

1987

Western Surety Company v. Joel Murphy,
Christopher Dowling, Brasher's Southern
California Auto Auction, Denver Auto Auction,
Shawn Patten, Yon Hee Lee, Colorado Auto
Auction, Inc., Leon Stubbs, MJH Behzadi, Earl
Snyder, Donna Curran, University of Utah Credit
Union, and John Does 1 through 20 : Brief of
Appellant

Utah Court of Appeals

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Robert L. Moody; Taylor, Moody, and Thorne; Attorney for Appellant.

Gary H. Weight; Aldrich, nelson, Weight, and Esplin; Attorney for Respondent.

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UTAH COURT OF APPEALS
BRIEF

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DOCKET NO. 870209-CA

IN THE SUPREME COURT OF THE STATE OF UTAH

WESTERN SURETY COMPANY, :

Plaintiffs/Appellants :

vs. :

JOEL MURPHY, CHRISTOPHER :
DOWLING, BRASHER'S SOUTHERN :
CALIFORNIA AUTO AUCTION, :
DENVER AUTO AUCTION, SHAWN :
PATTEN, YON HEE LEE, COLORADO :
AUTO AUCTION, INC., LEON :
STUBBS, MJH BEHZADI, EARL :
SNYDER, DONNA CURRAN, :
UNIVERSITY OF UTAH CREDIT :
UNION, and JOHN DOES 1 through :
20, :

Defendants/Respondents. :

Case No. 870040

870209-CA

14b

BRIEF OF APPELLANT

APPEAL FROM JUDGMENT OF THE FOURTH JUDICIAL
DISTRICT COURT IN AND FOR UTAH COUNTY, STATE OF UTAH
HONORABLE GEORGE E. BALLIF, JUDGE

Robert L. Moody
TAYLOR, MOODY & THORNE
2525 North Canyon Road
P. O. Box 1466
Provo, Utah 84603
Telephone (801) 373-2721

Attorney for
Appellant

Gary H. Weight ✓
ALDRICH, NELSON, WEIGHT & ESPLIN
43 East 200 North
P. O. Box "L"
Provo, Utah 84603
Telephone (801) 373-4912

Attorney for
Respondent

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COURT OF APPEALS

LIST OF PARTIES

The parties are as set forth in the caption of the case.

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IN THE SUPREME COURT OF THE STATE OF UTAH

WESTERN SURETY COMPANY, :
 : Case No. 870040
Plaintiffs/Appellants :
vs. :
JOEL MURPHY, CHRISTOPHER :
DOWLING, BRASHER'S SOUTHERN :
CALIFORNIA AUTO AUCTION, :
DENVER AUTO AUCTION, SHAWN :
PATTEN, YON HEE LEE, COLORADO :
AUTO AUCTION, INC., LEON :
STUBBS, MJH BEHZADI, EARL :
SNYDER, DONNA CURRAN, :
UNIVERSITY OF UTAH CREDIT :
UNION, and JOHN DOES 1 through :
20, :
Defendants/Respondents. :

STATEMENT OF ISSUES

The issues in this case on appeal are fourfold. First, can 1985 claims made on Plaintiff/Appellant's Motor Vehicle Dealer Bond exceed the total annual aggregate liability of TWENTY THOUSAND (\$20,000.00) DOLLARS as set forth by statute?

Second, can Plaintiff/Appellant's Blanket Rider filed with the Department of Motor Vehicles on August 31, 1983, limiting total annual aggregate liability to TWENTY THOUSAND (\$20,000.00) DOLLARS be summarily decided as a matter of law as having no force or effect?

Third, whether it was appropriate to award attorney's

fees to Defendant/Respondent.

Fourth, whether Summary Judgment was properly granted in light of the issue of Defendant/Respondent having a vehicle without a title and what its value might be as a set-off to any damages she might otherwise be entitled to.

STATEMENT OF THE NATURE OF THE CASE

The Appellant, Western Surety Company, Plaintiff below, appeals from a Summary Judgment in favor of Respondent Donna Curran in the principal sum of FIVE THOUSAND EIGHT HUNDRED TWELVE and 25/100 (\$5,812.25) DOLLARS, interest in the sum of NINE HUNDRED SEVENTY FIVE and 20/100 (\$975.20) DOLLARS, and attorney's fees in the sum of FOUR HUNDRED TWENTY TWO and 50/100 (\$422.50) DOLLARS. The Summary Judgment appealed from was based upon a prior ruling in which the Court below concluded that Appellant's Motor Vehicle Dealer Bond was "not subject to an aggregate annual limit of \$20,000.00 but that each individual claim is subject to the \$20,000.00 limit."

PROCEEDINGS AND DISPOSITION IN THE COURT BELOW

1. Appellant, Plaintiff below, filed an action on November 1, 1985 (R.1) and tendered to the Court below TWENTY THOUSAND (\$20,000.00) DOLLARS. The purpose of said action was to require Defendants to interplead to protect Appellant, Plaintiff below, from multiple claims and liability on its TWENTY THOUSAND (\$20,000.00) DOLLAR Motor Vehicle Dealer Bond.

2. An Answer (R.5) dated November 19, 1985, was filed by Respondent, Defendant Donna Curran below. This Answer alleged

that this Defendant had a claim against the Bond, it was entitled to priority, and attorney's fees.

3. An Answer, Counterclaim and Crossclaim (R.14) dated December 6, 1985, was filed by Defendant University of Utah Credit Union. The Counterclaim alleged that the conditions of Appellant's Bond had been violated and Counterclaimant was protected by said bond in an amount up to TWENTY THOUSAND (\$20,000.00) DOLLARS.

4. Defendant University of Utah Credit Union filed a Motion for Summary Judgment dated March 26, 1986, (R.85) together with supporting Memorandum (R.90) and Affidavits. (R.104,108)

5. Appellant filed its Objection to the Motion for Summary Judgment dated April 8, 1986 (R.125) together with its Statement of Answering Points and Authorities. (R.114)

6. Defendant University of Utah Credit Union filed Reply Points and Authorities dated May 5, 1986. (R.127)

7. Appellant filed a Request for Hearing dated May 8, 1986. (R.152)

8. Respondent, Defendant Curran below, filed a Motion for Summary Judgment dated April 19, 1986, (R.134) together with a supporting Memorandum. (R.137)

9. Appellant filed its Statement of Answering Points and Authorities dated May 15, 1986. (R.154)

10. Respondent filed a Reply Points and Authorities dated May 29, 1986. (R.191)

11. Appellant filed a Request for Hearing dated June

17, 1986. (R.206)

12. August 7, 1986, the Court below entered its ruling denying Defendant's Motion for Summary Judgment, but in so doing tentatively concluded that the Bond is not subject to an aggregate annual limit of TWENTY THOUSAND (\$20,000.00) DOLLARS and permitted Respondent to file a written Request for Oral Arguments on this issue. (R.239)

13. Respondent filed a Request for Oral Argument dated August 11, 1986. (R.241)

14. Oral Arguments were heard by the Court on September 5, 1986. (See transcript)

15. The Court below gave its ruling dated September 30, 1986, (R.264) concluding the Bond is not subject to an aggregate annual limit of TWENTY THOUSAND (\$20,000.00) DOLLARS.

16. Respondent, Defendant Curran below, filed a Request for Decision dated October 15, 1986. (R.269)

17. Partial Summary Judgment was entered November 12, 1986. (R.274)

18. January 6, 1987, the Court below entered its ruling on Respondent's Motion for Summary Judgment. (R.314)

19. January 20, 1987, Summary Judgment was entered. (R.318)

20. January 22, 1987, Appellant filed its Notice of Appeal. (R.321)

STATEMENT OF FACTS

The following facts are submitted.

1. Appellant/Plaintiff issued a Motor Vehicle Dealer Bond to Defendants Murphy and Dowling on June 2, 1982.

2. Said Bond was on the form approved by the Attorney General and filed with the Department of Motor Vehicles pursuant to the Motor Vehicle Code.

3. Plaintiff/Appellant caused a Blanket Rider to be filed with the Department of Motor Vehicles August 31, 1983, (R.122) which amended all of Appellant's Bonds then in effect or subsequently to be issued and specifically stated "the total aggregate annual liability of this Bond regardless of the number of claims, may not exceed \$20,000.00."

4. In 1985, Appellant received a number of claims on the Murphy/Dowling Bond. Said claims exceeded TWENTY THOUSAND (\$20,000.00) DOLLARS. Respondent was one of the claimants.

5. Appellant filed this action on November 1, 1985 (R.1) and tendered into the Court below TWENTY THOUSAND (\$20,000.00) DOLLARS. The action was filed pursuant to Rule 22 of the Utah Rules of Procedure to cause Respondent and all claimants on the Motor Vehicle Dealer Bond to be required to interplead to protect Appellant from multiple claims and liability on its TWENTY THOUSAND (\$20,000.00) DOLLAR Motor Vehicle Dealer Bond.

6. Respondent Curran's claim stated that she purchased a 1984 Mercury Topaz GS automobile from Defendant Murphy and paid a total purchase price of FIVE THOUSAND EIGHT HUNDRED TWELVE and 25/100 (\$5,812.25) DOLLARS. Curran further stated that Murphy

failed to deliver title to the vehicle within thirty (30) days of the date of purchase of thereafter. Curran claimed she had a vehicle she was unable to drive because it was not properly registered or licensed. Curran claimed this damaged her in the amount of FIVE THOUSAND EIGHT HUNDRED TWELVE and 25/100 (\$5,812.25) DOLLARS and in addition was entitled to attorney's fees. (R.5)

7. Respondent and Defendant University of Utah filed Motions for Summary Judgment claiming Appellant was not limited to a total aggregate annual liability of TWENTY THOUSAND (\$20,000.00) DOLLARS.

8. The Court below in considering the issue of total aggregate annual liability concluded Appellants liability was not limited to an aggregate annual liability of TWENTY THOUSAND (\$20,00.00) DOLLARS. (R.264)

9. The Court below granted Respondent Summary Judgment in the sum of FIVE THOUSAND EIGHT HUNDRED TWELVE and 25/100 (\$5,851.25) DOLLARS principal, NINE HUNDRED SEVENTY-FIVE and 20/100 (\$975.20) DOLLARS interest, and FOUR HUNDRED TWENTY TWO and 50/100 (\$422.50) DOLLARS attorney's fees. (R.314)

SUMMARY OF ARGUMENT

The claim of Respondent, as well as all others Appellant named in this interpleader action, must be made in compliance with the Motor Vehicle Code. They are claims that arose at various times in 1985. The Motor Vehicle Code in 1985 was specific in limiting a surety's liability. "The total

aggregate annual liability on the bond to all persons making claims may not exceed \$20,000.00." There is no authority for liability of a surety on a Motor Vehicle Dealer Bond in excess of said TWENTY THOUSAND (\$20,000.00) DOLLARS to all persons making claims.

ARGUMENT

POINT I

TOTAL AGGREGATE ANNUAL LIABILITY TO ALL PERSONS MAKING CLAIMS ON DEALER BONDS MAY NOT EXCEED \$20,000.00

Appellant issued a Motor Vehicle Dealer Bond to Defendants Murphy and Dowling on June 2, 1982. At that time, Utah Code Annotated (U.C.A.), 41-3-16(1) (1953 as amended) read as follows:

"(1) New motor vehicle dealer bond and used motor vehicle dealer bond: Before a new motor vehicle dealer's license or used motor vehicle dealer's license is issued, the applicant shall file with the administrator a good and sufficient bond in the amount of \$20,000.00 with corporate surety thereon, duly licensed to do business within the State, approved as to form by the Attorney General, and conditioned that the applicant will conduct business as a dealer without fraud or fraudulent representations, and without violation of this chapter. The bond may be continuous in form, and the total aggregate liability on the bond shall be limited to the payment of \$20,000.00."

In 1983, the Utah Supreme Court stated, "where a bond is by its terms more comprehensive than required by statute, the surety is liable to the full extent of the bond." Dennis Dillon Oldsmobile, GMC, Inc. v. Zdunich, 668 P2d 557, 560 (Utah 1983).

The Utah legislature reacted to the Dennis Dillon

Oldsmobile case and amended Utah Code Annotated (U.C.A.), 41-3-16(1) (1953 as amended) which at the time of Respondent's claim read and now reads as follows:

"(1) Before a new or used motor vehicle dealer's license is issued the applicant shall file with the administrator a good and sufficient corporate surety bond in the amount of \$20,000.00. The corporate surety shall be duly licensed to do business within the State. The bond shall be approved as to form by the Attorney General, and conditioned that the applicant will conduct business as a dealer without fraud or fraudulent representation, and without violation of this chapter, and may be continuous in form. The total aggregate annual liability on the bond to all persons making claim may not exceed \$20,000.00. No cause of action may be maintained against the surety unless:

(a) A claim is filed in writing with the administrator within one year after the cause of action arose, and

(b) The action is commenced within two years after the claim is filed with the administrator."

The Court in Dennis Dillon Oldsmobile, GMC, Inc. v. Zdunich, (supra), held that by the literal language of the bond, the sureties rendered themselves liable up to a maximum of TWENTY THOUSAND (\$20,000.00) DOLLARS per any loss suffered by any and all person. The legislature changed that and as the statute now reads the pertinent language states "the total aggregate annual liability on the bond to all persons making claims may not exceed \$20,000.00." (emphasis added). The Court below erred in failing to consider the plain meaning intended by the legislature when it clearly stated that "the total aggregate annual liability on the bond to all persons making claims may not exceed \$20,000.00." The Courts conclusion that the legislature's revision "simply

imposes a lessor requirement for surety bonds and does not in any way abrogate existing contractual duties" ignores the plain meaning and intention of the legislature.

— Since the claims at issue in the above entitled case arose in 1985 even though the bond was issued in 1982 and as originally issued contained the same language as the bonds interpreted by the Court in Dennis Dillon Oldsmobile, GMC, Inc. v. Zdunich, (supra), changes by the legislature mandate that "the total aggregate annual liability on the bond to all persons making claim may not exceed TWENTY THOUSAND (\$20,000.00) DOLLARS.

Respondent is further precluded statutorily from recovering an amount in excess of the Bond by virtue of U.C.A., 41-3-18 (1953 as amended) where again the intent of the legislature is set forth as follows:

"A person who suffers a loss or damage by reason of fraud, fraudulent representation, or violation of this chapter, any law respecting commerce and motor vehicles, or a rule or regulation respecting commerce in motor vehicles promulgated by a licensing or regulating authority, by licensed dealer, one of his salesmen acting for the dealer on his behalf, or within the scope of the employment of the salesman, or by a licensed crusher, shall have the right to maintain an action for recovery against the dealer, salesman, or crusher guilty of the fraud, fraudulent representation, or violation and the sureties upon their respective bonds. Successive recoveries against a surety on a bond is permitted, the total aggregate annual liability on the bond to all persons making claims may not exceed the amount of the bond." (emphasis added)

POINT II

APPELLANT'S BLANKET RIDER FILED WITH MOTOR VEHICLE DEPARTMENT
SPECIFICALLY LIMITED TOTAL AGGREGATE ANNUAL LIABILITY
TO \$20,000.00 REGARDLESS OF NUMBER OF CLAIMS

The Dennis Dillon Oldsmobile, GMC, Inc. v. Zdunich, (supra), decision was rendered by the Court on July 20, 1983. Upon Appellants learning of the ruling, it immediately employed counsel who prepared a new Bond form, obtained the approval as to form by the Utah State Attorney General's Office, and filed with the Motor Vehicle Department on the 31st day of August, 1983, a Blanket Rider. (R.122) The Blanket Rider amended Appellant's 1982 Bond issued to Defendants Murphy and Dowling and incorporated the language of the legislature when it stated "the total aggregate annual liability on this bond, regardless of the number of claims, may not exceed \$20,000.00."

The Court below erred when it concluded that the amendment to the Bond was ineffective because Appellant had not complied with the provisions of the Insurance Code, to wit: U.C.A., 31-19-26 (1953 as amended). A surety bond is not an "insurance contract". The statute relied upon by the Court below is taken from Section 19 of the Insurance Code where the subject "insurance contract" is treated.

U.C.A., 31-19-1 (1953 as amended) provides:

"The provisions of this chapter shall apply only to insurance contracts covering subjects of insurance resident, located, or to be performed in this State."

U.C.A., 31-19-7 (1953 as amended) in which application for insurance to be attached to contract is discussed uses the

word "contract" and "policy" synonymously. There it states:

"No application for the insurance of any life or disability insurance policy or annuity contract shall be admissible in evidence in any action relative to such policy or contract, unless a true copy of such application was attached to or otherwise made a part of the policy or contract when issued."

U.C.A., 31-19-9 (1953 as amended) requires all insurance policy forms to be approved by the insurance commissioner except a surety bond form. Subparagraph 1 provides:

"(1) No insurance policy form, other than a surety bond form or application form, where written application is required or rider form, pertaining thereto shall be issued, delivered, or used unless it has been filed with and approved by the commissioner."

Surety bonds for motor vehicle dealer bonds are to be approved as to form by the State Attorney General's Office. 41-3-16(1), U.C.A., (1953 as amended). The form approved by the State Attorney General's Office differs substantially from the definition set forth in the required specifications in an insurance contract as described in 31-19-11, U.C.A., (1953 as amended).

The remaining provisions of Chapter 19 of the Insurance Code clearly apply to insurance contracts and not surety bonds. For the Court below to impose the requirements of U.C.A., 31-19-26 (1953 as amended) on a summary basis is in error since the instrument in question is a surety bond and not a insurance contract. A motor vehicle dealer bond is controlled by the Motor Vehicle Code and not the Insurance Code and Appellant faithfully

complied with the requirements of the Motor Vehicle Code and appropriately obtained the approval of the Utah Attorney General's Office as to form.

Even if a motor vehicle dealer surety bond were to be construed as an insurance contract 31-19-26, U.C.A., would be inapplicable since the bond is a contract by the surety with the State of Utah for the protection of the public. Its sole purpose is to enable the dealer to obtain a motor vehicle dealer's license and the principal of the surety bond is entitled to no benefits as they are intended for his customers.

It is respectfully submitted that the Blanket Rider approved as to form by the Attorney General and filed with the Motor Vehicle Dealer Bond effectively modified the Bond as written in 1982 and the total aggregate annual liability on the Bond to all persons making claims was limited to TWENTY THOUSAND (\$20,000.00) DOLLARS.

POINT III

THE COURT BELOW COMMITTED ERROR WHEN IT SUMMARILY AWARDED
RESPONDENT ATTORNEY'S FEES WHERE NOT PROVIDED FOR
BY STATUTE OR CONTRACT

In paragraph 3, of the Summary Judgment, (R.318) the Court awarded attorney's fees in the sum of FOUR HUNDRED TWENTY TWO and 50/100 (\$422.50) DOLLARS.

The Motor Vehicle Code describes the basis of a claim, how the claim must be made, and the time limit within any such claims can be made. U.C.A., 41-3-16 and 41-3-18 (1953 as amended). Nowhere in the Motor Vehicle Code or elsewhere does it

provide that a claimant is entitled to attorney's fees.

The only reference to attorney's fees in the surety bond states:

"Said bounden principal shall also pay reasonable attorney's fees in cases successfully prosecuted to judgment."

Utah adheres to the well established rule that attorney's fees generally cannot be recovered unless provided by statute or by contract. White v. Fox, 665 P2d 1297 (Utah 1983); Turtle Management, Inc. v. Aggis Management, Inc., 645 P2d 667 (Utah 1982).

In White v. Fox, (supra), a real estate company brought an action for commissions alleged due and owing from vendor. Vendor prevailed and sought attorney's fees. The Court ruled that the vendor was not entitled to attorney's fees since the contract provided that only the real estate broker may recover attorney's fees in the event of a default. In this case, the vendor urged the Court to adopt a reciprocal application of a one sided attorney's fees provision and the Court ruled that under the circumstances cited, there was no basis for attorney's fees on a reciprocal basis since the parties in that action bargained on an equal basis.

Respondent as a claimant under the surety bond cannot even claim the status of a party to the contract. The bond makes no provision for attorney's fees to claimants.

Accordingly, it was error for the Court to award attorney's fees since there was no basis either in contract or by

statute.

POINT IV

SUMMARY JUDGMENT IN TOTAL AMOUNT OF CLAIM INAPPROPRIATE
SINCE NO CONSIDERATION HAS BEEN GIVEN TO THE SET-OFF
APPELLANT WOULD BE ENTITLED TO FOR THE VALUE
OF THE UNTITLED CAR IN POSSESSION OF RESPONDENT

Respondent claims she paid a total of FIVE THOUSAND EIGHT TWELVE and 25/100 (\$5,812.25) DOLLARS for a vehicle. She claims she has never received title and is unable to license it. There remains an issue of the value or rights as to the untitled vehicle and this issue would preclude any summary disposition for the total amount of the claim. In Respondent's Memorandum in Support of her Motion for Summary Judgment, paragraph 7 (R.137) Respondent states:

"Donna Curran is unable to drive the vehicle because it is not properly registered and licensed and believes that some other person or entity may have a superior claim to title and ownership of the vehicle."

It is clear from the Respondent's own statement of the facts that she has possession of the vehicle. Some evidence and determination as to priority of right and what if any set-off Appellant may be entitled to must be considered before the total amount of the claim can be awarded in the way of a Summary Judgment.

Rule 56(d), Utah Rules of Civil Procedure, (U.C.A. 1953 as amended) states:

"The Court at the hearing of the motion, by examining the pleadings and evidence before it and by interrogating counsel, shall if practicable ascertain what material facts

exist without substantial controversy and what material facts are actually in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just."

In Lockhart Company v. Anderson, 646 P2d 678 (Utah 1982), the Court ruled that even if there is no genuine issue as to any material fact, a summary judgment is proper only if the pleadings and other documents demonstrate that the moving party is entitled to judgment as a matter of law. The total amount of the claim under the basis of the facts stated by the Respondent clearly show that evidence is necessary in order to determine the proper amount of the summary judgment. To award the full amount of the claim was error.

CONCLUSION

The intent of the legislature was set forth plainly in its amendment to the Motor Vehicle Code in the session following the Dennis Dillon Oldsmobile case. In two sections, the legislature plainly stated that the total aggregate annual liability was limited to TWENTY THOUSAND (\$20,000.00) DOLLARS regardless of the number of claims. The legislature could not have made it any clearer in what it meant when it couched the TWENTY THOUSAND (\$20,000.00) DOLLAR limit with the words "regardless of the number of claims." It was error for the Court below to disregard this statutory limitation.

It was further error on the part of the Court below to

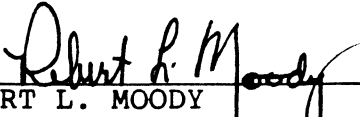
apply the provisions of the Insurance Code as it applies to "insurance contracts" when the document to be interpreted was a Motor Vehicle Dealer's Surety Bond. Appellant clearly complied with the requirements of the Motor Vehicle Dealer's Code, obtained the approval as to form from the Utah Attorney General's Office which amended the Surety Bond specifically limiting the total annual aggregate liability to TWENTY THOUSAND (\$20,000.00) DOLLARS regardless of the number of claims. It was error for the Court to rule otherwise.

The Court below committed further error when it awarded attorney's fees without any statutory or contractual basis and it is clear that no award for attorney's fees was appropriate.

It was further error to award Respondent the total amount of its claim when Respondent's own set of facts set forth clearly that Respondent was in possession of an untitled car. Evidence was required to determine what if any set-off Appellant was entitled to and a money judgment for the total amount of the claim was improper.

The Court below should be reversed and remand should issue directing that the total aggregate annual liability on claims filed against Appellant is limited to TWENTY THOUSAND (\$20,000.00) DOLLARS regardless of the number of claims and the other Defendants should be required to interplead and prove their respective claims for the TWENTY THOUSAND (\$20,000.00) DOLLARS tendered into Court by Appellant.

RESPECTFULLY SUBMITTED, this 29th day of May, 1987.


ROBERT L. MOODY
Attorney for Plaintiff/Appellant

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 29th day of May, 1987, I mailed a true and correct copy of the foregoing BRIEF OF APPELLANT, postage prepaid, to the following attorneys:

Gary H. Weight
ALDRICH, NELSON, WEIGHT & ESPLIN
Attorneys for Defendant Donna Curran
P. O. Box "L"
Provo, Utah 84603

Bruce L. Richards
Attorney for University of Utah Credit Union
1805 South Redwood Road
Salt Lake City, Utah 84104

Irshad A. Aadil
Attorney for Mr. MJH Behzadi
1154 East 300 South
Salt Lake City, Utah 84102

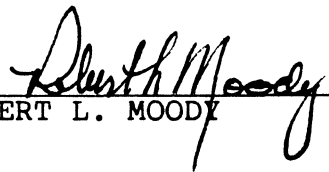
Richard L. Hill
Attorney for Christopher Dowling
3319 North University Ave.
Provo, Utah 84604

Craig M. Snyder
Attorney for Denver Auto Auction
P.O. Box 778
Provo, Utah 84603

Brent D. Young
Attorney for Colorado Auto Auction
P.O. Box 672
Provo, Utah 84603

Douglas E. Wahlquist
Attorney for Fred Moss
426 South 500 East
Salt Lake City, Utah 84603

David R. Ward
Attorney for Rocky Mountain State Bank
4455 South 700 East, Suite 205
Salt Lake City, Utah 84107



ROBERT L. MOODY

ADDENDUM

41-3-16(1), U.C.A., 1953, before Dennis Dillon Oldsmobile, GMC, Inc. v. Zdunich, 668 P2d 557 (Utah 1983) read as follows:

41-3-16. Bonds required of licensees — Filing — Amount — Surety — Form — Conditions — Maximum liability. (1) New Motor Vehicle Dealer's and Used Motor Vehicle Dealer's Bond: Before a new motor vehicle dealer's license or used motor vehicle dealer's license is issued the applicant shall file with the administrator a good and sufficient bond in the amount of \$20,000 with corporate surety thereon, duly licensed to do business within the state, approved as to form by the attorney general, and conditioned that the applicant will conduct business as a dealer without fraud or fraudulent representation, and without violation of this chapter. The bond may be continuous in form, and the total aggregate liability on the bond shall be limited to the payment of \$20,000.

41-3-16(1), U.C.A., 1953, after Dennis Dillon Oldsmobile, GMC, Inc. v. Zdunich, 668 P2d 557 (Utah 1983) reads as follows:

41-3-16. Bonds required of dealers and crushers

- Filing, amount, and form - Maximum liability - Action against surety.

(1) Before a new or used motor vehicle dealer's license is issued the applicant shall file with the administrator a good and sufficient corporate surety bond in the amount of \$20,000. The corporate surety shall be duly licensed to do business within the state. The bond shall be approved as to form by the attorney general, and conditioned that the applicant will conduct business as a dealer without fraud or fraudulent representation, and without violation of this chapter, and may be continuous in form. The total aggregate annual liability on the bond to all persons making claims may not exceed \$20,000. No cause of action may be maintained

(a) A claim is filed in writing with the administrator within one year after the cause of action arose; and

(b) The action is commenced within two years after the claim is filed with the administrator.

BLANKET RIDER

It is agreed and understood that any Motor Vehicle Dealer Bond issued by Western Surety Company in the State of Utah filed with the Motor Vehicle Department, State of Utah, is hereby amended pursuant to the attached bond form, shown as Exhibit "A".

This is a blanket rider pertaining to all Utah Motor Vehicle Dealer Bonds and in effect for all such bonds now on file or to be subsequently issued by Western Surety Company as if it were attached to all bonds individually.

DATED this 31st day of August, 1983.

WESTERN SURETY COMPANY

BY: Terry M. Plant

TERRY M. PLANT

Attorney for Western Surety Co.

SUBSCRIBED AND SWORN TO before me this 31 day of

August, 1983.

Lillian G. Fend
NOTARY PUBLIC
Residing at: Salt Lake County, Ut.

My Commission Expires:

10-15-86

I do hereby certify that this photostat copy is a true and correct copy of the document on file with the Motor Vehicle Business Administration, State of Utah

Michael J. Steed
MUBA 9-74-88

This

BOND OF MOTOR VEHICLE DEALER, SALESMAN OR CRUSHER

KNOW ALL MEN BY THESE PRESENTS: That we, _____
 _____ of
 Street Address _____ City _____
 County of _____, Utah, as Principal and _____

_____ a Surety Company qualified and authorized to do business in the State of Utah as Surety, are jointly and severally held and firmly bound to the people of the State of Utah to indemnify persons, firms and corporations for loss suffered by reason of violation of the conditions hereinafter contained, in the total aggregate annual penal sum of _____ Dollars (\$ _____), as required by Utah Code Annotated, Section 41-3-16(1), 1953 as amended, lawful money of the United States for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly, severally and firmly by these presents. The total aggregate annual liability of this bond, regardless of the number of claims, may not exceed \$ _____.

THE CONDITION OF THIS OBLIGATION IS SUCH, That,

WHEREAS, the above bounden principal has applied for a license to do business as a _____ Motor Vehicle _____ within the State of Utah, and that pursuant to the application, a license has been or is about to be issued.

NOW, THEREFORE, if the above bounden principal shall obtain said license to do business as such _____ Motor Vehicle _____ and shall well and truly observe and comply with all requirements and provisions of THE ACT PROVIDING FOR THE REGULATION AND CONTROL OF THE BUSINESS OF DEALING IN MOTOR VEHICLES, as provided by Chapter 3, Title 41, Utah Code Annotated, 1953, as amended, and indemnify persons, firms and corporations in accordance with Utah Code Annotated, Section 41-3-16(1), 1953 as amended, for loss suffered by reason of the fraud or fraudulent representations made or through the violation of any of the provisions of said Motor Vehicle Business Act or any law respecting commerce in motor vehicles, or rule or regulation respecting commerce in motor vehicles promulgated by a licensing or regulating authority and shall pay judgments and costs

annual liability of \$ _____ regardless of the number of claims on this bond on account of fraud or fraudulent representations or for any violation or violations of said laws, rules or regulations during the time of said license and all lawful renewals thereof, then the above obligation shall be null and void, otherwise to remain in full force and effect. Said bounden principal shall also pay reasonable attorney's fees in cases successfully prosecuted to judgment.

The Surety herein reserves the right to withdraw as such surety except as to any liability already incurred or accrued hereunder and may do so upon the giving of written notice of such withdrawal to the principal and to the Motor Vehicle Business Administrator; provided, however, that no withdrawal shall be effective for any purpose until sixty days shall have elapsed from and after the receipt of such notice by the said administrator, and further provided that no withdrawal shall in anywise affect the liability of said surety arising out of fraud or fraudulent representations or for any violation or violations of said laws, rules or regulations by the principal hereunder prior to the expiration of such period of sixty days, regardless of whether or not the loss suffered has been reduced to judgment before the lapse of sixty days.

Signed and sealed this _____ day of _____, 19 _____

ATTEST

By _____

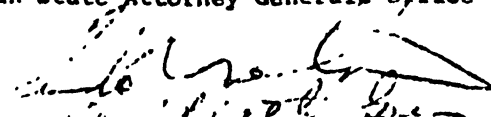
Principal

Surety

Attorney-in-Fact

Approved as to form

Utah State Attorney General's Office


S-27-53
10000 (Rev. 1-23) 6-7-53