

>> Carole Reynolds: This panel focuses on the practices related to spot delivery. This afternoon, we have as our distinguished panelists, immediately to my right, Bill Brauch. Bill is Special Assistant Attorney General, Iowa Office of Attorney General. He has been since March of 1995. He has been the Director of the Consumer Protection Division in that office, and he oversees the Attorney General's consumer protection, litigation, legislation rulemaking and education efforts. Next to Bill, we have Mike Charapp. Mike is partner in the law firm of Charapp and Weiss. He advises numerous business clients, primarily in the motor vehicle dealer and dealer-trade association area, including Virginia, Maryland, and the Washington area New Automobile Dealers Association. He's a founding member and past president of the National Association of Dealer Counsel. He received his B.A. from the University of Pittsburgh and his JD from Georgetown. And Bill, by the way, let me just recap, received his JD with distinction from the University of Iowa College of Law. Next we have Ian Lyngklip, and Ian is joining us from Lyngklip & Associates. He's a senior member there, he's litigating cases on behalf of consumers, particularly in the auto dealer fraud and identity theft area. He's been recognized nationally for his consumer advocacy efforts, including receiving a consumer advocate of the year award in 2003. His undergraduate degree is from the University of Michigan, and his law degree from the University of Detroit School of Law, where he currently teaches. Next, we have Allen Monello, he's a partner in the Automotive Industry Center for Excellence. Dr. Monello has provided extensive regulatory consulting and training services in franchise, RV and independent dealers, and finance company areas. Before that, he was with the Division of Motor Vehicles in Florida. He has a BS in behavioral science, an MS in criminal justice, and his doctorate in public administration. And last but certainly not least, we have Keith Whann. Keith is representing the National Independent Automobile Dealers Association. Keith also, however, is the co-owner and CEO of Columbus Fair Auto Auction, and has several other companies. Before that, he was several -- a number of years back, he was with the Ohio Attorney General's office, and he's conducted hundreds of seminars. We welcome all of you today. We're going to start off with a -- an explanation of what spot delivery is. And I would ask Mike Charapp to give us just a brief overview of what this process involves.

>> Michael Charapp: I'll try to be brief. Spot delivery is what it is defined as, which is a delivery on the spot. Having defined it that way, though, the history of it leaves us a little bit in the dark as

to what exactly the term means. And I'll give you a little history. I've been around or in the car business for almost 50 years now. And I started with my father's car dealership in a little steel town outside of Pittsburgh. It was a Dodge dealership, back in the early '60s. In those days, we didn't deliver cars until they were paid for. That means, someone either brought in a check and the check cleared, or we did a finance contract in-house. In those days, you did them by hand. And we sent it to the bank and it was funded. And those were seven, ten, fourteen-day processes. And during that time, there was a lot of concern by the consumer as to, "When am I going to get my car? When am I going to get my car?" And so at some point, and I don't know when that was, but at some point in the '70s, somebody made the decision, "Well, let's start delivering the cars before they were paid for, because that's what the customers want. They want their cars." And so that became the trend. And so the spot delivery was made when the deal was approved, and then I think it was moved up to when the dealer thought the deal would be approved. So the definition of spot delivery is somewhat murky as to what exactly it is. And -- but generally, it means it's -- today I think it's -- it's a delivery before you're actually paid for the vehicle. And with that definition, 100% of the cars are spot delivered, because under the indirect finance agreements that someone in the prior panel mentioned, which is the agreement between the dealer and the finance source, there's generally a representation of warranty that says the vehicle has been delivered. And so that usually -- that now takes place prior to the contract being assigned to the finance source and being funded. And, you know, just one last piece, which is, it's sometimes called by plaintiffs attorneys a yo-yo sale. And that's used -- I see it used all of the time interchangeably with spot delivery. And I have a real issue with that. As plaintiffs use it, the yo-yo sale has an intentional element to it. I'm putting it out knowing it's going to come back, for whatever reasons which frankly escape me, because it's a noneconomic -- I mean, it's not a wise economic decision for a dealer to do that.

>> Carole Reynolds: Okay. We're going to get into that.

>> Michael Charapp: That's the difference between those two.

>> Carole Reynolds: We're going to get into that. In fact, that's a good segue. I would like Ian to describe to us how he would characterize yo-yo financing. And to the extent you think it differs from spot delivery, could you address that?

>> Ian Lyngklip: Sure. I think the thing to recognize is that, as Mike said, the consumer bar views this somewhat differently than the industry does. In talking to dealers, it's true that the dealers do view 100% of their finance deals as being spot delivered for exactly the reasons that Mike identified. Issue that we come to as consumer advocates is the issue of yo-yo sales, which is a practice -- it really describes what happens after the consumer has already been told that he's been approved for financing, and received this vehicle and has relied on that and signing all the documents that have been put in front of them. It's effectively the bait in a bait-and-switch. The yo-yo part of the sale is the part when a dealer is unable to obtain what they call funding, which means they can't get a bank to actually cut a check for the finance contract for the retail installment contract. And consequently, they think that they have a right to bring a consumer back to the dealership to do one of a number of things. They will either ask them to be contract -- meaning they will ask them to sign a new contract with different terms, almost -- you know, most regularly on terms that are less advantageous to the consumer than those already committed to buying on. Or they may switch out the collateral, may give them a different car, a car which is more easily saleable on the terms that are already present. Or they may just unwind the deal entirely and say, "Sorry, you've got to go away, you're not getting a car." And in some instances, we see that car dealers will not return down payments, will not return vehicles that have been traded in. So when we talk about spot deliveries and yo-yo sales, these are effectively -- they are not necessarily interchangeable, and we have to be very careful about how we are talking about them. The practice of yo-yo sales is the thing that the notice was directed to, and that's certainly among the most deceptive practices that we have seen at car dealers.

>> Carole Reynolds: Keith, did you want to respond?

>> Keith Whann: Yes, I think maybe just before we go too far down the road in terms of the distinctions and what happens, I think it makes sense to take a step back and realize, the essence of the spot delivery is essentially delivering a car before financing approval has been finalized. And when that's happening, we hear about customers coming back to sign documents. I think it's important to remember whether the dealer wants the customer to have the car or the customer wants to have the car. We're talking about a sales transaction. We're talking about a financing transaction

that in most cases is going to be a retail installment sale. Although theoretically, I've been in the "buy here, pay here" industry a lot of years, and I've seen cars delivered "buy here, pay here," contingent upon steps or stipulations, such as bringing in some sort of proof of employment or proof of residence. So remember, you've got the sale of the car and a retail buyers order or purchase agreement and documentation, and you have a finance contract. You have the sale of a car under state motor vehicle codes, and you'd have statutes that allow for other documents to be referenced by integration, and you've got in most cases retail installment sales acts that require all material statements to be included in the document, sometimes essentially called a single document rule. So what we're talking about here a lot of paperwork being signed by a consumer, most of which should handle these things, whether the car is going to be delivered and what's going to happen, if, in fact, this spot delivery doesn't go through. So we're talking about a regulatory structure here of federal and state law, multiple laws dealing with both the sale and the financing of the vehicle, before we ever get into anyone's motivation why they're doing what they're doing.

>> Carole Reynolds: Ian, did you wish to respond?

>> Ian Lyngklip: I do, just to be clear. One of the things that Keith said is that -- was mentioning was this approval process. And from the consumer's perspective, that approval process is completed when they are in the dealership. The consumers are not told before they're signing these documents that there is this other process that may be going on afterwards. While it may be true that those documents are -- may reflect, and certainly in Michigan that's not going to be the case. But they may reflect that there's a conditional nature of a sale. This is really about what the consumer is being told and led to believe before they agree to, number one, fork out cash on a down payment, or two, give over the keys and title to their other car and give up that value on that good. So it's important to know that the consumers are relying on statements they're being told by a dealer that they have been approved, that there's nothing conditional about this sale. They're going to get this car, and they're going to -- when they sign these documents, they think they're walking out the door with a done deal.

>> Carole Reynolds: Mike? Did you wish to comment?

>> Michael: Yeah, I've really got to speak to that, because when the consumer walks out the door with a -- after signing all the paperwork, it is a done deal, unless there is a document or a provision in the contract, which makes it conditional on the dealer being able to assign the financing document to a lender. And so that document's there, that disclosure is made, and it's not hidden. And so I don't want to comment on why consumers believe what they believe, and I'm -- I understand Ian represents consumers and sees some of those in his practice. But generally, there is language that allows that -- the rescission of the transaction to take place, or else the transaction wouldn't be one that could be rescinded.

>> Carole Reynolds: I want to come back to that in just a moment. But first Bill, and then Allen.

>> Bill Brauch: Yes, I disagree with both Michael and Ian. Ian, only to the extent that spot delivery problems can occur, even if the consumer knows it's conditional, if the dealer representative says to them, "don't worry about it, this is just a technicality," you will be financed, and the dealer perhaps doesn't have a reasonable basis for saying that. So it's not just always where the consumer is led to believe everything is final. And where I disagree with Michael is as to the use of a conditional sale contract. I've been doing this work for 25 years in Iowa. I've seen many spot deliveries. I've never seen an Iowa dealer use a conditional sale contract in the context of financing. I've never seen it. Maybe they have, but we have seen many, many complaints over the years, and we just haven't seen them do that. There are states that mandate that. And in those states that have state laws, that require that, you do see it.

>> Carole Reynolds: A few more comments on this, and then we have to go on. Allen?

>> Allen Monello: Now I'll disagree with Bill. Actually, in my experience, I have seen the proper disclosures made. And the reality of the situation is, with all of the technology and the internet and being able to shotgun the application out to various sources, the dealer has a pretty good idea before delivery is made whether that contract is going to be financed, for the most part. The problem is, however, in two areas that might cause the car to be brought back. And these are just two. But the first one is when the consumer, especially in the subprime market, has failed to actually disclose all of the facts about their -- on their credit application. Or about their employment or how long they

have been at a certain job, which causes, as Keith has referred to, the stipulations to be called in by the finance company, and then finding out that there was some information conveniently left off. That could cause the vehicle to have to come back. And then the other thing, which I have not even heard mentioned any time today, is the condition, especially again in the subprime market, that the lenders put on the dealers, where they say in order to finance this loan, it's going to cost you \$2,000, which has to come out of the dealer's profit. And if the dealer doesn't have enough in that deal to be able to withstand that, then they're going to have to back out of that deal and try to get the customer into a different vehicle. So those are the two areas that I'm finding why the customer is brought back to the dealership.

>> Carole Reynolds: Okay. Mike, quick --

>> Michael Charapp: I simply want to respond to this point that Bill made, that he's never seen a conditional contract. If he's not seeing one, then it's not conditional. I hate to get legal in a law school. But basic contract law is, when a dealer and a customer sign a contract, they have a contract that's to be performed. The only opportunity a dealer has, if he's not able to assign the contract or find a lender to whom he may assign a contract, is to use rights that appear either in a part of the integrated package, a separate document, or as part of the buyer's order that allows the dealer to rescind the agreement in the event it cannot assign the contract on terms acceptable to it. And so -- and so there must be that, if there's going to be a rescission by the dealer.

>> Carole Reynolds: All right. Let's just move on, briefly. Let's drill into this a little bit further. The consumer is in the dealership. The consumer has signed something, and has taken the car and has gone home with the car. And days or weeks later, as I understand it, something happens. Things begin to unravel. I'd like you to just explain a little bit about what happens when the call comes in, or somehow the consumer is notified that they have to come back to the dealership. What happens at that juncture? Who would like to address? Ian?

>> Ian Lyngklip: I address this, because we do get those calls all the time. And I think one of the things that's important to note before we answer that is that we do have disparate -- a patchwork of regulatory environments that the dealers have to work with. So, for instance, in Michigan, that

practice is simply not legal. It's published in the dealer manuals, the AG has spoken to it. It's not something that's permissible. You can't do that here in Michigan. There are other states where I've litigated cases, in Louisiana, where you can have conditional sales contracts, and they have bailment agreements that allow the dealership to rescind that contract and bring it back under certain conditions. There are places where conditional contracts are allowable. And what we're talking about are the circumstances when dealerships simply do not comply with the law. That's what I think we're directing our comments to. So I want to speak to that. When my clients get calls, because spot deliveries are not legal in Michigan, half the time they'll get a call from the dealer saying, "You know what? The extra key that we promised you, it's here. And while you're here, we're going to bump out that ding in the back quarter panel. And by the way, can you bring your extra key for the trade-in vehicle?" And they may find they turn over the key so they can have that ding bumped out, and the next thing they know, the car is gone. There may be other instances, we have seen this happen, where the car dealer will just simply call and say, "I'm sorry, your financing has fallen through, and can you bring the car back? We're going to have to do something else." And in those cases, they may be asked to -- or pressured into turning cars over. I've had clients brought back under the pretext of executing some ancillary documents, being brought into back rooms and then being interrogated by police about, why is it that their credit applications fell through? So it can happen any number of ways, and I think how it happens is largely a function of whether or not the dealer is operating within or without the law.

>> Carole Reynolds: Keith, did you want to respond?

>> Keith Whann: Well, I think the first thing to remember, and something I'm always telling dealers in education, is a spot delivery is not like fine wine, it doesn't get better with age. So the longer that car is out there, the only thing that happens is you wind up with a problem if you don't have financing. And I think -- and I heard this in the panels earlier this morning -- you know, you can have overly aggressive advertising that some may think does not tell the truth. That's a violation of law. You can bring cars back in after the sale is done and put on some sort of start interrupt or GPS device. That's a violation of law. And most of the things that Ian is referencing are violations of law. So I think we need to be careful. There is a legitimate reason or purpose for this, if you follow the law. If what we're talking about is dealers that don't follow the law, then we

have a problem, with respect to that. And you're always going to have that problem. You're dealing with documents that are very specific, and we're trying to take in some cases a federal financing document that candidly, you can take regulations in truth and lending, and even that's going to take somewhat of a back seat in these cases to the retail installment sales act, and what state law may have with respect to how you disclose this. My home state of Ohio has a specific provision, the advertisement and sale of motor vehicles rule, how you disclose this and how it goes on the document. But dealers who are going to be out here getting information from one state to another, or watching the forum like this have the great propensity to be confused, because what you're hearing from experts here is a lot of disagreement, and you're hearing different answers on the same thing. So I think what we have done here is we have made buying a car so complicated, that it's really difficult for even some of us to be able to go draft the right paperwork, go from state to state and deliver a car. So clearly, there's misinformation that's being given to a consumer. But don't lose sight of the fact, if we have a dealer who is out there, or a lender or anyone in the industry, and they are misrepresented to a consumer, that's already a violation of the law.

>> Carole Reynolds: Mike?

>> Michael Charapp: I wanted to address the premise of the question about days or weeks. Because this is not an issue that legally should go on for weeks. Let's remember that in most states, dealers are licensed. You must have a license to be a dealer. And most states also have an outside time limit for titling the vehicle after selling it. And the dealer that regularly disregards that is going to find his license in some peril, not to speak of the bankruptcy law. Generally speaking, it used to be 20 days, now it's 30 days. If the dealer doesn't title the vehicle and put the lien of the lender on the vehicle within 30 days, under the bankruptcy code, that could lead to some problem if the dealer then subsequently goes bankrupt. The lender does not have a secured lien. And so there are a lot of problems that these things go on for a long time. And frankly, if they're going on for a long time, you're probably in -- there's probably violation of a number of other laws that protect against these things.

>> Carole Reynolds: Okay. Bill?

>> Bill Brauch: You asked what happens to consumers. And we've heard some of the examples of that. But, "bring the car back in." That's the first thing they're told. Second thing they might be told when they bring the car back in is, "Here's a new contract for that car." Or, "here is an offer on another car" -- without any explanation to the consumer that they're not bound by anything at that point. That they can walk away. Now, there are a few states that have a required disclosure to the consumer. Maybe at the outset or maybe at that point that says you have to be told. You have a right to walk away and terminate the contract. But all too often, they are led to believe, or they wrongly assume that they are stuck. And they end up very often in a transaction that is worse for them than had they not gone to that dealership to begin with. And what they might be told is, "Sorry, we can't give you your trade-in back. We sold it." I have an example I looked at today, where the consumer's trade-in was sold while she was still at the dealership, emptying her possessions from the trade-in, to give it back to put them in the car she purchased -- which ultimately ended up being a spot delivery. But they might also be told that, "We're not going to give you the value of the contract for your trade-in. Yeah, that's what the contract says, but we're going give you what we valued it at, our wholesale price. And see this on the back of the contract here? It says we can do that." Well, the consumer never saw that. That's not a disclosure.

>> Carole Reynolds: Ian?

>> Ian Lyngklip: I hate to be disagreeable, but I -- the idea that compliance is somehow or another confusing or difficult, I'm -- I understand the nature of the complaint, but the fact of the matter is that what we're talking about here are not overly technical issues. What we're talking about is simple things like, is the dealer going to tell the truth to the consumer when they're trying to get them to agree to sign documents? Are they telling you, "by the way, this contract conditional"? Or are they saying, "No, you have been approved, this is a done deal"? The question is, you know, is this the final deal? Is it conditional? What are the terms and conditions, and is the dealer willing to honor its contract in the event that -- that none of the conditions come to pass when they think? It's the dealers wanting -- the problem -- the fundamental problem is that the dealers want to play both sides of this condition, meaning that on the one side, they want to induce the consumers into engaging in these transactions by telling them, "Hey, you've been approved, sign here. Let me commit you now. Let me get a now commitment to this transaction, and let me dehorse you. Let

me take away your car or get you committed by giving you money." And then on the flip side of that, if the condition comes to pass, whether that be within the time that may be allowed by some of the conditional sales statutes or outside that time frame, they want to be able to tell the consumer, "Oh, by the way, your transaction was conditional, you have to bring it back." The most important thing that we can resolve out of this is, that the dealers' disclosures and their statements to consumers, and their contracts all must be consistent and must treat the contract and the agreement and the deal the same way. If it's a condition deal, you tell the consumer that, the same way that we don't allow car dealers to tell consumers that they have a warranty when they don't, under the used car buyers' guide rule. These disclosures must be consistent, and the dealer has to elect one way or another whether or not this deal is going to be conditional or not, in order to even know how they're going to complete the federal disclosures that they have to make as well, under the Truth in Lending Act. You can't make those disclosures the same way, depending on whether it's conditional -- condition present or condition subsequent. All this has to be known before and all those disclosures must be consistent. They can't play both sides of this transaction.

>> Carole Reynolds: Okay. Let's -- quickly on this point and then we have to move on to some others. Allen?

>> Allen Monello: Thank you. I agree with Ian, full disclosures must be made. There's no doubt about that. We're talking about a very, very small percentage of dealers who are for whatever reason are failing to do that. We also have to remember that the rest of the dealer population, ones that are doing it right, have every incentive to get that vehicle financed, because if they don't get financing for the customer, there is no sale. So we can't ever lose sight of that. The customer benefits, because they have someone who is basically looking on their behalf to get financing from multiple sources, which could take a consumer an extremely long period of time, if they're even capable of doing it, and they're able to leave that dealership with the vehicle on that day. So it's mutually beneficial. But short of proper disclosures, that would be problematic. I will admit that.

>> Keith Whann: As someone who -- excuse me, who has done this for pushing 27 years now and had both the pleasure and, I guess, the curse of drafting paperwork for dealers all over the country, documents like we have been discussing here in terms of being a conditional sale where permitted

or some sort of acknowledgment of voluntary resign have been in place for well over a decade, even in states where there is no law to do so. So I would say first and foremost, I think we need to kind of step into reality, and realize what paperwork is like at a dealership. And secondarily, if these are huge problems at the state level, I would think we'd see some sort of change in your state laws to be able to require that to take place. You know, and we say -- and it's almost well, compliance is difficult, it's not that confusing. We listened to experts this morning talking about extended warranties, when they meant service contracts. This is a confusing business. And we use a lot of labels, such as "dehorse" and other things. But the truth of the matter here is the consumer wants the car as much as the dealer does. And the dealer does not have an incentive -- a legitimate dealer, and I understand you guys have all sorts of stories about bad things that could happen. But a legitimate dealer does not want to take a motor vehicle that is titled in their name, and put it out on the street to a consumer and take whatever risk may come from bad things happening with that car, while they have it, and go sell some sort of trade so they have an unhappy customer. And although I'm speaking on behalf of the independent dealers, I would add in my work with franchise dealers through the years that they have to work very hard with their manufacturer. They have customer satisfaction indexes, and all sorts of other things that they need to be able to take care of. Everyone wants a happy customer. We don't want to go through and practice and bring them back in to bump them or trick them into doing something they're not obligated to do. Does it happen? I'm sure it does. We're hearing war stories. But if we're going to focus on what bad actors do all the time, we're not going to solve this issue. Spot deliveries are very, very complicated in terms of what we're dealing with today. And while the computer models help, and while the other systems that are out there help do this, we still don't have a perfect environment whereby we know what someone is going to qualify for when they're there. We could take the car, park the car, we could have them park the trade and do it like a home loan closing. I heard that discussed this morning, and we'll just come back in five days and close the deal. But that's not going to work either.

>> Carole Reynolds: Okay. Mike, and then Bill, and then we have some more --

>> Michael Charapp: Just very quickly, on the issue of the customer coming back -- let's understand the right of the dealer on a conditional contract. It is not to get a new contract or do a variety of other things. It is to rescind the deal. And again, I don't want to get terribly legal in the

law school, but rescission -- the rescission is clear. If one is going to rescind the contract and the parties have to go back to the status quo ante, which means the trade has to be returned. The down payment, if there's any cash down payment, that also has to be returned. And so these -- frankly, someone who is not doing that is not following the law. And as to what customers are told, I will say to you, the issues that customers are being deceived in the closing booth are lessened every month, because more and more dealers, because of the various problems that come up in private litigation, are actually videotaping their closings. That's more and more frequent. And even dealers who don't videotape as a dealer-attorney, I recommend to dealers they train their F&I people to have a script, a discussion piece to go through what exactly will take place for the consumer, so that if the issue does come up, the dealer has the ability to testify that, "I have a set process for disclosing these things to a consumer." Has that been this way forever? No. 10, 15, 20 years ago, it was clearly different. But as spot deliveries have led to a tremendous amount of litigation with attorneys like Ian, the various practices have evolved to the point where there is now the opportunity for great disclosure, and the paperwork is very clear in the situations where it is allowed, where in many states, conditional deliveries are allowed.

>> Carole Reynolds: Okay. Bill?

>> Bill Brauch: Well, I think this discussion about, "Well gee, it's illegal and there are some bad guys out there," is exactly right. Gee, it is illegal. And there are some bad guys out there. That's why we're here, to identify what's happening in the marketplace. That's always going to be the situation, regardless of the practice you are talking about. There are going to be good guys and there are going to be some bad guys. And here, there are some bad guys. And from our experience, we tend to see it more in certain locales. Not because there's anything funny in the water there, but because there was an actor there who started it, and others followed, because there is competition not just for consumers, but for dollars. And if they can make more money, tying people up very quickly in a transaction that perhaps they reasonably should have known the consumer couldn't afford, there is a benefit to that. There is a benefit not to the consumer, but to that dealership. And then the others say, "We can't compete any longer, because they're doing it. And so we have to do it." And then the third one says, "We have to do it." So, for example, we don't see this so often in the Des Moines market, but we see it in other markets in the state. It tends

to be clumped. So there is a situation where competition is not always beneficial to consumers. And I think this is one of those areas. It's a problem area. That's why there's been so much litigation.

>> Carole Reynolds: All right. Let just step back and look at the consumers' perspective on this. Do you think consumers understand at the beginning of this process what their options are, and what might happen in this kind of a situation? And related to that, are there any misrepresentations that play into this process, as near the beginning?

>> Ian Lyngklip: Start again.

>> Carole Reynolds: Okay.

>> Ian Lyngklip: You know, for purposes of at least the transactions I've seen within this state, there's very clearly misrepresentations that are being made. The consumers are being told at the outset that their deals are final, they're approved. They're getting those notices directly from the dealer, and they're being asked to sign contracts. Some of which -- some of which are, in fact, stating that they're conditional, even though that's illegal. But they're being told that they're finally approved. And there are some states where spot deliveries are, in fact, you know -- our conditional sales contracts are legal. They may be disclosed, but, you know, the thing that's not being disclosed is that the dealers don't view themselves necessarily as being limited by the terms and conditions of those contracts. The question is whether or not those dealers are going to comply with their legal obligations, whatever they may be, from state to state. And in Michigan, that means, you know, you can't spot deliver a car and bring a consumer back and tell them that they've -- that their transaction has fallen through. That dealer is obligated to carry the note and to either self in-house finance that, or find a place to negotiate that contract. And in other states, we see that the dealers -- even where they have conditional delivery agreements available for them, they will exceed the terms and conditions which their state statutes allow them to. So if the dealer can rescind within ten days, we see them calling back after 12, after 15, after 20 days. If the state statute says you have to give back all the money, sometimes they don't give back the money. Those are the problems that we're concerned with, is whether or not the dealers are complying. And certainly,

there are good dealers out there. There's many, many. There's dealers that I've never seen cross my desk in this city, and I know them, because I drive by them every day. But then there are dealers who come on my desk all the time, the same way that Bill mentioned. The problem is that we have to ask whether or not we are creating a competitive environment where there's an incentive for dealers to go out and grab those consumers and commit them to transactions so that other dealers don't get them. Are we creating those incentives for a competitive system where consumers are disadvantaged by improper disclosures and misrepresentations when they're signing on to these contracts?

>> Carole Reynolds: Keith?

>> Keith Whann: I think that the real thing we have to be careful of here is, you know, we're talking about those consumers and those dealers, and even, "What is a dealer?" Because in this morning's discussion, I was hearing dealers that have -- and they're out there -- multimillion-dollar facilities who have an F & I tower with a business manager and a finance manager and 31 finance sources and picking which one of the qualifying lenders are going to quote. I've got tell you, where I live, that doesn't happen. And, in fact, we're lucky with our NIADA members, the 20,000 across the country, I mean, you're probably talking about a mom and pop organization for the most part. Then you've got some as large as a CarMax out there. You've got some very large dealers. But most of these folks, you're not going to have more than three or four employees there. So they're not going from one area to a tower to somewhere else. You've got somebody who is probably related to the dealership or a salesman trying to sell the car, trying to do the paperwork, and handle all this and hopefully they've got some sort of automated system to be able to help. So it's a little different. So we start looking at this and talking about what the process is. The car-buying process is going to vary drastically, depending upon the size or the type of the dealership you're in. I don't disagree with anything that anyone here is saying in terms of the real-life experiences they have. It's been two-and-a-half years since I was assistant AG, I was a member of MOTFEA, I've seen it all, I think, in my 27 years, and some of it is pretty bad. But I think what we're talking here is do we need to somehow step up enforcement or do we need to tweak what we have in terms of disclosure to make it more uniform? Because I will tell you, speaking on behalf of what we have done with NIADA, and I have had the pleasure to be general counsel there since the mid '90s, we

spent a lot of time and effort educating both dealers and consumers about the right way to do it. And I'll speak on behalf of our sister organization, NADA. I know they have done the same. We have worked together with respect to these issues, and I think what you'll find is for the most part, these are family-owned businesses that are trying to do it right to provide a service to their community. They're the backbone of the community. And that doesn't mean we don't have people who cut corners that are out there. But for the vast majority of them, they're trying to get this thing right, and whether you think or so not, it's very complicated to buy a car or sell a car and try and I-dot T-cross with all of this that's going to be varying from state to state or in some cases, federal to state.

>> Carole Reynolds: Allen?

>> Allen Monello: I agree with Keith and with Ian on a couple points, certainly with Mike. The automotive industry has come a long way over the years. Much better educated. Much more ethical practices. F & I people are getting certification. Independent dealers who are constantly going to continuing education training to learn how to do it. I would hate for us to leave here today thinking that this is standard industry practice to be deceptive. It is not. Again, it is a very, very small percentage of dealers that do these things. And nobody's said that they're not wrong. So we have to keep in mind that instead of new laws, perhaps we need better enforcement of existing laws. And I can tell you as a former regulator, I see where we didn't always do everything we could have done or should have done in enforcing existing laws, and being more consistent. And better educated and enforcing it against the bad dealers, so to speak. So I would hate to just give this impression that this is a industry-wide problem, and an issue that needs to be dealt with and more laws need to be passed. It's really a better educational forum here for both the regulatory side as well as the dealers, and going after the bad guy dealers, and dealing with them specifically.

>> Carole Reynolds: Okay. Mike, and then Keith, and then we need to move on to some other points.

>> Michael Charapp: A short anecdote. I was visiting a friend in a townhouse development, when someone down the street took his girlfriend in one of the -- neighboring townhouses hostage.

About two dozen police cars and a couple S.W.A.T. teams showed up. Now, you're sitting there going, what's this have to do with what we're talking about today? Well, very simply, in the midst of all this great confusion where the person who took his girlfriend hostage was either going to be shot or arrested for kidnapping, the president of the homeowner's association came running up, waiving the by laws, going, you're in violation of the by laws! Now the fact of the matter is, we're talking about serious laws that are being violated by these anecdotes we're hearing today. People may be involved in criminal fraud, they may be involved in various sorts of violations that can lead to six-figure and seven-figure, even seven-figure judgments against them. And frankly, dealers don't make a living doing that. As we heard the dealer today, Dave Wescott say, he's got a reputation to uphold. He's got a manufacturer to listen to. He's got millions of dollars invested, and dozens and dozens of families who depend upon him. And it doesn't matter whether they're franchised or whether it's an independent dealer. They have investments that they must be careful about, and protect their reputations. The simple fact is, the law violators, the ones who don't care what the laws say, who lead to these kind of anecdotes, don't last in the business. They may be in there for a short time, but if they're -- if they're willing to violate the laws that are there, what more sort of regulation are we going to put on to make it different?

>> Carole Reynolds: Quickly.

>> Keith Whann: Just maybe, quickly in terms of wrap-up. And maybe this comes from a long career, and being from different perspectives and a former regulator. But the one thing we also don't want to do, I think, is discount the perspectives the other people are coming from. Because I would hate to think in a spot delivery that it denigrates to the lowest common denominator, but as we're hearing Bill say, I mean, in my experience at automobile advertising is just that. If you have to get traffic and you know, somebody goes a little edgy, then you need to go edgier. I'd be impressed, Bill, if somebody actually turned a contract over and realized what was in the small print. But there's another issue. If we're talking about small print on the back side of a contract for a conditional delivery disclosure, we fail. And in terms of some of the things that Ian is saying, is if there are gaps and we're not able to hit these gaps, then we've all spent a lot of time, effort and money to come together here today. We do have some bad actors that are out there. We've got a complicated system. I think we need to focus on how we do it right so we don't have the confusion,

and so we have the -- I guess the greater ability to identify those that are trying to do it right, and those are doing it wrong, because I wish all the wrong-doers did go away quickly, but some of them seem to survive and prosper over time. I mean, realistically, that happens. So, that's the industry that we have, and I think we need to focus on -- we have some differences, but we've also got a lot of commonality in trying to get this thing right, I would hope.

>> Carole Reynolds: Okay. Does anyone have any data on these practices occurring? How about complaints? You've all been -- you've received or know of complaints?

>> Bill Brach: I think we can put something together for you from the state attorneys general as far as number of complaints. The extent the states have a way to track that.

>> Carole Reynolds: Okay. Let's turn to this titling issue. When you said -- someone -- several of you mentioned the car was sold. And then someone else talked about how it's conditional, and we need to unwrap this deal. When that happens, a consumer comes back in, and the consumer's car -- if the consumer's car's been sold. Is the consumer's car being returned? Is that processed? Where the car has already gone, the title has gone? Is that conditional? Could someone speak to that?

>> Michael Charapp: I'll speak to that, if I could. If a car's been titled, the deal is done. And so the fact is that these -- the conditional aspect of this is prior to the titling of the vehicle, and that's where I get to the issue of rescission of the contract. At that point, there's a contract, binding both sides. But if the conditions are met, then there can be a rescission, but that rescission carries obligations with it, which is, taking the parties back to the status quo ante, which means the car -- the car sold has to come back, and the trade and any down payment have to be returned. Now in that -- in that overall legal construct, there is an opportunity for the parties to negotiate some more on a variation of the deal, or some other opportunities there. But that's basically the legal construct. But once a car is titled, it's -- the deal is complete.

>> Bill Brach: This can differ by state. In some states, the transaction really is in essence saying once the vehicle has been transferred, then the paperwork must go forward. They don't give an option. There's also question about how can that vehicle be legally operated on the roadway during

this interim period before things are final? Is it on a dealer plate? Does the state law allow the dealer plate to be used for anything other than demonstration? This is not a demonstration. But those questions are specific to state law. But a question that comes up across the board, which may or may not be dealt with by disclosure, is who is legally liable in the event of a motor vehicle accident? And that has gone up to appellate level in a number of states, because it has not been made clear, whether it's the dealer, whether it's the consumer who is liable in the event of an unfortunate situation.

>> Keith Whann: The first comment that Bill made is spot-on. This is an issue of state law. Unfortunately, I wish it was that easy, just like you would think if you walk on a dealer's lot and you asked the new car dealer for a new car or used car, you get a simple answer. You never think of the fact that if you were buying a demonstrator vehicle, it would be new under the Monroney sticker law, used under the FDC used car rule, and depending on the state titling or UDAP statute, it could be new or used or a new demo. So when you start getting into this who has what responsibility for the vehicle, it is a matter of state law, it is rather confusing, and there is no rhyme or reason, 'cause I've looked at the case law. Perhaps it's fitting to be in a law school, when that's what you'd wind up with, is a law school exam, as to who's liable for it. It goes a step further, though. Because depending what state you're in, you may have a conditional sale, or you may actually have some sort of sale with a right of rescission. And I think the paperwork, although it may reflect that, you're still back to a situation where that customer -- that consumer has no obligation to anything other than bring that car back. And then virtually every state that's out there, that trade-in vehicle should not be sold, it should be returned. And any monies the consumers putdown should go back to the consumer. There is no deal. So there is no deal. And from a dealer's perspective, the dealer ought to be sitting there looking at the customer saying that deal did not happen. Do we want to go forward or make a different deal? That customer is obligated to do nothing other than pick up their trade, their down payment or whatever deposit they had and go home if they want. And that's what the paperwork should reflect, although as Bill, like I said, spot-on, pointed out. Depending what state you're in, this could even be characterized a number of different ways in terms of is it a sale, is it a conditional delivery? And once the thing is titled, as Michael pointed out, we just compound this. Because now we've got a title involved, and do we back it up, and what happens with the title? And remember, the title -- although thought to be

magical, a title is just prima facie evidence of ownership, generally speaking, and that's a rebuttable presumption. So the titled owner, that's the first one that gets sued, obviously, by the lawyer, but it is a rebuttable presumption, when you get into cases like this, you could wind up with some of the most unlikely scenarios as to who is going to be liability -- or who's going to be liable, and usually it tends to follow the insurance coverage.

>> Carole Reynolds: Let me just add this one quick follow up question, and then I will get to this. What if the consumer didn't want to bring the car back? What happens?

>> Keith Whann: Well, there you have a real problem. Because I would say if they don't want to bring the car back, you may wind up in a game of hide and seek. And I've seen that where that's occurred. Generally speaking, if the paperwork were all done properly, and I'm going to take a scenario that I think we've all generally described, that it is some sort of sale conditioned upon financing, and we all know that, and we all agree to it. And remember, the representations that are being made, if a dealer or dealership representative is saying things to a customer that are material to the transaction, it generally is a violation of every state UDAP statute not to integrate or write those down. So we should not have a talk track that is different than what the paperwork says. The paperwork should say, I'm giving you this car, conditioned upon financing approval. And if this doesn't go through, here's what we'll do. And one of the things the consumer would be doing is upon reasonable notice as set forth returning the motor vehicle.

>> Carole Reynolds: Ian?

>> Ian Lyngklip: Just to corral back to -- the thing that brings us here. Which is -- as a consumer advocate, I see the complaints, and I understand I don't see the deals that go properly. I don't see the deals where there are no problem. But in terms of what happens, the question is that -- or the answer is that in most of my transactions, when I see a consumer it's because the dealer won't give the car back. That's what brings them to my office is the fact they don't get their trade-ins back, they don't get their down payments back, they don't get whatever value they gave back. And they're being asked to do things that are not in the contract. What this -- again, comes back down to is, are the consumers being given consistent information about their transaction? So if the dealer

makes a clear disclosure -- by the way, if this deal is not funded at the bank end, here's what you're going to be responsible for. They get told that. But the consumers don't get told -- that's not what's being sold to them when these transactions fall through. They're being told lies to get them back. They're being told they're going to be prosecuted, they're being investigated for fraud, that they need to bring cars back for repairs and dings. When dealers honor their contracts and stand behind the obligations they have under state law, these kinds of issues don't arise. But what we're here to deal with are those situations where the dealers are not making those consistent --. Are not telling the consumers what the real consequences are. It is -- it is the consequences that are not being disclosed at the front end before they sign their paperwork that is, in fact, the problem.

>> Carole Reynolds: Okay, I want to ask a follow-up, and then I'll get to the others. So they signed -- they signed a contract, they took the car home, and now you're referring to the second contract? Are they going to have two contracts? The consumer have potentially two contracts?

>> Ian Lyngklip: We've seen that happen in our case. I've had consumers with three -- that's highly unusual. But we've seen them brought back any number of times. It's not -- it's not uncommon to have a dealer try and recontract them. But the question is, what are they being told in order to get them to do that? Certainly under a UCC under state law, every place, you can always renegotiate a contract and make a modified contract. There's nothing wrong with that idea. But what is being told to induce them to do that? Are they being -- is that being done under threat of a repossession, is that being done under threat of arrest or investigation? If those are the things that are happening, that's the kind of problem that we need to address.

>> Carole Reynolds: Mike?

>> Michael Charapp: Well, let me address just that. I mean, the fact is that Ian and his colleagues around the country, who represent plaintiffs, I'm sure seen these kind of cases. But frankly, they are the stopgap on this. They are the ones who are bringing the cases that lead to substantial verdicts or substantial settlements that then bring -- that the dealers look at and say, geez, I don't want to do that. And so I'm going to tape my closing, which is frankly, what's driving a lot of the market now for suppliers who are having -- who are selling the means to dealers to videotape

closings and do things like that, because these things happen in an unusual -- unusual circumstances, with dealers who shouldn't be dealers who are doing some things that just disregard everything they're obligated to do. And they'll bring the lawsuits, and the verdict of the large settlement will keep the rest of the dealers looking at ways that they can comply. They can do a better job and explanation to consumers. And frankly, that takes us to the reason I put my card up was, I want to talk about one of the issues Bill brought up, which is what I agree with completely, he got into the economics that Keith spoke a little bit about. Which is there's nothing in the economics of this for the dealers that work for legitimate dealers who have their cars out there. Don't forget, these are cars that generally are not titled in the name of the customer. They're in the name of the dealer. And so if the -- if the customer's out there and the dealer's new car -- the dealer runs a risk of having it come back and have to be sold as a used car. There's use being put on the car, potentially damaged, potentially a serious accident with a question of who's liable. Now, even if the dealer's tag -- I mean, the customer's tag is on it, and the customer has some insurance liability because they have insurance, in the end, the dealer's still the certificate of title lawyer and any good plaintiff's lawyer is going to look at them for the rest of the multimillion dollar verdict over and above the hundred thousand dollars the consumer had on it. And so, there are tremendous economic disincentives to have your car out there as a dealer on a deal you don't really mean to do. I mean, the fact of the matter is, dealers do this so that they can sell cars, and satisfy their customers.

>> Carole Reynolds: Bill?

>> Bill Brach: And just to reiterate what I said before, I agree with most of what Michael said, but I do think that there is pressure brought on the dealers who are kind of border line. They want to comply with the law, but they feel this competitive pressure because others are doing the same thing and wrapping up sales that they probably shouldn't wrap-up, taking away their customers. And now there's pressure on them to do it. Your question a moment ago, where the consumer doesn't want to bring the car back, what does that mean? Well, if the dealer has not done a proper disclosure and conditional sales agreement with the consumer, it means the dealer has to carry the loan. If there has been a retail installment contract filled out. Because the dealer is the creditor on

that loan. It's only later that it gets assigned, where they are no longer the creditor. So they'd have to carry the loan.

>> Carole Reynolds: Keith?

>> Keith Whann: Just maybe a word of caution, 'cause we're kind of on a slippery slope. What I hear Ian say, everything Ian has said about those examples, they're all wrong. They're all in violation of the law. And he's -- we're even going into fair debt collection and some other stuff I think now. They're all violations of the law. And kind of reminds me, for those of you that may have teenagers, a frequent discussion at our house is there is no right way to do a wrong thing. But you'll have a discussion as they go down and try and justify it. Most of what we're talking about here, the act of practice is it's wrong. And if we've got a border line deal, that decides to do something wrong, it's wrong. But let's be careful. Because we've got a lot of laws on the books already for this. And if the consumers don't understand it, then we're failing. And if the bad actors are going to do it, I hate to see another law to do the same thing. We can go videotape, and there are dealers that videotape, and what they ask lawyers like Michael or myself is, okay, now that we videotaped, what type of disclosure do we need, and when do they sign it, and do we have to integrate it into the purchase agreement, and when does the camera go on, and how long do we keep the tape, and when can we destroy it? And now we've got somebody wanting to access that for some other purpose. So, do we have a problem here, if this is occurring? Yeah we have a problem. But in terms of a solution, let's not go and create a solution just layers on something that we're going to be having the same discussion in a couple years, because the consumers still don't understand, and the bad actors are still doing the same thing.

>> Michael Charapp: I just want to talk about this competitive point that Bill brings up. Because I don't agree with that. I mean, I grew up -- my father was a small -- small-town car dealer. You did not abuse your customers. Because you were a member of that community. And you are a member of that community. But -- and -- but even if you're not a small-town car dealer, even if you're someone who comes in set up -- we're just going to do this, and, you know, there's a lot of people around, the fact of the matter is, those people don't last either, because dealers must be licensed. If they're abusing their customers, they're going to have issues with the licensing, whether it's DMV,

motor vehicle dealer board, whatever it is in the state. Lawyers like Ian will be suing them, and basically getting verdicts that they can't afford to pay. And overall raising their costs to the point where they're no longer in business. And so, there is not this competitive pressure to do things the wrong way. Frankly, because the litigation atmosphere, regulatory atmosphere for franchise dealers, the pressure of the franchisor to meet customer satisfaction, goals, I mean, those pressures - the pressures are there for compliance, not for lack of compliance.

>> Carole Reynolds: Ian, and then we need to move to questions.

>> Ian Lyngklip: I hate to disagree, and maybe the disagreement is something that's local to our state. But I've deposed our state's department of licensing for -- that handles the financing. And they've simply said they don't do enforcement on car dealers because they don't have any money and they don't have a budget. They don't bring those actions. And we see that car dealers, the same car dealers who repetitively are engaging in these awful spot delivery kinds of fact scenarios where they're threatening with police or whatever, they're not enforcing -- they're not taking those licenses. There is no effective regulatory bar against spot delivery. And in some states like Michigan, where there's no real meaningful consumer remedy, because our UDAP statute will not provide a remedy to the consumer. If the consumer protection attorney is the only thing that stands between compliance and noncompliance, 'cause the state won't do it. In states where we've got no private remedies, it's not helpful. And to the extent that there maybe dealerships who have to pay judgments, we see that regularly what's happening is that the insurance companies for the dealerships step up, and they pay these -- they pay the settlements, they pay the judgments, they're covering the cost of defense. This is not an expense that is borne by the dealer directly. It is the expense that is being distributed through the entire marketplace, costing money to the people who are complying with the statute, as well as those who are not complying, but on a distributed basis. This is not being handed through. And it's not the same small town that we had, you know, 20, 30, 40 years ago. You've got consumers who are out on the internet, shopping, very savvy. You have a very transparent marketplace for purposes of price competition. And consequently, dealers are competing very heavily for those consumers, and they're wanting to lock them down, just as Bill says.

>> Michael Charapp: I've got to --

>> Carole Reynolds: Real quick.

>> Michael Charapp: I've got to say one thing on that insurance point, that's just not the case. There is no insurance company that -- that indemnifies against fraud or misrepresentation or anything like that. At most, there may be limited attorneys fees coverage. So that just is not the case.

>> Carole Reynolds: Okay. Any questions?

>> The form is to make sure that they don't lose any money that they've already got. They talked about returns. They talk about trade-in returns. They talk about down payment returns. That simply does not happen. Why? Because the spot delivery form is crafted to make sure they get to keep the trade. So they get to keep the down payment. Even if the customers have the car for two weeks. That's a loss of thousands of dollars for two-week car rental. And I -- I'm outraged by this. I'm a legal services attorney, all right? I've been doing this for under three years. I've handled five spot deliveries, quote unquote, YO-YO, failed spot delivery cases. And it's disgusting how much money my clients are losing in failed spot deliveries. And it deprives them of transportation, it deprives them of money, and it's outright theft. I think there needs to be regulation that states that this retail installment contract, if it is not assigned, it must be honored by the dealer to induce them to sign it. They say, yeah, you're approved, here's your car, okay, sign this. What's that?

Technicality.

Thank you.

>> Other questions?

>> Dani Liblang a consumer attorney in Birmingham. You covered a couple of the points. One of the things I wanted to point out, is there are^-- in the state of Michigan, I would be surprised if --[Inaudible ]Probably only ten of us, maybe, really know the spot delivery. And my point being that one, you have consumers who have no clue what they're rights are. So I'm sure there are many

consumers who are -- by the spot delivery position, which is completely illegal in Michigan. And the other problem is, we don't have enough private lawyers. And the other thing is, our enforcement mechanisms as private lawyers who are willing to do this work are really not effective here. Our consumer protection act has been guarded so it generally won't apply to dealers. So consumers can't afford to hire us. And we can't -- [ Inaudible ] So we really need more -- [ Inaudible ] If the regulations that we have, if there were a mechanism to enforce, that's part of the big problem, is our state budgets are such, our federal budgets are such. And our -- so a lot does fall to the private sector. And we don't have enough teeth in our private sector laws.

>> Okay. I think we're out of time. I would just like to thank all of our panelists for their segment.  
[ Applause ]

>> It was great meeting you.

Good afternoon, my name is Katie Worthman, I'm an attorney in the division of financial practices at the federal trade commission. This is the next panel, contract add-ons. And let me first introduce our panelists. Rob Cohen is president of auto advisory services. Prior to his work at auto advisory services, Mr. Cohen, rob, was represented dealers in litigation. He currently also serves as president of the national association of dealer council. Greg is assistant attorney general in the consumer fraud bureau of the office of the attorney of the state of Illinois. Attorney general of the state of Illinois. He's currently the supervising attorney in automobile fraud unit. He has worked on numerous automobile fraud cases, ranging from advertising to transactional purchases. Chris Leedom is the founder and CEO of Leedom and associates, auto Max of Florida and Georgia and the dealer business journal. He is a founding board member of community auto finance association. And he also founded the national special finance and buy here, pay here conference in 1996. Dani LiBlang practices in the area of automobile warranty and consumer fraud litigation. She is a former vice president of the Oakland chapter of Michigan trial lawyers association. She is a member of the national association of consumer advocates. And I think I would just like to jump right in here and start first with what is the most common add-ons that consumers purchase when buying a vehicle? Chris?

>> Christopher: I think that there's probably four primary categories of add-ons that consumers look to purchase when they acquire a vehicle. Probably the most prevalent would be some form of an extended service contract.

Second category would probably be some form of gap insurance or gap protection guaranteed auto protection. Third category starts to become much less frequent, but probably some other form of insurance such as perhaps credit life or credit A & H, although that's almost from a by gone era. And then the fourth category might be labeled "other." To include things like window etch and other products that could be^-- that could be add-ons.

>> Rob: Was that in any particular order or just the top four?

>> Christopher: I just^-- Those were just my top four.

>> Katie: Are there any other add-ons that are popular?

In the category of four, when you have "other," would you say etch?

Would there be any other sort of add-ons?

>> I have seen lately some kind of protection on leased vehicles for excessive damage. I have seen those. They seem to be popping up in the last year or two.

>> Rob: Like aware care, for example, which is a waiver, where any excess wear and tear on to the vehicle is waived. Any costs associated with such damage is waived. And I also say, in the other category, by the way, I think particularly in California, we have the sub categories, including theft deterrent devices and service protection products. Those are how we basically categorize the alarm system, like a perma paint type product, which protects the paint. Also including products such as theft deterring devices, a low jack, a vehicle location device, for those of you not familiar with it.

As well as, theft etch type product.

>> Katie: Are there any differences between the types of add-ons that consumers purchase at a franchise dealer versus an independent dealer versus a buy here, pay here, dealer? What are the

most popular add-ons at, say, a franchise dealer versus independent, versus buy here, pay here?  
Dani?

>> Dani: Well, the difference I notice is not so much in the type of product, but in the quality of the product. So I see much better products in terms of the extended warranties and service contracts, out of the franchise dealers. And I see much more deceptive warranties or warranties that really aren't worth the paper they're written on, let alone the price paid coming out of the buy here, pay here or secondary dealer.

>> Katie: Chris, if you would like to add?

>> Christopher: Yeah, I wouldn't completely agree with that in that I think that generally, most of the service contract companies deal with franchise dealers, as well as independent. And when we refer to independent, we're basically speaking about non-franchise dealers. I think that there typically is more of a variety of products offered by a franchise dealer. Things like alarm systems, things like Lo jack systems. There is usually a broader array or broader menu that's offered to the consumer, whereas we work with quite a few thousands of independent dealers, and you begin to narrow it down where probably half of the independent dealers don't even have a -- F & I office. So when you go to the non-franchise space, quite often, half the dealers don't offer anything. The other half of the dealers usually have a more limited offering that would include service contracts, typically or some type of gap protection. But once you leave that, because of staffing considerations, more of the non-franchise dealers probably don't have quite as broad an offering. But having said that, the same service contract companies generally serve both, with the exception of maybe GM and Ford. But you have you the GEs of the world and the JM & As of the world that would love an independent dealer and also a franchise dealer.

>> Katie: Greg?

>> Greg: Just generally, I'd like to speak a little bit about^-- In Illinois, I would tend to agree with Dani's assessment. Generally, our franchise dealers will sell products that are inherently less problematic than some of our smaller buy here, pay here dealers. We had a rash in Illinois of

service contracts that^-- providers that really, again, to echo what Dani said, wasn't worth the paper it was written on, deny everything. Again, I have a different view. I just see the complaints in my office, I don't see all the good ones, but the complaints I see are repetitive, same companies won't honor anything. And then they have to^-- you know, the consumers have to use our office or private counsel to try to get some use out of the contracts they sold. I would also like to point out that when sales slow down, in 2007, 2008, you also started seeing some of our franchise dealers sell products we haven't talked about yet, but it would be like a \$10^-- a consumer would buy a \$10 gift card that would be worth maybe \$1,000 at a local retailer like a furniture store or something like that. And that was a new kind of contract add-on that we saw in Illinois. And then, had lot's of problems. The company's that were^-- there were third party vendors that were insuring those \$1,000 gift certificates that consumers bought for \$10, or \$50, or whatever the case may be. That was our good deal. Some of our dealers sold those for \$500, so they were telling consumers you're getting it for half off and then when they try to use the \$1,000 voucher for furniture, there was nothing there. So, just want to point out that, that was a huge issue. I think it crossed state lines. I know it wasn't just in Illinois, it was may a mid-west thing. But, we did see that and a lot of the other state attorney generals did see that also. It was free gas, free furniture, you name it. And that was a big contract add-on.

>> Rob: To quote David from this morning, I'm pretty sure that's illegal, right?

>> Katie: Dani?

>> Dani: I was just going to add that there are two main problems that I see beyond what's covered and what's not covered. And I see it mostly in the non-franchise dealers. And that would be where they pocket the money. In other words, where they never send the premium into the extended warranty company to start the warranty. Or the vehicle has all kinds of preexisting conditions that would void that warranty. Such that the extended warranty company is not going to honor that contract. And I have seen many situations where the consumer is told, oh, well, your warranty isn't going to take effect for 30 days. So the fact that your engine started acting up on your way home, just let it sit for 30 days and then we'll put the claim in. And that's because the dealer is trying to cheat the warranty company, and, of course, the consumer, who is stuck with that situation.

>> Katie: Chris, did you have something to add?

>> Christopher: The only add that I was going to offer is, you had mentioned the franchise independent and then I think you touched on the buy here, pay here space. There were probably very few products offered in the buy here, pay here space, just because of the nature of the dealer already has the cash outlay for the car. So almost the only two type products that are ever offered, and they're probably not offered in a majority of the transactions, would be the service contract and some form of loss protection, gap type coverage.

>> Katie: So what is the process that a consumer faces when they decide to purchase a car, and then when are add-ons presented to them? Rob?

>> Rob: I can speak to that, being one of the few who has sold cars, done finance and now a attorney representing dealer and providing compliant services for them. The way it typically works, and again, differs from dealership to dealership, but, typically speaking, a consumer is brought in and the price of the vehicle is negotiated first. That is the general practice during the process and as was stated this morning, even by a more consumer oriented individual that customers, that customers are very focused on payments. So oftentimes, there is an emphasis on payments. But generally speaking, dealership goes through the process, negotiates with the customer, based on payment, down payment, the rate, and the price of the vehicle. Those are the issues that are typically resolved during the sales process. Once the customer arrives at a price, they are willing to accept for the vehicle, and or a payment that they're willing to accept and/or APR and down payment, the customer's hand is typically shaken and that point they say, okay, now we're going to move into the finance office, and we can discuss some more issues with you. At that point, the customer then goes into the finance office where, typically speaking, that's where the types of products are offered. Again, this does not cross the board. Sometimes dealerships offer the products earlier on in the process. But from my experience, again, the way that it is presented in the finance office is in a very transparent fashion. Specifically, the menu. The advent of the menu is a wonderful thing for this industry. Not only from a compliance perspective which is near and dear to my heart, but from a consumer perspective, from a dealership perspective, the menu

allows consumers to receive 100% of the products being offered to them, 100% of the time. And that's really what this is all about, is allowing the consumers to see what the price of those products are, what the products are available. They get discounts for packaging those products. And that's how the menus are put forward. If you're in a place like California, we actually do require that information be broken down so you can see what impact those products have on the payment itself. It's an extremely transparent process. And that is the best process, from a financial -- purely economic position for dealers, that is the best process to actually try to sell additional products. Not to, you know, front-load these types of things into the payment and discussions early-on in the transaction. That makes no sense at all, economically. You want to get the customer to agree to the price of the vehicle, agree to the payment to the vehicle, then in the finance office say okay, now we sold you the vehicle, let me show you how to protect that particular asset, which very well may be the largest asset the consumer has. That's really the way the process works.

>> Katie: So, this is before or after they've received the financing information?

>> Rob: Well, when you say the financing information, you're talking like truth in lending disclosures?

>> Katie: How much the rate will be and how much their payments will be.

>> Rob: typically speaking, again, we are dealing with a much more savvy consumer these days. The consumer by and large, and I'm not saying that this is 100% of the time, I don't like to speak in sweeping language saying this always happens. But typically speaking, the dealers are faced with a consumer that is savvy with respect to the APR, with respect to down payment, with respect to the pricing. They have access to voice information, of course, on the web, and APR information on the web. So ultimately, they are typically negotiating those terms right up front. Frankly, from what we call the first pencil. The first pencil is the negotiation on the worksheet which says this is what we're offering to you. If you're willing to purchase at this price, this is what we're willing to offer you. And oftentimes, I'm seeing more and more now that from that very first pencil, the dealership is saying this is what the APR is, this is what we would expect as your down payment, this is the

price of the vehicle. And this is your payment. And basically, those are the truth in lending advertising type disclosures right there, and the number of payments to throw into that, as well.

>> Katie: Now, when you talk about the menu selection of contract add-ons, what does a menu look like for a consumers? Chris?

>> Christopher: I believe Rob probably has one. But it is the most common best practice of^-- in my opinion, of finance and insurance disclosure, in that a menu typically is a consistent form, where the dealership always presents in the same format, the same fashion, the menu of options that may be available. So, for instance, typically the first set is an extended service contract. The second line might be gap insurance. Somewhere there's probably disclosure of what^-- if you want the platinum package, which is all three, and I'm using that anecdotally, you want the platinum package, it costs this much extra per month. If you want the service, it costs this much extra per month. So there say menu for them to choose from, thus the name. And many dealers go so far as to make sure there's the same offering every time. There's also a decline. So the consumer says, I appreciate it, but I don't want anything. There's usually an acknowledgment somewhere on that form that says I've elected to not purchase any of the above. I've been offered them, and I opt out. And that's typically how those things are disclosed. And even with that consistent disclosure every time, there's probably^-- I mean, actual penetration data. There's typically 40/45% of consumers that opt for a service contract. One out of two don't, is the reality of it.

>> Katie: So the consumer sees how much the car will cost without any of these add-ons. How much the monthly payment will be. And then afterwards, it's presented to them how much each add-on will be^-- will add to the monthly payment.

>> Christopher: That's the most common practice.

>> Katie: Rob?^--\E

>> Rob: Absolutely, that's what we're seeing. In fact, there's a number of products out there. You heard this morning from a representative from dealer track, probably one of the largest providers

out there, and they have an E-menu product that does just that. It outlines very^-- and they have^-- you heard. They had some 17,000 dealerships that utilize their services. This is the norm now. And these products^-- and, again, it's not just from a compliance perspective that this is good, which it is, it's great. But it makes perfect economic sense, it's extremely transparent, the customer is treated very professionally, and treated as^-- under the assumption that they have the intellect to understand everything, and understand the terms. Which makes them feel better about the process. And ultimately, the consumer walks away with a much more positive experience.

>> Katie: Dani?

>> Dani: Well, I wish that the menu option^-- I think that's a good thing. And I'm glad to hear that that's happening in many dealers. The experience^-- a lot of what^-- when I'm dealing with franchise dealers, I'm mostly dealing with lemon law things. So I'm not saying fraud never happens in franchise dealers, sometimes it does. But I'm usually seeing the B-lot dealers or the buy here, pay here. And some of the complaints I get from consumers are they find out they had all these add-ons they had no idea they had. You know, whether it's gap insurance -- although that's less common. You see gap insurance more at the franchise dealers and I don't know if that's a topic you want to delve into right now, because there are good things about gap insurance, if it's done directly. But at the^-- in the consumer stuff that I see, I see credit life in disability added. I see service contracts added. That the consumer had no idea. Sometimes the service contracts are almost as much as the car, when we're talking about these cars that are, you know, eight, ten years old with 100,000 miles and better. So I see those kinds of things, where it's not clearly disclosed to the consumer. Or a consumer will go in and negotiate on monthly payments, and they have no idea what the real price of the car was, and if they really had all that disclosed, it turns out many times they could have bought that car for a fraction of what they walked out of there with.

>> Katie: Greg?

>> Greg: I'll just echo some of the early comments. One of the panelists said there are good dealers out there. There are good dealers. There are. I usually see the complaints that come in our office, but there are good dealers. And the dealers that are disclosing in Illinois, the menus hopping, what

we try to encourage them to do is not just put the monthly payment price, but the extra cost of the service contract. And, again, just -- because our consumers are more educated, they are they have a lot more information prior to coming to the dealership. The problem I see, the consumers that aren't as educated. And because there are consumers that are educated, sometimes the dealership personnel, our not so good dealers in Illinois, will then lean on those consumers that aren't as educated, and that's when we start seeing negotiating the price on a car up front and negotiate a payment price right away. And in that payment price won't be an extended service contract, and gap insurance. And window etching. So, you know, there are good dealerships, want to make the point there are good dealerships out there, they do^-- we have seen this menu practiced most of our franchise dealers will use it. We would just encourage those dealers that do it to not just put the payment price, but the cost of the service contract or the gap insurance or whatever it may be.

>> Rob: And I would completely agree, by the way. If you have a dealership that is actually engaging in the practice of selling a product, whether it's a gap product or a service contract or theft deterring device, and the customer has no idea that they're buying that product, yeah, that's illegal. That's a deceptive, unfair and probably fraudulent process. So there's no doubt about it, that that process^-- it's illegal now. And frankly, always has been. So again, what we are seeing, though, is the exact opposite. My company performs about approximately 100 audits a month in dealerships, mostly in California, but in all different parts of the country. Today, for example, our auditors are probably going through somewhere in the vicinity of 250 deal jackets just today. And I can tell you, by and large, for some of the same reasons that Mike Charapp mentioned in the panel right before me, there is a serious concern out there by not presenting all of these^-- all of this type of information to consumers on a readily understandable, intelligent and clear basis. If you're not doing that, you run just great risk of individuals, you know, such as Mr. Grzeskiewicz next to me, or Ms. Liblang at the end coming after the dealership and really causing some problems. And the disruption in their business is huge. It's not even just the cost, which is always a deterrent, of course. Nobody wants to have to spend money unnecessarily. But it's the disruption of the business and the reputational issues. The last thing you want to be is the dealership that has the yellow taped wrapped around it in a police raid. I think everybody would agree, that's not really good for business.

>> Katie: Are these^-- what is more common for an add-on to be financed in the credit contract, or is it more common for them to be^-- for a consumer to pay for an extended service warranty up front?

>> Rob: Much more common to have it included in the amount financed.

>> Katie: Is there any incentive? Do dealers make more money off an add-on being financed than they do off of an add-on being purchased outright? Dani?

>> Dani: My understanding is, yes, they do, because of the yield spread premium that we were talking about earlier. So the higher -- the more that's financed, obviously, the greater the chance of them making money on the finance contract. So, yes, I think the fact that they financed that -- and I think another problem with consumers financing some of these things instead of just paying cash for them is, like gap insurance is a very good example. Obviously, the value of gap insurance when you first buy that car and if something happened to that car the first year you bought it, especially a brand-new car or a late-model car, gap insurance is a very good thing to have. But as the contract -- as you pay down your contract, of course, the value of the gap insurance is less. But yet you're -- as the consumer if you finance that through the contract, you're paying that full thing on the life of the contract, but paying interest on that the whole way through. It might just be better disclosure on that, I think, to consumers in terms of how that works. And the other thing in terms of the extended warranties, I think a lot of consumers are confused when they buy a five-year extended warranty, for instance, but they're buying a new car with a three-year, 36,000-mile warranty, they don't understand that they're really not getting eight years of coverage, they're really getting two extra years that they're paying for a five-year contract. And I think that gets confusing to consumers, and upsetting as they call a lawyer like me, maybe six years after. They're not covering it under the warranty and that's right, because your five-year extended warranty expired. And but, I thought this was in addition over and above my manufacturers warranty. So there is a lot of confusion out there.

>> Rob: For saying the dealership makes more money because of the yield spread and financing the service contract. But, just to give you an example of what we're talking about here, if you're talking

an \$800 service contract, for example, with the spreads where they are, if you want to call it a spread, but with the dealer participation where it is at^-- from my experience, considerably less on average than 1%, you're looking at \$8. So I'm not seeing that as a real high motivation factor to get the customer to include it in the financing. And frankly, from my experience, and I think what is very typical out there, the consumers don't have the money to come up with in addition to what would necessarily be the down payment to all^-- to pay outside of the contract, the service contract. And frankly, in places like California, you have to include a service contract as part of the itemization of the amount financed in the contract. If you don't include it, you would be violating the motor vehicles and finance act. Now, could you increase the down payment to accommodate the cost of that? Sure. But most consumers are looking to pay less down than more. So that's the first issue there. I don't see that as a real strong motivation or factor for dealers to include in the amount financed, at least the reserve aspect of it. The other thing, in terms of the service contract itself being confusing, I will agree to some extent that there is that issue as to whether or not the service contract begins from the date of delivery versus whether it's what's called an in-service date, and that is typical for a manufacturer type service contract. But one thing I can say for absolute certain, you cannot sell a service contract without getting a service contract application from the consumer. And every single service contract application I've ever seen makes it very clear when the service contract begins. What kind of miles, what the expiration miles are and the expiration date. That is very clear from every application that I've seen. Now, if the consumer never signs the application, then that's just impermissible. You can't sell that without having the document that actually memorializes the sale of the service contract.

>> Dani: All right. Well, I certainly have seen some contracts, as Rob says, and I think that is the better practice, where they say, it begins on this day, and it ends on this date. And it starts with this mileage and it ends on this mileage. But a lot of service contracts that I've seen don't make that clear. They just say how many months or how many thousand miles. And I think that's confusing to the consumer. And the other thing that I see that I think is not a good practice, and I don't know if any regulation on this, is the wild fluctuation in how much service contracts cost. I know even shopping myself for a service contract, the same -- and this was many years ago but the same service contract, same coverage, varied from about \$700 at one dealership, all the way up to \$1400 at

another dealership. So there is a huge profit margin, I imagine. I imagine that's where there is this huge price spread. But that's another factor, I think, that could and should be addressed.

>> Katie: That's also something that we could discuss too, very briefly. What is the range of the cost of these add-ons for a typical extended warranty, I don't know, a five-year extended warranty versus some of the etched gap insurance? I'm sure there's a range, but Rob, do you have?^--

>> Rob: Well, it's hard to say what the range is, because it varies so widely. What I would like to do is address Ms. Liblang's comments. There are so many different permutations and combinations of service contracts, that it's literally impossible to say what a range is. You can look at^-- in fact, on a service contract itself, you can have options such as a high-tech package that will include things like a GPS device that wouldn't be included in a regular device. And that could cost more. You could have towing car^-- towing coverage, and that could cost extra. You could have rental car coverage and that would cost extra. So again, it depends on what type of coverage you want on that particular contract. And whereas the top of the contract you can see the term, maybe it's 336, three years, 36,000 miles, it's from the same company. You're saying, well, it's \$700 here, but this dealer sold it for \$1,400. Well, the same exact company and the same coverage may have extensive more coverage in terms of electronic high-tech package, towing, rental coverage and even road-side assistance is built into many of the programs. But again, these all come with additional costs, and they're real benefits to consumers. These are really valuable type things. Trust me, no problem defending, even recommending to people that come to me and ask me about buying a car, to get a service contract. I buy them. There's no doubt about it. They are valuable. And I think justifying the costs on it is fairly easy if you had one major repair.

>> Katie: Greg?

>> Greg: Yeah, sure. I'll try putting my input on the range of price. I think they do^-- I agree with Rob, they vary, totally, on the type of contract being sold, even the service provider. Most of your service contracts, I would say the dealer costs in Illinois for a 60,000 mile extended service contract would be a dealer service, \$7,800 and what they sell to the consumer is part of the negotiation. But, you know, I just want to step back, because there's a problem that we see in Illinois, where we

talked earlier about disclosing to the consumer when they're extended service contract will start and when it ends. And a lot of those are written by the service contract provider. And, again, bad dealers, right? Talking about my experience, so that's where it's going to be arranged. When I have talked to the dealership groups in our state, what we have asked them to do is not have a box checked or have^-- because what -- unfortunately, we were seeing was^-- is the consumer would sign the contract, there would be no start date, and then after the^-- after all the paperwork was filled out, the F & I guy would turn around and fill in the date. So the consumer^-- when I have 15 or 20 consumers all saying the exact same thing, that's when you start^-- it starts comparing, maybe you had an F & I guy filling out the information, handwriting it in after the fact. So what we tell the dealership, just make sure that^-- sometimes we have a consumer's initials. I understand when my contract date is starting. You know, these are just things that the consumers^-- theoretically benefits everybody. The consumer knows when their start date is, the dealership, something happens in the future, can say look, they initialed, they signed^-- not the disclosures and everything, but yeah, these are things that can be done that can help make sure that consumers know when their start date is, because like Dani brought up, we had many consumer complaints where people thought they still had a warranty, and it's no longer there. The other thing I just want to bring up real quickly is we touched on gap a little bit. Some of the consumer complaints I see is, you know, consumer will buy a \$15,000 car, put \$10,000 down, and the F & I guy will sell them gap. Will gap come into place? You know, very unlikely. And, again, these aren't just --I try not to use anecdotes. These are just things I've seen more than once. And, again, that goes back to dealer practices. Why would you sell them a product or^-- or, again, goes to the service contract. Some service contract providers exclude any coverage over, let's say, 150,000 miles and the car is being sold at 142,000 miles and sold them a three-year, \$36,000 extended service contract. Why are you selling this product? Again, you can, but when we see stuff like that, again, not just one time, but repeatedly.

>> Katie: How common is that?

>> Rob: From my stand point, it's common enough for me to bring it up with the caveat I don't see all of the deals. And that's part of the problem. The extended service contract problem. Dani brought up earlier that sometimes our dealers aren't funding the contract. And that's illegal. No

one would argue with that. The problem is that I don't know about it. I don't know about it until the consumer complains in my office and says, hey, I didn't get^-- I called up for warranty coverage. Extended service contract coverage and I was told there is nothing there. Now once that person does, now I can put into motion my wheels of justice and check out the other consumers that may have the same problem. But until that happens, I have no idea, no does anyone else in the state that the dealership is doing that. So, again, that was a one-time deal. That's a common thing we have seen in Illinois where dealers may be hitting financial problems, they're just pocketing all the upfront money for the extended service contract. And everyone is aware that there is^-- there is a profit in selling the contract. That's why the dealership is selling them. So they keep the original cost, \$1500, instead of spending maybe\$900 over the service contract. They just keep the full amount once it gets financed.

>> Rob: Just to be clear, you don't typically see that very often in new vehicle franchise scenarios, do you?

>> Greg: Unfortunately we have seen them both.

>> Katie: Chris?

>> Christopher: Putting my dealer hat on for a minute, the service contract companies that don't honor claims, they're a problem for us as much as the consumer. Because the reality is, when they go out of business and I've had the calls with dealers, from state attorney general's office, respectfully, and the dealer is then expected to honor those claims that they're left holding and they should. And that's what dealers do. Last one to go out with smart choice. Thousands and thousands and thousands of consumers were swept into that. Dealer stepped up to the plate and had to honor the claims, which is what they should do. So from a dealer's perspective, a service contract company that doesn't honor claims is as much a problem for us, because you're the one ultimately -- if you're in that community, I don't want an upset customer. I don't want Greg to get a complaint because a person is unhappy. So you step in, and interested where the warranty company won't perform, and it's as much a problem for us in that area, as well. I think the problem is, when, you know, from a plaintiff's attorney standpoint, it's viewed as well the dealer is

representative on that. We don't close the grocery store down when they sell bad eggs, we try to figure out where the eggs with salmonella came from. So, I think, the perspective is, we have an in that as dealers to make that go away. And I think over time, he recognize some of the companies^- - I think Dani speaks about. Years ago they had additives a consumer was supposed to dump in a car. I as a dealer would never represent that product. It's just a bad product. And we would advise clients that way. So I think it's kind of -- we share that problem.

>> Katie: Dani?

>> Dani: Actually, almost going back off topic in a way. One of the other things I had seen -- not a huge trend in, but enough to cause me pause, is selling extended service contracts to people who are leasing cars. So the typical lease is three years. Two or three years. And they're selling five-year extended service contracts. That's crazy. So that's another bad practice.

>> Katie: Rob?

>> Rob: But wait. There is a very legitimate reason why you would want to do that. And I have done that. And particularly for those of us that do live in California, we drive our cars a lot. You can -- it's not just buying a five-year policy or five-year service contract. It's a five-year 50,000. It may be 336 on the bumper to bumper warranty, but you really intend to have a 15,000-mile a year lease. So you're going to definitely hit 45,000 miles, and yet those last 9,000 miles you'll be uncovered. It^-- and inevitably, you know, as the laws go, it inevitably, you will^-- of course, your vehicle will break down right before the^-- or right after your warranty expires. So to have that service contract is certainly a peace of mind. And is that justification enough? Well, to the one customer that certainly benefits from those additional 9,000 miles, absolutely.

>> Dani: And I think there are certain situations, for instance, even with my own car situation, I knew I was going to buy that car out. That's why I was buying a service contract. So there are situations where it is legitimate. I mean, every time^-- yours is a good example. But the times that I ran into it where somebody was complaining to me about it, they weren't in either one of those situations where they^-- they knew they were likely to go over mileage or where they knew they were going to buy the vehicle out at the end of the lease.

>> Rob: And sure, we can come up with all sorts of scenarios, of course.

>> Katie: Of these add-ons are they products that can be purchased independently outside, once the consumer has the contract or has purchased the car? Can they purchase these items from a third party, two weeks, three months down the road?

>> Rob: Absolutely. In fact, there are companies that actively market consumers immediately following the purchase of a vehicle. There's a number of companies^--they go by varies^-- some of them call them extended warranties, which in my opinion is incorrect. You can't sell an extended warranty. It should be a service contract. But a lot of them go by what's called mechanical breakdown insurance. And mechanical breakdown insurance is just what it sounds like, an insurance policy that protects you against the vehicle breaking down. It must be sold by an insurance company, but there are very large insurance companies out there that are competing with dealers, and oftentimes, because they have access to very interesting databases, and oftentimes tap into registration data, they target people that recently registered a vehicle, a new vehicle, and they even^-- and I've heard cases out there, they try to talk consumers into seeking a refund for the service contract that was lawfully purchased from the dealership. And oftentimes, to an inferior product. So I^-- from my position, I mean, the dealers that sell the service contracts, they're selling a legitimate product. There are a number of providers out there on the internet that are marketing to consumers in a very -- what I'll say, nebulous fashion, inferior products that consumers obvious oftentimes get wrapped up in.

>> Katie: For Greg and Dani do you more often see consumer complaints regarding third-party products or is it just a mix?

>> Dani: No, I would say it is a^-- in fact, I rarely see complaints about the product itself when it comes to the franchise dealers, or at least the captive^-- you know, like the Ford and the Chrysler and the GM warranties. Or extended contracts. Where I get the complaints, I really^-- the third party contracts, is where I see most of the complaints. You know, being confused about what they cover, what they don't cover.

>> Katie: Greg?

>> Greg: Yeah, I echo that. I don't want to endorse anyone that's selling other service contracts, but a good example would be with the bankruptcies of General Motors and Chrysler. They honored their extended service contracts, kind of what Rob spoke about. There are plenty of companies out there that are selling these products, and on the outside market. Some of them are good, some of them are really bad. We have had a lot that have gone out of business that caused a lot of work for the attorney generals and the plaintiffs lawyers, and what^-- you know, so I would tell the consumers that are buying stuff, you know, if you're looking for something that may cost you more, you may want to look to a manufacturer's product. Again, that's just my personal advice. But the flip^-- there's two sides to that coin. There's been plenty of times where I've gone in with people, like family, to buy cars, and I've noticed, you know, good dealer to go to, and I was going to the F & I office with my family member, and I was surprised to see that the F & I guy would often push a third party service contract as opposed to the manufacturer's. And just in litigation, and deposition I would generally find out that's not what that dealership^-- in other cases, generally they're doing that because they can get a bigger profit. That's the other side of the coin, if you're going to be a responsible dealer, the manufacturers really should try to^-- I mean, the principle should really watch their F & I guys and make sure they're selling products that are good, because it's going to come back to the dealership. As Chris mentioned, the consumers^-- because finance^-- extended service contract company goes out of business, they're going to come back to the dealership and complain to our office. So what the dealers really need to watch is what they're selling, what their general managers are authorizing their finance manager to sell. Because sometimes they're pulling some of these products from the outside, because they're offering them bigger commissions or, you know, dealer reserve, whatever term we want to use. And that's a concern also.

>> Katie: Rob?

>> Rob: Yeah, I couldn't agree more. The reality is, there's very few things that can cause a dealer -- excuse me, a consumer to react to more adversely than to know they paid \$800 for a service contract that is now worthless. So that does generate the complaints, both, you know, to Ms.

Liblang and Mr. Grzeskiewicz and their types of organizations. And that is the motivation in and of itself. Dealers know if they aren't selling these inferior type products this will come back and haunt them. And we have seen that time and again. So, again, if we rewind 20 years a those lessons weren't learned. The lessons now are^-- and particularly with the bankruptcies and a lot of the economic turmoil that we have seen, we have seen so many of these companies go into business, and dealers^-- many dealers I know stepped up to the plate, honored the service contract, with their own funds, because^-- well, A., they may have been required to. Depending on the laws and the way^-- and various states. But oftentimes, it's not^-- even if they had to. Not even because the law required it. Because they realized it's the right thing to do and they're protecting their reputation within the community. One thing I cannot emphasize enough and I know it's been spoken but I'm going to say it again, dealership sales are uniquely and distinctly local. It is a local process, they operate within various communities, and it is extremely important that these dealerships are well-respected within their communities. Last thing you want to do is sell products that turn out to be worthless. It just never pans out from an economic perspective.

>> Katie: Chris?

>> Christopher: Katie, it was interesting -- as a dealer, it's interesting listening to a lot of this dialogue today. I think it was Ms. Reynolds of the last panel who asked about data. And I was surprised that nobody offered any -- or has looked at any. But is anybody familiar with how many new car and used car transactions there are in the United States the last five years? How many new and used car transactions, not counting private?

>> Rob: Dealer facilitated?

>> Christopher: 200 million is the number. Another 80 million warranty claims or service contract claims. And I would be happy to share the data with you we have collected. And a lot of that is public info. When you go and look at the complaints relative to those, the FTC gets about 20 some,000 a year, I think it's 22 thousand in 2009, state attorney generals get about another 15 to 20,000 a year. When you qualify all this, there's about one complaint for every 10,000 transactions. So that's not to take away from the bad actor doing the bad act. But it's -- I think it's important to

keep it in context of there's about 300 million transaction occurring here, and 1 in 10,000 is bad. So I just want to -- it speaks to -- I can understand the view of attorney general's office or plaintiff's attorney. But there's also 9,900 or some customers who walk out of a dealership and they're happy, and their claim is paid for every couple or so or handful that have a serious issue that needs to be dealt with.

>> Katie: Dani?

>> Dani: Quick bonus to the dealers that do it right. Generally, in our communities, we know who they are. And so when friends and family come to me or acquaintances or clients and say, you know, I'm interested in X kind of car, what dealer should I go to? I know who to send them to and who not to send them to. But I'm kind of giving you the^-- yeah. Good idea, so^--

>> Katie: Now, For the F & I managers and people, are they compensated based not only on the markup but also on how many of these add-ons they sell? Greg?

>> Greg: Yeah, sure, I^-- you know, it's an that issue I've looked at in Illinois quite a bit. and some of our problem dealers often^-- the principles or the F & I will brag about that they're the highest paid salesmen in their dealership. And that's not a bad thing but that's a reality and how^-- generally, they're compensated in Illinois is anywhere from an 80 to 20^-- I would say 80/20% cut, maybe some say it's even^-- I've seen even higher, 85/15, 90/10. And what I mean by that percentage is, whatever the dealer reserve is, that F & I will take that portion of^-- I expect it to be even more like 50% but the principle will keep 10% or 15%. And then, the rest of the dealer reserve the profit from the selling of the extent service contract. If there is a rate increase or if there is a gap insurance, they will keep that amount, so, it's just^-- again, from my perspective, the litigation I've done, that's what I've seen when I have to pose to F & I guys.

>> Katie: Rob?

>> Rob: Yeah, I guess I'm a little confused. Were you saying that the^-- the finance personnel and the individual, himself keeps^-- or herself keeps 80 to 90% of the finance reserve?

>> Greg: Yes.

>> Rob: Okay, yeah, that's not correct, from my perspective. I don't think^-- I think we'd have a lot more people dying to get into finance if that were the case.

[ Laughter ]

>> Greg: They are^--

>> Rob: And I might^-- I might still be in finance, myself, if that were the case.

[ Laughter ]

Yeah, unfortunately, it's not that^-- it's the other way around.

>> Christopher: Rob, that number is actually about 15%. If you look at NADA information, our statistical data shows F & I compensation as a percent of F & I income is about 14 to 15%.

>> Rob: Right, so I think it's the other way around. Maybe I misunderstood you.

>> Greg: Yes, that's correct.

>> Rob: Okay. I thought you had said that the finance person got the 80% and that the dealer got the^--

>> Greg: No, I apologize, I apologize. I meant to say^--

>> Rob: --^20. Okay. No, no, yeah. The^-- the 10-15% , And yes, dealership finance personnel^-- although it varies from dealer to dealer, not only percentage but even whether it's a percentage at all, there are salaried finance personnel. There is dealerships that have moved to a^-- more of a

contracting type of model to get away from that. But I think by and large, yes, it is a commissioned position. They are responsible for selling these products, the valuable products, selling the benefits of them. Both from a theft deterrent device perspective, which is really big in California. We have a lot of stolen cars out there. The surface contract^-- the service contracts, surface protection products are still big in a lot of places. And, you know, the end gap. Gap is a valuable product and it takes a knowledgeable sales representative to explain the benefits of all those products. And, again, this is all about protecting the consumer's asset. We talk a lot about and^-- this is the way that this whole meeting was kicked off, was saying for many consumers, this is one of the largest purchases they will ever make. Well, it only makes sense to ensure that product properly, both with^-- from a service contract, maintenance perspective, from an appearance perspective. The list goes on and on. It^-- these are valuable products.

>> Katie: I have one question and I'll start with you, Dani, if you have a comment and then we'll^-- do you think that the compensation structure creates an incentive for payment packing? Dani?

>> Dani: Well, I suppose it certainly logically could. But sales people work on commissions too. I mean, the car dealers, personnel who are moving the metal also work on commission. So I don't know that that is necessarily a problem. You know, I think that's like any other sales profession. They're either honest or they're not and so I don't know that that's a big problem. One of the things where I was going to comment, that brought that up, was I'm seeing a big increase in these companies that will come to the dealers and manage their tent sale. In other words, they aren't regular dealer employees. And they come in and they do this huge tent sale and they engage in all kinds of practices that you would never expect to see a responsible dealer do. It's an outside company that comes in and does it and I've seen a lot of complaints with that sort of thing, with^-- with add-on complaints, and price gouging and financing issues. And in Michigan, actually, that^-- I don't know that that's legal. Because normally they're supposed to register and do all these things. And so, usually the dealers have gotten caught in the middle of that. But I think it's something to look out for.

>> Katie: Rob?

>> Rob: In terms of whether the commission structure services an incentive to pack payments, I would contend it's the exact opposite. There is a strong disincentive, economically, to pack payments with respect to the commissions that are made in finance. And let me explain. Well, commissions as a whole. Your sales department, if they can achieve a^-- if they can, what's called, "close" the customer and get the customer to agree to a price, that is exclusive of any finance products, then why would they^-- why would they try to increase that amount that they are trying to close the consumer, when there is already products built into it? And let me explain. I know it gets a little complicated but if Greg and I were negotiating and Greg agrees to pay \$400 a month, let's assume that Greg is really just interested in the payment, which many consumers are, because that's really what it comes down to, if they can fit it within their monthly budget. So if Greg's willing to pay \$400 a month, why^-- why would I then say, "okay, well, great, he's willing to pay \$400 a month for the price of the vehicle. But I'm going reduce the price, and get him to agree to \$400 a month that includes an \$800 service contract"? That just doesn't make sense at all. Ultimately, the dealership would much rather make \$800 on the sale of the vehicle. The sales department makes that, what's called, on the front end. So they make that \$800 profit on the front end and then it goes into finance. And the finance department is incentivized, of course, much like any other salesperson, to sell the valuable products and ultimately, Greg might agree to paying \$415 a month because he was able^-- he agreed to buy a theft deterrent device or something along those lines, to protect his asset.

>> Katie: Greg, if you have a comment and then we're going to open for questions.

>> Greg: I would just echo that it is possible. I understand what Rob's saying and I think, for dealerships to do it correctly, there is no incentive there. Unfortunately, what I've seen sometimes is the salesman working with the finance officer, talking to the consumer right up front. "What can you afford per month?" And then, that allows that^-- there's a potential there for the use of the word "payment packing" to be involved. That way, if someone agrees to pay \$450 a month, they may walk into a finance office, have a retail installment sales contract and have a 1,500 hour extended service contract put on there and then say, "hey, I didn't ask for this." And they'd say, "well, you agreed to \$450 a month." So, and^-- so what we've seen sometimes is that, you know, again, the problem dealers would^-- the men salesmen and the F & I work together because of that

85/15% cut and the finance manager would actually give part of the money^-- they use different terms^-- but actually give part of that money back to the finance commission, part back to split it with the salesman or something like that.

>> Katie: Rob?

>> Rob: Yeah, that^-- and that doesn't happen in terms of the splitting with the salesperson. I mean, the sales managers may ultimately benefit but^-- the scenario you just gave, by the way, that's impermissible already. I mean, every attorney general in the country would say that, "look, that is a classic payment packing scenario." Consumer was not^-- was not informed that the payment that they agreed upon included a service contract. The first time they were made aware of this product was on the contract itself, which, in California, that, in and of itself is impermissible. California, we have a very specific statute that says a consumer must consent to all optional goods and services prior to the presentation of the contract. If that doesn't happen, then the dealership is violating the law. And I think, even without such a statute, that could easily be deemed to be a deceptive^-- and would be deemed to be a deceptive practice and it's not something that goes on regularly. It's something that the consumer, ultimately^-- well, what's^-- the marketplace has created and attorney general's office, of course^-- attorneys general across the country have really kind of placed out their considerable fear associated with that type of practice and I just don't see it anymore.

>> Katie: We have one minute for questions.

>> All right. The question^-- Wendy Stone, Chrysler Financial. With respect to the finance companies, has anybody^-- and I don't know if you guys can even speak to this. Somebody in the room probably can^-- had difficulty assigning paper which has add-ons on, due to the finance company having some fear of liability? And if so, is that realistic? Is there any credence to such affair?

>> Rob: I didn't understand the question.

>> Well, so, for instance, if you need a^-- if the dealer should have been licensed to sell an insurance product, for instance, what's the potential recourse to the finance company that takes assignment of that paper? Now, for a long time, you know, based on^-- and truth and lending, you're limited to what's on the face of the contract. We'd have no way, as a finance source, of knowing. But are there other risks to the finance company? And have you had any pushback, those of you in the dealer world, for finance^-- certain finance companies or lenders, hesitant to take assignment of such a contract? I mean^-- and I'm not talking about the different, you know^-- the extended finance amount, over and above the value of the vehicle. I'm just talking about the products, itself and the issue it raises for a third-party finance source.

>> Rob: Well, you know, again, I don't do a whole lot^-- well, actually, I don't do any work for finance companies, so there's people in the room that are far better qualified to answer and possibly on this panel but what I can say is there is this concept and the FTC is certainly very familiar with it. It's called the "holder in due course" rule. And the holder in due course rule basically states that you, the assignee finance company is really going to be subject to any of the same claims and defenses that the assigning dealership would be. So, in terms of there being liability, yeah, but you guys do a pretty good job of protecting yourself by injecting language in your dealer agreements that allow you to recourse the deal back to the dealership.

>> Katie: Well, thank you, panelists, for a lively discussion. We have a 15 minute break, and we'll reconvene at 3:45.

[^Applause^]