Arizona Consumers Council Foundation
Chicago Consumer Coalition
Consumer Assistance Council
Consumer Federation of America
Consumer Federation of California
Consumer Federation of the Southeast
Consumer Action
Consumers for Auto Reliability and Safety
Maryland Consumer Rights Coalition
National Association of Consumer Advocates
National Consumer Law Center (on behalf of its low-Income clients)
U.S. Public Interest Research Group
Virginia Citizens Consumer Council
Watsonville Law Center

March 12, 2013

Federal Trade Commission
Office of the Secretary, Room H–113 (Annex T)
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: Used Car Rule Regulatory Review, Project No. P087604, 77 Fed. Reg. 74746 (Dec. 17, 2012)

On behalf of each of the above-designated organizations, we submit the following comments, in response to the Federal Trade Commission's Notice of Proposed Rulemaking published on December 17, 2012, regarding the agency's Used Car Rule.

Thank you for the opportunity to comment. Unfortunately, the FTC's proposal is seriously flawed and would be harmful to consumers. Four years after seeking public comment, the agency has disregarded all the major recommendations made by consumer groups and state attorneys general, and instead proposes to make an antiquated, bad rule even worse. The people who will benefit from the FTC's proposed rule are unscrupulous auto dealers, and the people who will be hurt are used car buyers.

The existing rule, which was promulgated in 1985, was fundamentally flawed from its inception, and is now also antiquated. Parts of it -- particularly the language interpreting what " AS IS" means -- are false and misleading, and function as a shield for unscrupulous dealers. On balance, it harms consumers. The proposed rule is even worse, and threatens to undermine an entire body of auto fraud law that has developed at the state level, that is far more protective of used car buyers.

The proposed rule is based on information that is out of date. It fails to recognize the entire body of pro-consumer case law that has developed over the decades since it was first promulgated, the improvements in state consumer protection statutes, the actual access dealers have to information, and the advances in completing and implementing the National Motor Vehicle Title Information System (NMVTIS).

The proposed Rule would be particularly harmful because of the Integration Clause which states that the Buyers Guide is part of any sales contract signed by the dealer and the car buyer. Therefore, every phrase on the Buyers Guide has significant legal consequences.

Rather than issue the proposed rule, the FTC should revise the proposal to:

- Require that dealers check NMVTIS for each used vehicle they offer for sale and on the front of the Buyers Guide fill in the following sentence: "On ____, [date] the dealer obtained a report from the National Motor Vehicle Title Information System (www.vehiclehistory.gov) regarding this vehicle." If the vehicle has been reported to NMVTIS, the dealer should be required to provide the same prominent red warning sticker that is required in California.[1]

- Require auto dealers to check with warrantors to ascertain whether any warranty on the vehicle, including the manufacturer's warranty, is still in effect and not void due to prior damage or other condition, and accurately report that information on the Guide

- Require dealers to provide the more detailed, complete disclosures required by the state of Wisconsin, using the Wisconsin version of the Used Car Buyers Guide as a model

- Remove misleading language from the existing Buyers Guide, regarding "AS IS- NO DEALER WARRANTY" sales, stating that "THE DEALER WILL NOT PAY ANY COSTS FOR ANY REPAIRS. The dealer assumes no responsibility for any repairs regardless of any oral statements about the vehicle"

- Preclude 50/50 Warranties or other dealer warranties where dealers represent they will split the cost of repairs with the customer, as qualifying as a warranty under the Buyer's Guide

- Require auto dealers to provide a completed translation of the Buyer's Guide in the language used to negotiate the contract

- Require auto dealers to inspect used vehicles prior to offering them for sale

- Require auto dealers to provide written disclosure of known defects and prior use

[1] A sample of the warning sticker is posted at: http://www.carconsumers.org/pdf/AB-1215_Red-Warning-Notice.pdf

How the agency's proposal would harm consumers

1. The Proposed Rule's "AS IS" language would be false, misleading, and harmful to consumers

The proposed rule would do unprecedented damage to consumers by requiring auto dealers to provide false and misleading information to every buyer of an "AS IS" used car. It would enshrine in the FTC-mandated notice the inaccurate, incorrect, and anti-consumer position that a dealer is not responsible for oral statements or fraud. If adopted, the FTC's proposed rule will encourage fraud in the marketplace, deter consumers from seeking or believing advice from consumer groups, state attorneys general, or consumer attorneys, and confuse judges regarding the meaning of "AS IS" sales.

When a used vehicle is sold "AS IS", the existing rule requires the Buyers Guide to state:

> **Existing:** AS IS = NO WARRANTY. YOU WILL PAY ALL COSTS FOR ANY REPAIRS. The dealer assumes no responsibility for any repairs regardless of any oral statements about this vehicle.

This language is incorrect and misleading. A whole body of case law establishes that a dealer that commits fraud when selling a vehicle *can* be forced to assume responsibility for repairs, even if the vehicle is sold "AS IS."[2] The language of the current rule discourages consumers from asserting their rights, leading them to suffer huge losses when they are actually entitled to meaningful protections under state and/or federal law. It is also confusing to judges, who sometimes interpret it to mean that consumers have no recourse, even when it is clear that they have been defrauded.

Instead of improving this provision, the proposed language is even worse for consumers than the existing language. When a used car is sold "AS IS," the proposed rule would require the Buyers Guide to state:

> **FTC Proposal:** AS IS - NO DEALER WARRANTY. THE DEALER WON'T PAY FOR ANY REPAIRS. The dealer is not responsible for any repairs, regardless what anyone else may tell you." (emphasis added)

The statement that a dealer that sells a car "AS IS" "is not responsible for any repairs, regardless what anyone may tell [the buyer]" is shockingly inaccurate. Currently, as a matter of law, in all 50 states, depending on the facts and circumstances of the specific case, a dealer that misrepresents or conceals the condition of a car *can be held responsible* not just for repairs but also for a refund of the purchase price actual and compensatory damages, attorneys fees, and in many states, punitive damages. The core idea is that when a dealer commits fraud or violates a state disclosure law, the dealer can be responsible for repairs and the

[2] For citations to cases that illustrate this point, please see Appendix.

FTC form should not say otherwise.

The FTC's proposed language is inaccurate because it wrongly conflates the lack of a warranty with no responsibility for repairs. In fact, a dealer that does not give a warranty is often responsible for repairs. For example, a state used car law may make the dealer liable for repairs. Or the dealer may be responsible for repairs because of fraud or deceptive practices. The FTC's proposed language treats the "AS IS" disclaimer as absolute, a position that would roll back decades of effort by consumers, consumer advocates, and state Attorneys General.

Moreover, the FTC's proposed language fails to take into account the fact that, in many circumstances, a dealer's attempt to disclaim implied warranties will be ineffective. The absolute statement that a dealer who sells a car "AS IS" is not responsible for repairs "regardless what anyone else may tell you" is simply false in many circumstances.

In the following types of cases, the FTC's proposed language would be false and misleading:

- Oral statements regarding the condition of the car may be express warranties under state law even if the contract documents disclaim implied warranties through the use of a term such as "AS IS." If there are express warranties, the dealer is responsible for repairs.

- Deceptive statements or advertising — written or oral -- about the condition of a vehicle are enforceable against the dealer under most states' deceptive practices statutes and may also create an express warranty, even if the Buyer's Guide states that the sale is "AS IS." [3]

- Concealment of known facts—a prior wreck history, mechanical failure, safety defects — is fraud and, in most states, a violation of the state's deceptive practices statute. The dealer will, at a minimum, be responsible for repairs.

- Dealers often enter into service contracts with car buyers but still sell the car "AS IS," even though the federal Magnuson Moss Warranty Act prohibits disclaimer of implied warranties in this situation. In this situation, the "AS IS" statement on the Buyers Guide would be a misrepresentation of both state law and federal law.

- Dealers often sell cars "AS IS" even though they have failed to follow procedures required by state law for disclaiming implied warranties. In this situation, the implied warranties exist as a matter of law regardless of the "AS IS" statement on the contract documents and the Buyers Guide, and the dealer is responsible for bringing the vehicle into conformity with the warranted condition.

- When the purchase takes place in one of 17 states that require auto dealers to provide mandatory warranty coverage on used cars, the dealer is responsible for repairs regardless of any disclaimer. Six states -- Hawaii, Massachusetts, Minnesota, New Jersey, New York, and Rhode Island -- have lemon laws for the protection of used car buyers. "These laws generally provide a statutory warranty for used cars, often based

[3] *See* National Consumer Law Center, Consumer Warranty Law § 15.3.4.7 (4th ed. 2010 and Supp.) and National Consumer Law Center, Unfair and Deceptive Acts and Practices § 7.4 (8th ed. 2012).

upon the age or mileage of the vehicle... Most used car lemon laws limit the warranty to 60 or 90 days." Another seven states -- Arizona, Connecticut, Illinois, Maine, Nevada, New Mexico, and Pennsylvania -- establish minimum warranties or minimum standards for used cars. Three states -- Maryland, Massachusetts, and West Virginia -- and Washington, D.C. specifically prohibit dealers from disclaiming implied warranties in all or certain categories of used car sales.[4] California requires "buy here pay here" dealers to include express warranty coverage of at least 1,000 miles or 30 days on all vehicles they offer for sale, regardless of the age or mileage of the vehicle.[5] In these states, a dealer is responsible for repairs even if the vehicle is sold "AS IS." However, the FTC's proposed language would indicate the contrary to consumers.

Although the FTC rule states the "AS IS" paragraph is not to be used in circumstances where it is not appropriate, once this language is released as official FTC language, unscrupulous car dealers will misuse the form. For example, West Virginia prohibits "AS IS" sales, across the board, for all used cars. Consumers who purchase vehicles from a disreputable West Virginia dealer who checks the "AS IS" box, in violation of the state law, would be entitled to have the benefit of various rights and remedies, which would entitle them to refunds, attorneys' fees, and potential punitive damages. If the FTC's language were adopted as proposed and then the form misused by an unscrupulous car dealer, consumers would be misled into thinking they have no recourse.

As proposed, the language states that, according to the FTC, the dealer is not responsible, regardless of the facts of the individual case, and regardless of what state or federal law may hold. The FTC is overstepping its authority and making conclusions of law that are more properly vested in the Courts. This language would give unscrupulous dealers and defense attorneys a new shield against legitimate cases -- even when they commit fraud.

Particularly because the Rule is supposed to take precedence over the terms of the contract, this language may be interpreted to override state law -- setting consumers back decades, despite hard-won progress in state legislatures and in the courts.

Making this provision even worse, it actively discourages victims of auto fraud from seeking advice and information about their rights, with the unprecedented and sweeping statement that the dealer is not responsible, *regardless* of what state attorneys general, non-profit consumer groups, consumer protection attorneys, or even judges may have to say.

Finally, the Uniform Commercial Code, § 2-313 recognizes that express warranties can be created in a variety of ways. These include an affirmation of fact, a description of the goods, or any sample or model which becomes part of the basis of the bargain. The FTC has not been authorized to preempt the state laws modeled on 2-313, and definitely should not do so by way of the Buyers Guide. Instead, the FTC should use the Buyers Guide to accurately inform a consumer what "AS IS" means.

Consequently, we urge the FTC to alter this proposed language to address the

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[4] *Fueling Fair Practices: A road map to improved public policy for used car sales and financing,* by John Van Alst, National Consumer Law Center, 2009, pages 21-22.

[5] AB 1447 (Feuer), enacted in 2012.

harm it would inflict on used car buyers, and to make it truly informative. As an alternative that would be far more accurate, we suggest the following:

> AS IS – NO DEALER WARRANTY. DEALER DENIES ANY RESPONSIBILITY FOR ANY REPAIRS AFTER SALE.

2. The Proposed Rule fails to require dealers to check the National Motor Vehicle Title Information System (NMVTIS) prior to offering used cars for sale

The FTC proposes to create a new FTC website to inform consumers about vehicle history databases, but not to require dealers to check NMVTIS and disclose the results to consumers. The FTC's Notice of Proposed Rulemaking is based on faulty, out-of-date information about NMVTIS. It fails to require dealers to check NMVTIS or disclose the results of any vehicle history reports. Instead, it puts the burden on consumers -- who typically lack access to computers when they are on the lot shopping for vehicles, and have to pay exponentially more than dealers to access the same information. The agency fails to recognize that many consumers cannot access the information at all, because of the practical realities of car buying, a very real digital divide, language issues, or the lack of access to credit. For consumers, it takes a credit card or similar means of payment to obtain a vehicle history report.

Even for consumers who can access databases online, it often requires both VIN information about the car they are interested in and secure internet access. This means consumers must be expected to go back and forth to and from car lots to obtain this data. Dealers are much better positioned to efficiently and effectively obtain and disclose this information. Thus, even the many millions of vulnerable low-income consumers who have language issues, or lack access to credit or computers, and therefore are precluded from obtaining vehicle history reports -- particularly at the time of sale -- will have the same information as everyone else.[6]

The NPR quotes auto dealer comments filed over four years ago, as a basis for its conclusions about whether to require dealers to check NMVTIS prior to offering used vehicles for sale. The FTC failed to note any of the following developments in completing NMVTIS:

- Since March 30, 2009, all auto insurers, salvage pools, junkyards, recyclers, **in all 50 states** are required to report all the total loss vehicles they handle to NMVTIS, and update the data at least every 30 days. Many are reporting daily.
- All 50 states are currently either fully integrated with NMVTIS or in the process of becoming fully integrated with NMVTIS.
- 88% of all vehicle registrations are currently included in the NMVTIS database, and the remaining states are on track to be included soon.
- Dealers are incorrect in claiming that they would be held liable for erroneous data, any more than they are currently held liable for erroneous data in Carfax, Autocheck, or

[6] "Federal regulators identified the gap in home internet access as a key challenge for education, in a report in 2010. Access to the Web has expanded since then, but roughly a third of households with income of less than $30,000 a year and teens living at home still don't have broadband access there, according to the Pew Research Center." -- "The Web Deprived Study at McDonald's," *Wall Street Journal*, January 29, 2013

other databases, to which many dealers already subscribe. They would, however, be obliged to provide accurate information based on what has been reported to NVMTIS.

- According to a cost-benefit analysis commissioned by the U.S. Department of Justice, completion of NMVTIS will save the American public up to $11.3 BILLION dollars each year by curbing auto theft, salvage fraud, VIN-switching (also known as vehicle identity theft) and related crimes.[7]
- Due to bulk discounts available solely to auto dealers, the costs to dealers of obtaining NMVTIS reports is generally less than $.50 per Vehicle Identification Number (VIN). These are costs that are easily incorporated into the price of the car, and are so minimal they will have no impact whatsoever on the market. Dealers can access NMVTIS more efficiently and economically than consumers, and by requiring dealers to access NMVTIS and provide prominent disclosure of vitally important information about what they find, the FTC would be helping to ensure that everyone has the same information.
- Under AB 1215, which was enacted in California in 2011 with widespread bi-partisan support and took effect July 1, 2012, all auto dealers in California are required to check NMVTIS before offering a used car for sale, and post a prominent warning sticker on the vehicle itself, if the vehicle is in NMVTIS or has a branded title. This sets a precedent for the FTC to follow, and debunks the auto dealer myths that such a requirement would be too burdensome or unworkable.

On the front of the Buyers Guide every car dealer should be required to fill in the following sentence: "On ____, [date] the dealer obtained a report from the National Motor Vehicle Title Information System (www.vehiclehistory.gov) regarding this vehicle." If the vehicle has been reported to NMVTIS, the dealer should be required to provide the same prominent red warning sticker that is required in California.[8]

With the changes suggested above on the front of the form, and removing the recommendation that the consumer consult a website that has not yet been developed, enough space on the front of the form exists for this disclosure.

3. The Proposed Rule fails to require dealers to indicate whether the car being sold is covered by a manufacturer's warranty

The FTC's Notice of Proposed Rulemaking would not require dealers to indicate if a car offered for sale is covered by a dealer's warranty, in part based upon industry comments claiming that dealers cannot obtain this information. As the owner of the car being sold, a car dealer has the same right to information about a manufacturer's warranty on the car as any future owner. To claim that the dealer cannot get this information but a potential consumer could is simply false. The FTC should not adopt any rule based on this untruth.

As the owner of the car and a repeat player within the auto industry, the dealer is actually in a better position than the consumer to determine whether manufacturer

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[7] National Motor Vehicle Title Information System Cost-Benefit Analysis, authored by Logistics Management Institute, June, 2001. Posted at: https://www.bja.gov/Publications/LMI_NMVTIS.pdf.

[8] A sample of the warning sticker is posted at: http://www.carconsumers.org/pdf/AB-1215_Red-Warning-Notice.pdf

warranties exist. If the dealer cannot get this information, then a consumer who buys the car has little hope of ever getting this information. Furthermore, the presence or absence of a manufacturer's warranty significantly affects the value of a vehicle. A consumer needs this information before he or she becomes the owner. For the marketplace to function properly, this characteristic of the vehicle must be known for the marketplace to determine the price of the car.

No excuse exists for the dealer not to find this information, and provide it to a buyer. That the FTC would claim a consumer who is merely considering buying a car and not yet its legal owner is in a better position than a car dealer to determine whether a manufacturer's warranty applies to the car is simply absurd.

4. The Proposed Rule would allow dealers to mislead car buyers by hiding crucial information on the BACK of the form

The proposal would allow auto dealers the option of checking a box on the BACK of the form regarding whether there is a manufacturer's warranty in effect. In what may be an unprecedented step, the FTC would allow a regulated industry to provide notice about critical information on the BACK of a document, where consumers are unlikely to see it at all, particularly since (with relatively rare exceptions) the Used Car Buyers Guide must be posted on the inside of the car, facing out, where the back isn't even visible to consumers when they approach the vehicle. In addition, most consumers are not expecting crucial information to be located on the back of a document, so they are unlikely to look for it there.

Under this proposal, a dealer could tell a consumer verbally that the remainder of the factory warranty is in effect, and even include a statement in the sales contract that says the remainder of the factory warranty is in effect, then leave the box on the BACK of the Used Car Buyers Guide unchecked, and claim that, as a matter of federal law, that supersedes the terms of the contract. Thus unscrupulous dealers could use this provision as a shield, allowing them to deceive car buyers into believing they are getting a warranty from the manufacturer, and charging them extra for that protection, while taking it away through hidden fine print.

The solution is to move the Non-Dealer Warranties and Service Contract sections to the front. Under the Limited Warranty section, dealers should be required to state: "For ____, [period of time] the dealer will pay 100% of the labor and costs for the covered systems that fail. Only the systems that are circled on the OTHER SIDE OF THIS FORM are covered systems. Prior to your agreement to purchase the car, the dealer must make available to you a copy of the warranty that explains the warranty coverage, the exclusions, and the dealer's repair obligations. Implied warranties under your state's laws may give you additional rights."

On the back the covered systems list should be written in a larger font. The regulation should instruct dealers to circle the systems covered. The list then identifies exactly what is covered and what is not covered, and the font size and legibility of the covered list is always the same. Using the form list and circling will also take less time than asking the dealer to rewrite the identification of each covered system. The requirement of providing the warranty terms prior to purchase implements the existing requirements of 15 U.S.C. § 2302(b)(1)(A), of the Magnuson-Moss Warranty Trade Improvement Act, and its implementing regulation 16 C.F.R. § 702.3(a).

5. Other serious problems with the FTC's proposal

The FTC's proposal also:

- Fails to require dealers to inspect vehicles prior to sale to determine their condition, or even whether the vehicles are safe and fit to drive.

- Fails to require dealers to simply disclose KNOWN vehicle defects.

- Allows dealers to continue to offer "50/50" warranties, including when the consumer must obtain parts and labor from the dealer as a condition of the warranty, making it easy for dealers to artificially inflate the price so that consumers end up paying 100% of the actual price of repairs

Thank you again for the opportunity to comment. Should you or your staff have any questions regarding our comments, please contact:

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Respectfully submitted,

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National Consumer Law Center (on behalf of its low-Income clients)
U.S. Public Interest Research Group
Virginia Citizens Consumer Council
Watsonville Law Center

APPENDIX

Existing case law contradicts the language found in the FTC's Proposed Rule stating that in a purported "AS IS" sale the dealer is not responsible for any repairs “regardless what anyone else may tell you.” The cases cited below show that this statement is not correct and misinforms consumers regarding their rights. For additional cases see National Consumer Law Center, Unfair and Deceptive Acts and Practices (8th ed. 2012) and National Consumer Law Center, Consumer Warranty Law (4th ed. 2010 and Supp.)

W. Recreational Vehicles, Inc. v. Swift Adhesives, Inc., 23 F.3d 1547 (9th Cir. 1994) (Wash. law)

Sierra Diesel InjectionServ., Inc. v. Burroughs Corp., 874 F.2d 653 (9th Cir. 1989) (Nev. law), reh’g denied and opinion amended, 890 F.2d 108 (9th Cir. 1989)

Select Pork, Inc. v. Babcock Swine, Inc., 640 F.2d 147 (8th Cir. 1981)

George Robberecht Seafood, Inc. v. Maitland Bros. Co., Inc., 220 Va. 109, 255 S.E.2d 682 (Va., 1979)

Slusher v. Jack Roach Cadillac, Inc., 719 S.W.2d 880 (Mo. App. W.D. 1986)

Anthony's Auto Sales, Inc. v. Shephard, 600 So.2d 125 (La. App. 2 Cir.,1992)

Bauer v. Giannis, 834 N.E.2d 952 (Ill. App. 2 Dist. 2005)

Weigand v. Walser Automotive Groups, Inc., 683 N.W.2d 807 (Minn.2004)

Grabinski v. Blue Springs Ford Sales, Inc., 136 F.3d 565 (8th Cir. 1998)

Grabinski v. Blue Springs Ford Sales, Inc., 203 F.3d 1024 (8th Cir. 2000)

Slone v. Purina Mills, Inc., 927 S.W.2d 373, 373 (Mo.App.1996)

Walters v. Maloney, 758 S.W.2d 489 (Mo.App. 1988)

Larsen v. Exclusive Cars, Inc., 97 P.3d 714 (Ut.App. 2004)

Fields v. Mitch Crawford’s Holiday Motors Company, 908 S.W.2d 877 (Mo.App. 1995)

Alabama: Chrysler Corp. v. Schiffer, 736 So. 2d 538 (Ala. 1999)

St.Croix Printing v. Rockwell Intern 428 N.W.2d 877 (MN App. 1988)

Weise v. Red Owl Stores, Inc. 175 N.W.2d 184 (Minn. 1970)

Nomo Agroindustrial Sa De CV v. Enza Zaden N. Am., Inc., 492 F. Supp. 2d 1175, 1177, 1180 (D. Ariz. 2007)

Epsman v. Martin-Landers, L.L.C., 64 U.C.C. Rep. Serv. 2d 19 (E.D. Ark. 2007)

Nat'l Mulch & Seed, Inc. v. Rexius Forest By-Products Inc., 62 U.C.C. Rep. Serv. 2d 371 (S.D. Ohio 2007)

Liimatta v. V & H Truck, Inc., 58 U.C.C. Rep. Serv. 2d 564 (D. Minn. 2005)

Evolution, Inc. v. SunTrust Bank, 342 F. Supp. 2d 964 (D. Kan. 2004)

Neb. Plastics, Inc. v. Holland Colors Americas, Inc., 51 U.C.C. Rep. Serv. 2d 1100 (D. Neb. 2003), aff'd on other grounds, 408 F.3d 410 (8th Cir. 2005)

Hercules Mach. Corp. v. McElwee Bros., Inc., 49 U.C.C. Rep. Serv. 2d 72 (E.D. La. 2002)

Virginia Transformer Corp. v. P.D. George Co., 932 F. Supp. 156 (W.D. Va. 1996)

Providence &Worcester R.R. v. Sargent & Greenleaf, Inc., 802 F. Supp. 680 (D.R.I. 1992) (Ky. law)

Computerized Radiological Services v. Syntex Corp., 595 F. Supp. 1495 (E.D.N.Y. 1984), aff'd in part, rev'd in part on other grounds, 786 F.2d 72 (2d Cir. 1986)

Campus Sweater & Sportswear Co. v. M.B. Kahn Constr. Co., 515 F. Supp. 64 (D.S.C. 1979), aff'd, 644 F.2d 877 (4th Cir. 1981)

Fleming Farms v. Dixie Ag Supply, Inc., 631 So. 2d 922 (Ala. 1994) King v. Ron's Mobile Home Sales, Inc., 2009 WL 2243967 (Del. Ct. Com. Pl. July 23, 2009)

Bill Spreen Toyota, Inc. v. Jenquin, 294 S.E.2d 533 (Ga. Ct. App. 1982)

Jensen v. Seigel Mobile Homes Group, 668 P.2d 65 (Idaho 1983)

Session v. Chartrand Equip. Co., 479 N.E.2d 376 (Ill. App. Ct. 1985)

Stormont v. Tenn-River Trading Co., 1995 WL 250806 (Ohio Ct. App. Apr. 27, 1995)

Barksdale v. Van's Auto Sales, Inc., 577 N.E.2d 426 (Ohio Ct. App. 1989)