

Extended comments of Michael S. Archer, Director of Legal Assistance, Marine Corps Installations East

I extend heartfelt thanks to the FTC for the opportunity to participate as a panelist at the roundtable discussion in San Antonio. I would like to take this opportunity to expand on comments made during that discussion, as certain items did not come up during the short, one hour give and take, and I could have expressed other points either more eloquently or fully.

Military service members fit a demographic perfectly suited to be ripped off by auto dealers. The majority are young, unsophisticated consumers, earning a significant paycheck for the first time in their lives. They have never purchased a car before. They are transient, and even more so during the early portion of their careers, when they attend initial recruit training, then follow on training in their military specialty, possibly additional training, then assignment to their first duty non-school duty station and soon thereafter, deployment. They will not know the reputation of any car dealer, good or bad. They may purchase products only to find that contractual stipulations prevent transportation of the goods over state lines, or limit the usefulness of service products. After receiving orders to a new duty station, they may find that they are required to bring suit in the state in which the vehicle was purchased, a practical impossibility. [For example, state lemon laws typically require suit to be brought in the state of purchase.] They are taught to respect authority, a respect that may transfer over to auto dealers, who seem knowledgeable and will often claim some sort of military service or affinity.

Junior troops may have very little time to shop for a car, perhaps only a Saturday afternoon. They may be impulsive and have very little knowledge of tools available on the internet and, in any event, limited access thereto. Using the internet may mean taking precious little free time to walk to the library, and then wait their turn for computer access.

Service members are targeted by all sorts of scoundrels who can not resist the opportunity to exploit so many unsophisticated, easily identifiable consumers all located in one place. Thus, the life insurance industry has a long and well documented history of selling inferior products to service members through abusive and deceptive means. Before the advent of digital cameras, scams involving photo development services proliferated near military installations. They have been replaced by predatory financing of computers and other consumer electronics, as illustrated by major lawsuits initiated by the attorneys general of New York and Tennessee. Payday lenders, car title lenders, and other predators proliferate near military installations. Why should we expect auto dealers to be some special breed, somehow immune to the foibles and character defects that abound in other business sectors?

Further, autos and auto financing are perfectly suited products with which to abuse service members. They are complicated products where exact and effective quality and price comparison is extremely difficult. My experience tells me that service members are far more likely to get a bad deal when the product is a complicated one: loans, warranties, insurance, and vehicles.

Over the years I have seen abusive techniques used to sell and finance autos to service members. Service members have complained that they have purchased cars that don't make it back to the installation before breaking down, that can't drive in reverse, or that have been

involved in a flood. On the financing end, I have taken statements from several Marines who have been victims of the yo-yo sale. In this scam, the dealer misleads the consumer to believe that the financing is complete, or completion is a mere formality, and invites the buyer to drive the new car off the lot. Days later the consumer is jerked back to the dealership like a yo-yo on a string and told that the financing “fell through.” Upon return, the buyer is told that he must purchase a different car, or sign up for financing at a much worse rate than promised. When the buyer balks, he is told that his trade in has been sold and his down payment will not be returned. In some of these cases, the dealer berates the consumer, shouts obscenities, and demands his money.

Years ago, a Virginia Beach area dealership would offer Marines free transportation to that resort. Upon arrival, they found it virtually impossible to return to Camp Lejeune without purchasing a car. The return van seemed to be perennially unavailable, or delayed. I thought we were done with that sort of problem, but it popped up again recently, victimizing a soldier from Fort Bragg.

I have seen cases wherein the dealer uses financing to pack in extra costs or to wipe out trade-in value. On multiple cases I have seen dealers add a “dealer preparation” fee exactly equal to the value of the trade in vehicle, even up to several thousand dollars, thereby effectively wiping out any trade in value. I have seen a dealership that routinely sold cars that it didn’t own; selling cars that had been traded in without paying off the remaining debt as promised. As a result, those who traded in the cars continued receiving calls from creditors who should have been paid off by the dealer, and people who bought the trade in were unable to take title due to an existing lien. In one case, a Marine was told that he would receive free airline tickets home for Thanksgiving if he purchased a car. In fact, the cost of the tickets was folded into the car loan.

I have seen cases of phony financing, dealers sending false information and documents to lenders in order to qualify for the loan. In one case, a bottle of white out and a photocopier were used to change an expired learner’s permit into a current driver’s license. In another, the lender changed a leave and earnings statement to increase the rank and pay of the buyer. In yet another, the lender was misled about various features of the car, including an assertion that it had four doors when in fact it only had two. Apparently, the Marine was getting such a bad deal on the price of the car that it exceeded the amount that lenders would provide for it.

Recently, a client came to me and complained that she had purchased a two year warranty with the vehicle. The car broke down in far less than two years, but she was told that the warranty had expired. Seems that the dealer led the consumer to believe she had a two year warranty, but some fine print said that the “in service date” of the warranty, the date it began to run, was over eighteen months before she ever bought the car. In this case, even if she knew what an “in service date” was, she would still have been ripped off. Only the dealer’s copy of documents listed any such date. Other military attorneys have recently described to me the phenomena of junk cars being sold with short term warranties. When the consumer brings the car back for its first, relatively minor repairs, the repair work is drawn out, through the remainder of the warranty period, or nearly so. Thus, the warranty period has already expired when transmission or engine falls apart.

Throughout the roundtable, in both the formal and informal discussions, those aligned with the auto industry asserted that these “horror stories” didn’t occur, or that they were rare. Well, they do occur. As for how often they occur, I don’t know, and neither do those auto executives. I suspect that the cases I see are the tip of the iceberg. It is a matter of chemistry; whenever this combustible mix of tens of thousands of gullible, transient, service members is combined with salesmen whose income depends on commission, the results are depressing and predictable.

Unfortunately, there are a variety of reasons why a service member would not complain to a military legal assistance officer. They may believe, and sometimes rightly so, that little can be done to correct the wrongs perpetrated by the salesman. They may find it difficult to take time out from their duty schedule to get to my office or may not have transportation to do so. They may not know they have been ripped off. They may be embarrassed at their vulnerability. They may just decide to eat the extra costs and chalk it up to an expensive lesson learned. Recently, JP Morgan Chase settled a class action lawsuit against some 6,000 military consumers for violating the mortgage foreclosure and interest rate protections of the Servicemember Civil Relief Act. Yet, when I polled the six military legal assistance offices within my jurisdiction (Camp Lejeune, NC; Marine Corps Air Station Cherry Point, NC; Marine Corps Air Station New River, NC; Marine Corps Recruit Depot Parris Island, SC; Marine Corps Air Station Beaufort, SC, Marine Corps Logistics Base Albany, GA) I learned that only half a dozen or so people went to a military lawyer with this kind of complaint. Six thousand SCRA foreclosure / interest cases with only one lender, yet an aggregate of half a dozen complaints at six installations.

Most of the time, there is no effective remedy. If the salesman lied to the consumer, or misled him, it will be hard to prove. Even if there is a good case, litigation will require legal counsel, and there are very few attorneys who take this type of case. Venue may be problematic for a service member soon to deploy or to execute permanent change of station orders to a distant duty station. Furthermore, the dollar values involved in the dispute may not warrant the expense, time, and aggravation of litigation.

Finally, car dealers are increasingly requiring buyers to sign an arbitration agreement as a condition of financing, or even of purchasing the car for cash. The arbitration agreement snuffs out the right to trial and the right to participate in any class action lawsuit. The dealer may be given the contractual right to choose the arbitrator or to choose the company from which the arbitrator is to come from. Unlike a car dealer, John Q. Public is extremely unlikely to have multiple cases go through arbitration. The arbitrator, knowing who butters his bread, will inevitable tend to side with the entity that can give him more business.

Public enforcement can be helpful. We have had some cases in which the NC Department of Motor Vehicles (License and Theft Bureau) was critical to a fair resolution. But the Bureau is far too underfunded and has far too few agents. And there are many types of cases that they will not be involved with due to limits on their regulatory authority and / or the type and quality of evidence. States attorneys general almost never initiate litigation actions against car dealers. For reasons already expounded upon at the roundtable, the Armed Forces Disciplinary Control Board is a useful but extremely limited, time consuming, and cumbersome tool.

What can be done? Here are a few ideas that should be obvious to an objective observer:

-Make the process more transparent. Buying and financing a car should be a lot more like ordering a chicken sandwich from Wendy's and a lot less like haggling in a middle eastern bizarre. Disclose the costs *up front* of all the goods and services in menu type format. Disclose dealer mark up on interest rates. Disclose the interest rate that is likely to result from a given credit score.

-Provide greater education to troops. It is difficult; their time is limited, and they need to prepare themselves for war. Nonetheless, it must be done and the direction and initiative needs to come from the top. Provide incentives for completing consumer education, for example, additional points towards an enlisted member's cutting score towards promotion.

-Outlaw the yo-yo sale. Don't let the consumer drive off the lot unless the financing is final. If the car dealer and the consumer sign an agreement for financing at a stated rate, such an agreement should be binding. If the dealer can't sell the note, the dealer itself must finance the deal at the agreed upon rate.

-More effective public enforcement, since private enforcement is all but illusory. The enforcement will involve prophylactic new regulations including disclosure of all costs, higher scrutiny of car dealers (including undercover operations) and the initiation of enforcement actions. Penalties should be sufficient to deter dealers from bad practices.

-Protect service members against loss of rights due to executing military orders. A service member who purchases a car should be allowed to take it to any state or country he is assigned to. S/he should be able to enforce the warranty, extended service plan, or state lemon law rights nationwide. [California has already applied this principle to Lemon Laws, as its legislature unanimously passed an amendment to the Beverly Songer Consumer Warranty Act, effective January 1, 2008. See CA Civil Code section 1790 et seq, especially sections 1793.2(d)(2) and 1793.22].

-Provide consumers with a three day right to cancel vehicle sales. The FTC already provides a three day cooling off period to cancel sales solicited at the buyer's home (16 CFR 429). States have passed cooling off periods for a variety of transaction that experience has shown often result from high pressure, deceptive sales tactics, such as life insurance, camping memberships, health clubs, and timeshares. Why not apply such a rule to the biggest high pressure sales of them all?