IN THE MATTER OF

FORD MOTOR COMPANY, ET AL.

FINAL ORDER, OPINION, ETC., IN REGARD TO ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION ACT

Docket 9073. Complaint, Feb. 10, 1978 — Final Order, Sept. 21, 1979*

This order, among other things, requires Francis Ford, Inc., a Portland, Ore. Ford dealer, to cease failing to dispose of repossessed vehicles in a manner designed to obtain the best possible price; provide information regarding the disposition of such vehicles to defaulting customers; properly calculate surpluses realized from the sale of the vehicles; and repay such surpluses in a timely fashion. The order further requires respondent to identify all surpluses realized back to February 10, 1976, and to notify affected consumers of their existence. Additionally, respondent is required to maintain specified records for at least three years.

Appearances

For the Commission: *Bruce D. Carter, Dean A. Fournier* and *David R. Pender.*

For the respondents: *Michael J. Esler, Haessler, Stamer, Tilbury & Esler,* Portland, Ore.

INITIAL DECISION BY LEWIS F. PARKER, ADMINISTRATIVE LAW JUDGE

JAN. 3, 1979

I. PRELIMINARY STATEMENT

A. History of the Case

This case began on February 10, 1976, when the Commission issued a complaint charging Ford Motor Company ("Ford"), Ford Motor Credit Company ("Ford Credit"), and Francis Ford, Inc. ("Francis Ford") with violations of Section 5 of the Federal Trade Commission Act ("FTC Act").

On March 24, 1976, Francis Ford filed its answer, admitting certain allegations of the complaint, denying others and asserting six defenses. Prehearing conferences were held [2] on April 13, 1976 and on February 3 and July 22, 1977. Complaint counsel filed their witness and document lists and trial brief on December 5, 1977. On March 17, 1978, this case was withdrawn from adjudication as to Ford and Ford Credit for purposes of considering a proposed consent agreement executed by these respondents and complaint counsel.

*Complaint published in 93 F.T.C. 402.

This agreement was subsequently placed on the public record for comment.

Hearings with respect to Francis Ford were held from March 21-28, 1978 in Seattle, Washington. On June 26 and 27, 1978, Francis Ford filed a trial brief and list of witnesses, and its exhibit list was filed on July 10, 1978. Francis Ford presented its defense from July 24-28, 1978 in Seattle. The final record consists of 2,166 pages of testimony and argument and almost a thousand exhibits.

The record in this case was closed on September 1, 1978. Complaint counsel and Francis Ford filed their proposed findings on October 13, 1978 and their replies on October 30, 1978. At my request the Commission granted me an extension of time to January 8, 1979 to file this initial decision.

B. Allegations of the Complaint

The complaint alleges that Francis Ford, a Ford dealer, arranges the financing of its retail sales of motor vehicles through Ford Credit or other lenders. When Ford Credit finances a sale, it is alleged, it provides a retail installment contract form which names the customer as buyer and the dealer as seller and which states that the contract is to be assigned to Ford Credit for value, that the buyer is to be indebted to the dealer or its assignee and that the dealer or its assignee is to be a secured party holding a security interest in the vehicle.

The complaint further alleges that if the buyer defaults, Francis Ford has undertaken the obligation, either by express or implied representations in its retail installment contracts, to account to the defaulting buyer for any surplus arising from the resale of repossessed collateral; however, the complaint states, despite the fact that the laws of most states (derived from Article Nine of the Uniform Commercial Code ("UCC")), require a secured party, after default and repossession of the collateral, to account for any surplus [3] of proceeds[1] from the sale of the collateral, Francis Ford has, in a substantial number of instances, deprived defaulting buyers of substantial amounts of money which are rightfully theirs by:

(1) Failing to institute or follow correct procedures for determining the existence or amounts of surpluses realized from the sale of repossessed vehicles,

[1] Defined in the complaint as that sum which is "in excess of the amount needed to satisfy all secured indebtedness, reasonable expenses of retaking, holding, preparing for sale, selling, and the like, and allowable legal costs and fees." (Complaint, Par. Five)

(2) Failing to disclose the existence of these surpluses to defaulting buyers, and

(3) Wrongfully retaining such surpluses in violation of the defaulting buyers' statutory and contractual rights.

Finally, the complaint alleges that repurchase dealers,[2] one of which is Francis Ford, have failed to inform defaulting buyers of facts necessary to their exercise of the right of redemption granted by state law, and that this failure to disclose material facts has the tendency and capacity to hinder defaulting buyers in exercising this right. This allegation was, however, withdrawn by complaint counsel at the beginning of the hearings.

The following findings of fact, conclusions of law and proposed order are based upon the record in this case and upon the proposed findings and replies of the parties. Any proposed findings not adopted herein in substance or verbatim are rejected either because they are irrelevant or because they are not supported by the record. [4]

II. Findings of Fact

A. Francis Ford's Business

1. Francis Ford is an Oregon corporation with its office and principal place of business at 509 S.E. Hawthorne Boulevard, Portland, Oregon (Ans. ¶ I).[3] It is one of more than 6,000 franchised Ford dealers. It sells new and used cars and trucks and operates parts and service departments. These separate operations are required of franchised dealers by Ford (Tr. 1239-41). Francis Ford's total sales exceeded $13 million during each of the years 1974 and 1975 (CX's 2321-22). Its pre-tax profits from all of its operations were $112,406.00, or .0085% of total sales in 1974 (CX 2321) and $18,934.00, or .0014% of total sales in 1975 (CX 2322).

2. Francis Ford is one of the two highest-volume Ford dealers in the Portland area (Tr. 157). It sells about 2,400 vehicles annually, most of which are sold to retail customers rather than to wholesale

[2] Dealers who, by contract, agree that Ford Credit and other lending institutions may return repossessed vehicles to them. The lending institutions then receive from these dealers a "payoff" which consists of the unpaid balance of the retail installment contract adjusted by certain charges and credits. The repurchase dealer then resells the vehicle to a third party. (Complaint, Par. Seven)

[3] Abbreviations used in this decision are:

CX	- Commission exhibit.
RX	- Respondent's exhibit.
Tr.	- Transcript of testimony.
Ans.	- Francis Ford's answer to the complaint.
Adm.	- Pages 13-14 Francis Ford's response to complaint counsel's second and third requests for admissions dated March 13, 1978.

purchasers or "fleet" operators (CX's 2321–22; Tr. 177). Francis Ford maintains two lots for the retail sale of used vehicles to the public (CX 2358).

3. In calendar year 1975, Francis Ford sold 878 used cars and trucks at retail and 283 used cars and trucks at wholesale (CX 2322). In calendar year 1974, Francis Ford sold 1,093 used cars and trucks at retail and 403 used cars and trucks at wholesale (CX 2321).

4. As of December 31, 1977, 588 retail installment contracts sold or assigned by Francis Ford to Ford Credit were outstanding, and they amounted to a total receivable of approximately $1,868,000 (Tr. 38–39).

B. Commerce

5. All Ford motor vehicles sold by Francis Ford are manufactured and assembled at plants located outside the [5] State of Oregon. They are shipped to Francis Ford in response to orders placed by Francis Ford with Ford's office in Seattle, Washington (Tr. 472–73).

6. Portland, Oregon is situated adjacent to the Columbia River, the boundary between the States of Oregon and Washington. Portland is the hub of a retail trading zone which includes Clark and Skamania counties in southwestern Washington, and is a Standard Metropolitan Statistical Area which includes Clark County (Stipulation, Tr. 1011–13). Francis Ford advertises its new and used cars and trucks for sale in this market through broadcast (television and radio) and print media (CX's 3601–07, 3622–26, 3631–34C; Tr. 158–62, 175–76). Vancouver is the largest city in Clark County, Washington, and is located immediately across the Columbia River from Portland.

7. The normal dissemination areas of several of the Portland-based television channels and radio stations which carry Francis Ford advertising extend into the State of Washington, including metropolitan Vancouver (Tr. 160–62).

8. In 1975, Francis Ford spent $221,578 on advertising allocated as follows: $16,113 to institutional advertising and promotion, $145,060 to new car advertising, and $60,405 to used car advertising (CX 2322). In calendar year 1974, Francis Ford spent $197,622 on advertising, allocated as follows: $10,835 to institutional advertising and promotion, $146,343 to new car advertising, and $40,444 to used car advertising (CX 2321).

9. Francis Ford's advertising volume in the Portland *Oregonian* and *Oregon Journal* newspapers totaled approximately $134,000 in each of the years 1974 and 1975 (Adms. 10 & 11). The *Oregonian* and *Journal* have substantial interstate circulation: Over 16,000 copies of

the daily edition of the *Oregonian,* 4,800 of the daily edition of the *Journal,* and 33,000 of the *Oregonian* Sunday edition are distributed outside the State of Oregon. Most of this out-of-state circulation is in the State of Washington, about half of it in Clark County (Stipulation, Tr. 1011–13). Francis Ford also advertises occasionally in the Vancouver, Washington *Columbian* (Tr. 158).

10. Francis Ford advertises in the Vancouver, Washington telephone directory yellow pages as well as in the yellow pages for Portland and St. Helens, Oregon (Tr. 164–68). In all of these yellow pages advertisements, Francis Ford's ads appear in conjunction with ads for Washington-located auto dealers (including Ford dealers) who compete with Francis Ford (CX's 3610–13, 3615–16; Tr. 172–73). **[6]**

11. Francis Ford arranges for other types of advertising and promotional activity in other areas of the State of Washington (CX's 3604, 3606, 3608, 3622–26, 3631–33; Tr. 162–63, 169–75).

12. Francis Ford makes occasional sales of motor vehicles to residents of states other than Oregon, primarily to persons who reside in the Vancouver, Washington area (Tr. 158, 171).

13. Over half of the retail installment contracts executed by Francis Ford customers are sold or assigned to Ford Motor Credit Company's Portland branch office, which provides financing to Ford dealers and their retail customers in an area of responsibility extending from Oregon northward to Longview, Washington (Tr. 37, 191–93). Ford Credit has other branch offices engaged in like activity throughout the United States (Tr. 34–36). A total of 724 such contracts were sold by Francis Ford to Ford Credit's Portland branch in 1976–77 (Tr. 38).

14. When vehicles sold by Francis Ford are thereafter repossessed and returned to it by the financing institutions it does business with, the repossessions may take place outside the State of Oregon or may involve an out-of-state resident who was either the original customer from whom the vehicle was repossessed or who was the purchaser upon resale after repossession (Tr. 1048–50, 1072–81, 1087–89, 1097–98). Of the 43 repossession transactions discussed below, at least 3 involved out-of-state residents as the original customers (CX's 2771, 3021, 3083–84). Four involved repossession at out-of-state sites (CX's 2416, 2928B, 2963A–B, 3027–30), and in three the resales were to out-of-state residents (CX's 2595, 2934, 3390; Tr. 1049).

15. In connection with its original sales and post-repossession resales of vehicles, Francis Ford has shipped used vehicles to out-of-state purchasers (CX 2595; Tr. 1049–50), and has initiated or

participated in the transmission across state lines of credit reports and various instruments of retail installment credit, title registrations, licensing documents and related correspondence and payments (CX's 2922, 3083–84, 3393), and other business papers related to the extension and enforcement of credit obligations (CX 2938A–B).

16. Approximately three years before issuance of the present complaint, Francis Ford entered into a consent agreement in which it admitted the Commission's jurisdiction, [7] under the "in commerce" standard then applicable, with respect to various alleged practices including representations in newspapers and broadcast advertising, handling of customers' deposits, and preparation of retail installment contracts (82 F.T.C. 1501 (1973)).

17. Francis Ford maintains a substantial course of trade in motor vehicles and motor vehicle credit in commerce, and that trade affects commerce, as "commerce" is defined in the FTC Act.

C. Francis Ford's Retail Installment Contracts

18. About 70 percent of Francis Ford's retail sales of motor vehicles are financed in whole or in part. These consumer credit sales are drawn up on retail installment contracts which are preprinted forms supplied either by Ford Credit or by the United States National Bank of Oregon ("U.S. Bank"). Francis Ford sells, assigns or transfers over half of these contracts to Ford Credit; the remainder go to U.S. Bank (Tr. 179, 191–93).

19. The Ford Credit installment contract form calls for monthly installment payments by the debtor to the seller (Francis Ford) which are secured by a security interest in the vehicle by Francis Ford or its assignee. The contract provides for its assignment to Ford Credit (CX 2311). The U.S. Bank installment contract form is substantially similar to the Ford Credit form except that it contains a provision for its assignment to U.S. Bank (CX 2314B).

20. The Ford Credit contract form states that: "This contract shall be governed by the laws of the state in which the original Seller [Francis Ford] is located . . .", and identifies the security interest created thereby as "a security interest under the Uniform Commercial Code . . ." (CX 2311). The "default" provision of the contract states that:

> Seller shall have all the rights and remedies of a Secured Party under the Uniform Commercial Code, including the right to repossess the Property . . . and to recondition and sell the same at public or private sale. (CX 2311)

[8] The U.S. Bank contract form used in such transactions recites that: "The parties [Francis Ford and its customer] agree that their

relations, rights and duties under this agreement shall be governed by the substantive law of the State of Oregon" (CX 2314B). The "repossession resale" provision of the contract states, *inter alia,* that:

Creditor Dealer will give Customer reasonable notice of the time and place of any public sale or of the time after which any private sale or other intended disposition is to be made. . . . Expenses of retaking, holding, preparing for sale, selling or the like shall include Creditor-Dealer's reasonable attorneys' fees and legal expenses. (CX 2314B)

21. The law referred to above, the UCC, was enacted in Oregon in 1961 and includes a provision that a secured party may, in the event of default, repossess the collateral and sell, lease or otherwise dispose of it and that he "must account to the debtor for any surplus . . ." (ORS ¶ 79.5040(2)).

22. If repossession of a vehicle financed by Ford Credit occurs, Ford Credit sends a form notice to the customer (and to Francis Ford) which states:

The [repossessed vehicle] will be sold by [Ford Credit] or its assignee at a private sale at any time after 10 days from the date shown above unless redeemed by you prior to such sale. The proceeds will be applied first to the payment of the expenses of retaking, holding, preparing for sale and selling said property and reasonable attorney's fees and legal expenses incurred by [Ford Credit], then to the satisfaction of the balance due under the contract covering the financing of said property, and then to the satisfaction of any indebtedness secured by any subordinate security interest in said property. *Any surplus will be paid to you* and, unless prohibited by law, you will remain liable for any deficiency. (emphasis added) (CX's 1240, 2678; Tr. 955)

[9] 23. A similar statement appears in another Ford Credit form which is executed by defaulting customers when they voluntarily surrender their vehicle to Ford Credit:

[T]he undersigned [customer] hereby voluntarily surrenders and returns to you [Ford Credit] the above-described commodity for . . . disposition . . . in conformance with law . . . The undersigned hereby requests and authorizes you to dispose of this property at public or private sale and to apply the net proceeds received therefrom against the amount of the undersigned's present indebtedness to you. If the net proceeds so realized shall be less than the said unpaid balance, after deducting your expenses, the undersigned agrees to remain liable to you for the difference thereof, plus a reasonable fee . . . as attorney fees . . . *If the net proceeds so realized is more than said unpaid balance, you agree to pay the excess to me.* (emphasis added) (CX 2655)

24. The installment contract forms and their incorporation of state law constitute an implied promise by Francis Ford, as a secured party, to account for and pay to the customer any surplus resulting from its resale or other disposition of a vehicle repossessed from the customer, and these forms, along with the notices referred to in

Findings 22 and 23, have the capacity and tendency to lead customers to believe that any surpluses realized after repossession will be paid to them.

D. Repurchase Agreements

25. Since August 15, 1967, Francis Ford has been party to a series of agreements with Ford Credit under which each retail installment contract sold or assigned by Francis Ford to Ford Credit has been governed by the terms of a "Retail Plan" set forth in a Ford Credit dealer manual titled "Automotive Finance Plans for Ford Motor Company Dealers" (CX's 2301, 2303). These agreements provide further that each retail installment contract sold or assigned to Ford Credit is deemed assigned on a "repurchase" basis unless otherwise specified (CX's 2301, 2303). [10]

26. U.S. Bank also has a repurchase agreement with Francis Ford which is similar to Ford Credit's (CX's 2307A–B, 2314B; Tr. 191–92, 1482–83).

27. Under these repurchase agreements Francis Ford is obliged, in the event of a default by the customer, and upon the lender's request and the return of the vehicle, to pay to the lender the outstanding balance on the loan (CX's 1015[4] and 1016, p. 20; CX 1014, p. 22; CX 2311;[5] Tr. 1277).

28. Since January 1973, the "repurchase" portion of the Ford Credit retail plan has included the following provision:

EXCESS PROCEEDS ON RESALES OF REPOSSESSIONS

If the proceeds (less reasonable selling expenses) received by the dealer from his resale of a repossessed vehicle exceed the repurchase price of the vehicle, he should pay the excess to the customer as required by law (CX's 1015 and 1016, p. 22).

[11] On March 9, 1973 and on July 29, 1974, Francis Ford accepted and agreed to Ford Credit retail plans containing the "excess proceeds" provision (CX 2301).

29. The repurchase agreement between Francis Ford and U.S. Bank also contains an admonition that surpluses realized on resales

[4] CX 1015, p. 20 states:
The Retail Plan contemplates a sharing of responsibility between the Dealer and Ford Credit with respect to vehicles covered by retail installment contracts on which the customer has defaulted. The standard Retail Plan is a repurchase plan under which Ford Credit assumes responsibility for confiscated vehicles, converted vehicles, certain collision damages to vehicles and for repossessing and returning vehicles to the Dealer after default, and the Dealer assumes the responsibility for repurchasing and merchandising repossessed vehicles.

[5] The Ford Credit retail installment contract form states:
REPURCHASE: The [dealer] guarantees payment of the full amount remaining unpaid under said [retail installment] contract, and covenants if default be made in payment of any installment thereunder to pay the full amount then unpaid to [Ford Credit] upon demand, except as otherwise provided by the terms of the Ford Motor Credit Company Retail Plan in effect at the time this assignment is accepted.

of repossessed vehicles should be paid to the defaulting customer as required by the UCC (CX 2307A).

30. All retail installment contracts sold or assigned by Francis Ford to Ford Credit and U.S. Bank are subject to repurchase agreements (Tr. 39, 189, 191–92, 1482–83).

E. The Benefits of Repurchase Financing

31. Mr. James Woods, the secretary-treasurer of Francis Ford, testified that it arranges for financing its customer's vehicle purchases because its competition does so, but that because of the costs involved in handling installment contracts, Francis Ford would much rather sell cars for cash (Tr. 1276–77).

32. However, it is apparent that repurchase financing, the only type of financing available to automobile dealers in the Portland area (Tr. 189, 191), does provide certain benefits to Francis Ford. Foremost, of course, is the fact that financing sells automobiles[6] (Tr. 178–79, 1489, 1514, 2286).

33. There are other tangible monetary benefits which Francis Ford realizes from its repurchase agreements. When it assigns an executed retail installment contract to a financing institution on a repurchase basis, the financing institution credits a share of the total finance charge to Francis Ford. Francis Ford's share of the finance income is the amount by which the finance charge negotiated between Francis Ford and the consumer exceeds the amount of finance income for the financing institution as agreed upon between Francis Ford and that institution. For example, the interest rate which Ford Credit charged on new cars at the time of hearings was 6 percent. If the total finance charge negotiated by Francis Ford were $1,560 on a hypothetical contract, and as a result of its 6 percent rate, Ford Credit's finance charge was $1,200, Francis Ford would retain the difference between $1,560 and $1,200–$360 (Tr. 45–46).

34. Francis Ford's sale of cars on retail installment contracts also enables it to sell credit life, accident and [12] health insurance to many customers. It receives a commission of between 35 percent and 37 1/2 percent on its sales of such insurance. Credit life, accident and health insurance meet the customer's obligation under the installment contract if the customer suffers a misfortune covered by the policy. These policies protect the customer against repossession due to sudden loss of income, while protecting Francis Ford against being called upon to perform its obligations under the repurchase agreement with the financing institution (Tr. 180).

[6] "If everybody sold for cash, all dealers would sell far less cars today than they do by having a contract" (Tr. 1277).

35. "Profit centers" are the revenue generating activities of a merchandising firm which ultimately provide for payment of its indirect or fixed (overhead) expenses (Tr. 546–47). Finance and insurance income may be a major profit center for a dealership (CX 319A–F). Francis Ford realized $127,827 in finance and insurance income in 1974 and $124,407 in such income in 1975 (CX's 2321–22).

F. Repossession

1. Calculating the Payoff

36. During calendar year 1974, approximately 91 repossessed vehicles were returned to Francis Ford pursuant to its repurchase agreements with Ford Credit and U.S. Bank (Adm. 9). Approximately 85 repossessed vehicles were returned to Francis Ford by these lending institutions in 1975 (Adm. 8).

37. When Ford Credit and U.S. Bank return a repossessed vehicle to Francis Ford, they calculate a "payoff," that is the amount which the defaulting customer owed them but which, by virtue of the repurchase agreements, Francis Ford now owes them. Francis Ford then looks to the defaulting customer to reimburse it for the payoff plus other legitimate expenses incurred in preparing the repossessed vehicle for sale and in reselling it.

38. The payoff does not equal the amount owed on the installment contract, for it is adjusted by credits for any prepaid but unearned finance charges or insurance premiums, and by charges for such items as collision damage and expenses of repossession by the financial institution (CX's 1016, pp. 20–22; 2307A–B, 2396A, 2564, 2566A–2569, 2571; RX 2565; Tr. 55–59, 62–63). [13]

a. Finance Charges

39. When Francis Ford sells a vehicle under a retail installment contract, the contract customarily provides for the customer to pay a finance charge which is included in the face amount of the contract (*e.g.,* CX 2581A).

40. When Francis Ford assigns a retail installment contract to Ford Credit or U.S. Bank, the financing institution credits Francis Ford's reserve account with the amount by which the gross finance charge negotiated between Francis Ford and the customer exceeds the discount rate agreed to between Francis Ford and the financing institution (CX 1054A–C; Tr. 46–50, 1509–11; Finding 33). The financing institution then sends Francis Ford a check for the unpaid balance owing on the vehicle plus the amount of any premiums for creditor's life, accident, or health insurance financed under the

contract which Francis Ford has arranged through its independent broker (CX 2396A; Tr. 48–49).

41. The Ford Credit and U.S. Bank retail installment contract forms used by Francis Ford provide that if the buyer prepays the obligation in full, the buyer will receive a rebate (credit) of the unearned portion of the finance charge computed under the Rule of 78 (sum of the digits method)[7] after deducting an acquisition fee of $15 (CX's 2311 [¶ 14], 2441, 3421, 3461).

42. In the event of an early payoff by a customer purchasing a vehicle under a retail installment contract held by a financing institution pursuant to a repurchase agreement with an automobile dealer, the gross finance charge is prorated by the financing institution under the Rule of 78. The face amount of the contract is then reduced by the amount of the unearned gross finance charge to obtain the payoff. The amount of the finance charge previously credited to Francis Ford, being a part of the gross finance charge, is also prorated under the Rule of 78, and the unearned portion is charged to its reserve account. No charge is made to the customer for the unearned finance charge Francis Ford or the financing institution would have earned had the contract continued for its maximum term (CX's 1954A–C, 2396A, 2431, 3516; Tr. 2267–71).

43. Professor Johnson, one of Francis Ford's expert witnesses, gave an example of proration under the Rule of 78, assuming that the finance institution made a loan on which it assessed a finance charge of $100 for 12 months. [14] If the debtor paid off the loan prior to the end of its term, after 60 percent of the finance charges were earned by the finance institution, $40 would be credited to him under the Rule of 78. If an automobile dealer, because of a repurchase agreement, were entitled to 20 percent of the finance charge ($20) he would, upon early payment, be required to refund his share of the unearned finance charges. In such a case, the finance institution would credit the same amount ($40) to the debtor and would charge the dealer's reserve account for his share—$8 (20 percent of $40)—of the unearned finance charge (Tr. 2267–71).

44. In the event of a repossession under a retail installment contract held by Ford Credit under a repurchase agreement followed by a subsequent redemption of the vehicle by the customer, the customer's payoff and Francis Ford's chargeback are accounted for in the same method as reflected in Finding 42 except that any out-of-pocket expenses incurred in making the repossession are added to the payoff amount to be paid by the redeeming customer (CX 2396A;

[7] The "Rule of 78" is a method for prorating finance charges and insurance premiums in the event of early payoff, redemption, or repossession under a retail installment contract (CX 3516; Tr. 55–56, 88, 2267–73).

Tr. 62–63); and, in the event of a repossession from a customer purchasing a vehicle under a retail installment contract held by a financing institution pursuant to a repurchase agreement, Francis Ford's payoff and chargebacks are accounted for by the same method as in Finding 42 (CX's 2396A, 2431; Tr. 69–70, 2267–71).

45. The amount of the Francis Ford's chargeback representing its share of the unearned finance charge for the period after early payoff, redemption, or repossession is not charged or collected as an expense from the customer (CX's 2396A, 2431; Tr. 56–58, 62–65, 69–71, 2270).

b. Insurance

46. When Francis Ford sells creditors' life, accident, or health insurance in connection with the sale of a vehicle under a retail installment contract, the gross insurance premium is included in the face amount of the contract (*e.g.,* CX 2581A). Francis Ford obtains such insurance through independent brokers, and receives a share of the insurance premium (Tr. 1178).

47. In the event of an early payoff by a customer purchasing a vehicle under a retail installment contract held by Ford Credit pursuant to a repurchase agreement where the customer has purchased creditor's life insurance from Ford Life Insurance Company, Ford Credit prorates the amount [15] of the gross insurance premium under the Rule of 78. The face amount of the obligation is then reduced by the amount of the unearned gross premium. The portion of the gross premium previously credited to Francis Ford is prorated under the Rule of 78 and the unearned portion is charged back to the dealer (CX 2396A; Tr. 52, 55–56, 85–88, 139).

48. In the event of either an early payoff or repossession on a direct loan on which U.S. Bank has sold creditor life, accident, or health insurance and received a commission, the gross insurance premium is prorated and the balance owing is reduced by the amount of the unearned gross premiums (Tr. 1526–33).

2. Resale of the Repossessed Vehicle

a. Francis Ford's Practice

49. Francis Ford engages in substantial sales of used vehicles to retail customers (Finding 3). When, pursuant to its repurchase obligation, Francis Ford receives a repossessed vehicle from Ford Credit or U.S. Bank, it treats most of them in the same manner as

other used vehicles which it has obtained through other methods and often sells them at retail.[8]

50. There is some evidence in the record that Francis Ford has obtained prices close to retail book value for repossessed vehicles:

a. The Wallace P.[9] repossession was resold for $1,425 on 6/21/75 (CX 2501). It was a 1969 Ford Pickup, Model F100 (CX 2561), with 87,855 miles on it at the time of resale (RX 2570A). The retail blue book value for this vehicle was $1,560 (RX 10, p. 234), less a mileage adjustment of $135 (RX 10, p. 10), leaving a retail blue book value of $1,425. [16] The wholesale blue book value for this vehicle was $1,125 (RX 10, p. 234), less a mileage adjustment of $100 (RX 10, p. 10), leaving a wholesale blue book value of $1,025.

b. The Hugh W. repossession was resold for $5,275 on 8/13/75 (CX 2503). It was a 1975 Ford Elite with 9,220 miles on it at the time of resale (RX 2609A). The retail blue book value for this vehicle was $5,270 (RX 11, p. 102), plus a mileage adjustment of $100 (RX 11, p. 8) leaving a retail blue book value of $5,370. The wholesale blue book value for this vehicle was $4,150 (RX 11, p. 102), plus a mileage adjustment of $75 (RX 11, p. 8), leaving a wholesale blue book value of $4,225.

c. The Gregory D. repossession was resold for $2,702 on 3/15/75 (CX 2504). It was a 1973 Pinto, two-door, S/W, four-speed manual transmission, with 27,173 miles on it at the time of resale (RX 2637B). The retail blue book value for this vehicle was $2,605 (RX 9, p. 95), plus a mileage adjustment of $100 (RX 9, p. 10) and less an accessory adjustment for manual transmission of $65 (RX 9, p. 11), leaving a retail blue book value of $2,640. The wholesale blue book value for this vehicle was $1,950 (RX 9, p. 95), plus a mileage adjustment of $75 (RX 9, p. 10) and less an accessory adjustment for manual transmission of $50 (RX 9, p. 11), leaving a wholesale blue book value of $1,975.

d. The Benjamin T. repossession was resold for $4,750 on 8/12/75 (CX 2506). It was a 1975 Mustang II Ghia, V-8 (RX 2671), with 3,365 miles on it at the time of resale (RX 2684). The retail blue book value for this vehicle was $4,675 (RX 11, p. 102), plus a mileage adjustment of $65 (RX 11, p. 10) and plus an accessory adjustment of $265 (RX 11, p. 102), leaving a retail blue book value of $5,005. The wholesale blue book value for this vehicle was $3,650 (RX 11, p. 102) plus a mileage

[8] Forty-one of the 43 repossessed vehicles on which Francis Ford realized surpluses were sold at retail by a person to whom Francis Ford paid a salesman's commission (CX's 2501–43; Tr. 932).

[9] Complaint counsel have requested that the full names of the persons involved in the repossessions analyzed in this decision not be revealed.

adjustment of $50 (RX 11, p. 10) [17] and plus an accessory adjustment for V-8 engine of $200 (RX 11, p. 102), leaving a wholesale blue book value of $3,900.

e. The Ronald A. repossession was resold for $3,295 on 2/18/75 (CX 2509). It was a 1972 Ford Gran Torino, two-door, sports roof (RX 2761), with 53,669 miles on it at the time of resale (RX 2756A). The retail blue book value for this vehicle was $2,885 (RX 8, p. 94), less a mileage adjustment of $200 (RX 8, p. 9), leaving a retail blue book value of $2,685. The wholesale blue book value for this vehicle was $2,175 (RX 8, p. 94), less a mileage adjustment of $150 (RX 8, p. 9), leaving a wholesale blue book value of $2,025.

51. In practice, Francis Ford has never compared income and expenses on repossessed vehicles at the time they were resold to determine whether surpluses resulted therefrom (Tr. 1086–87, 1175). Instead, Francis Ford has assumed, because of the way it values repossessed vehicles, that their resale always resulted in a deficiency (Tr. 1253, 1373, 1375).

52. The one occasion on which Francis Ford did compare income and expenses on repossessed vehicles resulted from a June 27, 1975 letter from the Commission's Seattle Regional Office. In response to this letter, and upon the advice of its then counsel, Francis Ford prepared and submitted to the Seattle Regional Office in July 1975 a summary tabulation of income and expenses on each of 27 repossessed vehicles returned to it by Ford Credit and U.S. Bank between October 1 and December 31, 1974 (CX 2344; Tr. 210–24, 1119–21, 1135, 1161). This summary tabulation was drawn from various types of records maintained by the dealership, including (a) records showing costs directly attributable to preparation and resale of the vehicles and (b) records showing certain department-wide and overall dealership expenses, indirect in nature (*e.g.,* imputed capital costs, general advertising, lot maintenance and other overhead items such as phone, water, lights and rent), which Francis Ford apportioned to the 27 vehicles on a prorata basis (Tr. 1123–24, 1128–31, 1134).

53. Among the records of direct outlays for these repossessed vehicles which Francis Ford consulted in preparing these tabulations were the internal repair orders it had generated at the time of reconditioning the 27 vehicles in question. For purposes of its response to [18] the Commission's Seattle Office, Francis Ford altered many of the repair orders applicable to these vehicles by crossing out figures which it concluded were too low and entering higher or additional figures (Tr. 1146–51).

54. According to this analysis, and taking the figures supplied by