - f. the Certificate of Origin;
 - g. each odometer statement;
 - h. damage to the vehicle, at any time, by any means.
2. All documents, and documentation of all information, which you provided to all persons or entities to whom you were interested in selling the vehicle after you obtained its return from Allen or Sue Owner. In the event you offered the vehicle for sale by wire or other announcement, produce a copy of the wire or other announcement, and all documents furnished to interested persons or entities in connection with the vehicle.
3. Each estimate or repair order prepared by any person in connection with any vandalism, theft, accident damage or other damage to the vehicle at any time.
4. All correspondence and other documents which relate or refer to insurance claims or coverage in connection with the vehicle, including all checks, drafts, confirmation of wire transfers or other evidence of payment made by or received by you, by Allen or Sue Owner or others in connection with damage to the vehicle at any time.

5. Each other repair, maintenance or service order (including customer, warranty and shop copies) for or other documentation of mechanical or body work performed on the vehicle at any time, when it was in the possession of Allen or Sue Owner, BMW Financial, Peterson, plaintiff or any other person or entity.

6. All documents (including, without limitation, handwritten notes and a hard copy printout of any computer entries) which refer to any inspection of or observations about the vehicle's condition at any time by any persons or entities.

7. All correspondence or other documents which you received from or sent to plaintiff or his representatives, or to Allen or Sue Owner or any other person who owned or leased the car at any time.

8. The following documents and things which refer to plaintiff's purchase of the vehicle, to the plaintiff or to the vehicle:

- a. each Purchase Order and Sales Invoice;
- b. each Retail Installment Contract or other loan agreement;
- c. each odometer statement;
- d. each application for financing or questionnaire about plaintiff's income, assets or liabilities, including any documents which refer to any prior credit problems or explanations of same;
- e. each credit report on plaintiff or other document which refers to plaintiff's income, assets, liabilities or prior credit history;
- f. each document which identifies plaintiff's relatives or references;
- g. each document which refers to plaintiff's employer or history of employment;
- h. each document which refers to plaintiff's residence or history of his place of residence;
- i. all other documents submitted by plaintiff or Peterson to you in connection with plaintiff's purchase or financing of the vehicle, including without limitation all documentation of plaintiff's income, finances, assets and liabilities and/or explanation of any past credit problems;
- j. each document which refers to the temporary or permanent registration of the vehicle, or temporary or permanent tags to the vehicle, including power of attorney forms;

- k. each document which constitutes or refers to title to the car at any time, including without limitation each Application for Certificate of Title and related documents;
- l. each McArthur Statement or “Spot Delivery/Financing” document;
- m. each BMW Financial deal jacket for the vehicle;
- n. your stock and inventory cards or like records for the vehicle;
- o. the daily cash receipts journal and/or ledger which reflect any payments by plaintiff or others on his behalf in connection with the Retail Installment Contract for the car;
- p. all internal worksheets or other drafts or documents used by you in connection with the vehicle;
- q. each inspection sticker or certificate for the vehicle and all other documents which refer to the vehicle being inspected by, passed or failed by any inspection station;
- r. all other documents which record or refer to changes made or work done to the vehicle by the original selling dealer, by Peterson or others prior to its sale to plaintiff, at time of sale or after its sale to the plaintiff;
- s. all notes, memoranda or other documents which record or reflect conversations or other communications related to the vehicle, its financing, Peterson or plaintiff, whether before, during or after his purchase of the vehicle;
- t. all documents prepared for, sent to or received from the police or any insurance company or representative concerning theft, vandalism, accidents or damage involving the vehicle at any time;
- u. each photograph, videotape or other visual embodiment of the vehicle taken or prepared at any time;
- v. all printed advertisements, sales brochures or other promotional materials which refer to the vehicle, at any time;
- w. the warranty history of the vehicle and all documents submitted by or received by you in connection with any warranty claims on the vehicle;
- x. all other handwritten or typewritten notes and a printout of all computer entries which refer to plaintiff, his deal, his trade-in or financing of plaintiff’s deal, to Peterson, or to the vehicle or plaintiff’s trade-in;

y. all correspondence and other documents which you sent to, or received from, the person or entity from whom you acquired the vehicle which refer to the vehicle in any way, at any time (including the Buyer's Order or Bill of Sale, predelivery inspection checklist, disclosure of prior use or prior accident damage and all of your other purchase documents);

z. All recourse or partial recourse agreements with Peterson involving plaintiff's purchase;

aa. all other documents which refer to plaintiff or the vehicle in any way;

bb. all other documents of any kind signed by plaintiff, or by others for him, and any other documents which purport to bear his signature.

9. All documents which contain an explanation of the accounting codes or any other documents needed to understand abbreviations or codes contained in the documents and things produced in response to Request No. 8 above.

10. All other correspondence or other documents which you received from or sent to Peterson at any time in connection with plaintiff or the vehicle.

11. If you acquired the vehicle at auction, please produce all documents provided by the auction or seller in connection with the vehicle.

12. If you acquired or sold the vehicle at auction, any and all notes made by persons attending the auction regarding announcements made about the vehicle at the auction, and his or her inspection of the vehicle.

13. The underwriting guidelines and/or program information for the financing program available to Peterson through BMW Financial, as of the date Peterson sold the vehicle to plaintiff.

14. The Dealer Agreement, Master Agreement or other contract between Peterson and BMW Financial which establishes the terms upon which Peterson may assign, and BMW Financial may accept, Retail Installment Contracts.

15. BMW Financial's floor planning agreement with Peterson.

16. All other documents which establish or refer to the formula by which Peterson shall receive any commissions, reserves or other sums in connection with financing of the vehicle, and any documents which refer to the sums Peterson was to earn in connection with financing of plaintiff's vehicle.

17. All documents or things not previously produced which refer to plaintiff, the vehicle, plaintiff's trade-in or financing of the vehicle.

18. If you contend that the plaintiff knew or should have known about prior accident damage to the vehicle at the time of his purchase, all documents or things which support your contention.

19. If you contend that plaintiff's conduct in any way contributed to or caused the losses or damages claimed in the Complaint, or that he failed to mitigate damages, all documents or things which support such contention.

20. If you contend that you did not know that the vehicle had sustained damage in one or more accidents prior to the date you sold the vehicle to Peterson, or prior to the date that Peterson sold the vehicle to plaintiff, all documents or things which support your contention.

21. The personnel file of each person who negotiated, participated in or approved plaintiff's deal.

22. All documents which support any of your Affirmative Defenses to the Complaint.

23. All documents which support any of your other defenses to the Complaint.

24. A copy of each insurance agreement under which any person carrying on an insurance business might be liable to satisfy part or all of a judgment that might be entered in this action against BMW Financial or to indemnify or reimburse you in connection with this matter.

25. Each price guide (such as the Black Book, N.A.D.A. Official Used Car Guide, Kelly Blue Book, and so forth) which you either accept as authoritative or use in your business, which states a price or value for a 1994 BMW 530i as of May 31, 1996.

26. The *curriculum vitae* or other background information on each person whom you expect to testify as an expert at the trial of this action.

27. All documents you intend to mark for identification or introduce at the trial of this action.

Counsel for Plaintiff

H.2.5 Notice to Take Deposition of Car Dealer

The following is a sample notice to take the deposition of a dealer in a case involving failure to disclose prior damage or the rental car history of a vehicle. As required under the federal and many state rules of civil procedure, when a party names a corporation as a deponent, the notice must describe with particularity the matters on which the examination is requested, in order that the deponent may designate who shall

testify on its behalf. This sample is intended to suggest ideas for the subject of such a notice, and would have to be adapted by a competent professional to the facts and theories of a particular case. This outline is based on materials prepared by Dan L. Wultz, an experienced consumer fraud attorney in Las Vegas, Nevada.

IN THE CIRCUIT COURT
FOR ANY COUNTY, NEVADA

[plaintiff]WALTER C. CONSUMER,
Plaintiff,

[vs.]

[defendant]CAR DEALER, INC., et al.,
Defendants.

[action]Civil Action No. 1234

**AMENDED NOTICE TO TAKE DEPOSITION OF
DEFENDANT CAR DEALER, INC.**

To: Defendant Car Dealer, Inc. and its counsel of record.

Plaintiffs, by and through counsel, pursuant to NRCP 30(b)(6),[nn]17@ hereby name Defendant, Car Dealer, Inc., as the deponent, and designate the following matters on which examination is requested:

DEFINITIONS

1. "MOTOR VEHICLE" means a 2001 GMC Safari, Vehicle Identification Number xxxx.
2. "SIMILAR CLAIM" means a claim made within five years preceding the date of filing of the Complaint herein (April 4, 2002) through the date of the deposition; as to "similar," means a claim under any theory that Defendant allegedly sold without disclosure either a vehicle which had previously been damaged, or a vehicle which had previously been owned by a rental car company; and as to "claim," means any claim, contention, argument, demand or assertion in writing, made by whatever means, including by way of example and not limitation a letter, statement, demand, formal Complaint filed in Court, arbitration, or administrative proceeding, and whether notice of the claim was received from the claimant or a third party (for example, Better Business

Bureau, Department of Motor Vehicles, Department of Consumer Affairs, or the claimant's representative).

TOPICS OF EXAMINATION

1. Defendant's policies, practices, and procedures in August 2000 and today with respect to acquisition of used vehicles for resale.

2. Defendant's policies, practices, and procedures in August 2000 and today with respect to inspection of used vehicles for resale.

3. Defendant's policies, practices, and procedures in August 2000 and today with respect to appraisal of used vehicles for resale.

4. Defendant's knowledge in August 2000 as to Car Service, Inc., San Francisco, California.

5. Defendant's knowledge in August 2000 of any representations made to Defendant regarding the MOTOR VEHICLE by Car Sales and Service, Inc. d.b.a. Car Dealer II.

6. Any work Defendant performed or had performed on the MOTOR VEHICLE prior to the sale to Plaintiffs.

7. The terms under which Defendant acquired the MOTOR VEHICLE from Car Sales & Service, Inc. d.b.a. Car Dealer II.

8. Defendant's knowledge as to acquisition of the MOTOR VEHICLE by Car Sales & Service, Inc. d.b.a. Car Dealer II.

9. Defendant's knowledge as to acquisition of the MOTOR VEHICLE from Car Sales & Service, Inc. d.b.a. Car Dealer II.

10. Defendant's knowledge as to appraisal of the MOTOR VEHICLE.

11. Defendant's determination of the price for the MOTOR VEHICLE.

12. Defendant's inspection of the MOTOR VEHICLE at any time.

13. Defendant's knowledge as to sale of the MOTOR VEHICLE to Plaintiffs.

14. Defendant's knowledge of conversations with Plaintiffs, or either of them, prior to sale of the MOTOR VEHICLE.

15. Defendant's knowledge of conversations with Plaintiffs, or either of them, after the sale of the MOTOR VEHICLE.

16. Defendant's knowledge in August 2000 and today as to training of used car salespersons.

17. Defendant's knowledge as to SIMILAR CLAIMS.

18. Defendant's policies, practices, and procedures in August 2000 and today with respect to efforts to sell an extended service contract in connection with the sale of a used vehicle.

19. Defendant's policies, practices, and procedures in August 2000 and today with respect to the effort, if any, to become aware of a used vehicle's collision and repair history.

20. Defendant's policies, practices, and procedures in August 2000 and today with respect to whether and when to disclose a used vehicle's collision and repair history of which it is aware.

21. Defendant's policies, practices, and procedures in August 2000 and today with respect to the effort, if any, to become aware of a used vehicle's history as a prior rental vehicle.

22. Defendant's policies, practices, and procedures in August 2000 and today with respect to whether and when to disclose a used vehicle's history as a prior rental vehicle of which it is aware.

23. Defendant's knowledge in August 2000 as to whether the MOTOR VEHICLE was a prior rental vehicle.

24. Defendant's effort in August 2000 to become aware whether the MOTOR VEHICLE was a prior rental vehicle.

25. Defendant's knowledge in August 2000 as to the MOTOR VEHICLE'S collision and repair history.

26. Defendant's effort in August 2000 to become aware of the MOTOR VEHICLE'S collision and repair history.

27. Defendant's membership in state or national associations, and documents sent to and received from same.

28. Defendant's policies, practices, and procedures in August 2000 and today with respect to how to handle a customer's complaint that they were sold a used car that was not disclosed as a having a prior serious collision and substantial repair history.

29. Defendant's policies, practices, and procedures in August 2000 and today with respect to how to handle a customer's complaint that they were sold a used car that was not disclosed as a having been a prior rental vehicle.

30. Defendant's policies, practices, and procedures in August 2000 and today with respect to disciplining, up to and including termination of employment, of used car salespersons.

31. Defendant's knowledge in August 2000 of inspections of used vehicles by Car Sales & Service, Inc. d.b.a. Car Dealer II.

32. Defendant's knowledge in August 2000 of applicability of the General Motors' factory warranty for the MOTOR VEHICLE.

33. Defendant's use of Carfax in August 2000.

34. Defendant's knowledge in August 2000 of the extent of information contained in Carfax, and its disclaimer as to the extent of that information.

35. Defendant's relationship in August 2000 with Car Sales & Service, Inc. d.b.a. Car Dealer II.

36. Defendant's relationship in August 2000 and today with Auto Sales, Inc.

The deposition shall be taken at the offices of Counsel for Plaintiff, 700 N. Second Street, Any Town, Any State, and shall commence at the hour of 9:30 a.m., Wednesday, July 30, 2003 and shall continue from hour to hour and day to day until completed. Under the rules of civil procedure, the organization shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. The persons so designated shall testify to matters known or reasonably available to the organization.

If the designated time and/or date is inconvenient, please notify the undersigned so that a time and/or date convenient to all concerned may be arranged.

Attorney for Plaintiff

H.2.6 Outline for Deposition of Car Dealer in Concealed Wreck Damage Case

The following is a sample outline for the deposition of the manager of a dealership in a case involving the sale of a vehicle with concealed wreck damage. It is in the form of an outline that a practitioner might use while questioning the witness, and consists of phrases and topics rather than complete sentences. It is intended to suggest ideas for the subject and order of such a deposition, and would have to be adapted by a

competent professional to the facts and theories of a particular case. This outline is based on materials prepared by Michelle Weinberg, an experienced consumer fraud attorney in Chicago, Illinois.

BACKGROUND INFORMATION

Name, address, date of birth, Social Security number

Ever been investigated, accused or convicted of a felony or other crime involving dishonesty or moral turpitude?

Ever been sued before? For what? Disposition?

Current position

Former positions (other dealerships?)

What are your duties/responsibilities?

How long in auto business? Are you licensed as a car dealer under [state] law?

Worked for any other car dealers?

What did you do before that?

Training, education?

CUSTOMARY PRACTICES--ACQUISITION OF USED VEHICLES FOR RESALE

Do you sell new and used cars?

Where do you get the used cars from? (anywhere else?)

How do you select the used cars?

From whom did you purchase plaintiff's car?

How many vehicles have you purchased from [same]? From other wholesale dealers? At auctions? From out of state? From green light/red light auctions?

Auction announcements/rules/return policy/inspection of vehicles

Do you commonly purchase cars from out of state?

Are you aware of problem of dealers purchasing used cars (from auctions) with problems such as previous wreck damage or odometer discrepancies? Hear about [state] titles? Ever happen to you (professionally)?

Aware of any other complaints/cases against [*others in chain of title or involved with car*]? Anyone ever come back with such a claim?

Reputation of auction house?

Reputation of [*others in chain of title or involved with car*]?

Hear about big case against [*others in chain of title or involved with car*]?

In general, when you first get a used car, what do you do with it?

Do you inspect vehicles at time of purchase? Prior to putting them out for sale?

What is involved in such an inspection? What is checked?
test drive?
check engine? transmission?

fluids? brakes? check or change oil?
check oil leaks?
brakes?
radiator?
hoses? gaskets? belts?
electrical system?
alternator?
lights? signals?
charge the battery?
check a/c? how?
alignment?
suspension? struts/shocks?
tires?

Who would do such an inspection? What are their qualifications? (in-house or subcontract)?

Do your mechanics use a checklist? If so, where is it kept? Have a copy?

How do they know what to look for? What might give them a clue as to potential problems?

What do they do if they find problems?

Are repairs made if inspection shows they are needed? When/why/why not?

When/what kind of problems would you not repair?

Do you do any different inspection depending on where you purchased the vehicle? [*on trade-in*] [*from wholesale dealers*] [*at auction*] [*from out of state*]?

Do you “recondition” used cars before sale? What exactly is done in a reconditioning of a car? What is “detailing”? Do you do this to used cars before selling them?

Do you ever conduct a title search on used cars prior to sale? When? Are you familiar with a company called Carfax? Vinguard? Other comparable services? Have you ever

used the services of Carfax? Vanguard? Other comparable service? If so, do you have a contract with Carfax or other service for a certain number of title searches per month?

Do you get a maintenance history on the used [*manufacturer*] cars you sell? Can you? Where? (from [*manufacturer*]? from dealer?) When?

How do you decide to give a warranty? (condition of car?)

How would you know if manufacturer warranty is still in effect? Do you check? Or just based on mileage?

When you give a warranty on a used car, do you examine the vehicle more closely?

When you sell a service plan/service contract do you have a means of checking with warranty company that the warranty will be valid? How? Does the service contract cover repairs due to prior accident damage? Explain how service contract works.

Does [*manufacturer*] issue used car warranties? Do they require an inspection prior to issuing a warranty on a used car? What is required (list)? Would they refuse to issue a warranty if the car had been in a previous accident?

Describe relationship with any other dealers involved with the car (for example, transferred it to deponent or repaired it).

CUSTOMARY PROCEDURES--CAR SALES

How does salesman determine sale price?

Does management instruct salesman on how to price vehicles for sale?

Does manager approve sale price before it goes through? Or set a minimum?

Sales staff training? (in-house or out?) What is involved? (how to fill out forms, how to present documents to customers? legal issues?)

Inventory lists? Meetings with sales staff? Directions concerning specific cars for sale?
Incentives to salesmen?

What documents must buyers sign at time of purchase?

Training seminars for finance managers/F & I products?

CONTACT WITH PLAINTIFF

Have you ever met Plaintiff?

When? How many times? What was the occasion?

Who else at dealer spoke with plaintiff? Still works at dealership? Any conversations with him about Plaintiff or his car?

Anyone else? Where is she now? Have you spoken with her since she left dealer? When last? What said?

What did Plaintiffs ask/say during sale transaction?

What did you tell Plaintiff about vehicle history? About warranty coverage? About safety? About suitability for family use? Could tell that Mrs. Plaintiff was pregnant?

Conversations with Plaintiff after the sale? Numerous calls and visits.

Repairs to the vehicle after purchase (where performed)?

Who would know about it? Still with dealership? When/why did she leave dealership?
Any problems?

What do you recall about the car Plaintiff purchased? (condition, history, management comments, repairs, complaints prior to and after purchase)

What else do you recall specifically about this transaction?

How was the price of the car determined?

Discussion of financing?

Was a warranty provided? An extended service contract? When the extended warranty was sold to Plaintiff, did you (or salesman) check with manager/issuer of warranty first?

Was the vehicle inspected before sale and/or before Plaintiff took possession? By whom?

When was the car purchased by dealer? Where/how?

How much did dealer pay for Plaintiff's vehicle? Who made/authorized the purchase for dealer? Has this person made other purchases for dealer?

Have you purchased other cars from this seller/wholesaler/broker? Sold cars purchased from them to your customers? Any complaints? Recall anyone ever complaining about sale of rebuilt car? (at this dealer or any other you have worked for?)

Ever return a car to the auction house upon discovery of defects?

Aware of Plaintiff's car's history? Did you know those who were prior owners?

What did you know about the car when purchased?

What do you know about the seller? How did you hear of them?

What did seller say about the car? Reason for selling with low mileage? Did you inspect the car at time of dealer's purchase? Before/after?

How did the car get from [state] to [state]?

What was the mileage on the car at the time of the sale?

Were any repairs or maintenance done at dealer prior to selling car to Plaintiff? What was done?

What repairs did dealer perform after Plaintiff's purchase? (if any)

Was the car advertised?

DOCUMENTS/EXHIBITS